



CRIMINAL JUSTICE COMMITTEE MEETING

**Wednesday, February 22, 2006
10:15 a.m. - 12:00 p.m.
404 House Office Building**

MEETING PACKET

Allan G. Bense
Speaker

Dick Kravitz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 2/10/2006 3:46:45PM)

Amended(1)

Criminal Justice Committee

Start Date and Time: Wednesday, February 22, 2006 10:15 am
End Date and Time: Wednesday, February 22, 2006 12:00 pm
Location: 404 HOB
Duration: 1.75 hrs

Consideration of the following bill(s):

HB 253 Corrections by Quinones
HB 585 Inmate Litigation Costs by Hukill
HB 591 Electronic Monitoring by Ambler
HB 627 License Plates by Brummer
HB 651 Secondhand Dealers by Kottkamp
HB 761 Trespass on the Property of a Certified Domestic Violence Center by Carroll
HB 763 Luring or Enticing a Child by Ambler

Workshop on the following:

HB 515 Resale of Tickets by Stargel
HB 589 Resale of Tickets by Llorente

Consideration of the following proposed committee bill(s):

PCB CRJU 06-04 -- Youthful Offenders

NOTICE FINALIZED on 02/10/2006 15:46 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, February 22, 2006
404 House Office Building
10:15 a.m. – 12:00 p.m.**

I. Opening remarks by Chair Kravitz

II. Roll call

III. Consideration of the following bill(s):

- **HB 253 Corrections by Quinones**
- **HB 585 Inmate Litigation Costs by Hukill**
- **HB 591 Electronic Monitoring by Ambler**
- **HB 627 License Plates by Brummer**
- **HB 651 Secondhand Dealers by Kottkamp**

- **HB 761 Trespass on the Property of a Certified Domestic Violence Center by Carroll**
- **HB 763 Luring or Enticing a Child by Ambler**

IV. Workshop on the following:

- **HB 515 Resale of Tickets by Stargel**
- **HB 589 Resale of Tickets by Llorente**

V. Consideration of the following proposed committee bill:

- **PCB CRJU 06-04—Youthful Offenders**

VI. Closing comments / Meeting adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 253 Corrections
SPONSOR(S): Quinones
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	_____	Cunningham <i>gmc</i>	Kramer <i>YK</i>
2) <u>Justice Appropriations Committee</u>	_____	_____	_____
3) <u>Justice Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, there is no statutory restriction on where the Department of Corrections may site a probation office. However, if the Department intends to site a probation office within one-quarter mile (1320 feet) of a licensed day care center or school, the Department must publish notice of their intent to do so in the local newspaper and provide written notification to the county or city administrator in the county or city in which the office space is to be located. In addition to complying with the above statutory requirements, it is the Department's policy to locate probation and parole offices at least 250 feet away from certain locations, such as licensed day care centers and schools.

This bill prohibits probation and parole offices from being located within 2,500 feet of a licensed daycare center or school for children in grade 12 or lower. Offices that do not comply with this requirement by the effective date of this act (July 1, 2006) have until August 1, 2006, or the expiration of its current lease, whichever is earlier, to relocate to a compliant location.

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary correctional probation officers (CPOs). Every prospective CPO must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification. Because the statutory definition of a CPO only includes state employees, the CJSTC is only responsible for certifying state CPOs, not *county* CPOs. Counties currently have discretion in setting training standards for county CPOs.

This bill gives counties the discretion to have their probation officers certified by the CJSTC. Counties electing to require their probation officers to be certified must provide certification criteria similar to those provided for in s. 943.13, F.S. Additionally, the CJSTC must provide training and certification consistent with s. 943.13, F.S.

This bill will likely have a significant fiscal impact. See fiscal section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill gives counties the discretion to have their probation officers certified by the Criminal Justice Standards and Training Commission.

Maintain Public Security – The bill prohibits probation and parole offices from being located within 2,500 feet of a licensed day care center or school for children in grade 12 or lower.

