CRIMINAL JUSTICE COMMITTEE

MEETING PACKET REVISED

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

Second Revised

Allan G. Bense
Speaker

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 11/7/2005 4:28:01PM)

Amended(1)

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 175 Drug Court Programs by Adams
HB 187 Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth

NOTICE FINALIZED on 11/07/2005 16:28 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 175—Drug Court Programs by Adams

1302 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-6333

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

IV. Closing comments / Meeting adjourned

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.

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

A bill to be entitled

An act relating to assault or battery on security officers; amending s. 784.07, F.S.; providing for reclassification of an assault or battery on a licensed security officer; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.--

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a traffic accident investigation officer as described in s. 316.640, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, <u>a person licensed as a security officer as defined in s. 493.6101,</u> or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, intake officer, traffic accident investigation officer, traffic infraction enforcement officer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful

performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

Section 2. This act shall take effect July 1, 2006, and shall apply to offenses committed on or after that date.

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 JK	Kramer JK
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

A bill to be entitled

An act relating to alcoholic beverages; creating s. 562.61, F.S.; providing a definition of the term "alcohol vaporizing device"; prohibiting the sale, offer for sale, purchase, or use of machines or devices which vaporize alcohol; providing penalties; providing a fine; creating s. 563.09, F.S.; permitting certain vendors to conduct malt beverage tastings under certain conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 562.61, Florida Statutes, is created to read:

562.61 Sale, offer for sale, purchase, or use of alcohol vaporizing devices prohibited.--

(1) For purposes of this section, the term "alcohol vaporizing device" means 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.

(2) A person may not sell, offer for sale, purchase, or use an alcohol vaporizing device.

(3)(a) Any person who violates this section by selling or offering for sale an alcohol vaporizing device commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates this section by selling or offering for sale an alcohol vaporizing device after

having been previously convicted of such an offense within the past 5 years commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who violates this section by purchasing or using an alcohol vaporizing device shall be subject to a fine of $250.

Section 2. Section 563.09, Florida Statutes, is created to read:

563.09 Malt beverage tastings permitted; limitations.--

(1) A vendor may not conduct a malt beverage tasting except as provided in this section.

(2) A malt beverage tasting may be conducted:

(a) On a licensed premises by a vendor who is licensed to sell alcoholic beverages for consumption on those premises;

(b) Within a fully enclosed building under a permanent roof by a vendor who is licensed under s. 563.02(1)(a) or s. 564.02(1)(a) with a licensed premises consisting of at least 7,000 square feet of publicly accessible floor space; or

(c) Within a fully enclosed building under a permanent roof by a vendor who is licensed under s. 565.02(1)(a) regardless of the amount of publicly accessible floor space.

(3) An importer, manufacturer, or distributor may not assist, 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 under s. 563.02(1)(a), s. 564.02(1)(a), or s. 565.02(1)(a) in the conduct of a malt beverage tasting.

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Henriquez offered the following:

Amendment (with directory and title amendments)

Remove line(s) 35-54.

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

Remove line(s) 6-9 and insert:

alcohol; providing penalties; providing a fine; providing an effective date.

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 TK
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.

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:

[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

[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.

A bill to be entitled

An act relating to trespass; amending s. 810.011, F.S.; providing that property that is owned or leased by a railroad or railway company does not have to satisfy the definition of "posted land" in order to obtain the benefits of ss. 810.09 and 810.12, F.S., in certain circumstances; reenacting s. 810.09(1)(a), F.S., relating to trespass on property other than structure or conveyance, for the purpose of incorporating the amendment to s. 810.011, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 810.011, Florida Statutes, is amended to read:

810.011 Definitions.--As used in this chapter:

(5)(a) "Posted land" is that land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words "no trespassing" and in addition thereto the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line.

(b) It shall not be necessary to give notice by posting on any enclosed land or place not exceeding 5 acres in area on

which there is a dwelling house in order to obtain the benefits of ss. 810.09 and 810.12 pertaining to trespass on enclosed lands.

