CRIMINAL JUSTICE COMMITTEE

MEETING PACKET

Wednesday, November 9, 2005
9:45 a.m. – 11:45 a.m.
(404 HOB)

Allan G. Bense
Speaker

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

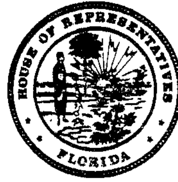
Criminal Justice Committee

Start Date and Time:	Wednesday, November 09, 2005 09:45 am
End Date and Time:	Wednesday, November 09, 2005 11:45 am
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 85 Assault or Battery on Security Officers by Taylor
HB 95 Alcoholic Beverages by Henriquez
HB 139 Trespass by Mahon
HB 147 Criminal Prosecutions by Kravitz
HB 171 Notification of Next of Kin by Meadows
HB 175 Drug Court Programs by Adams
HB 187 Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth

NOTICE FINALIZED on 10/28/2005 15:03 by THOMPSON.SONJA



FLORIDA HOUSE OF REPRESENTATIVES
Allan G. Bense, Speaker

Justice Council
Criminal Justice Committee

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Meeting Agenda
Wednesday, November 9, 2005
404 House Office Building
9:45 a.m. – 11:45 a.m.

I. Opening remarks by Chair Kravitz

II. Roll call

III. Consideration of the following bills:

HB 85—Assault or Battery on Security Officers by Taylor

HB 95—Alcoholic Beverages by Henriquez

HB 139—Trespass by Mahon

HB 147—Criminal Prosecutions by Kravitz

HB 171—Notification of Next of Kin by Meadows

HB 175—Drug Court Programs by Adams

HB 187—Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth

IV. Closing comments / Meeting adjourned

HB 85

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 85 Assault or Battery on Security Officers
SPONSOR(S): Taylor
TIED BILLS: **IDEN./SIM. BILLS:** SB 212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer TK	Kramer TK
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, section 784.087, F.S., reclassifies the felony or misdemeanor degree of assault and battery offenses committed against a law enforcement officer, firefighter or other specified person. The bill adds licensed security officers to the list of specified people. This will have the effect of increasing the maximum sentence that can be imposed for an assault or battery offense committed against a security officer in the same manner as if the offense were committed against a law enforcement officer or firefighter.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: HB 85 will have the effect of increasing the maximum sentence which may be imposed for an assault or battery offense committed against a licensed security officer.

B. EFFECT OF PROPOSED CHANGES:

Security officers are licensed and regulated by the Department of Agriculture and Consumer Services under chapter 493. The term "security officer" is statutorily defined as follows:

> Any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.[1]

A security officer must have what is known as a Class D license issued by the department.[2] An applicant for a Class D security officer license must have 40 hours of training at a licensed school or training facility.[3] According to the department, as of October 1, 2005, there were 102,083 people statewide with a Class D license.

Currently, section 784.07, F.S., provides that when a person is charged with knowingly committing assault[4], aggravated assault[5], battery[6] or aggravated battery[7] against a law enforcement officer,[8] firefighter,[9] emergency medical care provider,[10] traffic accident investigation officer, traffic infraction

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[1] s. 493.6101(19), F.S.
[2] s. 493.6301(5), F.S.
[3] s. 493.6303(4), F.S.
[4] An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011, F.S.
[5] An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.
[6] A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S
[7] An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.
[8] "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10 and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement. s. 784.07(1)(a), F.S.
[9] "Firefighter" means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires. s. 784.07(1)(b), F.S.
[10] "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in

enforcement officer, parking enforcement specialist[11] or security officer employed by the board of trustees of a community college while the officer, firefighter or emergency medical care provider is engaged in the lawful performance of his or her duties, the assault of battery offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor is one year of incarceration; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.[12]

HB 85 adds licensed security officers to the specified officers listed above. Therefore, an assault or battery offense committed against a security officer will be reclassified as discussed above. This will have the effect of increasing the maximum sentence that can be imposed for an assault or battery offense committed against a security officer in the same manner as if the offense were committed against a law enforcement officer or firefighter.

C. SECTION DIRECTORY:

Section 1. Amends s. 784.07, F.S. to provide for reclassification of assault or battery on a licensed security officer.

Section 2. Provides July 1, 2006 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill reclassifies the offenses of battery, assault, aggravated battery and aggravated assault committed against a licensed security officer. As a result, the offenses will have a higher statutory maximum sentence. However, the offenses of aggravated battery and aggravated assault on a specified official are ranked in the same level in the offense

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chapter 395, who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof. s. 784.07(1)(c), F.S.

[11] s. 316.640, F.S.

[12] s. 775.082, F.S.

severity ranking chart of the Criminal Punishment Code as the corresponding offenses committed against a victim who is not a member of the protected class. Therefore, the bill will not increase the minimum sentence for these aggravated offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to assault or battery on security
3 officers; amending s. 784.07, F.S.; providing for
4 reclassification of an assault or battery on a licensed
5 security officer; providing applicability; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (2) of section 784.07, Florida
11 Statutes, is amended to read:
12 784.07 Assault or battery of law enforcement officers,
13 firefighters, emergency medical care providers, public transit
14 employees or agents, or other specified officers;
15 reclassification of offenses; minimum sentences.--
16 (2) Whenever any person is charged with knowingly
17 committing an assault or battery upon a law enforcement officer,
18 a firefighter, an emergency medical care provider, a traffic
19 accident investigation officer as described in s. 316.640, a
20 traffic infraction enforcement officer as described in s.
21 316.640, a parking enforcement specialist as defined in s.
22 316.640, a person licensed as a security officer as defined in
23 s. 493.6101, or a security officer employed by the board of
24 trustees of a community college, while the officer, firefighter,
25 emergency medical care provider, intake officer, traffic
26 accident investigation officer, traffic infraction enforcement
27 officer, parking enforcement specialist, public transit employee
28 or agent, or security officer is engaged in the lawful

29 performance of his or her duties, the offense for which the
30 person is charged shall be reclassified as follows:
31 (a) In the case of assault, from a misdemeanor of the
32 second degree to a misdemeanor of the first degree.
33 (b) In the case of battery, from a misdemeanor of the
34 first degree to a felony of the third degree.
35 (c) In the case of aggravated assault, from a felony of
36 the third degree to a felony of the second degree.
37 Notwithstanding any other provision of law, any person convicted
38 of aggravated assault upon a law enforcement officer shall be
39 sentenced to a minimum term of imprisonment of 3 years.
40 (d) In the case of aggravated battery, from a felony of
41 the second degree to a felony of the first degree.
42 Notwithstanding any other provision of law, any person convicted
43 of aggravated battery of a law enforcement officer shall be
44 sentenced to a minimum term of imprisonment of 5 years.
45 Section 2. This act shall take effect July 1, 2006, and
46 shall apply to offenses committed on or after that date.

HB 95

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 95 Alcoholic Beverages
SPONSOR(S): Henriquez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Business Regulation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

An alcohol vaporizing device allows users to inhale alcohol in the form of vapor. HB 95 makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A second conviction within 5 years will be a third degree felony. A person who purchases or uses an alcohol vaporizing device will be subject to a fine of $250.

HB 95 creates s. 563.09, F.S. to provide that a vendor may not conduct a malt beverage tasting except as provided in the section. A malt beverage tasting may be conducted:

- On a licensed premises by a vendor who is licensed to sell alcoholic beverages for consumption on the premises:
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store for malt beverages or a package store for malt, wine, and fortified wines with a licensed premises consisting of at least 7,000 square feet of publicly accessible floor space; or
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store to sell any alcoholic beverages regardless of the amount of publicly accessible floor space.

The bill further provides that an importer, manufacturer, or distributor is prohibited from assisting, by any gifts or loans of money or property of any description or by the giving of any rebates of any kind, a vendor who is licensed to sell malt beverages under s. 563.02(1)(a), F.S., malt, wines, and fortified wines under s. 564.02(1)(a), F.S., or any alcoholic beverages regardless of alcoholic content under s. 565.02(1)(a), F.S., in the conduct of a malt beverage tasting.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill prohibits the use of an alcohol vaporizing device. The bill will permit malt beverage tastings in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

***Alcohol vaporizing devices**:* An alcohol vaporizing device which is also known as an alcohol without liquor machine or AWOL allows users to inhale alcohol in the form of vapor. The device works by pouring an alcoholic spirit into a diffuser capsule in the alcohol vaporizing device. The alcohol is absorbed by oxygen bubbles, and the user inhales the alcohol vapor. Alcohol vaporizing devices are being marketed on the internet as a low calorie and hangover free way to consume alcohol. There does not appear to be any evidence supporting either of these claims. There are obvious health risks associated with consuming a large amount of alcohol in a short amount of time. There is currently no federal or state regulation of these devices.

HB 95 creates s. 562.61, F.S. which provides that no person shall purchase, sell, offer for sale, or use an alcohol vaporizing device. The bill makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A person who violates the provision by selling or offering for sale an alcohol vaporizing device after having been previously convicted of such offense within the past 5 years commits a third degree felony. A person who purchases or uses an alcohol vaporizing device shall be subject to a $250 fine.

The term "alcohol vaporizing device" is defined as "any device, machine, or process which mixes spirits, liquor or other alcohol products with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation."

Malt beverage tastings:

The Beverage Law provides a three-tier system of alcoholic beverage regulation composed of manufacturers, distributors, and vendors. Manufacturers may only distribute and sell their products to distributors.[1] Distributors sell and distribute alcoholic beverages to vendors.[2] Vendors may only sell alcoholic beverages at retail.[3] Manufacturers and distributors cannot be licensed as vendors, and vendors cannot be licensed as manufacturers or distributors.[4] Section 561.221, F.S., provides an exception to vendors engaged in brewing malt beverages at a single location and in an amount which will not exceed 10,000 kegs (at 15.5 gallons per keg) per year.

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

Paragraph 561.42(12)(f), F.S., prohibits manufacturers or distributors of beer from conducting any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only. Paragraph 561.42(12)(g), F.S., also prohibits manufacturers and distributors of beer from engaging in cooperative advertising with vendors.

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[1] *See* s. 561.14(1), F.S.
[2] *See* s. 561.14(2), F.S.
[3] *See* s. 561.14(3), F.S.
[4] *See* s. 561.22, F.S.

Current law does not prohibit vendors from conducting beverage tastings on their licensed premises, provided that the tastings are not conducted with the assistance of manufacturers or distributors or otherwise violate s. 561.42, F.S. Current law provides exceptions for wine and spirituous beverages that permit distributors to conduct tastings at a vendor's licensed premises.

Section 564.08, F.S., authorizes licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S. The wine tasting must be limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., provides that licensed distributors of spirituous beverages and vendors are authorized to conduct spirituous beverage tastings in any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S. The spirituous beverage tasting must be limited to, and directed toward, the general public of the age of legal consumption.

Neither of these exceptions allow manufacturers to conduct wine or spirituous beverage tastings.

HB 95 creates s. 563.09, F.S. relating to malt beverage tastings to provide that a vendor may not conduct a malt beverage tasting except as provided in the section. A malt beverage tasting may be conducted:

- On the licensed premises of a vendor who is licensed to sell alcoholic beverages for consumption on the premises:
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store for malt beverages or a package store for malt, wine, and fortified wines (such as port or sherry) with a licensed premises consisting of at least 7,000 square feet of publicly accessible floor space; or
- Within a fully enclosed building under a permanent roof by a vendor who is licensed as a package store to sell any alcoholic beverages regardless of the amount of publicly accessible floor space.

The bill further provides that an importer, manufacturer, or distributor is prohibited from assisting, by any gifts or loans of money or property of any description or by the giving of any rebates of any kind, a vendor who is licensed to sell malt beverages under s. 563.02(1)(a), F.S., malt, wines, and fortified wines under s. 564.02(1)(a), F.S., or any alcoholic beverages regardless of alcoholic content under s. 565.02(1)(a), F.S., in the conduct of a malt beverage tasting.

C. SECTION DIRECTORY:

Section 1. Creates s. 562.61, F.S. relating to alcohol vaporizing devices.

Section 2. Creates s. 563.09, F.S. relating to malt beverage tastings.

Section 3. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

On February 22, 2005, the Criminal Justice Impact Conference determined that HB 241, which was identical to this bill, would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to alcoholic beverages; creating s.
3 562.61, F.S.; providing a definition of the term "alcohol
4 vaporizing device"; prohibiting the sale, offer for sale,
5 purchase, or use of machines or devices which vaporize
6 alcohol; providing penalties; providing a fine; creating
7 s. 563.09, F.S.; permitting certain vendors to conduct
8 malt beverage tastings under certain conditions; providing
9 an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 562.61, Florida Statutes, is created to
14 read:
15 562.61 Sale, offer for sale, purchase, or use of alcohol
16 vaporizing devices prohibited.--
17 (1) For purposes of this section, the term "alcohol
18 vaporizing device" means any device, machine, or process which
19 mixes spirits, liquor, or other alcohol products with pure
20 oxygen or other gas to produce a vaporized product for the
21 purpose of consumption by inhalation.
22 (2) A person may not sell, offer for sale, purchase, or
23 use an alcohol vaporizing device.
24 (3)(a) Any person who violates this section by selling or
25 offering for sale an alcohol vaporizing device commits a
26 misdemeanor of the first degree, punishable as provided in s.
27 775.082 or s. 775.083. Any person who violates this section by
28 selling or offering for sale an alcohol vaporizing device after

29 having been previously convicted of such an offense within the
30 past 5 years commits a felony of the third degree, punishable as
31 provided in s. 775.082 or s. 775.083.
32 (b) Any person who violates this section by purchasing or
33 using an alcohol vaporizing device shall be subject to a fine of
34 $250.
35 Section 2. Section 563.09, Florida Statutes, is created to
36 read:
37 563.09 Malt beverage tastings permitted; limitations.--
38 (1) A vendor may not conduct a malt beverage tasting
39 except as provided in this section.
40 (2) A malt beverage tasting may be conducted:
41 (a) On a licensed premises by a vendor who is licensed to
42 sell alcoholic beverages for consumption on those premises;
43 (b) Within a fully enclosed building under a permanent
44 roof by a vendor who is licensed under s. 563.02(1)(a) or s.
45 564.02(1)(a) with a licensed premises consisting of at least
46 7,000 square feet of publicly accessible floor space; or
47 (c) Within a fully enclosed building under a permanent
48 roof by a vendor who is licensed under s. 565.02(1)(a)
49 regardless of the amount of publicly accessible floor space.
50 (3) An importer, manufacturer, or distributor may not
51 assist, by any gifts or loans of money or property of any
52 description or by the giving of any rebates of any kind, a
53 vendor who is licensed under s. 563.02(1)(a), s. 564.02(1)(a),
54 or s. 565.02(1)(a) in the conduct of a malt beverage tasting.
55 Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1(for drafter's use only)

Bill No. **HB 95**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Criminal Justice Committee

2 Representative(s) Henriquez offered the following:

3

4 **Amendment (with directory and title amendments)**

5 Remove line(s) 35-54.

6

7 ================ T I T L E A M E N D M E N T =============

8 Remove line(s) 6-9 and insert:

9 alcohol; providing penalties; providing a fine; providing an

10 effective date.

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95-Henriquez-01.doc

HB 139

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Trespass on Railroad Property
SPONSOR(S): Mahon
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Cunningham SC	Kramer JK
2) Judiciary Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Trespass is the unauthorized entry onto the property of another. In prosecuting trespass, the state must prove that the offender knew, or should have known, that entry onto the property is unauthorized. In regards to open lands (as opposed to buildings), a person knows not to enter the lands if told not to enter, or if no trespassing signs are posted. A person should know not to enter if the property is cultivated or fenced.

This bill provides that a person may be prosecuted for trespass onto railroad property even if the property is not fenced and does not have no trespassing signs posted. In effect, this bill provides that persons should know not to enter railroad property.

In general, trespass onto lands is a first degree misdemeanor.

This bill appears to have an insignificant fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill lessens the requirement that a railway company post signs in order to have the protection of the trespass law.