B. EFFECT OF PROPOSED CHANGES:

Relocating Probation and Parole Offices

The Florida Department of Corrections (Department) currently supervises over 148,000 offenders in the community at approximately 150 accredited¹ probation and parole offices.² These offices conduct interviews, investigations, and drug testing, and provide offenders access for reporting and meeting with their individual probation officers.³ Depending on the level of community supervision, offenders report in for supervision daily, weekly, monthly, or as directed by the releasing authority.

Currently, there is no statutory restriction on where the Department of Corrections may site a probation office. However, if the Department intends to site a probation office within one-quarter mile (1320 feet) of a licensed day care center or school, the Department must publish notice of their intent to do so in the local newspaper and provide written notification to the county or city administrator in the county or city in which the office space is to be located.⁴ In addition to complying with the above statutory requirements, it is the Department's policy to locate probation and parole offices 250 feet away from certain locations, such as licensed day care centers and schools.⁵

This bill prohibits probation and parole offices from being located within 2,500 feet of a licensed daycare center or school for children in grade 12 or lower. Offices that do not comply with this requirement by the effective date of this act (July 1, 2006) have until August 1, 2006, or the expiration of its current lease, whichever is earlier, to relocate to a compliant location.

The Department reports that approximately 75% of its existing probation offices (113 offices) would be required to relocate pursuant to the provisions of this bill. Additionally, the Department reports that locating office space that complies with the bill's provisions may be difficult (i.e. office space in areas outside the 2,500 foot restricted zone may be more costly than space within the zone).

Certification of County Probation Officers

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary correctional probation officers (CPOs).⁶ Every prospective CPO must

¹ The American Correctional Association and the Commission on Accreditation for Corrections are private, non-profit organizations which administer the only national accreditation program for all components of adult and juvenile corrections.

² <http://www.dc.state.fl.us/facilities/comcor/index.html>

³ *Id.*

⁴ s. 945.28, F.S.

⁵ Department Procedure 210.007.

⁶ <http://www.fdle.state.fl.us/cjst/commission/index.html>

successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification.⁷ Because the statutory definition of a CPO only includes state employees, the CJSTC is only responsible for certifying state CPOs, not *county* CPOs (county probationers have generally committed misdemeanors, have sentences of a year or less in length, and are supervised by the county - state probationers have generally committed felonies, have sentences of more than a year in length, and are supervised by the Department of Corrections).⁸ Counties currently have discretion in setting training standards for county CPOs.

This bill gives counties the discretion to have their probation officers certified by the CJSTC.⁹ Counties electing to require their probation officers to be certified must provide certification criteria similar to those provided for in s. 943.13, F.S.¹⁰ Additionally, the CJSTC must provide training and certification consistent with s. 943.13, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 945.28, F.S., prohibiting probation and parole offices from being located within 2,500 feet of a licensed day care center facility or a school for children in grade 12 or lower; deleting the requirement that the Department of Corrections publish in the newspaper and provide written notification to the county or city administrator if a probation/parole office is to be located within one-quarter mile of a licensed daycare center of a school for children grade 12 or lower.

Section 2. Providing that probation and parole offices have until August 1, 2006, or the expiration of their current leases, whichever is earlier, to relocate to a location that complies with s. 945.28(2)(a), F.S.

Section 3. Creates s. 943.1301, F.S. providing that counties may require their probation officers to be certified by the Criminal Justice Standards and Training Commission and FDLE; requiring counties to provide certification criteria similar to those in s. 943.13, F.S.; requiring the Standards and Training Commission and FDLE to provide training and certification for county probation officers.

Section 4. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁷ *Id.*

⁸ Section 943.10, F.S., defines "correctional probation officer" as "a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community."

⁹ The bill's language references the "commission" and the "department." Because the bill amends language in s. 945.28, F.S., the definitions contained in s. 943.10, F.S., apply. Thus, the term "commission" refers to the CJSTC, and the term "department" refers to FDLE.