(c) It shall not be necessary to give notice by posting as required in paragraph (a) on any stationary rails or roadbeds that are owned or leased by a railroad or railway company and are:

1. Readily recognizable to a reasonable person as being the property of a railroad or railway company; or

2. Identified by conspicuous fencing or signs indicating that the property is owned or leased by a railroad or railway company

in order to obtain the benefits of ss. 810.09 and 810.12 pertaining to trespass on enclosed and posted land.

Section 2. For the purpose of incorporating the amendment to section 810.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 810.09, Florida Statutes, is reenacted to read:

810.09 Trespass on property other than structure or conveyance.--

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. 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,

commits the offense of trespass on property other than a structure or conveyance.

Section 3. This act shall take effect October 1, 2006.

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 TK	Kramer TK
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

A bill to be entitled

An act relating to criminal prosecutions; creating s. 918.19, F.S.; prescribing rights of the prosecution in closing arguments; repealing Rule 3.250, Florida Rules of Criminal Procedure, relating to the accused as a witness and being entitled to concluding arguments before the jury, to the extent of inconsistency with the act; providing an effective date.

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,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 918.19, Florida Statutes, is created to read:

<u>918.19 Closing argument.--As provided in the common law, in criminal prosecutions after the closing of evidence:</u>

(1) The prosecuting attorney shall open the closing arguments.

(2) The accused or the attorney for the accused may reply.

(3) The prosecuting attorney may reply in rebuttal.

Section 2. Rule 3.250, Florida Rules of Criminal Procedure, is repealed to the extent that it is inconsistent with this act.

Section 3. This act shall take effect upon becoming a law, except that section 2 of this act shall take effect only if this act passed by a two-thirds vote of the membership of each house of the Legislature.

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 SLC	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:

[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

A bill to be entitled

An act relating to drug court programs; providing a short title; amending s. 39.001, F.S.; providing additional legislative purposes and intent with respect to the treatment of substance abuse, including the use of the drug court program model; authorizing the court to require certain persons to undergo treatment following adjudication; amending s. 39.407, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment upon a showing of good cause in connection with a shelter petition or petition for dependency; amending ss. 39.507 and 39.521, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment as part of an adjudicatory order or pursuant to a disposition hearing; requiring a showing of good cause; authorizing the court to require participation in a treatment-based drug court program; authorizing the court to impose sanctions for noncompliance; amending s. 39.701, F.S.; authorizing the court to extend the time for completing a case plan during judicial review, based upon participation in a treatment-based drug court program; amending s. 397.334, F.S.; revising legislative intent with respect to treatment-based drug court programs to reflect participation by community support agencies, the Department of Education, and other individuals; including postadjudicatory programs as part of treatment-based drug court programs; providing requirements and sanctions, including clinical placement

or incarceration, for the coordinated strategy developed by the drug court team to encourage participant compliance; requiring each judicial circuit to establish a position for a coordinator of the treatment-based drug court program, subject to annual appropriation by the Legislature; authorizing the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based drug court program; providing for membership of the committee; revising language with respect to an annual report; amending s. 910.035, F.S.; revising language with respect to conditions for the transfer of a case in the drug court treatment program to a county other than that in which the charge arose; amending ss. 948.08, 948.16, and 985.306, F.S., relating to felony, misdemeanor, and delinquency pretrial substance abuse education and treatment intervention programs; providing requirements and sanctions, including clinical placement or incarceration, for the coordinated strategy developed by the drug court team to encourage participant compliance and removing provisions authorizing appointment of an advisory committee, to conform to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. <u>This act may be cited as the "Robert J. Koch Drug Court Intervention Act."</u>

Section 2. Subsection (4) of section 39.001, Florida

Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.--

(4) SUBSTANCE ABUSE SERVICES.--

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat substance abuse in families and that treatment is cost effective.