B. EFFECT OF PROPOSED CHANGES:

Florida's rail system stretches for 2,788 miles.[1] All but 81 of those miles are privately owned.[2] The Federal Railroad Administration (FRA) reports that trespasser deaths have decreased by 36.4% between 2002 and 2004.[3] Florida is third in the nation for trespasser fatalities that occur on rail lines.[4]

Section 810.09, F.S., provides that it is a first degree misdemeanor to commit trespass on lands.[5] The offense level is increased to a third degree felony in certain circumstances.[6] Trespass on lands is when a person:

- willfully enters upon or remains in any property other than a structure or conveyance without being authorized[7], licensed, or invited; and
- notice against entering is given by actual communication or by posting, fencing, or cultivation.[8]

"Posted land" is land upon which signs are placed no more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently the words "no trespassing."[9] The unauthorized entry by any person into or upon any enclosed and posted land is prima facie evidence of the intention of such person to commit an act of trespass.[10]

The effect of these laws is that a person is not prosecuted for criminal trespass by simply wandering onto the open property of another. An offender must be given notice (e.g. direct

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[1] 2004 Florida Rail System Plan, published by the Florida Department of Transportation (FDOT).
[2] The State of Florida, through the FDOT, owns the 81-mile stretch between West Palm Beach and Miami, with a branch to the Miami International Airport.
[3] The Federal Railroad Administration Office of Safety Analysis reports that Florida had 33 trespasser deaths in 2002, and 21 trespasser deaths in 2004. Between January and July of 2005, there have been 25 trespasser deaths. See http://safetydata.fra.dot.gov/officeofsafety/.
[4] http://safetydata.fra.dot.gov/officeofsafety/.
[5] Trespass in a dwelling, structure or conveyance is considered a more serious offense.
[6] It is a third degree felony if the offender is armed during the trespass; if the property trespassed is a posted construction site; if the property is posted as commercial property designated for horticultural products; if the property trespassed is posted as a designated agricultural site for testing or research purposes; or if a person knowingly propels any potentially lethal projectile over or across private land without authorization while taking, killing, or endangering specified animals. See ss. 810.09(2)(a)-(g), F.S
[7] "Authorized" means any owner, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or agent to communicate an order to leave the property in the case of a threat to public safety or welfare. Section 810.09(3), F.S.
[8] See s. 810.09(1)(a), F.S. Trespass can also occur if the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.
[9] See s. 810.011(5)(a), F.S.
[10] See s. 810.12, F.S.

communication or posting) that entry is not authorized.[11] The law presumes that individuals know or should know that they are not authorized to enter fenced or cultivated lands.

Generally, the only duty owed by a railroad company to a trespasser on its property is not to harm the trespasser willfully or wantonly or to expose the trespasser to danger recklessly or wantonly.[12] Once the presence of a trespasser is known, the railroad company must exercise ordinary care to avoid injury to him.[13]

Effect of Bill

This bill provides that, for purposes of prosecution for trespass, posting is not required for lands that contain stationary rails or roadbeds[14] that are owned or leased by a railroad or railway company if the property is:

- readily recognizable to a reasonable person as being the property of a railroad or railway company, or
- identified by conspicuous fencing or signs indicating that the property is owned or leased by a railroad or railway company.

Thus, this bill provides that in order for the state to prove that an individual trespassed upon railroad property, the state does not have to offer proof that notice by posting was given.

C. SECTION DIRECTORY:

Section 1 amends s. 810.011, F.S., to provide an alternative to posting requirements.

Section 2 re-enacts s. 810.09, F.S., to incorporate the reference to s. 810.011, F.S.

Section 3 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The 2004 Criminal Justice Estimating Conference determined that this bill had an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[11] *See K.S. v. State*, 840 So.2d 1116 (Fla. 1st DCA 2003).
[12] See *Louisville & N.R. Co. v. Holland, 79 So.2d 691 (Fla. 1955).*
[13] See *Atlantic Coast Line R. Co. v. Webb, 112 Fla. 449 (Fla. 1933).*
[14] The roadbed of a railroad is the foundation upon which the ties, rails, and ballast of a railroad are laid. *See* The American Heritage Dictionary of the English Language, Fourth Edition.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If the railroad companies elected to post "No Trespassing" signs, it would require more than 58,000 signs.[15]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

   None,

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

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[15] There are 2,788 miles of railway. Signs are required to be no more than 500 feet apart, which would require approximately 10.5 signs per mile. Multiplying 29,274 times two (both sides of the tracks) yields 58,548.

1 A bill to be entitled
2 An act relating to trespass; amending s. 810.011, F.S.;
3 providing that property that is owned or leased by a
4 railroad or railway company does not have to satisfy the
5 definition of "posted land" in order to obtain the
6 benefits of ss. 810.09 and 810.12, F.S., in certain
7 circumstances; reenacting s. 810.09(1)(a), F.S., relating
8 to trespass on property other than structure or
9 conveyance, for the purpose of incorporating the amendment
10 to s. 810.011, F.S., in a reference thereto; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsection (5) of section 810.011, Florida
16 Statutes, is amended to read:
17 810.011 Definitions.--As used in this chapter:
18 (5)(a) "Posted land" is that land upon which signs are
19 placed not more than 500 feet apart along, and at each corner
20 of, the boundaries of the land, upon which signs there appears
21 prominently, in letters of not less than 2 inches in height, the
22 words "no trespassing" and in addition thereto the name of the
23 owner, lessee, or occupant of said land. Said signs shall be
24 placed along the boundary line of posted land in a manner and in
25 such position as to be clearly noticeable from outside the
26 boundary line.
27 (b) It shall not be necessary to give notice by posting on
28 any enclosed land or place not exceeding 5 acres in area on

29 which there is a dwelling house in order to obtain the benefits
30 of ss. 810.09 and 810.12 pertaining to trespass on enclosed
31 lands.
32 (c) It shall not be necessary to give notice by posting as
33 required in paragraph (a) on any stationary rails or roadbeds
34 that are owned or leased by a railroad or railway company and
35 are:
36 1. Readily recognizable to a reasonable person as being
37 the property of a railroad or railway company; or
38 2. Identified by conspicuous fencing or signs indicating
39 that the property is owned or leased by a railroad or railway
40 company
41
42 in order to obtain the benefits of ss. 810.09 and 810.12
43 pertaining to trespass on enclosed and posted land.
44 Section 2. For the purpose of incorporating the amendment
45 to section 810.011, Florida Statutes, in a reference thereto,
46 paragraph (a) of subsection (1) of section 810.09, Florida
47 Statutes, is reenacted to read:
48 810.09 Trespass on property other than structure or
49 conveyance.--
50 (1)(a) A person who, without being authorized, licensed,
51 or invited, willfully enters upon or remains in any property
52 other than a structure or conveyance:
53 1. As to which notice against entering or remaining is
54 given, either by actual communication to the offender or by
55 posting, fencing, or cultivation as described in s. 810.011; or
56 2. If the property is the unenclosed curtilage of a

57 dwelling and the offender enters or remains with the intent to
58 commit an offense thereon, other than the offense of trespass,
59
60
61 commits the offense of trespass on property other than a
62 structure or conveyance.
63 Section 3. This act shall take effect October 1, 2006.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 147

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 147 Criminal Prosecutions
SPONSOR(S): Kravitz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 147 creates a new section of statute which provides that in criminal prosecutions after the closing of evidence, the prosecuting attorney shall open the closing arguments, the accused or the attorney for the accused may reply, and the prosecuting attorney may reply in rebuttal.

The bill also repeals Florida Rules of Criminal Procedure 3.250 to the extent that it is inconsistent with the bill. The bill will take effect upon becoming law except that the repeal of the rule of procedure will take effect only if the bill is passed by a 2/3 vote of the membership of each house of the legislature.

This bill does not appear to have any fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Provide limited government: This bill grants the prosecution a statutory right to have the first and last closing argument in a criminal case. The order in which closing arguments occur is currently governed by court rule.

B. EFFECT OF PROPOSED CHANGES:

Florida Rule of Criminal Procedure 3.250 provides that:

> In all criminal prosecutions the accused may choose to be sworn in as a witness in the accused's own behalf and shall in that case be subject to examination as other witnesses, but no accused person shall be compelled to give testimony against himself or herself, nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his or her own behalf, *and a defendant offering no testimony in his or her own behalf, except the defendant's own, shall be entitled to the concluding argument before the jury.*

Florida Rule of Criminal Procedure 3.780 which applies to sentencing in a capital case, provides that:

> Both the state and the defendant will be given an equal opportunity for one opening statement and one closing argument. The state will proceed first.

The Florida Supreme Court has characterized the effect of these rules as follows:

> Both rules are clear and unambiguous--in a guilt phase proceeding, a defendant has the right to close in final argument only if the defendant presents no testimony other than his or her own; in a penalty phase proceeding of a death case, a defendant always has the right to close in final argument.

Wike v. State, 648 So.2d 683, 686 (Fla.1994); Lamar v. State, 583 So.2d 771, 772 (Fla. 4th DCA 1991)("The final phrase of said rule gives the defendant in a criminal case the right to closing argument unless he offers witnesses other than himself. Stated differently, the defendant is entitled to close the argument if he offers no witnesses, or if he offers simply himself as a witness, but not if he offers someone other than or in addition to himself.").

There are a large number of reported cases in which an appellate court reversed a felony conviction based on the fact that the defendant was not given the opportunity to have the last closing argument. The Florida Supreme Court has determined that the right to make the closing argument where no evidence except the defendant's own testimony has been introduced, "is a vested procedural right, the denial of which constitutes reversible error." Birge v. State, 92 So.2d 819 (Fla. 1957); Freeman v. State, 846 So.2d 552, 554 -555 (Fla. 4th DCA 2003)("This error is not subject to harmless error analysis."); Morales v. State, 609 So.2d 765, 766 (Fla 3rd DCA 1992)(reversing grand theft, burglary and resisting arrest convictions because "[i]n spite of the overwhelming evidence against [the defendant], the trial court did not scrupulously follow a required rule of procedure.")
The Florida Supreme Court has explained the history of this rule as follows:

> To fully understand the rights this state has historically provided to defendants regarding concluding arguments under either rule, it is necessary to examine the history of these rules. At common law, the generally accepted rule was that the party who had the burden of proof had the right to begin and conclude the argument to the jury. The rule applied to both civil and criminal cases. The rationale behind this common law rule was to provide the party who

shouldered the disadvantage of the burden of proof with the advantage of the opening and closing arguments before the jury. In 1853, this common law rule was changed in Florida ..... to provide that a defendant who produced no testimony at trial was entitled to the advantage of making the concluding argument before the jury. That law was later codified as section 918.09, Florida Statutes.

> As early as 1858, this Court determined that a trial judge had no discretion in following the statutory predecessor of section 918.09 and that the erroneous denial of a defendant's right to concluding argument constituted reversible error. Throughout the years, Florida courts have never deviated from the holding that the denial of a defendant's right to close under this rule constitutes reversible error. In fact, this is true even though in 1968 section 918.09 was incorporated as rule 3.250 and in 1970 section 918.09 was repealed.

Wike, 648 So.2d 683, 686 (Fla. 1995)(citations omitted)

At least one court has urged a change in the Florida rule:

> Presently in the United States, forty-six states, the District of Columbia and all United States District Courts[1] allow the prosecution to close the final arguments in criminal cases. Florida is one of only four states that have a rule which provides the criminal defendant the right to close final arguments where the defendant presents no evidence other than his own testimony.......[W]e respectfully suggest that the time has come for our Supreme Court to revisit the wisdom of this provision.

Diaz v. State, 747 So.2d 1021, 1025 (Fla. 3rd DCA 1999).

HB 147 creates section 918.19, F.S., relating to closing arguments. The bill provides that, as provided in common law, in criminal prosecutions after the closing of evidence, the prosecuting attorney shall open the closing arguments, the accused or the attorney for the accused may reply and the prosecuting attorney may reply in rebuttal.[2]

The bill repeals Rule 3.250 of the Florida Rules of Criminal Procedure to the extent that it is inconsistent with the bill. The bill will take effect upon becoming law, except that the repeal of the rule of procedure shall take effect only in the act is passed by a two-thirds vote of the each house of the legislature.

C. SECTION DIRECTORY:

Section 1. Creates s. 918.19, F.S.; relating to closing argument in criminal cases.

Section 2. Provides for repeal of rule of criminal procedure.

Section 3. Provides effective date.

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[1] See Federal Rule of Criminal Procedure 29.1 which states: "After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal."

[2] The bill also has several "whereas clauses" which state the following:

WHEREAS, the common law rule in criminal and civil cases granted the right to final closing argument to the party bearing the burden of proof, and

WHEREAS, the state has the burden of proving guilt beyond a reasonable doubt in criminal cases, and

WHEREAS, the Federal Rules of Criminal Procedure grant the right to final closing argument to the party which bears the burden of proof, and

WHEREAS, other states follow the common law rule in granting the right to final closing argument to the party bearing the burden of proof in civil and criminal cases, NOW, THEREFORE,

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   The Florida Constitution provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts". Art. V. Section 2(a), Fla. Const. The separation of powers provision of the state constitution prohibits one branch of government from exercising a power given to another branch. Art. II, Section 3, Fla. Const. According to the constitution, a rule of court "may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature." The constitution does not give the Legislature the authority to replace the repealed rule with a legislative enactment. The constitution also does not preclude the Supreme Court from reenacting a rule that is similar or identical to one that the Legislature has repealed.

   Florida courts generally protect their rulemaking power by striking down laws that that they determine are "procedural" in nature. In January of 2000, the legislature passed the Death Penalty Reform Act (DPRA) of 2000 in order to reduce the amount of time spent in litigation of capital cases. The bill advanced the start of the postconviction appeals process in capital cases to have it begin while the

case was on direct appeal. The bill also imposed time limitations at key points of the postconviction process, limited successive postconviction motions and prohibited amending a postconviction motion after the expiration of the time limitation. The bill repealed the rules of criminal procedure applying to capital postconviction motions. In Allen v. Butterwoth, 756 So.2d 52 (Fla. 2000), the Florida Supreme Court held that the Death Penalty Reform Act of 2000 was an "unconstitutional encroachment" on the Court's "exclusive power to 'adopt rules for the practice and procedure in all courts'." Id. at 54.

It is possible that the statute created by this bill will be challenged on the grounds that it violates the separation of powers provision of the state constitution by dealing with procedural matters that are the province of the court. In ruling on the constitutionality of a statutory provision, the court determines whether the statute deals with "substantive" or "procedural" matters. As discussed earlier, although the court was not being asked to rule specifically on the issue of whether the rule was substantive or procedural, the Florida Supreme Court has characterized the defendant's right to have the final closing argument as a "vested procedural right". On the other hand, based on the fact that the court has reversed a number of criminal convictions because a defendant has not been given the right to a closing argument, it could be argued that the right is substantive in nature and therefore something that the legislature could alter.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to criminal prosecutions; creating s.
3 918.19, F.S.; prescribing rights of the prosecution in
4 closing arguments; repealing Rule 3.250, Florida Rules of
5 Criminal Procedure, relating to the accused as a witness
6 and being entitled to concluding arguments before the
7 jury, to the extent of inconsistency with the act;
8 providing an effective date.
9
10 WHEREAS, the common law rule in criminal and civil cases
11 granted the right to final closing argument to the party bearing
12 the burden of proof, and
13 WHEREAS, the state has the burden of proving guilt beyond a
14 reasonable doubt in criminal cases, and
15 WHEREAS, the Federal Rules of Criminal Procedure grant the
16 right to final closing argument to the party which bears the
17 burden of proof, and
18 WHEREAS, other states follow the common law rule in
19 granting the right to final closing argument to the party
20 bearing the burden of proof in civil and criminal cases, NOW,
21 THEREFORE,
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Section 918.19, Florida Statutes, is created to
26 read:
27 918.19 Closing argument.--As provided in the common law,
28 in criminal prosecutions after the closing of evidence:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29 (1) The prosecuting attorney shall open the closing
30 arguments.
31 (2) The accused or the attorney for the accused may reply.
32 (3) The prosecuting attorney may reply in rebuttal.
33 Section 2. Rule 3.250, Florida Rules of Criminal
34 Procedure, is repealed to the extent that it is inconsistent
35 with this act.
36 Section 3. This act shall take effect upon becoming a law,
37 except that section 2 of this act shall take effect only if this
38 act passed by a two-thirds vote of the membership of each house
39 of the Legislature.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 171 Notification of Next of Kin
SPONSOR(S): Meadows
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Cunningham	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, there is no statutory requirement that law enforcement agencies notify next of kin when a death results from criminal activity, an accident, suicide, a suspicious or unusual circumstance, or use of a controlled substance or poison. HB 171 will require that a law enforcement officer make in-person notification, document all notification attempts in writing, and provide a written explanation to the next of kin when proper notification is not made. Although data to calculate the cost of this bill are unavailable, this bill would have a fiscal impact on law enforcement agencies that currently allow individuals other than law enforcement officers to notify next of kin as well as agencies that currently do not require documentation of their notification attempts.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill will require that state, county, and municipal law enforcement agencies who are taking the lead in an investigation notify a decedent's next of kin, as further described below.

Empower Families – This bill requires law enforcement agencies to notify a decedent's next of kin when there is reason to believe the death is unknown to the next of kin, and that the death was the result of criminal activity, an accident, suicide, a suspicious or unusual circumstance, or use of a controlled substance.