¹⁰ Section 943.13, F.S. provides minimum employment qualifications for officers.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Relocating Probation and Parole Offices

The Department reports that approximately 75% of its existing probation offices (113 offices) would be required to relocate pursuant to the provisions of this bill. The Department reports the fiscal impact as follows:

	Year 1	Year 2	Year 3
Termination of 113 Existing Offices (Buy-Out)	\$ 25,642,498.78		
Tenant Reimbursement	\$270,000.00		
Estimated New Lease ¹¹	10,741,000.68	IND	IND
Moving Costs	IND	IND	IND
Relocating Telephones	540,705.00		
Computer Cabling & Installation	973,975.00	-	-
Total Section 1	\$ 38,168,179.46	\$ -	\$ -
Summary	Year 1	Year 2	Year 3
Recurring	\$ 10,741,000.68	IND	IND
Non-Recurring	\$27,427,178.78		
Total	\$ 38,168,179.46	\$ -	\$ -
Notes:			
1. The estimated lease costs for Years 2 and 3 are indeterminate due to various issues such as the possibility of a significant increase due to limited availability of sites and possible "Tenant-at-Will/Tenant-at-Sufferance" situation.			
2. There are eight (8) offices with DMS leases that do not require a buy-out requirement. Also, DMS current lease rate is \$15.86, which is much lower than most of the private lease rates.			
3. Circuit 6-Office 67 is housed in a building owned by DOC, the bill will require relocation and possibly lease costs with a private vendor for lease space.			

¹¹ The Department states that this figure represents the estimated amount that the new lease would exceed the current lease as well as office retrofitting.

Certification of County Probation Officers

The amount of expenditures would be dependant on the number of counties that choose to require the CJSTC to certify their county CPOs. State government costs would include possible additions to the CPO Basic Recruit Curriculum or developing a Basic Recruit Curriculum for county probation officers. Local Government costs would include the cost of developing substantially similar certification criteria as well as county CPO training costs.

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 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:

Relocating Probation and Parole Offices

The bill does not address what must occur if a probation and parole office is located, and a daycare center or school is subsequently built/established within 2,500 feet of the office – would the probation office be required to move?

Currently, all of the Department of Corrections' facilities and programs are accredited by the American Correctional Association (ACA).¹² In regards to probation offices, the ACA standards provide that "Field facilities are located in areas with community input that are optimally accessible to offenders' places of residence and employment, to transportation networks and other community agencies." Restricting probation offices from being within 2,500 feet of licensed daycare centers and schools for children in grades K-12 may result in probation offices being located in remote areas, thereby making it difficult for some offenders to report to their probation office. This would be contrary to the ACA standards.

Certification of County Probation Officers

The bill provides that if a county elects to require its CPOs to be certified by the CJSTC, the county must provide certification criteria that is substantially similar to the criteria for CPOs established in s. 943.13, F.S. However, Ch. 943 requires that in order to be certified by the CJSTC as a CPO, a person must comply with the provisions of s. 943.13, F.S., not comply with *substantially similar* provisions of s. 943.13, F.S. If the purpose is for the CJSTC to certify county CPOs, then the specific provisions of s. 943.13, F.S., should be required.

¹² <http://www.dc.state.fl.us/pub/aca/index.html>. The ACA establishes standards that are considered to be the national benchmark for the effective operation of correctional systems throughout the United States.

If county CPOs are to be certified by the CJSTC, definitions of "county probation officer" and "part-time county probation officer" should be included in s. 943.10, F.S.

The bill states that the CJSTC and FDLE will provide *training* and certification to county CPOs. However, neither the CJSTC or FDLE provide training, only certification.¹³ Training is provided by CJSTC-certified training schools.

FDLE / CJSTC expressed concerns relating to uniformity of certification. Specifically, the certification of county CPOs should be required of all county CPOs throughout the state, rather than give counties the option of requiring such certification.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹³ Although the CJSTC establishes and maintains officer training programs, curricula requirements, and certifies training schools and training school instructors, the training schools actually *train* officers.