(b) The Legislature establishes the following goals for the state related to substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of substance abuse on families involved in protective supervision or foster care and reduce substance abuse, including alcohol abuse, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services to children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify

and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the drug court program model established by s. 397.334 and authorize courts to assess parents and children where good cause is shown to identify and address substance abuse problems as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment prior to adjudication shall be voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used ~~utilized~~ as resources permit.

(f) Participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

Section 3. Subsection (15) of section 39.407, Florida Statutes, is amended and subsection (16) is added to that section to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, ~~or~~ mental, or substance abuse

examination of ~~parent or~~ person with or requesting child custody ~~of child~~.--

(15) At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

(16) At any time after a shelter petition or petition for dependency is filed, the court may order a child or a person who has custody or is requesting custody of the child to submit to a substance abuse assessment and evaluation. The assessment and evaluation must be administered by a qualified professional, as defined in s. 397.311. The order may be made only upon good cause shown. This subsection shall not be construed to authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

Section 4. Subsection (9) is added to section 39.507, Florida Statutes, to read:

39.507 Adjudicatory hearings; orders of adjudication.--

(9) After an adjudication of dependency, or a finding of dependency where adjudication is withheld, the court may order a child or a person who has custody or is requesting custody of the child to submit to a substance abuse assessment or

evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person 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 established under s. 397.334. In addition to supervision by the department, the court, including the treatment-based drug court program, may oversee the progress and compliance with treatment by the child or a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon the child or a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subsection may be made only upon good cause shown. This subsection shall not be construed to authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

Section 5. Paragraph (b) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.--

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have

failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child~~,~~ to participate in treatment and services identified as necessary. The court may require the child or the person who has custody or who is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person 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 established under s. 397.334. In addition to supervision by the department, the court, including the treatment-based drug court program, may oversee the progress and compliance with treatment by the child or a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon the child or a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph shall not be

construed to authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires substance abuse treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 6. Paragraph (d) of subsection (9) of section 39.701, Florida Statutes, is amended to read:

39.701 Judicial review.--

(9)

(d) The court may extend the time limitation of the case plan, or may modify the terms of the plan, which, in addition to other modifications, may include a requirement that the parent or legal custodian participate in a treatment-based drug court program established under s. 397.334, based upon information provided by the social service agency, and the guardian ad litem, if one has been appointed, the parent or parents, and the foster parents or legal custodian, and any other competent information on record demonstrating the need for the amendment. If the court extends the time limitation of the case plan, the court must make specific findings concerning the frequency of past parent-child visitation, if any, and the court may authorize the expansion or restriction of future visitation. Modifications to the plan must be handled as prescribed in s. 39.601. Any extension of a case plan must comply with the time requirements and other requirements specified by this chapter.

Section 7. Section 397.334, Florida Statutes, is amended to read:

397.334 Treatment-based drug court programs.--

(1) Each county may fund a treatment-based drug court program under which persons in the justice system assessed with a substance abuse problem will be processed in such a manner as to appropriately address the severity of the identified substance abuse problem through treatment services ~~plans~~ tailored to the individual needs of the participant. It is the intent of the Legislature to encourage the Department of

Corrections, the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and such ~~other~~ agencies, local governments, law enforcement agencies, ~~and~~ other interested public or private sources, and individuals to support the creation and establishment of these problem-solving court programs. Participation in the treatment-based drug court programs does not divest any public or private agency of its responsibility for a child or adult, but enables ~~allows~~ these agencies to better meet their needs through shared responsibility and resources.

(2) Entry into any pretrial treatment-based drug court program shall be voluntary. The court may only order an individual to enter into a pretrial treatment-based drug court program upon written agreement by the individual, which shall include a statement that the individual understands the requirements of the program and the potential sanctions for noncompliance.

(3) ~~(2)~~ The treatment-based drug court programs shall include therapeutic jurisprudence principles and adhere to the following 10 key components, recognized by the Drug Courts Program Office of the Office of Justice Programs of the United States Department of Justice and adopted by the Florida Supreme Court Treatment-Based Drug Court Steering Committee:

(a) Drug court programs integrate alcohol and other drug treatment services with justice system case processing.