B. EFFECT OF PROPOSED CHANGES:

Nieves Arambul and Robert Pardo both died from drug overdoses. In both instances, local officials apparently failed to notify next of kin of the deaths. In Arambul's case, strangers notified the 26-year old's parents that their son had died. A friend of Robert Pardo's notified Pardo's parents that their 23-year old had died.[1]

Under current law, when any person dies in this state of criminal violence; by accident; by suicide; suddenly, when in apparent good health; unattended by a practicing physician or other recognized practitioner; in any prison or penal institution; in police custody; in any suspicious or unusual circumstance; by criminal abortion; by poison; by disease constituting a threat to public health; or by disease, injury, or toxic agent resulting from employment; the medical examiner must ensure that the next of kin is notified that the medical examiner's office is investigating the death.[2] Law enforcement agencies have a duty to identify unidentified decedents, and must, in the case of a homicide, request that the victim's next of kin complete a victim notification card.[3] Law enforcement officers assigned to and investigating a death also have a duty to "immediately establish and maintain liaison with the medical examiner during the investigation into the cause of death."[4] The Florida Association of Medical Examiners' *Practice Guidelines for Florida Medical Examiners* states that medical examiner personnel responding to a scene should "assist law enforcement, as needed, in informing family members that an investigation of the death and examination of the body will be conducted by the medical examiner, what reports might be available to them, when the body will be released, and what support agencies are available." At this time, there is no statutory requirement that law enforcement notify next of kin when a death occurs.

A survey of 14 of Florida's 24 medical examiner districts revealed that currently, local law enforcement agencies notify next of kin of a death. Each medical examiner district surveyed expressed that they routinely cooperate with local law enforcement agencies to identify decedents and investigate deaths.

Additionally, representatives from the Florida Network of Victim Witness Services, Inc., the Florida Sheriff's Association, and the Florida Police Chief's Association state that although procedures for notification may vary, local law enforcement agencies currently notify next of kin when there has been a death.

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[1] http://www.sptimes.com/2004/06/22/State/2_mothers_push_for_la.shtml
[2] Rule 11G-2.001(5)(e), F.A.C.
[3] Sections 406.145 and 960.001, F.S.
[4] Section 406.14, F.S.

Effect of the Bill

This bill requires that a state, county, or municipal law enforcement agency in the jurisdiction where a death occurred or a body is found that is taking the lead in the investigation must, after preliminary determination of the cause of death, contact the decedent's next of kin:

- when there is verifiable documentation of a decedent's identity,
- when there is reason to believe that a decedent death is unknown to the next of kin, and
- where a decedent's death is the result of criminal activity; an accident; suicide; a suspicious or unusual circumstance; or use of a controlled substance or poison.

The responsible law enforcement agency must document in writing their attempts to notify the next of kin and must include such a requirement in their internal procedures. The responsible law enforcement agency must make prompt, in-person notification in a manner that would not cause discomfort to the person(s) being notified and, if victim advocate and chaplain services are available, inform the next of kin on how they may use such services. This bill requires that notification be made only after approval of a supervisor or homicide detective designated by the law enforcement agency. When proper notification is not made, this bill makes law enforcement agencies responsible for disciplining employees and requires agencies to provide a written explanation to the next of kin that includes a statement of the disciplinary action taken against the officer. This bill provides that law enforcement agencies may establish next of kin notification procedures.

This bill also provides that if the decedent's next of kin is not within the jurisdiction where the death occurred or body is found, the law enforcement agency responsible for making notification must send notice of the death to the agency with jurisdiction where the next of kin is located and request that such agency:

- immediately contact the next of kin,
- provide information regarding any available victim advocate and chaplain services, and
- inform the requesting agency in writing as to how and when the notification was made.

The requesting agency must follow up with a telephone call within 24 hours if they have not heard from the agency with jurisdiction.

C. SECTION DIRECTORY:

Section 1. This act is cited as the "Pardo-Arambul Act."

Section 2. Creates s. 960.046, F.S., requiring state, county, and municipal law enforcement agencies who are taking the lead in an investigation to notify a decedent's next of kin; requiring prompt, in-person notification; requiring agencies to document notification attempts in writing; requiring a written explanation to the next of kin if proper notification is not made; requiring agencies to forward death notices to law enforcement agencies in jurisdictions where the next of kin is located; requiring agencies to provide available victim advocate and chaplain services information to next of kin.

Section 3. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate - See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate - See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Although local law enforcement agencies currently notify next of kin, agencies vary as to how notification is made (e.g. some agencies allow victim advocates to make notification rather than officers). This bill would require that a law enforcement officer make in-person notification and document all notification attempts in writing. This bill also requires that law enforcement provide a written explanation to the next of kin when proper notification was not made. There are no data available to estimate the number of death notifications made by local law enforcement agencies each year, whether such notifications are being made by law enforcement officers or other personnel, or whether agency policy require notification attempts to be made in writing. Thus, data to calculate the cost of this bill are unavailable. However, this bill would have a fiscal impact on law enforcement agencies that currently allow individuals other than law enforcement officers to notify next of kin. Additionally, this bill would have a fiscal impact on law enforcement agencies that currently do not require documentation of their notification attempts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Although local law enforcement agencies currently notify next of kin, agencies vary as to how notification is made (e.g. some agencies allow victim advocates to make notification rather than officers). This bill would require that a law enforcement officer make in-person notification and document all notification attempts in writing. This bill also requires that law enforcement provide a written explanation to the next of kin when proper notification was not made. The provisions of this bill require counties and cities to take actions that may require the expenditure of funds (e.g. hiring officers to fulfill the in-person notification and written documentation obligations). There are no data available to estimate the number of death notifications made by local law enforcement agencies each year. Thus, data to calculate the cost of this bill are unavailable. However, it is possible that the fiscal impact of this bill could be significant.[5] If the bill is determined to have a significant fiscal impact, the act may not be binding upon local governments unless the legislature finds that it fulfills an important state interest and the bill passes by 2/3 vote of each house.

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[5] For purposes of legislative application of Article VII, Section 18, the term "significant" means an amount greater than the average statewide population for the applicable fiscal year times ten cents. In 2004, the Office of Economic and Demographic Research reported that the estimate of Florida's population was 17,516,732. This number, multiplied by $0.10, equals $1,751,673.20.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to notification of next of kin; providing
3 a short title; creating s. 960.046, F.S.; requiring law
4 enforcement agencies to notify the next of kin of
5 decedents whose deaths occur in certain circumstances;
6 prescribing procedures to be followed with respect to such
7 notification; requiring disciplinary action against
8 officers who fail to make a required notification or who
9 fail to follow specified procedures for making such
10 notification; providing for notice of available victim
11 advocate and chaplain services; providing an effective
12 date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. This act may be cited as the "Pardo-Arambul
17 Act."
18 Section 2. Section 960.046, Florida Statutes, is created
19 to read:
20 960.046 Deceased person's next of kin; contact
21 requirements.--
22 (1) In addition to any other requirement imposed by law
23 when the death of a human being occurs, the state, county, or
24 municipal law enforcement agency in the jurisdiction in which
25 the death occurred or the body was found that is taking the lead
26 in the investigation shall, upon preliminary determination of
27 the cause of death, contact the decedent's next of kin when
28 there is:

29 (a) Verifiable documentation of the decedent's identity;
30 (b) Reason to believe that the decedent's death is unknown
31 to the next of kin; and
32 (c) Reason to believe that the decedent's death was a
33 result of:
34 1. Criminal activity;
35 2. An accident;
36 3. Suicide;
37 4. A suspicious or unusual circumstance; or
38 5. Use of a controlled substance or poison.
39 (2) The following requirements apply with respect to
40 notifications of next of kin under this section:
41 (a) Each attempt at notification must be documented in
42 writing, according to procedures established by the law
43 enforcement agency making the notification.
44 (b) Notification of the decedent's next of kin must be
45 accomplished promptly in such a manner as to cause the least
46 discomfort possible to the person being notified.
47 (c) Notification of the decedent's next of kin may be made
48 only after approval of a supervisor or homicide detective
49 designated by the law enforcement agency for such purpose.
50 (d) Notification must be made in person by a law
51 enforcement officer assigned to investigate the cause of the
52 decedent's death or by a supervisor designated by the law
53 enforcement agency for such purpose.
54 (e) Each law enforcement agency is responsible for
55 disciplining an employee who fails to comply with this section.
56 (f) If the decedent's next of kin was not notified within

57 a reasonable time as required in this section, the designated
58 supervisor or homicide detective of the responsible law
59 enforcement agency shall provide a written explanation of the
60 failure to the next of kin, along with a statement of the
61 disciplinary action taken against the officer who failed to
62 provide such notification.
63 (g) A law enforcement agency may establish additional
64 procedures to implement this section.
65 (3) If the decedent's next of kin is not within the
66 jurisdiction in which death occurred or the body was found, the
67 law enforcement agency responsible for making the notification
68 shall forward notice of the decedent's death to a law
69 enforcement agency having jurisdiction over where the next of
70 kin is located. The notice shall be accompanied by a request for
71 that agency to contact the next of kin immediately, provide them
72 with any information about victim advocate and chaplain services
73 supplied under subsection (4), and give written notification to
74 the requesting law enforcement agency as to how and when the
75 notification has been done. If the requesting agency has not
76 heard from the notifying agency within 24 hours, it shall follow
77 up with a telephone call.
78 (4) If the decedent's next of kin are within the
79 jurisdiction in which death occurred or the body was found, the
80 law enforcement agency notifying the next of kin shall, if
81 victim advocate and chaplain services are available, provide
82 information to those being notified on how the decedent's next
83 of kin may use such services. If the decedent's next of kin are
84 not within the jurisdiction in which death occurred or the body

85 was found, the law enforcement agency forwarding information
86 under subsection (3) shall, if victim advocate and chaplain
87 services are available to the decedent's next of kin in the
88 jurisdiction in which death occurred or the body was found,
89 include information on how the decedent's next of kin may use
90 such services.
91 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 175 Drug Court Programs
SPONSOR(S): Adams and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 114, SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Cunningham SVC	Kramer TK
2) Juvenile Justice Committee			
3) Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). This bill authorizes a dependency court to order individuals involved in a dependency court case to be evaluated for drug or alcohol problems, and allows the court to refer an individual to dependency drug court for monitoring of treatment after a finding of dependency. Individuals may voluntarily enter drug court prior to a finding of dependency. This bill also allows appropriate sanctions (including incarceration) of persons referred to dependency drug court who fail to comply with the conditions of the referral.

The term "drug court" refers to a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals.

This bill modifies laws regarding drug court programs for adult and juvenile criminal offenders. Currently, those programs are primarily structured as pre-trial diversion programs. This bill provides that convicted offenders, post-adjudication offenders, and individuals involved in dependency proceedings may be referred to drug court programs. Drug courts have traditionally used sanctions, including short terms of incarceration, as punishment for participants who violate terms of their treatment plan; however, recent case law has held that such incarceration for persons in a pre-adjudicatory drug court program is not authorized by law. This bill addresses this issue by providing for incarceration of a person violating his or her treatment plan ordered by a drug court, which incarceration is in addition to any term of incarceration that may be ordered should the person leave drug court and then be convicted of the offense. Participation in a drug court prior to adjudication or a pretrial intervention program is voluntary. This bill further requires that participants acknowledge in writing that they wish to enter the program and understand the program requirements and sanctions for noncompliance.

The fiscal impact to state and local governments of this is bill is unknown. The language of the bill is permissive (i.e. participation in drug court programs is at the counties' discretion). However, should a county elect to participate in such programs, the bill requires that the protocol of sanctions for treatment-based programs other than those authorized by Chapter 39 include jail-based treatment and incarceration. This would require counties to expend funds and would therefore fall under the mandates provisions of Article VII, Section 18 of the Florida Constitution. However, since the bill deals with criminal laws, it would appear to be exempt from this section. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes the court to order a substance abuse assessment and evaluation after a shelter petition or dependency petition has been filed for individuals involved in the case. This bill expands the scope of drug court program beyond pretrial intervention programs to include dependency drug court, post-adjudicatory programs, and the monitoring of sentenced offenders. This bill provides for incarceration of individuals subject to drug court who violate drug court terms and conditions.

Promote Personal Responsibility → This bill provides for court-ordered substance abuse evaluation and treatment and court-monitored compliance with such orders. Sanctions are authorized for individuals who do not comply with the court orders.

Empower Families → This bill provides increased court responsibilities in dependency court matters.

B. EFFECT OF PROPOSED CHANGES:

Proceedings Relating to Children

There are two main court systems specifically tailored for minors. Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). Delinquency court is for minors who commit crimes that do not warrant transfer to the adult criminal justice system.

In January 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.[1] CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly $10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997. In connection with the report, CASA conducted a national survey of family court and welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases. The survey reveled the following:

- 71.6 percent of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.
- Almost 80 percent of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while nearly 40 percent stated that substance abuse was a factor in over 75 percent of cases.
- 75.7 percent of respondents believed that children of substance abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42 percent of all caseworkers reported that they were either not required or uncertain if they were required to report substance abuse when investigating child abuse or neglect cases.

In April 1999, the Department of Health and Human Services issued a report to Congress which highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care. It stated that children in substance abuse households were more likely than others to be served in foster care, spent longer periods of time in foster care than other children, and were less likely to have left foster care within a year.

[1] "No Safe Haven: Children of Substance-Abusing Parent," January 1999.

Drug Court System

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.[2] The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction."[3] The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.[4]

As of July 2004, 88 drug courts operated in 43 counties.[5] There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.[6]

In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism, and that drug courts are a cost-effective alternative to incarceration of drug offenders.[7]

Drug courts operate on a reward and punishment system. The reward for successful completion of the program is not only a better life, but also lowering of a criminal charge to a lesser offense, or even dismissal of the criminal charge. Punishments for failing to comply with the program typically include work assignment, increased treatment modalities, increased court appearances, increased urinalysis testing, community service, house arrest, and incarceration. Failure to comply with the program can also result in the continuation of the criminal process and possible additional jail time upon conviction. Recently, a district court ruled that because there is no statutory authorization for the imposition of a jail sentence upon violation of a drug court program, a drug court participant cannot be incarcerated for violating the terms of the drug court program.[8]

Effect of the Bill

Dependency Proceedings

This bill expands existing legislative intent to encourage courts to use the drug court program model and to authorize courts to assess parents and children for substance abuse problems in every stage of the dependency process. This bill establishes the following goals for substance abuse treatment services in the dependency process:

- ensure the safety of children
- prevent and remediate the consequence of substance abuse
- expedite permanent placement
- support families in recovery

This bill authorizes a dependency court, upon a showing of good cause, to order a child, or person who has custody or is requesting custody of the child, to submit to substance abuse assessment and evaluation. The assessment and evaluation must be made by a qualified professional, as defined by s. 397.311, F.S.[9]

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[2] Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p.1
[3] *Id.*
[4] *Id.*
[5] *Report on Florida's Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, p.5
[6] *Id.*
[7] *Id.*
[8] *Diaz v. State*, 884 So.2d 299 (Fla. 2nd DCA 2004).
[9] Section 397.311(24), F.S., defines "qualified professional" to mean "a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment."

After an adjudication of dependency, the court may require the individual to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program. Prior to a finding of dependency, participation in treatment, including a treatment-based drug court program, is voluntary. The court, in conjunction with other public agencies, may oversee progress and compliance with treatment and may impose appropriate available sanctions (including incarceration) for noncompliance. The court may also make a finding of noncompliance for consideration in determining whether an alternate placement of the child is in the child's best interests.

Drug Court Programs

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. A defendant who successfully completes the drug court program receives the benefit of dismissal of the criminal charge, thereby sparing the defendant from jail and from a permanent criminal record of a conviction. Pretrial drug court programs suspend the setting of a trial date and use the threat of resetting the trial date, and possible conviction, as a means to encourage compliance with the program.

This bill specifies that entry into any pretrial treatment-based drug court program is voluntary and that participating individuals state in writing that they understand the program requirements and potential sanctions for noncompliance. A recent court ruling indicates that a participating individual may be allowed to "opt out" of the program if there is an administrative order stating that *participation* in the program is voluntary.[10] Sanctions for noncompliance may include incarceration separate from the term of incarceration that may be imposed should the person leave drug court and then be convicted of the crime.[11] The term of incarceration is limited to the term available for contempt of court (six months). For juveniles, the term of incarceration in a secure detention facility is 5 days for a first violation and 15 days for a subsequent violation.

This bill provides that, in addition to pretrial intervention programs, treatment-based drug court programs may include individuals involved in dependency proceedings, sentenced offenders, and offenders who are involved in postadjudicatory programs.

This bill provides that an individual who successfully completes a treatment-based drug court program, if otherwise eligible, may have his/her arrest record and nolo contendere plea expunged.