1 A bill to be entitled
 2 An act relating to corrections; amending s. 945.28, F.S.;
 3 prohibiting the location of a probation and parole office
 4 within a specified distance of certain schools and day
 5 care facilities; providing for relocation of current
 6 probation and parole offices not in compliance with this
 7 requirement; creating s. 943.1301, F.S.; providing for
 8 certification of county probation officers at the
 9 discretion of the county governing body; providing for
 10 training for such officers; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 945.28, Florida Statutes, is amended to
 15 read:

16 945.28 Location ~~Selection~~ of probation or parole offices
 17 ~~by the department; prohibitions; public notice.--~~

18 (1) ~~Beginning July 1, 1995,~~ Whenever the department is
 19 going to enter into a contract for the lease or purchase of a
 20 probation and parole office space to be used by the department,
 21 the department shall provide notice, by publication in the
 22 county in which the office space is to be located, in a
 23 newspaper of general circulation in said county, 30 days prior
 24 to signing any lease or purchasing any property to be used for
 25 office space, that the department intends to lease or purchase
 26 such property. The published notice shall include a telephone
 27 number whereby interested members of the public may communicate

28 with the department with respect to any questions or input the
 29 public may have with regard to the proposed lease or purchase.

30 (2) (a) A probation and parole office may not be located
 31 within 2,500 feet of a school for children in grade 12 or lower
 32 or a licensed day care center facility.

33 (b) When the site of the proposed probation and parole
 34 office space is to be located within one-quarter ~~one-quarter~~
 35 mile of a ~~school for children in grade 12 or lower, licensed day~~
 36 ~~care center facility,~~ park, playground, nursing home,
 37 convalescent center, hospital, association for disabled
 38 population, mental health center, youth center, group home for
 39 disabled population or youth, or other place where children or a
 40 population especially vulnerable to crime due to age or physical
 41 or mental disability regularly congregates, the department shall
 42 provide written notification to the county or city administrator
 43 in the county or city in which the office space is to be located
 44 simultaneously with the newspaper publication.

45 Section 2. Any probation and parole office that does not
 46 comply with the requirements of s. 945.28(2) (a), Florida
 47 Statutes, as amended by this act, on the effective date of this
 48 act shall have until August 1, 2006, or the expiration of its
 49 current lease, whichever is earlier, to be relocated to a
 50 location that complies with s. 945.28 (2) (a), Florida Statutes,
 51 as amended by this act.

52 Section 3. Section 943.1301, Florida Statutes, is created
 53 to read:

54 943.1301 Certification of county probation officers.--At
 55 the discretion of the governing body of a county, the county may

56 require the county's probation officers to be certified by the
 57 commission and the department. The county shall provide
 58 certification criteria that shall be substantially similar to
 59 the criteria for correctional probation officers established in
 60 s. 943.13. The commission and the department shall provide
 61 training and certification for such county probation officers
 62 consistent with this section and s. 943.13.

63 Section 4. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 253

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	_____	

1 Council/Committee hearing bill: Criminal Justice Committee
2 Representative Quinones offered the following:

Amendment (with directory and title amendments)

Remove lines 30-63 and insert:

6 (2) (a) A probation and parole office may not be located
7 within 1,000 feet of a school for children in grade 8 or lower
8 or a licensed day care center facility.

9 (b) When the site of the proposed probation and parole
10 office space is to be located within one-quarter ~~one-quarter~~
11 mile of a school for children in grades ~~grade~~ 9-12, 12 or lower,
12 ~~licensed day care center facility,~~ park, playground, nursing
13 home, convalescent center, hospital, association for disabled
14 population, mental health center, youth center, group home for
15 disabled population or youth, or other place where children or a
16 population especially vulnerable to crime due to age or physical
17 or mental disability regularly congregates, the department shall
18 provide written notification to the county or city administrator
19 in the county or city in which the office space is to be located
20 simultaneously with the newspaper publication.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

21 Section 2. Any probation and parole office that does not
22 comply with the requirements of s. 945.28(2)(a), as amended by
23 this act, on the effective date of this act shall have until
24 August 1, 2006, or the expiration of its current lease,
25 whichever is earlier, to be relocated to a location that
26 complies with s. 945.28(2)(a), as amended by this act.