(b) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting

participants' due process rights.

(c) Eligible participants are identified early and promptly placed in the drug court program.

(d) Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

(e) Abstinence is monitored by frequent testing for alcohol and other drugs.

(f) A coordinated strategy governs drug court program responses to participants' compliance.

(g) Ongoing judicial interaction with each drug court program participant is essential.

(h) Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.

(i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.

(j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

(4)~~(3)~~ Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.306, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs, and the monitoring of sentenced offenders through a treatment-based drug court program. While enrolled in any treatment-based drug court program, the participant is subject to a coordinated strategy developed by the drug court team under paragraph (3)(f). Each

coordinated strategy must include a protocol of sanctions that may be imposed upon the participant. The protocol of sanctions for treatment-based programs other than those authorized in chapter 39 must include, and the protocol of sanctions for treatment-based drug court programs authorized in chapter 39 may 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. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

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

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

Professionals is created. The membership of the association may consist of treatment-based drug court program practitioners who comprise the multidisciplinary treatment-based drug court program team, including, but not limited to, judges, state attorneys, defense counsel, treatment-based drug court program coordinators, probation officers, law enforcement officers, community representatives, members of the academic community, and treatment professionals. Membership in the association shall be voluntary.

(b) The association shall annually elect a chair whose duty is to solicit recommendations from members on issues relating to the expansion, operation, and institutionalization of treatment-based drug court programs. The chair is responsible for providing on or before October 1 of each year the association's recommendations and an annual report to the appropriate Supreme Court ~~Treatment-Based Drug Court Steering~~ committee or to the appropriate personnel of the Office of the State Courts Administrator~~, and shall submit a report each year, on or before October 1, to the steering committee~~.

(7)~~(5)~~ If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004. However, this does not preclude counties from using treatment and other service dollars provided through state executive branch agencies. Counties may provide, by interlocal agreement, for the collective funding of these programs.

(8) The chief judge of each judicial circuit may appoint

an advisory committee for the treatment-based drug court program. The committee shall be composed of the chief judge, or his or her designee, who shall serve as chair; the judge of the treatment-based drug court program, if not otherwise designated by the chief judge as his or her designee; the state attorney, or his or her designee; the public defender, or his or her designee; the treatment-based drug court program coordinators; community representatives; treatment representatives; and any other persons the chair finds are appropriate.

Section 8. Paragraphs (b) and (e) of subsection (5) of section 910.035, Florida Statutes, are amended to read:

910.035 Transfer from county for plea and sentence.--

(5) Any person eligible for participation in a drug court treatment program pursuant to s. 948.08(6) may be eligible to have the case transferred to a county other than that in which the charge arose if the drug court program agrees and if the following conditions are met:

(b) If approval for transfer is received from all parties, 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 period of not less than 1 year in duration, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court or the state attorney may deny the defendant's admission to such a program.

2. If the state attorney believes that the facts and

circumstances of the case suggest the defendant's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy must 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.

(c)~~(b)~~ At the end of the pretrial intervention period, the court shall consider the recommendation of the administrator pursuant to subsection (5) and the recommendation of the state attorney as to disposition of the pending charges. The court shall determine, by written finding, whether the defendant has successfully completed the pretrial intervention program.

~~(c)1.~~ 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, which may include secure licensed clinical or jail-based treatment programs, or order that the charges revert to normal channels for prosecution.

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

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

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

(7)~~(8)~~ The department may contract for the services and facilities necessary to operate pretrial intervention programs.

Section 10. Section 948.16, Florida Statutes, is amended

to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.--

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor 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 period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy must 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).