This bill requires that, contingent upon an annual appropriation, each judicial circuit must establish at least one coordinator position for the treatment-based drug court program.[12]

Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have his/her case transferred to a county other than that in which the charge arose if the drug court program agrees and of specific conditions are met. The bill specifies that if approval for transfer is received from all parties, the trial court must accept a plea of nolo contendere. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case.

In regards to criminal court pretrial intervention programs and misdemeanor pretrial intervention programs, as they relate to drug offenses and referral of drug court, this bill provides that entry into such programs is voluntary, the defendant agreeing to drug court is subject to a coordinated strategy for treatment,

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[10] Section 948.08, F.S. requires that pretrial substance abuse education and treatment intervention programs be approved by the chief judge of the circuit. The court in *Mullin v. Jenne*, 890 So.2d 543 (Fla. 4th DCA 2005), referenced this statute and held that where a chief's judge's administrative order defining the parameters of the program stated that *participation* in the program was voluntary (rather than *entry*), a court could not require a defendant to remain in a drug court treatment program. The court noted that had the administrative order stated that "entry" into the program was voluntary, a different result would have occurred. Although this bill provides that entry, rather than participation, is voluntary, pretrial substance abuse intervention program are still, by statute, subject to approval by the chief judge of the circuit. Thus, should a chief judge issue an administrative order stating that participation in a program is voluntary, participating individuals may opt out of the program.

[11] This would have the effect of overruling the effect of the decision in *Diaz v. State*, 884 So.2d 299 (Fla. 2nd DCA 2004). Note that the court in that case suggested that the Legislature make this change.

[12] These positions were established in prior budgets and are currently staffed and funded.

noncompliance can lead to confinement, and the possible sanctions must be provided to the defendant in writing before the defendant agrees to participate in the drug court.

This bill adds tampering with evidence, solicitation to purchase a controlled substance, and obtaining a prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program. Entry into the program is voluntary, the juvenile agreeing to drug court is subject to a coordinated strategy for treatment, noncompliance can lead to confinement, and the possible sanctions must be provided to the defendant in writing before the defendant agrees to participate in the drug court.

C. SECTION DIRECTORY:

Section 1. This act is cited as the "Robert J. Koch Drug Court Intervention Act."

Section 2. Amends s. 39.001(4), F.S., adding legislative intent language regarding substance abuse treatment services in proceedings relating to children.

Section 3. Amends s. 39.407, F.S., providing that at any time after a shelter or dependency petition is filed, a court may order a child or a person who has or is requesting custody of a child to submit to substance abuse assessment and evaluation.

Section 4. Amends s. 39.507, F.S., providing that after an adjudication of dependency or finding of dependency where adjudication is withheld, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; providing that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; providing that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

Section 5. Amends s. 39.521(1)(b)1., F.S., providing that when a child is adjudicated dependent, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; providing that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; providing that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

Section 6. Amends s. 39.701(9)(d), F.S., providing that the court may modify a dependency case plan to require parental/custodian participation in a treatment-based drug court program.

Section 7. Amends s. 397.334, F.S., providing that entry into a pretrial treatment-based drug court program is voluntary; expanding the types of treatment-based drug court programs; providing a treatment-based drug court program coordinator within each judicial circuit; providing that a circuit's chief judge may appoint an advisory committee for the drug program.

Section 8. Amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing.

Section 9. Amends, s. 948.08, F.S., providing that while in a felony pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team; providing that the coordinated strategy must include a protocol of sanctions for noncompliance with the program.

Section 10. Amends s. 948.16, F.S., providing that while in a misdemeanor pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team; providing that the coordinated strategy must include a protocol of sanctions for noncompliance with the program.

Section 11. Amends s. 985.306, F.S., expanding the list of crimes for which an offender is eligible for participation in a delinquency pretrial substance abuse education and treatment intervention program; providing that while in a delinquency pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team; providing that the coordinated strategy must include a protocol of sanctions for noncompliance with the program.

Section 12. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None – this bill does not affect a state revenue source.

2. Expenditures:

Indeterminate – see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None – this bill does not affect a local government revenue source.

2. Expenditures:

Indeterminate – the language in this bill is permissive and participation in a drug court program will be left to the counties' discretion. However, the bill requires the court to include a protocol of sanctions for individuals in pretrial intervention programs, which are authorized for all counties. The protocol of sanctions for treatment-based programs other than those established in Chapter 39 (dependency proceedings) must include jail-based treatment programs and incarceration for noncompliance. These sanctions would result in a cost to the counties. There are no data available to estimate the number of individuals that would be incarcerated under the provisions of this bill. It should be noted that pretrial intervention programs are already authorized in law and are designed to reduce jail populations and associated costs. Thus, pretrial intervention programs are generally perceived as providing a financial benefit to counties.

Additionally, the Department of Juvenile Justice states that the bill would increase the number of youth eligible for secure detention due to sanctions provided for in the bill. The Department estimates that of the 1,798 youths placed in drug court programs, 17 percent would violate, resulting in 306 youths eligible for placement in secure detention for 5 days. Of those 306 first-time violators, 5 percent would violate a second time, resulting in 15 youths eligible for placement in secure detention for 15 days. At current per diem rates for secure detention, this represents expenditures of approximately $204,800 per year.[13] Although pre-adjudication costs for secure detention became a county responsibility on July 1, 2005, the Department of Juvenile Justice states that the majority of those placed in secure detention will be placed there post-adjudication. Thus, the state would be responsible for the majority of the cost.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the use of private drug assessment and treatment programs. Individuals are often required to pay for services ordered through drug courts.

D. FISCAL COMMENTS:

Department of Children and Family Services

[13] 306 youths multiplied by 5 days multiplied by $115 per day results in a total of $175,950. 15 youth multiplied by 15 days multiplied by $115 per day results in a total of $28,875. $175,950 plus $28,874 results in a combined total of $204,825.

In its analysis of this bill, the Department of Children and Family Services (DCF) states that they currently fund substance abuse treatment services for approximately 8,602 adults and 2,200 children involved in the drug court system. DCF notes that because the language of the bill is permissive (i.e. the bill does not *require* courts to order assessment and evaluations), it is difficult to anticipate a fiscal impact.

Office of State Courts Administrator

The Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there will not be a fiscal impact related to the provision that each judicial circuit, contingent upon appropriation, establish the position of drug court coordinator.

Under the implementation of Revision 7 to Article V of Florida's Constitution, the state is obligated to pay from state revenues certain case management costs which include "service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334."[14] However, "costs associated with the application of therapeutic jurisprudence principles by the courts" are excluded from the mandated portion of these costs to be borne by the state.[15] Therefore, while costs associated with case management will be paid by the state, to the extent the assessments and treatment described by the provisions of the bill are "therapeutic," they do not appear to have a significant fiscal impact on the state.

Committee on Criminal Justice Fiscal Comments

The State Courts Administrator asserts that the costs of evaluation of individuals ordered by a dependency court would be "therapeutic", and therefore not paid by the state under s. 29.004(10), F.S. However, that section is only applicable to "case management services". Section 29.004(6), F.S., provides that the state will be responsible for "expert witnesses not requested by any party which are appointed by the court pursuant to an express grant of statutory authority." If a finding is made that an assessment is not therapeutic, but only explores whether therapeutic services are necessary, then s. 29.004(10), F.S., will not apply and the state may be obligated to pay for the evaluation for indigent persons.

Currently, these assessments are already being ordered and paid for through a variety of sources, including payment by individuals who can afford it. The number of annual assessments is unknown. Also unknown is whether this bill will increase the number of substance abuse assessments ordered. In FY 2002-2003, there were 16,215 dependency cases filed.[16] If 70% of cases involve substance abuse, and courts were to order a substance abuse evaluation in each case, this would result in a potential of 11,351 cases with substance abuse evaluations. Note, however, that some cases may involve multiple individuals, but that evaluations may not be ordered where the individual admits to his or her addiction. The estimated cost for an assessment is $50.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although counties are given the option of whether to fund drug courts, the bill allows the courts to impose sanctions on pre-trial intervention participants which involve incarceration in county jail, jail-based treatment programs and secure juvenile detention. Thus, the bill would appear to require counties to expend funds. While the Department of Juvenile Justice estimates a $1.2 million impact, data to estimate the amount of any jail bed impact are unavailable. In addition, pre-trial intervention programs are already authorized under current law and are designed to reduce jail populations and associated costs. So these programs are generally perceived as providing financial benefit to counties that outweigh the costs.

Article VII, Section 18 of the state constitution reads as follows: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action

[14] Section 29.004(10)(d), F.S.

[15] Section 29.004(10), F.S.

[16] Trial Court Statistical Reference Guide, published by the Office of State Courts Administrator.

requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance."

Subsection (d) provides for several exemptions to Section 18. Among them are criminal laws and laws having insignificant fiscal impact. Even if the potential costs of incarceration authorized by this bill exceeded an amount considered by the Legislature to constitute an insignificant fiscal impact, these provisions relate to the criminal law, specifically to sentencing and the implementation of criminal sanctions, and therefore are exempt from any requirements of Section 18 of Article VII of the Florida Constitution.

2. Other:

The amendments to s. 397.334, F.S. provide that the protocol of sanctions for treatment-based programs authorized in chapter 39 (dependency proceedings) may include incarceration for noncompliance with the program rules within the time limits established for contempt of court. Thus, an individual participating in a treatment-based drug court program as part of a dependency proceeding may be incarcerated for failing to comply with the program's terms and conditions. As written, this bill authorizes a court to impose a criminal punishment (incarceration) in a civil proceeding (dependency proceedings are civil proceedings). Although incarceration can be used in civil proceedings as a sanction for criminal and civil contempt, this bill does not specify that incarceration would be the result of contempt proceedings (only that the incarceration may not exceed the time limits established for contempt of court). This could result in a constitutional challenge.

It is uncertain whether the statements that parents or other caregivers make during the substance abuse assessment can be used against them in a criminal proceeding. Although some of the persons who administer assessments may qualify as a psychotherapist for purposes of the psychotherapist and patient privilege[17], the privilege does not apply to statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.[18]

Section 7 of this bill provides that offenders who are "postadjudicatory" may be referred to drug court for assessment and treatment of addictions. The ex post facto and double jeopardy clauses may prohibit a court from compelling such a referral for an offender whose offense was committed prior to the effective date of this bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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[17] Section 90.503, F.S. The constitutional privilege against self-incrimination relates to protecting the accused from giving an admission of guilt against his or her will; Psychiatric examinations generally require testimonial communications of the person examined and any statements obtained from the patient by the doctor are used as evidence of mental condition only, and not as evidence of the factual truth contained therein, *Parkin v. State*, 238 So.2d 817 (Fla. 1970); A person's prior substance abuse treatment as part of a plea agreement did not constitute a court-ordered examination under the statute providing that there is no psychotherapist-patient privilege for communications made during a court-ordered examination of the mental conduct of the patient, *Viveiros v. Cooper*, 832 So.2d 868 (Fla. 4th DCA 2002).

[18] Section 90.503(4)(c), F.S.

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to drug court programs; providing a short
3 title; amending s. 39.001, F.S.; providing additional
4 legislative purposes and intent with respect to the
5 treatment of substance abuse, including the use of the
6 drug court program model; authorizing the court to require
7 certain persons to undergo treatment following
8 adjudication; amending s. 39.407, F.S.; authorizing the
9 court to order specified persons to submit to a substance
10 abuse assessment upon a showing of good cause in
11 connection with a shelter petition or petition for
12 dependency; amending ss. 39.507 and 39.521, F.S.;
13 authorizing the court to order specified persons to submit
14 to a substance abuse assessment as part of an adjudicatory
15 order or pursuant to a disposition hearing; requiring a
16 showing of good cause; authorizing the court to require
17 participation in a treatment-based drug court program;
18 authorizing the court to impose sanctions for
19 noncompliance; amending s. 39.701, F.S.; authorizing the
20 court to extend the time for completing a case plan during
21 judicial review, based upon participation in a treatment-
22 based drug court program; amending s. 397.334, F.S.;
23 revising legislative intent with respect to treatment-
24 based drug court programs to reflect participation by
25 community support agencies, the Department of Education,
26 and other individuals; including postadjudicatory programs
27 as part of treatment-based drug court programs; providing
28 requirements and sanctions, including clinical placement

29 or incarceration, for the coordinated strategy developed
30 by the drug court team to encourage participant
31 compliance; requiring each judicial circuit to establish a
32 position for a coordinator of the treatment-based drug
33 court program, subject to annual appropriation by the
34 Legislature; authorizing the chief judge of each judicial
35 circuit to appoint an advisory committee for the
36 treatment-based drug court program; providing for
37 membership of the committee; revising language with
38 respect to an annual report; amending s. 910.035, F.S.;
39 revising language with respect to conditions for the
40 transfer of a case in the drug court treatment program to
41 a county other than that in which the charge arose;
42 amending ss. 948.08, 948.16, and 985.306, F.S., relating
43 to felony, misdemeanor, and delinquency pretrial substance
44 abuse education and treatment intervention programs;
45 providing requirements and sanctions, including clinical
46 placement or incarceration, for the coordinated strategy
47 developed by the drug court team to encourage participant
48 compliance and removing provisions authorizing appointment
49 of an advisory committee, to conform to changes made by
50 the act; providing an effective date.
51
52 Be It Enacted by the Legislature of the State of Florida:
53
54 Section 1. This act may be cited as the "Robert J. Koch
55 Drug Court Intervention Act."
56 Section 2. Subsection (4) of section 39.001, Florida

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

57 Statutes, is amended to read:
58 39.001 Purposes and intent; personnel standards and
59 screening.--
60 (4) SUBSTANCE ABUSE SERVICES.--
61 (a) The Legislature recognizes that early referral and
62 comprehensive treatment can help combat substance abuse in
63 families and that treatment is cost effective.
64 (b) The Legislature establishes the following goals for
65 the state related to substance abuse treatment services in the
66 dependency process:
67 1. To ensure the safety of children.
68 2. To prevent and remediate the consequences of substance
69 abuse on families involved in protective supervision or foster
70 care and reduce substance abuse, including alcohol abuse, for
71 families who are at risk of being involved in protective
72 supervision or foster care.
73 3. To expedite permanency for children and reunify
74 healthy, intact families, when appropriate.
75 4. To support families in recovery.
76 (c) The Legislature finds that children in the care of the
77 state's dependency system need appropriate health care services,
78 that the impact of substance abuse on health indicates the need
79 for health care services to include substance abuse services to
80 children and parents where appropriate, and that it is in the
81 state's best interest that such children be provided the
82 services they need to enable them to become and remain
83 independent of state care. In order to provide these services,
84 the state's dependency system must have the ability to identify

85 and provide appropriate intervention and treatment for children
86 with personal or family-related substance abuse problems.
87 (d) It is the intent of the Legislature to encourage the
88 use of the drug court program model established by s. 397.334
89 and authorize courts to assess parents and children where good
90 cause is shown to identify and address substance abuse problems
91 as the court deems appropriate at every stage of the dependency
92 process. Participation in treatment, including a treatment-based
93 drug court program, may be required by the court following
94 adjudication. Participation in assessment and treatment prior to
95 adjudication shall be voluntary, except as provided in s.
96 39.407(16).
97 (e) It is therefore the purpose of the Legislature to
98 provide authority for the state to contract with community
99 substance abuse treatment providers for the development and
100 operation of specialized support and overlay services for the
101 dependency system, which will be fully implemented and used
102 ~~utilized~~ as resources permit.
103 (f) Participation in the treatment-based drug court
104 program does not divest any public or private agency of its
105 responsibility for a child or adult, but is intended to enable
106 these agencies to better meet their needs through shared
107 responsibility and resources.
108 Section 3. Subsection (15) of section 39.407, Florida
109 Statutes, is amended and subsection (16) is added to that
110 section to read:
111 39.407 Medical, psychiatric, and psychological examination
112 and treatment of child; physical, ~~or~~ mental, or substance abuse

113 examination of ~~parent or~~ person with or requesting child custody
114 ~~of child~~.--
115 (15) At any time after the filing of a shelter petition or
116 petition for dependency, when the mental or physical condition,
117 including the blood group, of a parent, caregiver, legal
118 custodian, or other person who has custody or is requesting
119 custody of a child is in controversy, the court may order the
120 person to submit to a physical or mental examination by a
121 qualified professional. The order may be made only upon good
122 cause shown and pursuant to notice and procedures as set forth
123 by the Florida Rules of Juvenile Procedure.
124 (16) At any time after a shelter petition or petition for
125 dependency is filed, the court may order a child or a person who
126 has custody or is requesting custody of the child to submit to a
127 substance abuse assessment and evaluation. The assessment and
128 evaluation must be administered by a qualified professional, as
129 defined in s. 397.311. The order may be made only upon good
130 cause shown. This subsection shall not be construed to authorize
131 placement of a child with a person seeking custody, other than
132 the parent or legal custodian, who requires substance abuse
133 treatment.
134 Section 4. Subsection (9) is added to section 39.507,
135 Florida Statutes, to read:
136 39.507 Adjudicatory hearings; orders of adjudication.--
137 (9) After an adjudication of dependency, or a finding of
138 dependency where adjudication is withheld, the court may order a
139 child or a person who has custody or is requesting custody of
140 the child to submit to a substance abuse assessment or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