Section 11. Section 985.306, Florida Statutes, is amended to read:

985.306 Delinquency pretrial intervention program.--

(1)~~(a)~~ Notwithstanding any provision of law to the contrary, a child who is charged ~~under chapter 893~~ with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence; solicitation for purchase of a controlled substance; or obtaining a prescription by fraud, and who has not previously been adjudicated for a felony ~~nor been admitted to a delinquency pretrial intervention program under this section~~, is eligible for voluntary admission into a delinquency 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 or alternative sanctions coordinator of the circuit to the extent that funded programs are available, for a period based on the program requirements and the treatment services that are suitable for the offender ~~of not less than 1 year in duration~~, upon motion of either party or the court's own motion. However, if the state attorney believes that the facts and circumstances of the case suggest the child's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes by a preponderance of the evidence at such hearing that the child was involved in the dealing and selling of controlled substances, the court shall deny the child's admission into a delinquency pretrial intervention program.

(2) While enrolled in a delinquency pretrial intervention program authorized by this section, a child is subject to a coordinated strategy developed by a drug court team under s.

397.334(3). The coordinated strategy must include a protocol of sanctions that may be imposed upon the child. The protocol of sanctions must include as available options placement in a secure licensed clinical facility or placement in a secure detention facility under s. 985.216 for noncompliance with program rules. The coordinated strategy must be provided in writing to the child before the child agrees to enter the pretrial treatment-based drug court program, or other pretrial intervention program.

(3)~~(b)~~ At the end of the delinquency pretrial intervention period, the court shall consider the recommendation of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, whether the child has successfully completed the delinquency pretrial intervention program.

~~(c)1.~~ If the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue in an education, treatment, or urine monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution.

~~2.~~ The court may dismiss the charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

(4)~~(d)~~ Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, and a urine monitoring program under this section must contract with the county or appropriate governmental entity, and the terms of

the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3). It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

~~(2) The chief judge in each circuit may appoint an advisory committee for the delinquency pretrial intervention program composed of the chief judge or designee, who shall serve as chair; the state attorney, the public defender, and the program administrator, or their designees; and such other persons as the chair deems appropriate. The committee may also include persons representing any other agencies to which children released to the delinquency pretrial intervention program may be referred.~~

Section 12. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

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	_____

Council/Committee hearing bill:

Representative Adams offered the following:

Amendment (with title amendment)

Remove lines 309-561 and insert:

coordinated strategy may include a protocol of sanctions that may be imposed upon the participant. The protocol of sanctions for treatment-based programs other than those authorized in chapter 39 must include, and the protocol of sanctions for treatment-based drug court programs authorized in chapter 39 may 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. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

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

(6) ~~(4)~~ (a) The Florida Association of Drug Court ~~Program~~ Professionals is created. The membership of the association may consist of treatment-based drug court program practitioners who comprise the multidisciplinary treatment-based drug court program team, including, but not limited to, judges, state attorneys, defense counsel, treatment-based drug court program coordinators, probation officers, law enforcement officers, community representatives, members of the academic community, and treatment professionals. Membership in the association shall be voluntary.

(b) The association shall annually elect a chair whose duty is to solicit recommendations from members on issues relating to the expansion, operation, and institutionalization of treatment-based drug court programs. The chair is responsible for providing on or before October 1 of each year the association's recommendations and an annual report to the appropriate Supreme Court ~~Treatment-Based Drug Court Steering~~ committee or to the appropriate personnel of the Office of the

State Courts Administrator~~, and shall submit a report each year, on or before October 1, to the steering committee~~.

(7)~~(5)~~ If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004. However, this does not preclude counties from using treatment and other service dollars provided through state executive branch agencies. Counties may provide, by interlocal agreement, for the collective funding of these programs.

(8) The chief judge of each judicial circuit may appoint an advisory committee for the treatment-based drug court program. The committee shall be composed of the chief judge, or his or her designee, who shall serve as chair; the judge of the treatment-based drug court program, if not otherwise designated by the chief judge as his or her designee; the state attorney, or his or her designee; the public defender, or his or her designee; the treatment-based drug court program coordinators; community representatives; treatment representatives; and any other persons the chair finds are appropriate.