141 evaluation. The assessment or evaluation must be administered by
142 a qualified professional, as defined in s. 397.311. The court
143 may also require such person to participate in and comply with
144 treatment and services identified as necessary, including, when
145 appropriate and available, participation in and compliance with
146 a treatment-based drug court program established under s.
147 397.334. In addition to supervision by the department, the
148 court, including the treatment-based drug court program, may
149 oversee the progress and compliance with treatment by the child
150 or a person who has custody or is requesting custody of the
151 child. The court may impose appropriate available sanctions for
152 noncompliance upon the child or a person who has custody or is
153 requesting custody of the child or make a finding of
154 noncompliance for consideration in determining whether an
155 alternative placement of the child is in the child's best
156 interests. Any order entered under this subsection may be made
157 only upon good cause shown. This subsection shall not be
158 construed to authorize placement of a child with a person
159 seeking custody, other than the parent or legal custodian, who
160 requires substance abuse treatment.
161 Section 5. Paragraph (b) of subsection (1) of section
162 39.521, Florida Statutes, is amended to read:
163 39.521 Disposition hearings; powers of disposition.--
164 (1) A disposition hearing shall be conducted by the court,
165 if the court finds that the facts alleged in the petition for
166 dependency were proven in the adjudicatory hearing, or if the
167 parents or legal custodians have consented to the finding of
168 dependency or admitted the allegations in the petition, have

169 failed to appear for the arraignment hearing after proper
170 notice, or have not been located despite a diligent search
171 having been conducted.
172 (b) When any child is adjudicated by a court to be
173 dependent, the court having jurisdiction of the child has the
174 power by order to:
175 1. Require the parent and, when appropriate, the legal
176 custodian and the child~~,~~ to participate in treatment and
177 services identified as necessary. The court may require the
178 child or the person who has custody or who is requesting custody
179 of the child to submit to a substance abuse assessment or
180 evaluation. The assessment or evaluation must be administered by
181 a qualified professional, as defined in s. 397.311. The court
182 may also require such person to participate in and comply with
183 treatment and services identified as necessary, including, when
184 appropriate and available, participation in and compliance with
185 a treatment-based drug court program established under s.
186 397.334. In addition to supervision by the department, the
187 court, including the treatment-based drug court program, may
188 oversee the progress and compliance with treatment by the child
189 or a person who has custody or is requesting custody of the
190 child. The court may impose appropriate available sanctions for
191 noncompliance upon the child or a person who has custody or is
192 requesting custody of the child or make a finding of
193 noncompliance for consideration in determining whether an
194 alternative placement of the child is in the child's best
195 interests. Any order entered under this subparagraph may be made
196 only upon good cause shown. This subparagraph shall not be

197 construed to authorize placement of a child with a person
198 seeking custody of the child, other than the child's parent or
199 legal custodian, who requires substance abuse treatment.
200 2. Require, if the court deems necessary, the parties to
201 participate in dependency mediation.
202 3. Require placement of the child either under the
203 protective supervision of an authorized agent of the department
204 in the home of one or both of the child's parents or in the home
205 of a relative of the child or another adult approved by the
206 court, or in the custody of the department. Protective
207 supervision continues until the court terminates it or until the
208 child reaches the age of 18, whichever date is first. Protective
209 supervision shall be terminated by the court whenever the court
210 determines that permanency has been achieved for the child,
211 whether with a parent, another relative, or a legal custodian,
212 and that protective supervision is no longer needed. The
213 termination of supervision may be with or without retaining
214 jurisdiction, at the court's discretion, and shall in either
215 case be considered a permanency option for the child. The order
216 terminating supervision by the department shall set forth the
217 powers of the custodian of the child and shall include the
218 powers ordinarily granted to a guardian of the person of a minor
219 unless otherwise specified. Upon the court's termination of
220 supervision by the department, no further judicial reviews are
221 required, so long as permanency has been established for the
222 child.
223 Section 6. Paragraph (d) of subsection (9) of section
224 39.701, Florida Statutes, is amended to read:

225 39.701 Judicial review.--
226 (9)
227 (d) The court may extend the time limitation of the case
228 plan, or may modify the terms of the plan, which, in addition to
229 other modifications, may include a requirement that the parent
230 or legal custodian participate in a treatment-based drug court
231 program established under s. 397.334, based upon information
232 provided by the social service agency, and the guardian ad
233 litem, if one has been appointed, the parent or parents, and the
234 foster parents or legal custodian, and any other competent
235 information on record demonstrating the need for the amendment.
236 If the court extends the time limitation of the case plan, the
237 court must make specific findings concerning the frequency of
238 past parent-child visitation, if any, and the court may
239 authorize the expansion or restriction of future visitation.
240 Modifications to the plan must be handled as prescribed in s.
241 39.601. Any extension of a case plan must comply with the time
242 requirements and other requirements specified by this chapter.
243 Section 7. Section 397.334, Florida Statutes, is amended
244 to read:
245 397.334 Treatment-based drug court programs.--
246 (1) Each county may fund a treatment-based drug court
247 program under which persons in the justice system assessed with
248 a substance abuse problem will be processed in such a manner as
249 to appropriately address the severity of the identified
250 substance abuse problem through treatment services ~~plans~~
251 tailored to the individual needs of the participant. It is the
252 intent of the Legislature to encourage the Department of

253 Corrections, the Department of Children and Family Services, the
254 Department of Juvenile Justice, the Department of Health, the
255 Department of Law Enforcement, the Department of Education, and
256 such ~~other~~ agencies, local governments, law enforcement
257 agencies, ~~and~~ other interested public or private sources, and
258 individuals to support the creation and establishment of these
259 problem-solving court programs. Participation in the treatment-
260 based drug court programs does not divest any public or private
261 agency of its responsibility for a child or adult, but enables
262 ~~allows~~ these agencies to better meet their needs through shared
263 responsibility and resources.
264 (2) Entry into any pretrial treatment-based drug court
265 program shall be voluntary. The court may only order an
266 individual to enter into a pretrial treatment-based drug court
267 program upon written agreement by the individual, which shall
268 include a statement that the individual understands the
269 requirements of the program and the potential sanctions for
270 noncompliance.
271 (3)~~(2)~~ The treatment-based drug court programs shall
272 include therapeutic jurisprudence principles and adhere to the
273 following 10 key components, recognized by the Drug Courts
274 Program Office of the Office of Justice Programs of the United
275 States Department of Justice and adopted by the Florida Supreme
276 Court Treatment-Based Drug Court Steering Committee:
277 (a) Drug court programs integrate alcohol and other drug
278 treatment services with justice system case processing.
279 (b) Using a nonadversarial approach, prosecution and
280 defense counsel promote public safety while protecting

281 participants' due process rights.
282 (c) Eligible participants are identified early and
283 promptly placed in the drug court program.
284 (d) Drug court programs provide access to a continuum of
285 alcohol, drug, and other related treatment and rehabilitation
286 services.
287 (e) Abstinence is monitored by frequent testing for
288 alcohol and other drugs.
289 (f) A coordinated strategy governs drug court program
290 responses to participants' compliance.
291 (g) Ongoing judicial interaction with each drug court
292 program participant is essential.
293 (h) Monitoring and evaluation measure the achievement of
294 program goals and gauge program effectiveness.
295 (i) Continuing interdisciplinary education promotes
296 effective drug court program planning, implementation, and
297 operations.
298 (j) Forging partnerships among drug court programs, public
299 agencies, and community-based organizations generates local
300 support and enhances drug court program effectiveness.
301 (4) ~~(3)~~ Treatment-based drug court programs may include
302 pretrial intervention programs as provided in ss. 948.08,
303 948.16, and 985.306, treatment-based drug court programs
304 authorized in chapter 39, postadjudicatory programs, and the
305 monitoring of sentenced offenders through a treatment-based drug
306 court program. While enrolled in any treatment-based drug court
307 program, the participant is subject to a coordinated strategy
308 developed by the drug court team under paragraph (3)(f). Each

309 coordinated strategy must include a protocol of sanctions that
310 may be imposed upon the participant. The protocol of sanctions
311 for treatment-based programs other than those authorized in
312 chapter 39 must include, and the protocol of sanctions for
313 treatment-based drug court programs authorized in chapter 39 may
314 include, as available options placement in a secure licensed
315 clinical or jail-based treatment program or serving a period of
316 incarceration for noncompliance with program rules within the
317 time limits established for contempt of court. The coordinated
318 strategy must be provided in writing to the participant before
319 the participant agrees to enter into a pretrial treatment-based
320 drug court program. Any person whose charges are dismissed after
321 successful completion of the treatment-based drug court program,
322 if otherwise eligible, may have his or her arrest record and
323 plea of nolo contendere to the dismissed charges expunged under
324 s. 943.0585.

325 (5) Contingent upon an annual appropriation by the
326 Legislature, each judicial circuit shall establish, at a
327 minimum, one coordinator position for the treatment-based drug
328 court program within the state courts system to coordinate the
329 responsibilities of the participating agencies and service
330 providers. Each coordinator shall provide direct support to the
331 treatment-based drug court program by providing coordination
332 between the multidisciplinary team and the judiciary, providing
333 case management, monitoring compliance of the participants in
334 the treatment-based drug court program with court requirements,
335 and providing program evaluation and accountability.

336 (6) ~~(4)~~ (a) The Florida Association of Drug Court ~~Program~~

337 Professionals is created. The membership of the association may
338 consist of treatment-based drug court program practitioners who
339 comprise the multidisciplinary treatment-based drug court
340 program team, including, but not limited to, judges, state
341 attorneys, defense counsel, treatment-based drug court program
342 coordinators, probation officers, law enforcement officers,
343 community representatives, members of the academic community,
344 and treatment professionals. Membership in the association shall
345 be voluntary.
346 (b) The association shall annually elect a chair whose
347 duty is to solicit recommendations from members on issues
348 relating to the expansion, operation, and institutionalization
349 of treatment-based drug court programs. The chair is responsible
350 for providing on or before October 1 of each year the
351 association's recommendations and an annual report to the
352 appropriate Supreme Court ~~Treatment-Based Drug Court Steering~~
353 committee or to the appropriate personnel of the Office of the
354 State Courts Administrator~~, and shall submit a report each year,~~
355 ~~on or before October 1, to the steering committee~~.
356 (7)~~(5)~~ If a county chooses to fund a treatment-based drug
357 court program, the county must secure funding from sources other
358 than the state for those costs not otherwise assumed by the
359 state pursuant to s. 29.004. However, this does not preclude
360 counties from using treatment and other service dollars provided
361 through state executive branch agencies. Counties may provide,
362 by interlocal agreement, for the collective funding of these
363 programs.
364 (8) The chief judge of each judicial circuit may appoint

365 an advisory committee for the treatment-based drug court
366 program. The committee shall be composed of the chief judge, or
367 his or her designee, who shall serve as chair; the judge of the
368 treatment-based drug court program, if not otherwise designated
369 by the chief judge as his or her designee; the state attorney,
370 or his or her designee; the public defender, or his or her
371 designee; the treatment-based drug court program coordinators;
372 community representatives; treatment representatives; and any
373 other persons the chair finds are appropriate.
374 Section 8. Paragraphs (b) and (e) of subsection (5) of
375 section 910.035, Florida Statutes, are amended to read:
376 910.035 Transfer from county for plea and sentence.--
377 (5) Any person eligible for participation in a drug court
378 treatment program pursuant to s. 948.08(6) may be eligible to
379 have the case transferred to a county other than that in which
380 the charge arose if the drug court program agrees and if the
381 following conditions are met:
382 (b) If approval for transfer is received from all parties,
383 the trial court shall accept a plea of nolo contendere and enter
384 a transfer order directing the clerk to transfer the case to the
385 county which has accepted the defendant into its drug court
386 program.
387 (e) Upon successful completion of the drug court program,
388 the jurisdiction to which the case has been transferred shall
389 dispose of the case pursuant to s. 948.08(6). If the defendant
390 does not complete the drug court program successfully, the
391 jurisdiction to which the case has been transferred shall
392 dispose of the case within the guidelines of the Criminal

393 Punishment Code ~~case shall be prosecuted as determined by the~~
394 ~~state attorneys of the sending and receiving counties~~.
395 Section 9. Subsections (6), (7), and (8) of section
396 948.08, Florida Statutes, are amended to read:
397 948.08 Pretrial intervention program.--
398 (6)(a) Notwithstanding any provision of this section, a
399 person who is charged with a felony of the second or third
400 degree for purchase or possession of a controlled substance
401 under chapter 893, prostitution, tampering with evidence,
402 solicitation for purchase of a controlled substance, or
403 obtaining a prescription by fraud; who has not been charged with
404 a crime involving violence, including, but not limited to,
405 murder, sexual battery, robbery, carjacking, home-invasion
406 robbery, or any other crime involving violence; and who has not
407 previously been convicted of a felony nor been admitted to a
408 felony pretrial program referred to in this section is eligible
409 for voluntary admission into a pretrial substance abuse
410 education and treatment intervention program, including a
411 treatment-based drug court program established pursuant to s.
412 397.334, approved by the chief judge of the circuit, for a
413 period of not less than 1 year in duration, upon motion of
414 either party or the court's own motion, except:
415 1. If a defendant was previously offered admission to a
416 pretrial substance abuse education and treatment intervention
417 program at any time prior to trial and the defendant rejected
418 that offer on the record, then the court or the state attorney
419 may deny the defendant's admission to such a program.
420 2. If the state attorney believes that the facts and

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421 circumstances of the case suggest the defendant's involvement in
422 the dealing and selling of controlled substances, the court
423 shall hold a preadmission hearing. If the state attorney
424 establishes, by a preponderance of the evidence at such hearing,
425 that the defendant was involved in the dealing or selling of
426 controlled substances, the court shall deny the defendant's
427 admission into a pretrial intervention program.
428 (b) While enrolled in a pretrial intervention program
429 authorized by this section, the participant is subject to a
430 coordinated strategy developed by a drug court team under s.
431 397.334(3). The coordinated strategy must include a protocol of
432 sanctions that may be imposed upon the participant. The protocol
433 of sanctions must include as available options placement in a
434 secure licensed clinical or jail-based treatment program or
435 serving a period of incarceration for noncompliance with program
436 rules within the time limits established for contempt of court.
437 The coordinated strategy must be provided in writing to the
438 participant before the participant agrees to enter into a
439 pretrial treatment-based drug court program, or other pretrial
440 intervention program.
441 (c)~~(b)~~ At the end of the pretrial intervention period, the
442 court shall consider the recommendation of the administrator
443 pursuant to subsection (5) and the recommendation of the state
444 attorney as to disposition of the pending charges. The court
445 shall determine, by written finding, whether the defendant has
446 successfully completed the pretrial intervention program.
447 ~~(c)1.~~ If the court finds that the defendant has not
448 successfully completed the pretrial intervention program, the

449 court may order the person to continue in education and
450 treatment, which may include secure licensed clinical or jail-
451 based treatment programs, or order that the charges revert to
452 normal channels for prosecution.
453 ~~2.~~ The court shall dismiss the charges upon a finding that
454 the defendant has successfully completed the pretrial
455 intervention program.
456 (d) Any entity, whether public or private, providing a
457 pretrial substance abuse education and treatment intervention
458 program under this subsection must contract with the county or
459 appropriate governmental entity, and the terms of the contract
460 must include, but need not be limited to, the requirements
461 established for private entities under s. 948.15(3).
462 ~~(7) The chief judge in each circuit may appoint an~~
463 ~~advisory committee for the pretrial intervention program~~
464 ~~composed of the chief judge or his or her designee, who shall~~
465 ~~serve as chair; the state attorney, the public defender, and the~~
466 ~~program administrator, or their designees; and such other~~
467 ~~persons as the chair deems appropriate. The advisory committee~~
468 ~~may not designate any defendant eligible for a pretrial~~
469 ~~intervention program for any offense that is not listed under~~
470 ~~paragraph (6)(a) without the state attorney's recommendation and~~
471 ~~approval. The committee may also include persons representing~~
472 ~~any other agencies to which persons released to the pretrial~~
473 ~~intervention program may be referred.~~
474 (7)~~(8)~~ The department may contract for the services and
475 facilities necessary to operate pretrial intervention programs.
476 Section 10. Section 948.16, Florida Statutes, is amended