Section 8. Paragraphs (b) and (e) of subsection (5) of section 910.035, Florida Statutes, are amended to read:

910.035 Transfer from county for plea and sentence.--

(5) Any person eligible for participation in a drug court treatment program pursuant to s. 948.08(6) may be eligible to have the case transferred to a county other than that in which the charge arose if the drug court program agrees and if the following conditions are met:

(b) If approval for transfer is received from all parties, 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

period of not less than 1 year in duration, upon motion of either party or the court's own motion, except~~:~~

~~1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court or the state attorney may deny the defendant's admission to such a program.~~

~~2.~~ if the state attorney believes that the facts and circumstances of the case suggest the defendant's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 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.

(c) ~~(b)~~ At the end of the pretrial intervention period, the court shall consider the recommendation of the administrator

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

~~(c)1.~~ 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, which may include secure licensed clinical or jail-based treatment programs, or order that the charges revert to normal channels for prosecution.

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

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

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

~~any other agencies to which persons released to the pretrial intervention program may be referred.~~

(7)~~(8)~~ The department may contract for the services and facilities necessary to operate pretrial intervention programs.

Section 10. Section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.--

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor 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 period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 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).

Section 11. Section 985.306, Florida Statutes, is amended to read:

985.306 Delinquency pretrial intervention program.--

(1) ~~(a)~~ Notwithstanding any provision of law to the contrary, a child who is charged ~~under chapter 893~~ with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence; solicitation for purchase of a controlled substance; or obtaining a prescription by fraud, and who has not previously been adjudicated for a felony ~~nor been admitted to a delinquency pretrial intervention program under this section~~, is eligible for voluntary admission into a delinquency 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 or alternative sanctions coordinator of the circuit to the extent that funded programs are available, for a period based on the program requirements and the treatment services that are suitable for the offender ~~of not less than 1 year in duration~~, upon motion of either party or the court's own motion. However, if the state attorney believes that the facts and circumstances of the case suggest the child's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes by a preponderance of the evidence at such hearing that the child was involved in the dealing and selling of controlled substances, the court shall deny the child's admission into a delinquency pretrial intervention program.

(2) While enrolled in a delinquency pretrial intervention program authorized by this section, a child is subject to a

coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of

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

Remove lines 44-48 and insert:

abuse education and treatment intervention programs; deleting a provision allowing state attorney to deny a defendant's admission to a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program; providing for application of the coordinated strategy developed by the drug court team; removing 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 TK	Kramer TK
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

A bill to be entitled

An act relating to lawful testing for alcohol, chemical substances, or controlled substances; amending s. 316.1932, F.S.; revising provisions to notify a person that refusal to submit to a lawful test of the person's breath, urine, or blood is a misdemeanor, to conform to changes made by the act; revising language relating to presumption of consent to submit to a blood test; removing reference to treatment at a medical facility; amending s. 316.1933, F.S.; directing a law enforcement officer to require a person driving or in actual physical control of the motor vehicle to submit to a blood test for the purpose of determining alcoholic content of the blood or the presence of specified chemical or controlled substances if that person has refused or failed to submit to a lawful urine test; amending s. 316.1939, F.S.; removing prior suspension as a condition for the commission of a misdemeanor by refusal to submit to a lawful test of breath, urine, or blood; amending s. 327.352, F.S.; revising provisions to notify a person that refusal to submit to a lawful test of the person's breath, urine, or blood is a misdemeanor, to conform to changes made by the act; revising language relating to presumption of consent to submit to a blood test; removing reference to treatment at a medical facility; amending s. 327.353, F.S.; directing a law enforcement officer to require a person operating or in actual physical control of the vessel to submit to a blood test for the purpose of

determining alcoholic content of the blood or the presence of specified chemical or controlled substances if that person has refused or failed to submit to a lawful urine test; amending s. 327.359, F.S.; removing prior suspension as a condition for the commission of a misdemeanor by refusal to submit to a lawful test of breath, urine, or blood; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1.a. 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. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the

motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath ~~and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. 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 a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances 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 chemical substances or controlled substances. The urine test must be incidental to a lawful arrest

and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine ~~and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the

operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with the provisions of this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the

driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances 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. ~~As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle.~~ The blood test shall be performed in a reasonable manner. Any person who is

incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood~~, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been suspended previously as a result of a refusal to submit to such a test or tests, and that a refusal to submit to a lawful test of his or her blood~~, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