477 to read:
478 948.16 Misdemeanor pretrial substance abuse education and
479 treatment intervention program.--
480 (1)(a) A person who is charged with a misdemeanor for
481 possession of a controlled substance or drug paraphernalia under
482 chapter 893, and who has not previously been convicted of a
483 felony nor been admitted to a pretrial program, is eligible for
484 voluntary admission into a misdemeanor pretrial substance abuse
485 education and treatment intervention program, including a
486 treatment-based drug court program established pursuant to s.
487 397.334, approved by the chief judge of the circuit, for a
488 period based on the program requirements and the treatment plan
489 for the offender, upon motion of either party or the court's own
490 motion, except, if the state attorney believes the facts and
491 circumstances of the case suggest the defendant is involved in
492 dealing and selling controlled substances, the court shall hold
493 a preadmission hearing. If the state attorney establishes, by a
494 preponderance of the evidence at such hearing, that the
495 defendant was involved in dealing or selling controlled
496 substances, the court shall deny the defendant's admission into
497 the pretrial intervention program.
498 (b) While enrolled in a pretrial intervention program
499 authorized by this section, the participant is subject to a
500 coordinated strategy developed by a drug court team under s.
501 397.334(3). The coordinated strategy must include a protocol of
502 sanctions that may be imposed upon the participant. The protocol
503 of sanctions must include as available options placement in a
504 secure licensed clinical or jail-based treatment program or

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505 serving a period of incarceration for noncompliance with program
506 rules within the time limits established for contempt of court.
507 The coordinated strategy must be provided in writing to the
508 participant before the participant agrees to enter into a
509 pretrial treatment-based drug court program, or other pretrial
510 intervention program.
511 (2) At the end of the pretrial intervention period, the
512 court shall consider the recommendation of the treatment program
513 and the recommendation of the state attorney as to disposition
514 of the pending charges. The court shall determine, by written
515 finding, whether the defendant successfully completed the
516 pretrial intervention program.
517 ~~(a)~~ If the court finds that the defendant has not
518 successfully completed the pretrial intervention program, the
519 court may order the person to continue in education and
520 treatment or return the charges to the criminal docket for
521 prosecution.
522 ~~(b)~~ The court shall dismiss the charges upon finding that
523 the defendant has successfully completed the pretrial
524 intervention program.
525 (3) Any public or private entity providing a pretrial
526 substance abuse education and treatment program under this
527 section shall contract with the county or appropriate
528 governmental entity. The terms of the contract shall include,
529 but not be limited to, the requirements established for private
530 entities under s. 948.15(3).
531 Section 11. Section 985.306, Florida Statutes, is amended
532 to read:

533 985.306 Delinquency pretrial intervention program.--
534 (1)~~(a)~~ Notwithstanding any provision of law to the
535 contrary, a child who is charged ~~under chapter 893~~ with a felony
536 of the second or third degree for purchase or possession of a
537 controlled substance under chapter 893; tampering with evidence;
538 solicitation for purchase of a controlled substance; or
539 obtaining a prescription by fraud, and who has not previously
540 been adjudicated for a felony ~~nor been admitted to a delinquency~~
541 ~~pretrial intervention program under this section~~, is eligible
542 for voluntary admission into a delinquency pretrial substance
543 abuse education and treatment intervention program, including a
544 treatment-based drug court program established pursuant to s.
545 397.334, approved by the chief judge or alternative sanctions
546 coordinator of the circuit to the extent that funded programs
547 are available, for a period based on the program requirements
548 and the treatment services that are suitable for the offender ~~of~~
549 ~~not less than 1 year in duration~~, upon motion of either party or
550 the court's own motion. However, if the state attorney believes
551 that the facts and circumstances of the case suggest the child's
552 involvement in the dealing and selling of controlled substances,
553 the court shall hold a preadmission hearing. If the state
554 attorney establishes by a preponderance of the evidence at such
555 hearing that the child was involved in the dealing and selling
556 of controlled substances, the court shall deny the child's
557 admission into a delinquency pretrial intervention program.
558 (2) While enrolled in a delinquency pretrial intervention
559 program authorized by this section, a child is subject to a
560 coordinated strategy developed by a drug court team under s.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

561 397.334(3). The coordinated strategy must include a protocol of
562 sanctions that may be imposed upon the child. The protocol of
563 sanctions must include as available options placement in a
564 secure licensed clinical facility or placement in a secure
565 detention facility under s. 985.216 for noncompliance with
566 program rules. The coordinated strategy must be provided in
567 writing to the child before the child agrees to enter the
568 pretrial treatment-based drug court program, or other pretrial
569 intervention program.
570 (3)~~(b)~~ At the end of the delinquency pretrial intervention
571 period, the court shall consider the recommendation of the state
572 attorney and the program administrator as to disposition of the
573 pending charges. The court shall determine, by written finding,
574 whether the child has successfully completed the delinquency
575 pretrial intervention program.
576 ~~(c)1.~~ If the court finds that the child has not
577 successfully completed the delinquency pretrial intervention
578 program, the court may order the child to continue in an
579 education, treatment, or urine monitoring program if resources
580 and funding are available or order that the charges revert to
581 normal channels for prosecution.
582 ~~2.~~ The court may dismiss the charges upon a finding that
583 the child has successfully completed the delinquency pretrial
584 intervention program.
585 (4)~~(d)~~ Any entity, whether public or private, providing
586 pretrial substance abuse education, treatment intervention, and
587 a urine monitoring program under this section must contract with
588 the county or appropriate governmental entity, and the terms of

589 the contract must include, but need not be limited to, the
590 requirements established for private entities under s.
591 948.15(3). It is the intent of the Legislature that public or
592 private entities providing substance abuse education and
593 treatment intervention programs involve the active participation
594 of parents, schools, churches, businesses, law enforcement
595 agencies, and the department or its contract providers.
596 ~~(2) The chief judge in each circuit may appoint an~~
597 ~~advisory committee for the delinquency pretrial intervention~~
598 ~~program composed of the chief judge or designee, who shall serve~~
599 ~~as chair; the state attorney, the public defender, and the~~
600 ~~program administrator, or their designees; and such other~~
601 ~~persons as the chair deems appropriate. The committee may also~~
602 ~~include persons representing any other agencies to which~~
603 ~~children released to the delinquency pretrial intervention~~
604 ~~program may be referred.~~
605 Section 12. This act shall take effect upon becoming a
606 law.

Bill No. **0175**

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)
ADOPTED AS AMENDED __ (Y/N)
ADOPTED W/O OBJECTION __ (Y/N)
FAILED TO ADOPT __ (Y/N)
WITHDRAWN __ (Y/N)
OTHER ______

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1 Council/Committee hearing bill:
2 Representative Adams offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 309-561 and insert:
6 coordinated strategy may include a protocol of sanctions that
7 may be imposed upon the participant. The protocol of sanctions
8 for treatment-based programs other than those authorized in
9 chapter 39 must include, and the protocol of sanctions for
10 treatment-based drug court programs authorized in chapter 39 may
11 include, as available options placement in a secure licensed
12 clinical or jail-based treatment program or serving a period of
13 incarceration for noncompliance with program rules within the
14 time limits established for contempt of court. The coordinated
15 strategy must be provided in writing to the participant before
16 the participant agrees to enter into a pretrial treatment-based
17 drug court program. Any person whose charges are dismissed after
18 successful completion of the treatment-based drug court program,
19 if otherwise eligible, may have his or her arrest record and
20 plea of nolo contendere to the dismissed charges expunged under
21 s. 943.0585.

22 (5) Contingent upon an annual appropriation by the
23 Legislature, each judicial circuit shall establish, at a
24 minimum, one coordinator position for the treatment-based drug
25 court program within the state courts system to coordinate the
26 responsibilities of the participating agencies and service
27 providers. Each coordinator shall provide direct support to the
28 treatment-based drug court program by providing coordination
29 between the multidisciplinary team and the judiciary, providing
30 case management, monitoring compliance of the participants in
31 the treatment-based drug court program with court requirements,
32 and providing program evaluation and accountability.
33 (6) ~~(4)~~ (a) The Florida Association of Drug Court ~~Program~~
34 Professionals is created. The membership of the association may
35 consist of treatment-based drug court program practitioners who
36 comprise the multidisciplinary treatment-based drug court
37 program team, including, but not limited to, judges, state
38 attorneys, defense counsel, treatment-based drug court program
39 coordinators, probation officers, law enforcement officers,
40 community representatives, members of the academic community,
41 and treatment professionals. Membership in the association shall
42 be voluntary.
43 (b) The association shall annually elect a chair whose
44 duty is to solicit recommendations from members on issues
45 relating to the expansion, operation, and institutionalization
46 of treatment-based drug court programs. The chair is responsible
47 for providing on or before October 1 of each year the
48 association's recommendations and an annual report to the
49 appropriate Supreme Court ~~Treatment-Based Drug Court Steering~~
50 committee or to the appropriate personnel of the Office of the

51 State Courts Administrator~~, and shall submit a report each year,~~
52 ~~on or before October 1, to the steering committee~~.
53 (7)~~(5)~~ If a county chooses to fund a treatment-based drug
54 court program, the county must secure funding from sources other
55 than the state for those costs not otherwise assumed by the
56 state pursuant to s. 29.004. However, this does not preclude
57 counties from using treatment and other service dollars provided
58 through state executive branch agencies. Counties may provide,
59 by interlocal agreement, for the collective funding of these
60 programs.
61 (8) The chief judge of each judicial circuit may appoint
62 an advisory committee for the treatment-based drug court
63 program. The committee shall be composed of the chief judge, or
64 his or her designee, who shall serve as chair; the judge of the
65 treatment-based drug court program, if not otherwise designated
66 by the chief judge as his or her designee; the state attorney,
67 or his or her designee; the public defender, or his or her
68 designee; the treatment-based drug court program coordinators;
69 community representatives; treatment representatives; and any
70 other persons the chair finds are appropriate.
71 Section 8. Paragraphs (b) and (e) of subsection (5) of
72 section 910.035, Florida Statutes, are amended to read:
73 910.035 Transfer from county for plea and sentence.--
74 (5) Any person eligible for participation in a drug court
75 treatment program pursuant to s. 948.08(6) may be eligible to
76 have the case transferred to a county other than that in which
77 the charge arose if the drug court program agrees and if the
78 following conditions are met:
79 (b) If approval for transfer is received from all parties,
80 the trial court shall accept a plea of nolo contendere and enter

a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court program.

(e) Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred shall dispose of the case pursuant to s. 948.08(6). If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Punishment Code ~~case shall be prosecuted as determined by the state attorneys of the sending and receiving counties~~.

Section 9. Subsections (6), (7), and (8) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.--

(6)(a) Notwithstanding any provision of this section, a person who is charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud; who has not been charged with a crime involving violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence; and who has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in this section is eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a

110 period of not less than 1 year in duration, upon motion of
111 either party or the court's own motion, except~~:~~
112 ~~1. If a defendant was previously offered admission to a~~
113 ~~pretrial substance abuse education and treatment intervention~~
114 ~~program at any time prior to trial and the defendant rejected~~
115 ~~that offer on the record, then the court or the state attorney~~
116 ~~may deny the defendant's admission to such a program.~~
117 ~~2.~~ if the state attorney believes that the facts and
118 circumstances of the case suggest the defendant's involvement in
119 the dealing and selling of controlled substances, the court
120 shall hold a preadmission hearing. If the state attorney
121 establishes, by a preponderance of the evidence at such hearing,
122 that the defendant was involved in the dealing or selling of
123 controlled substances, the court shall deny the defendant's
124 admission into a pretrial intervention program.
125 (b) While enrolled in a pretrial intervention program
126 authorized by this section, the participant is subject to a
127 coordinated strategy developed by a drug court team under s.
128 397.334(3). The coordinated strategy may include a protocol of
129 sanctions that may be imposed upon the participant. The protocol
130 of sanctions must include as available options placement in a
131 secure licensed clinical or jail-based treatment program or
132 serving a period of incarceration for noncompliance with program
133 rules within the time limits established for contempt of court.
134 The coordinated strategy must be provided in writing to the
135 participant before the participant agrees to enter into a
136 pretrial treatment-based drug court program, or other pretrial
137 intervention program.
138 (c) ~~(b)~~ At the end of the pretrial intervention period, the
139 court shall consider the recommendation of the administrator

140 pursuant to subsection (5) and the recommendation of the state
141 attorney as to disposition of the pending charges. The court
142 shall determine, by written finding, whether the defendant has
143 successfully completed the pretrial intervention program.

144 ~~(c)1.~~ If the court finds that the defendant has not
145 successfully completed the pretrial intervention program, the
146 court may order the person to continue in education and
147 treatment, which may include secure licensed clinical or jail-
148 based treatment programs, or order that the charges revert to
149 normal channels for prosecution.

150 ~~2.~~ The court shall dismiss the charges upon a finding that
151 the defendant has successfully completed the pretrial
152 intervention program.

153 (d) Any entity, whether public or private, providing a
154 pretrial substance abuse education and treatment intervention
155 program under this subsection must contract with the county or
156 appropriate governmental entity, and the terms of the contract
157 must include, but need not be limited to, the requirements
158 established for private entities under s. 948.15(3).

159 ~~(7) The chief judge in each circuit may appoint an~~
160 ~~advisory committee for the pretrial intervention program~~
161 ~~composed of the chief judge or his or her designee, who shall~~
162 ~~serve as chair; the state attorney, the public defender, and the~~
163 ~~program administrator, or their designees; and such other~~
164 ~~persons as the chair deems appropriate. The advisory committee~~
165 ~~may not designate any defendant eligible for a pretrial~~
166 ~~intervention program for any offense that is not listed under~~
167 ~~paragraph (6)(a) without the state attorney's recommendation and~~
168 ~~approval. The committee may also include persons representing~~

169 ~~any other agencies to which persons released to the pretrial~~
170 ~~intervention program may be referred.~~
171 (7) ~~(8)~~ The department may contract for the services and
172 facilities necessary to operate pretrial intervention programs.
173 Section 10. Section 948.16, Florida Statutes, is amended
174 to read:
175 948.16 Misdemeanor pretrial substance abuse education and
176 treatment intervention program.--
177 (1)(a) A person who is charged with a misdemeanor for
178 possession of a controlled substance or drug paraphernalia under
179 chapter 893, and who has not previously been convicted of a
180 felony nor been admitted to a pretrial program, is eligible for
181 voluntary admission into a misdemeanor pretrial substance abuse
182 education and treatment intervention program, including a
183 treatment-based drug court program established pursuant to s.
184 397.334, approved by the chief judge of the circuit, for a
185 period based on the program requirements and the treatment plan
186 for the offender, upon motion of either party or the court's own
187 motion, except, if the state attorney believes the facts and
188 circumstances of the case suggest the defendant is involved in
189 dealing and selling controlled substances, the court shall hold
190 a preadmission hearing. If the state attorney establishes, by a
191 preponderance of the evidence at such hearing, that the
192 defendant was involved in dealing or selling controlled
193 substances, the court shall deny the defendant's admission into
194 the pretrial intervention program.
195 (b) While enrolled in a pretrial intervention program
196 authorized by this section, the participant is subject to a
197 coordinated strategy developed by a drug court team under s.
198 397.334(3). The coordinated strategy may include a protocol of

sanctions that may be imposed upon the participant. The protocol of sanctions must include as available options placement in a secure licensed clinical or jail-based treatment program or serving a period of incarceration for noncompliance with program rules within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program, or other pretrial intervention program.

(2) At the end of the pretrial intervention period, the court shall consider the recommendation of the treatment program and the recommendation of the state attorney as to disposition of the pending charges. The court shall determine, by written finding, whether the defendant successfully completed the pretrial intervention program.

~~(a)~~ If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.

~~(b)~~ The court shall dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

(3) Any public or private entity providing a pretrial substance abuse education and treatment program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(3).

228 Section 11. Section 985.306, Florida Statutes, is amended
229 to read:
230 985.306 Delinquency pretrial intervention program.--
231 (1) ~~(a)~~ Notwithstanding any provision of law to the
232 contrary, a child who is charged ~~under chapter 893~~ with a felony
233 of the second or third degree for purchase or possession of a
234 controlled substance under chapter 893; tampering with evidence;
235 solicitation for purchase of a controlled substance; or
236 obtaining a prescription by fraud, and who has not previously
237 been adjudicated for a felony ~~nor been admitted to a delinquency~~
238 ~~pretrial intervention program under this section~~, is eligible
239 for voluntary admission into a delinquency pretrial substance
240 abuse education and treatment intervention program, including a
241 treatment-based drug court program established pursuant to s.
242 397.334, approved by the chief judge or alternative sanctions
243 coordinator of the circuit to the extent that funded programs
244 are available, for a period based on the program requirements
245 and the treatment services that are suitable for the offender ~~of~~
246 ~~not less than 1 year in duration~~, upon motion of either party or
247 the court's own motion. However, if the state attorney believes
248 that the facts and circumstances of the case suggest the child's
249 involvement in the dealing and selling of controlled substances,
250 the court shall hold a preadmission hearing. If the state
251 attorney establishes by a preponderance of the evidence at such
252 hearing that the child was involved in the dealing and selling
253 of controlled substances, the court shall deny the child's
254 admission into a delinquency pretrial intervention program.
255 (2) While enrolled in a delinquency pretrial intervention
256 program authorized by this section, a child is subject to a

257 coordinated strategy developed by a drug court team under s.
258 397.334(3). The coordinated strategy may include a protocol of
259
260 ================ T I T L E A M E N D M E N T =============
261 Remove lines 44-48 and insert:
262 abuse education and treatment intervention programs; deleting a
263 provision allowing state attorney to deny a defendant's
264 admission to a pretrial substance abuse education and treatment
265 intervention program if the defendant previously declined
266 admission to such a program; providing for application of the
267 coordinated strategy developed by the drug court team; removing
268 provisions authorizing appointment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances
SPONSOR(S): Porth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Transportation Committee			
3) Transportation & Economic Development Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

HB 187 increases the sanction for refusing to submit to a lawful test of breath, urine or blood when an officer has reasonable cause to believe that a person was driving under the influence. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a prior refusal to submit to such a test. As a result of the bill, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill makes a corresponding change to the relevant boating under the influence (BUI) statutes.

The bill also expands the circumstances in which a law enforcement officer can request that a blood sample be taken in DUI and BUI cases. Currently, a person who accepts the privilege of driving in this state is deemed to have given his or her consent to a *blood* test if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at hospital, clinic or other medical facility and if the administration of a breath or urine test if impractical or impossible. HB 187 provides that a person will be deemed to have given his or her consent to a blood test if the administration of a breath or urine test is impractical or impossible, regardless of whether the person appeared for treatment at a medical facility. The bill makes a corresponding change to the relevant BUI statute.

Current law provides that a law enforcement officer must require that a blood sample be taken when the officer has probable cause to believe that a vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being. An officer is authorized to use reasonable force, if necessary, to require a person to submit to the blood test. The bill will allow an officer to require a blood test if a person refused to submit to a urine test, regardless of whether death or serious bodily injury is involved. In other words, if an officer has probable cause to believe that a motor vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being *or* if the person has refused to submit to a requested urine test, the officer may require that a blood sample be taken and may use reasonable force, if necessary. The bill makes a corresponding change to the relevant BUI statute.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Safeguard Individual Liberty: HB 187 will authorize law enforcement to compel a blood test in an increased number of DUI and BUI cases. The bill also makes it a first degree misdemeanor for a person to refuse to submit to a lawful breath, urine or blood test in a DUI or BUI case.

Promote Personal Responsibility: The bill will provide for increased sanctions for refusal to submit to a lawful breath, urine or blood test in DUI and BUI cases.

B. EFFECT OF PROPOSED CHANGES:

DUI/BUI

The offense of driving under the influence[1] (DUI) is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The offense is punishable as follows[2]:

- For a first conviction, by a fine of not less than $250 or more than $500 and by imprisonment for not more than 6 months
- For a second conviction, by a fine of not less than $500 or more than $1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.[3]
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than $1000 or more than $2500 and by imprisonment for not more than 12 months.

A third conviction that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail[4] and up to five years in prison and a fine of up to $1000.[5] A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than $1000 or more than $5000.[6]

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

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[1] s. 316.193(1), F.S.
[2] s. 316.193(2), F.S.
[3] s. 316.193(6)(b), F.S.
[4] s. 316.193(6)(c), F.S.
[5] s. 316.193(2)(b), F.S.
[6] Additionally, a person who has been convicted of DUI faces suspension of his or her driving privilege and may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

Breath, urine and blood tests

A chemical or physical test of a person's breath can be used to determine the alcoholic content of a person's blood or breath. A breath test cannot detect the presence of a controlled substance or a chemical substance. A urine test can be used to detect the presence of a controlled substance or a chemical substance but is not used for the purpose of determining alcoholic content. A blood test can be used to detect controlled substances and chemical substances and to determine alcoholic content.

Implied consent

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. Specifically, section 316.1932(1)(a)1, F.S. provides that:

> Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her *breath* for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages.

Similarly, section 316.1932(1)(a)2, F.S. provides that a person who accepts the privilege of driving in the state is deemed to have consented to a *urine* test for the purpose of detecting the presence of a chemical substance or controlled substance. A breath or urine test must be incidental to a lawful arrest at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence.

A person is deemed to have given his or her consent to a *blood* test even if the person has not yet been arrested, if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at a medical facility and if the administration of a breath or urine test if impractical or impossible.[7]

When an officer requests the breath, urine or blood test, the offender must be told that:

- Refusal to submit to the test will result in the suspension of the offender's driving privilege for one year.
- Refusal to submit to the test will result in the suspension of the offender's driving privilege for 18 months if the offenders driving privilege has previously been suspended for a refusal to submit.
- Refusal to submit to test is a misdemeanor if the offender's driving privilege has previously been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood.

According to the Department of Highway Safety & Motor Vehicles, there were 23,517 driver license suspensions in 2003 and 23,058 in 2004 for refusal to consent to a lawful test of breath, urine or blood.

Sanctions for refusing to comply

Prior to the 2002 legislative session, if a person refused to submit to a breath, blood or urine test after an arrest for driving under the influence (DUI), the offender's driving privilege would be suspended. The refusal to submit was not a criminal offense. During the 2002 session, the law was changed to make a refusal to submit to a breath, urine or blood test a first degree misdemeanor if the offender's driving privilege has previously been suspended for a refusal to submit. See 2002-263, Laws of Fla.

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[7] s. 316.1932(1)(c), F.S The refusal to submit to a breath, urine or blood test is admissible into evidence in any criminal proceeding. The result of any test pursuant to this section which indicates the presence of a controlled substances is not admissible in a trial for the possession of a controlled substance. s. 316.1932(2), F.S.

Specifically, section 316.1939, F.S. provides that a person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine as described in s. 316.1932, F.S., and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine or blood:

1. Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.
2. Who was placed under lawful arrest for a violation of s. 316.193, unless such test was requested pursuant to s. 316.1932(1)(c)[8].
3. Who was informed that if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months, and that the refusal to submit to such test is a misdemeanor.
4. Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a first degree misdemeanor, punishable by up to one year in jail.

Blood test for impairment in cases of death or serious bodily injury Section 316.1933, F.S., requires a person to submit to a blood test, upon request of a law enforcement officer, when a law enforcement officer has probable cause to believe the person was driving under the influence and caused death or serious bodily injury[9]. The law enforcement officer may use reasonable force if necessary to require the person to submit to the blood test. The testing does not need to be incidental to a lawful arrest of a person. The blood must be withdrawn by a medical professional or technician.

Constitutional law According to the Florida courts, the implied consent statutes discussed above place greater limitations on law enforcement's authority to obtain breath, urine or blood samples than is constitutionally required. The Third District Court of Appeal discussed the issue as follows:

> Indeed, it is the established law of this state that Florida's implied consent statutes [§§ 316.1932, 316.1933, 316.1934, Fla. Stat. (1991)] impose, in certain respects, higher standards on police conduct in obtaining breath, urine, and blood samples from a defendant in a DUI case than those required by the Fourth Amendment. The Florida Supreme Court in *Sambrine v. State,* 386 So.2d 546, 548 (Fla.1980), has so stated:
>
>> What is at issue here ... is ... the right of the state of Florida to extend to its citizenry protections against unreasonable searches and seizures greater than those afforded by the federal constitution [through the Fourth Amendment]. This it has done through the enactment of section 322.261, Florida Statutes (1975) [now sections 316.1932, 316.1933, Florida Statutes (1991)]
>
> As further stated by the Fifth District Court of Appeal in *State v. McInnis,* 581 So.2d 1370, 1374 (Fla. 5th DCA), *cause dismissed,* 584 So.2d 998 (Fla.1991),

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[8] s. 316.1932(1)(c) applies in cases in which there is reasonable cause to believe that the person was driving which under the influence and the person appears for treatment at a hospital, clinic or other medical facility and the administration of a breath or urine test is impractical or impossible.

[9] Serious bodily injury is defined as an injury "which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ." Sec. 316.1933(1)(b), F.S.

> One public policy reason for enacting such a statutory scheme [Florida's implied consent statutes] is the legislature's decision to extend to some motorists driving in Florida greater protection and rights of privacy than are provided by the state or federal constitutions.
>
> In particular, Florida's implied consent statutes (1) limit the power of the police to require a person who is lawfully arrested for DUI to give samples of his/her breath, urine, or blood without the person's consent, and (2) prescribe the exact methods by which such samples may be taken and tested. These limitations and prescribed procedures represent higher standards for police conduct in obtaining samples of this nature from a DUI defendant than those required by the Fourth Amendment and are entirely permissible as a matter of state law.

State v. Langsford, 816 So.2d 136, 139 (Fla. 4th DCA 2002); *Schmerber v. California,* 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)(holding that it is not an unreasonable search under the Fourth Amendment for police to obtain a warrantless involuntary blood sample from a defendant who is under arrest for DUI if there is probable cause to arrest the defendant for that offense, and the blood is extracted in a reasonable manner by medical personnel pursuant to medically approved procedures).

Effect of HB 187

HB 187 amends s. 316.1939, F.S. to make it a first degree misdemeanor to refuse to consent to a lawful test of breath, urine or blood. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a refusal to submit to such a test. As a result, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill also amends s. 316.1932, F.S. to require that an officer inform a person that his or her refusal to submit to the test will be punishable as a misdemeanor. The bill makes a corresponding change to the relevant BUI statutes, ss. 327.352 and 327.359, F.S.

As discussed above, s. 316.1932(1)(c), F.S. currently provides that a person is deemed to have given his or her consent to a blood test if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at hospital, clinic or other medical facility and if the administration of a breath or urine test if impractical or impossible. HB 187 removes the requirement that the person appeared for treatment at a hospital, clinic or other medical facility. As such, a person will be deemed to have given his or her consent to a blood test if the administration of a breath or urine test is impractical or impossible, regardless of whether the person has appeared for treatment at a medical facility. The bill makes a corresponding change to the relevant BUI statute, s. 327.352(1)(c), F.S.

The bill also amends s. 316.1933, F.S. which currently provides that a law enforcement officer must require a blood test when the officer has probable cause to believe that a vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being. An officer is authorized to use reasonable force, if necessary, to require a person to submit to the blood test. The bill will allow an officer to require a blood test if a person refused to submit to a urine test requested pursuant to s. 316.1932, F.S., regardless of whether death or serious bodily injury is involved. In other words, if an officer has probable cause to believe that a motor vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being *or* if the person has refused to submit to a requested urine test, the officer may require that a blood test be taken and may use reasonable force, if necessary. The bill makes a corresponding change to the relevant BUI statute, s.327.353, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1932, F.S. relating to refusal to submit to a breath, urine or blood test.

Section 2. Amends s. 316.1933, F.S.; permitting law enforcement to require person to submit to blood test if person has refused to take urine test.

Section 3. Amends s. 316.1939, F.S.; removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in DUI case.

Section 4. Amends s. 327.352, F.S. relating to refusal to submit to breath, urine or blood test in BUI cases.

Section 5. Amends s. 327.353, F.S.; permitting law enforcement officer to require person to submit to blood test in BUI case if person has refused to submit to urine test.

Section 6. Amends s. 327.359, F.S.; removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in BUI case.

Section 7. Provides October 1, 2005 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Highway Safety and Motor Vehicles reports that the bill will not have a fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill will make a first refusal to submit to a lawful breath, urine or blood test a first degree misdemeanor. Currently, a person commits a misdemeanor in refusing to submit to a breath, urine or blood test only if the person's driving privilege had previously been suspended for a refusal to submit to a test. A first degree misdemeanor is punishable by up to a year in county jail. This may have an impact on county jail populations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to lawful testing for alcohol, chemical
3 substances, or controlled substances; amending s.
4 316.1932, F.S.; revising provisions to notify a person
5 that refusal to submit to a lawful test of the person's
6 breath, urine, or blood is a misdemeanor, to conform to
7 changes made by the act; revising language relating to
8 presumption of consent to submit to a blood test; removing
9 reference to treatment at a medical facility; amending s.
10 316.1933, F.S.; directing a law enforcement officer to
11 require a person driving or in actual physical control of
12 the motor vehicle to submit to a blood test for the
13 purpose of determining alcoholic content of the blood or
14 the presence of specified chemical or controlled
15 substances if that person has refused or failed to submit
16 to a lawful urine test; amending s. 316.1939, F.S.;
17 removing prior suspension as a condition for the
18 commission of a misdemeanor by refusal to submit to a
19 lawful test of breath, urine, or blood; amending s.
20 327.352, F.S.; revising provisions to notify a person that
21 refusal to submit to a lawful test of the person's breath,
22 urine, or blood is a misdemeanor, to conform to changes
23 made by the act; revising language relating to presumption
24 of consent to submit to a blood test; removing reference
25 to treatment at a medical facility; amending s. 327.353,
26 F.S.; directing a law enforcement officer to require a
27 person operating or in actual physical control of the
28 vessel to submit to a blood test for the purpose of

29 determining alcoholic content of the blood or the presence
30 of specified chemical or controlled substances if that
31 person has refused or failed to submit to a lawful urine
32 test; amending s. 327.359, F.S.; removing prior suspension
33 as a condition for the commission of a misdemeanor by
34 refusal to submit to a lawful test of breath, urine, or
35 blood; providing an effective date.
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. Paragraphs (a) and (c) of subsection (1) of
40 section 316.1932, Florida Statutes, are amended to read:
41 316.1932 Tests for alcohol, chemical substances, or
42 controlled substances; implied consent; refusal.--
43 (1)(a)1.a. Any person who accepts the privilege extended
44 by the laws of this state of operating a motor vehicle within
45 this state is, by so operating such vehicle, deemed to have
46 given his or her consent to submit to an approved chemical test
47 or physical test including, but not limited to, an infrared
48 light test of his or her breath for the purpose of determining
49 the alcoholic content of his or her blood or breath if the
50 person is lawfully arrested for any offense allegedly committed
51 while the person was driving or was in actual physical control
52 of a motor vehicle while under the influence of alcoholic
53 beverages. The chemical or physical breath test must be
54 incidental to a lawful arrest and administered at the request of
55 a law enforcement officer who has reasonable cause to believe
56 such person was driving or was in actual physical control of the

57 motor vehicle within this state while under the influence of
58 alcoholic beverages. The administration of a breath test does
59 not preclude the administration of another type of test. The
60 person shall be told that his or her failure to submit to any
61 lawful test of his or her breath will result in the suspension
62 of the person's privilege to operate a motor vehicle for a
63 period of 1 year for a first refusal, or for a period of 18
64 months if the driving privilege of such person has been
65 previously suspended as a result of a refusal to submit to such
66 a test or tests, and shall also be told that if he or she
67 refuses to submit to a lawful test of his or her breath ~~and his~~
68 ~~or her driving privilege has been previously suspended for a~~
69 ~~prior refusal to submit to a lawful test of his or her breath,~~
70 ~~urine, or blood~~, he or she commits a misdemeanor in addition to
71 any other penalties. The refusal to submit to a chemical or
72 physical breath test upon the request of a law enforcement
73 officer as provided in this section is admissible into evidence
74 in any criminal proceeding.
75 b. Any person who accepts the privilege extended by the
76 laws of this state of operating a motor vehicle within this
77 state is, by so operating such vehicle, deemed to have given his
78 or her consent to submit to a urine test for the purpose of
79 detecting the presence of chemical substances as set forth in s.
80 877.111 or controlled substances if the person is lawfully
81 arrested for any offense allegedly committed while the person
82 was driving or was in actual physical control of a motor vehicle
83 while under the influence of chemical substances or controlled
84 substances. The urine test must be incidental to a lawful arrest

85 and administered at a detention facility or any other facility,
86 mobile or otherwise, which is equipped to administer such tests
87 at the request of a law enforcement officer who has reasonable
88 cause to believe such person was driving or was in actual
89 physical control of a motor vehicle within this state while
90 under the influence of chemical substances or controlled
91 substances. The urine test shall be administered at a detention
92 facility or any other facility, mobile or otherwise, which is
93 equipped to administer such test in a reasonable manner that
94 will ensure the accuracy of the specimen and maintain the
95 privacy of the individual involved. The administration of a
96 urine test does not preclude the administration of another type
97 of test. The person shall be told that his or her failure to
98 submit to any lawful test of his or her urine will result in the
99 suspension of the person's privilege to operate a motor vehicle
100 for a period of 1 year for the first refusal, or for a period of
101 18 months if the driving privilege of such person has been
102 previously suspended as a result of a refusal to submit to such
103 a test or tests, and shall also be told that if he or she
104 refuses to submit to a lawful test of his or her urine ~~and his~~
105 ~~or her driving privilege has been previously suspended for a~~
106 ~~prior refusal to submit to a lawful test of his or her breath,~~
107 ~~urine, or blood~~, he or she commits a misdemeanor in addition to
108 any other penalties. The refusal to submit to a urine test upon
109 the request of a law enforcement officer as provided in this
110 section is admissible into evidence in any criminal proceeding.
111 2. The Alcohol Testing Program within the Department of
112 Law Enforcement is responsible for the regulation of the

113 operation, inspection, and registration of breath test
114 instruments utilized under the driving and boating under the
115 influence provisions and related provisions located in this
116 chapter and chapters 322 and 327. The program is responsible for
117 the regulation of the individuals who operate, inspect, and
118 instruct on the breath test instruments utilized in the driving
119 and boating under the influence provisions and related
120 provisions located in this chapter and chapters 322 and 327. The
121 program is further responsible for the regulation of blood
122 analysts who conduct blood testing to be utilized under the
123 driving and boating under the influence provisions and related
124 provisions located in this chapter and chapters 322 and 327. The
125 program shall:
126 a. Establish uniform criteria for the issuance of permits
127 to breath test operators, agency inspectors, instructors, blood
128 analysts, and instruments.
129 b. Have the authority to permit breath test operators,
130 agency inspectors, instructors, blood analysts, and instruments.
131 c. Have the authority to discipline and suspend, revoke,
132 or renew the permits of breath test operators, agency
133 inspectors, instructors, blood analysts, and instruments.
134 d. Establish uniform requirements for instruction and
135 curricula for the operation and inspection of approved
136 instruments.
137 e. Have the authority to specify one approved curriculum
138 for the operation and inspection of approved instruments.
139 f. Establish a procedure for the approval of breath test
140 operator and agency inspector classes.