Section 2. Paragraph (a) of subsection (1) of section 316.1933, Florida Statutes, is amended to read:

316.1933 Blood test for <u>alcohol, chemical substances, or controlled substances</u> ~~impairment or intoxication in cases of death or serious bodily injury~~; right to use reasonable force.--

(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, or if the person driving or in actual physical control of a motor vehicle has refused or failed to submit to a urine test requested pursuant to s. 316.1932(1)(a)1.b., a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person unless the testing is required because the person refused or failed to submit to a urine test requested pursuant to s. 316.1932(1)(a)1.b.

Section 3. Section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.--

(1) Any 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, ~~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,~~ and:

(a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(b) 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);

(c) 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;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood~~, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor; and

(e) 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 misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

(2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under this section.

(3) The disposition of a criminal action under this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. ~~The department's records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood shall be admissible and shall create a rebuttable presumption of such suspension.~~

Section 4. Paragraphs (a) and (c) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, 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 operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe

such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in a civil penalty of $500~~,~~ and shall also be told that if he or she refuses to submit to a lawful test of his or her breath ~~and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test

shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in a civil penalty of $500~~,~~ and shall also be told that if he or she refuses to submit to a lawful test of his or her urine ~~and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances 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. ~~As used in this paragraph, the term "other medical~~

~~facility" includes an ambulance or other medical emergency vehicle.~~ The blood test shall be performed in a reasonable manner. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of $500 and that a refusal to submit to a lawful test of his or her blood~~, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood,~~ is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 5. Paragraph (a) of subsection (1) of section 327.353, Florida Statutes, is amended to read:

327.353 Blood test for alcohol, chemical substances, or controlled substances ~~impairment or intoxication in cases of death or serious bodily injury~~; right to use reasonable force.--

(1)(a) If a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, or if the person operating or in actual physical control of a vessel has refused or failed to submit to a urine test requested pursuant to s. 327.352(1)(a)2., a law enforcement officer shall require the person operating or in actual physical control of the vessel to submit to a test of the person's blood for the purpose of determining the alcoholic

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

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

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

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

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

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

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

~~been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor; and

(5) 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 misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 7. This act shall take effect October 1, 2006.

CRIMINAL JUSTICE COMMITTEE MEETING

ADDENDUM

Wednesday, November 9, 2005
9:45 a.m. - 11:45 a.m.
404 House Office Building

Allan G. Bense
Speaker

Dick Kravitz
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2(for drafter's use only)

Bill No. **187**

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Between lines 376 and 377 insert:

(e)1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the

withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed;

b. The time of the collection of the blood or breath sample analyzed;

c. The numerical results of the test indicating the alcohol content of the blood and breath;

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

Full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line(s) 287-288 and insert:

Amendment No. 2(for drafter's use only)

Section 4. Paragraphs (a), (c) and (e) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

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

Remove line(s) 25 and insert:

to treatment at a medical facility; revising language relating to information given to person tested; amending s. 327.353,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **187**

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Between lines 219 and 220 insert:

(f)1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. Such rules must specify precisely the test or tests that are approved by the Department of Law Enforcement for reliability of result and ease of administration, and must provide an approved method of administration which must be followed in all such tests given under this section. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2.a. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the

purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

b. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in s. 316.193(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.

c. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

d. Nothing contained in s. 395.3025(4), s. 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s. 395.3025(4), s. 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a

breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

e. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the

person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed;

b. The time of the collection of the blood or breath sample analyzed;

c. The numerical results of the test indicating the alcohol content of the blood and breath;

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

Full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed

clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line(s) 39-40 and insert:

Section 1. Paragraphs (a), (c) and (f) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

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

Remove line(s) 9 and insert:

reference to treatment at a medical facility; revising language relating to information given to person tested; amending s.