141 g. Have the authority to approve or disapprove breath test
142 instruments and accompanying paraphernalia for use pursuant to
143 the driving and boating under the influence provisions and
144 related provisions located in this chapter and chapters 322 and
145 327.
146 h. With the approval of the executive director of the
147 Department of Law Enforcement, make and enter into contracts and
148 agreements with other agencies, organizations, associations,
149 corporations, individuals, or federal agencies as are necessary,
150 expedient, or incidental to the performance of duties.
151 i. Issue final orders which include findings of fact and
152 conclusions of law and which constitute final agency action for
153 the purpose of chapter 120.
154 j. Enforce compliance with the provisions of this section
155 through civil or administrative proceedings.
156 k. Make recommendations concerning any matter within the
157 purview of this section, this chapter, chapter 322, or chapter
158 327.
159 l. Promulgate rules for the administration and
160 implementation of this section, including definitions of terms.
161 m. Consult and cooperate with other entities for the
162 purpose of implementing the mandates of this section.
163 n. Have the authority to approve the type of blood test
164 utilized under the driving and boating under the influence
165 provisions and related provisions located in this chapter and
166 chapters 322 and 327.
167 o. Have the authority to specify techniques and methods
168 for breath alcohol testing and blood testing utilized under the

169 driving and boating under the influence provisions and related
170 provisions located in this chapter and chapters 322 and 327.
171 p. Have the authority to approve repair facilities for the
172 approved breath test instruments, including the authority to set
173 criteria for approval.
174
175 Nothing in this section shall be construed to supersede
176 provisions in this chapter and chapters 322 and 327. The
177 specifications in this section are derived from the power and
178 authority previously and currently possessed by the Department
179 of Law Enforcement and are enumerated to conform with the
180 mandates of chapter 99-379, Laws of Florida.
181 (c) Any person who accepts the privilege extended by the
182 laws of this state of operating a motor vehicle within this
183 state is, by operating such vehicle, deemed to have given his or
184 her consent to submit to an approved blood test for the purpose
185 of determining the alcoholic content of the blood or a blood
186 test for the purpose of determining the presence of chemical
187 substances or controlled substances as provided in this section
188 if there is reasonable cause to believe the person was driving
189 or in actual physical control of a motor vehicle while under the
190 influence of alcoholic beverages or chemical or controlled
191 substances and ~~the person appears for treatment at a hospital,~~
192 ~~clinic, or other medical facility and~~ the administration of a
193 breath or urine test is impractical or impossible. ~~As used in~~
194 ~~this paragraph, the term "other medical facility" includes an~~
195 ~~ambulance or other medical emergency vehicle.~~ The blood test
196 shall be performed in a reasonable manner. Any person who is

197 incapable of refusal by reason of unconsciousness or other
198 mental or physical condition is deemed not to have withdrawn his
199 or her consent to such test. A blood test may be administered
200 whether or not the person is told that his or her failure to
201 submit to such a blood test will result in the suspension of the
202 person's privilege to operate a motor vehicle upon the public
203 highways of this state and that a refusal to submit to a lawful
204 test of his or her blood~~, if his or her driving privilege has~~
205 ~~been previously suspended for refusal to submit to a lawful test~~
206 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any
207 person who is capable of refusal shall be told that his or her
208 failure to submit to such a blood test will result in the
209 suspension of the person's privilege to operate a motor vehicle
210 for a period of 1 year for a first refusal, or for a period of
211 18 months if the driving privilege of the person has been
212 suspended previously as a result of a refusal to submit to such
213 a test or tests, and that a refusal to submit to a lawful test
214 of his or her blood~~, if his or her driving privilege has been~~
215 ~~previously suspended for a prior refusal to submit to a lawful~~
216 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.
217 The refusal to submit to a blood test upon the request of a law
218 enforcement officer is admissible in evidence in any criminal
219 proceeding.
220 Section 2. Paragraph (a) of subsection (1) of section
221 316.1933, Florida Statutes, is amended to read:
222 316.1933 Blood test for alcohol, chemical substances, or
223 controlled substances ~~impairment or intoxication in cases of~~
224 ~~death or serious bodily injury~~; right to use reasonable force.--

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

225 (1)(a) If a law enforcement officer has probable cause to
226 believe that a motor vehicle driven by or in the actual physical
227 control of a person under the influence of alcoholic beverages,
228 any chemical substances, or any controlled substances has caused
229 the death or serious bodily injury of a human being, or if the
230 person driving or in actual physical control of a motor vehicle
231 has refused or failed to submit to a urine test requested
232 pursuant to s. 316.1932(1)(a)1.b., a law enforcement officer
233 shall require the person driving or in actual physical control
234 of the motor vehicle to submit to a test of the person's blood
235 for the purpose of determining the alcoholic content thereof or
236 the presence of chemical substances as set forth in s. 877.111
237 or any substance controlled under chapter 893. The law
238 enforcement officer may use reasonable force if necessary to
239 require such person to submit to the administration of the blood
240 test. The blood test shall be performed in a reasonable manner.
241 Notwithstanding s. 316.1932, the testing required by this
242 paragraph need not be incidental to a lawful arrest of the
243 person unless the testing is required because the person refused
244 or failed to submit to a urine test requested pursuant to s.
245 316.1932(1)(a)1.b.
246 Section 3. Section 316.1939, Florida Statutes, is amended
247 to read:
248 316.1939 Refusal to submit to testing; penalties.--
249 (1) Any person who has refused to submit to a chemical or
250 physical test of his or her breath, blood, or urine, as
251 described in s. 316.1932, ~~and whose driving privilege was~~

252 ~~previously suspended for a prior refusal to submit to a lawful~~
253 ~~test of his or her breath, urine, or blood,~~ and:
254 (a) Who the arresting law enforcement officer had probable
255 cause to believe was driving or in actual physical control of a
256 motor vehicle in this state while under the influence of
257 alcoholic beverages, chemical substances, or controlled
258 substances;
259 (b) Who was placed under lawful arrest for a violation of
260 s. 316.193 unless such test was requested pursuant to s.
261 316.1932(1)(c);
262 (c) Who was informed that, if he or she refused to submit
263 to such test, his or her privilege to operate a motor vehicle
264 would be suspended for a period of 1 year or, in the case of a
265 second or subsequent refusal, for a period of 18 months;
266 (d) Who was informed that a refusal to submit to a lawful
267 test of his or her breath, urine, or blood~~, if his or her~~
268 ~~driving privilege has been previously suspended for a prior~~
269 ~~refusal to submit to a lawful test of his or her breath, urine,~~
270 ~~or blood,~~ is a misdemeanor; and
271 (e) Who, after having been so informed, refused to submit
272 to any such test when requested to do so by a law enforcement
273 officer or correctional officer
274
275 commits a misdemeanor of the first degree, punishable ~~and is~~
276 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.
277 (2) The disposition of any administrative proceeding that
278 relates to the suspension of a person's driving privilege does
279 not affect a criminal action under this section.

280 (3) The disposition of a criminal action under this
281 section does not affect any administrative proceeding that
282 relates to the suspension of a person's driving privilege. ~~The~~
283 ~~department's records showing that a person's license has been~~
284 ~~previously suspended for a prior refusal to submit to a lawful~~
285 ~~test of his or her breath, urine, or blood shall be admissible~~
286 ~~and shall create a rebuttable presumption of such suspension.~~
287 Section 4. Paragraphs (a) and (c) of subsection (1) of
288 section 327.352, Florida Statutes, are amended to read:
289 327.352 Tests for alcohol, chemical substances, or
290 controlled substances; implied consent; refusal.--
291 (1)(a)1. The Legislature declares that the operation of a
292 vessel is a privilege that must be exercised in a reasonable
293 manner. In order to protect the public health and safety, it is
294 essential that a lawful and effective means of reducing the
295 incidence of boating while impaired or intoxicated be
296 established. Therefore, any person who accepts the privilege
297 extended by the laws of this state of operating a vessel within
298 this state is, by so operating such vessel, deemed to have given
299 his or her consent to submit to an approved chemical test or
300 physical test including, but not limited to, an infrared light
301 test of his or her breath for the purpose of determining the
302 alcoholic content of his or her blood or breath if the person is
303 lawfully arrested for any offense allegedly committed while the
304 person was operating a vessel while under the influence of
305 alcoholic beverages. The chemical or physical breath test must
306 be incidental to a lawful arrest and administered at the request
307 of a law enforcement officer who has reasonable cause to believe

308 such person was operating the vessel within this state while
309 under the influence of alcoholic beverages. The administration
310 of a breath test does not preclude the administration of another
311 type of test. The person shall be told that his or her failure
312 to submit to any lawful test of his or her breath will result in
313 a civil penalty of $500~~,~~ and shall also be told that if he or
314 she refuses to submit to a lawful test of his or her breath ~~and~~
315 ~~he or she has been previously fined for refusal to submit to any~~
316 ~~lawful test of his or her breath, urine, or blood~~, he or she
317 commits a misdemeanor in addition to any other penalties. The
318 refusal to submit to a chemical or physical breath test upon the
319 request of a law enforcement officer as provided in this section
320 is admissible into evidence in any criminal proceeding.
321 2. Any person who accepts the privilege extended by the
322 laws of this state of operating a vessel within this state is,
323 by so operating such vessel, deemed to have given his or her
324 consent to submit to a urine test for the purpose of detecting
325 the presence of chemical substances as set forth in s. 877.111
326 or controlled substances if the person is lawfully arrested for
327 any offense allegedly committed while the person was operating a
328 vessel while under the influence of chemical substances or
329 controlled substances. The urine test must be incidental to a
330 lawful arrest and administered at a detention facility or any
331 other facility, mobile or otherwise, which is equipped to
332 administer such tests at the request of a law enforcement
333 officer who has reasonable cause to believe such person was
334 operating a vessel within this state while under the influence
335 of chemical substances or controlled substances. The urine test

336 shall be administered at a detention facility or any other
337 facility, mobile or otherwise, which is equipped to administer
338 such test in a reasonable manner that will ensure the accuracy
339 of the specimen and maintain the privacy of the individual
340 involved. The administration of a urine test does not preclude
341 the administration of another type of test. The person shall be
342 told that his or her failure to submit to any lawful test of his
343 or her urine will result in a civil penalty of $500~~,~~ and shall
344 also be told that if he or she refuses to submit to a lawful
345 test of his or her urine ~~and he or she has been previously fined~~
346 ~~for refusal to submit to any lawful test of his or her breath,~~
347 ~~urine, or blood~~, he or she commits a misdemeanor in addition to
348 any other penalties. The refusal to submit to a urine test upon
349 the request of a law enforcement officer as provided in this
350 section is admissible into evidence in any criminal proceeding.
351 (c) Any person who accepts the privilege extended by the
352 laws of this state of operating a vessel within this state is,
353 by operating such vessel, deemed to have given his or her
354 consent to submit to an approved blood test for the purpose of
355 determining the alcoholic content of the blood or a blood test
356 for the purpose of determining the presence of chemical
357 substances or controlled substances as provided in this section
358 if there is reasonable cause to believe the person was operating
359 a vessel while under the influence of alcoholic beverages or
360 chemical or controlled substances and ~~the person appears for~~
361 ~~treatment at a hospital, clinic, or other medical facility and~~
362 the administration of a breath or urine test is impractical or
363 impossible. ~~As used in this paragraph, the term "other medical~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

364 ~~facility" includes an ambulance or other medical emergency~~
365 ~~vehicle.~~ The blood test shall be performed in a reasonable
366 manner. Any person who is incapable of refusal by reason of
367 unconsciousness or other mental or physical condition is deemed
368 not to have withdrawn his or her consent to such test. Any
369 person who is capable of refusal shall be told that his or her
370 failure to submit to such a blood test will result in a civil
371 penalty of $500 and that a refusal to submit to a lawful test of
372 his or her blood~~, if he or she has previously been fined for~~
373 ~~refusal to submit to any lawful test of his or her breath,~~
374 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a
375 blood test upon the request of a law enforcement officer shall
376 be admissible in evidence in any criminal proceeding.
377 Section 5. Paragraph (a) of subsection (1) of section
378 327.353, Florida Statutes, is amended to read:
379 327.353 Blood test for alcohol, chemical substances, or
380 controlled substances ~~impairment or intoxication in cases of~~
381 ~~death or serious bodily injury~~; right to use reasonable force.--
382 (1)(a) If a law enforcement officer has probable cause to
383 believe that a vessel operated by a person under the influence
384 of alcoholic beverages, any chemical substances, or any
385 controlled substances has caused the death or serious bodily
386 injury of a human being, or if the person operating or in actual
387 physical control of a vessel has refused or failed to submit to
388 a urine test requested pursuant to s. 327.352(1)(a)2., a law
389 enforcement officer shall require the person operating or in
390 actual physical control of the vessel to submit to a test of the
391 person's blood for the purpose of determining the alcoholic

392 content thereof or the presence of chemical substances as set
393 forth in s. 877.111 or any substance controlled under chapter
394 893. The law enforcement officer may use reasonable force if
395 necessary to require the person to submit to the administration
396 of the blood test. The blood test shall be performed in a
397 reasonable manner. Notwithstanding s. 327.352, the testing
398 required by this paragraph need not be incidental to a lawful
399 arrest of the person unless the testing is required because the
400 person refused or failed to submit to a urine test requested
401 pursuant to s. 327.352(1)(a)2.

402 Section 6. Section 327.359, Florida Statutes, is amended
403 to read:

404 327.359 Refusal to submit to testing; penalties.--Any
405 person who has refused to submit to a chemical or physical test
406 of his or her breath, blood, or urine, as described in s.
407 327.352, ~~and who has been previously fined for refusal to submit~~
408 ~~to a lawful test of his or her breath, urine, or blood,~~ and:

409 (1) Who the arresting law enforcement officer had probable
410 cause to believe was operating or in actual physical control of
411 a vessel in this state while under the influence of alcoholic
412 beverages, chemical substances, or controlled substances;

413 (2) Who was placed under lawful arrest for a violation of
414 s. 327.35 unless such test was requested pursuant to s.
415 327.352(1)(c);

416 (3) Who was informed that if he or she refused to submit
417 to such test he or she is subject to a fine of $500;

418 (4) Who was informed that a refusal to submit to a lawful
419 test of his or her breath, urine, or blood~~, if he or she has~~

420 ~~been previously fined for refusal to submit to a lawful test of~~
421 ~~his or her breath, urine, or blood,~~ is a misdemeanor; and
422 (5) Who, after having been so informed, refused to submit
423 to any such test when requested to do so by a law enforcement
424 officer or correctional officer
425
426 commits a misdemeanor of the first degree, punishable ~~and is~~
427 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.
428 Section 7. This act shall take effect October 1, 2006.