27 Section 3. Section 943.1301, Florida Statutes, is created
28 to read:

29 943.1301 Certification of county probation officers.--At
30 the discretion of the governing body of a county, the county may
31 require the county's probation officers to be certified by the
32 commission and the department.

33 Section 4. Section 943.10, Florida Statutes, is amended to
34 read:

35 943.10 Definitions; ss. 943.085-943.255.--The following
36 words and phrases as used in ss. 943.085-943.255 are defined as
37 follows:

38 (22) "County probation officer" means a person who is employed
39 full time by a county whose primary responsibility is the
40 supervision and monitoring of offenders within the community.

41 (23) "Part time county probation officer" means a person who is
42 employed less than full time by a county whose primary
43 responsibility is the supervision and monitoring of offenders
44 within the community.

45 Section 5. This act shall take effect July 1, 2006.

46
47
48 ===== T I T L E A M E N D M E N T =====

49 Remove lines 9-10 and insert:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

50 Discretion of the county governing body; providing definitions;
51 providing an effective date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 515
SPONSOR(S): Stargel
TIED BILLS:

Resale of Tickets

IDEN./SIM. BILLS: SB 1168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>		Cunningham <i>CC</i>	Kramer <i>TK</i>
2) <u>Agriculture Committee</u>			
3) <u>Finance & Tax Committee</u>			
4) <u>Justice Council</u>			
5) _____			

SUMMARY ANALYSIS

Currently, s. 817.36, F.S., states that it is a second degree misdemeanor for anyone to offer for sale or sell tickets "for passage or accommodations on any common carrier" or tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged" for a price in excess of \$1 over the original retail price charged by the original seller.

The bill increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller. In regards to tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged," the bill provides that the above prohibition does not apply to tickets purchased through an electronic medium using a credit card or other electronic payment mechanism that offers full reimbursement for fraud, misrepresentation, or nonperformance, unless the ticket is for admission to a theme park, entertainment complex, or permanent exhibitions or recreational activities within such theme parks/entertainment complexes.

Thus, under the bill, all of the above-mentioned tickets may be resold for up to 25% of their original retail price. However, tickets for sporting exhibitions, athletic contests, theaters, or exhibitions where an admission price is charged (except for tickets to theme parks or entertainment complexes) may be resold at any price so long as it is done through an electronic medium using a credit card or other electronic payment mechanism that offers reimbursement for fraud, etc...

This bill does not appear to have a significant fiscal impact.

This bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill increases the amount above retail price for which specified tickets may be resold without committing a second degree misdemeanor.

B. EFFECT OF PROPOSED CHANGES:

Ticket scalping is commonly defined as the reselling of tickets at a price higher than the established value.¹ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Commentators argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.² Further, it has been argued that ticket scalping provides a service to those who are not willing to purchase tickets directly from the promoter.³ A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.⁴ Further, ticket scalping can lead to the sale of fraudulent tickets.⁵

There are no federal laws directly governing ticket resales, but several states prohibit the reselling of tickets for an amount in excess of the face price.⁶ At least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.⁷ Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.⁸ In almost all instances where ticket scalping is prohibited or there is a resale without a license, the offense is a misdemeanor.⁹

Section 817.36, Florida Statutes.

Section 817.36, F.S., (Florida's "ticket scalping statute") was passed in 1945. Currently, s. 817.36, F.S., states that it is a second degree misdemeanor¹⁰ for anyone to offer for sale or sell tickets "for passage or accommodations on any common carrier" or tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged" for a price in excess of \$1 over the original retail price charged by the original seller. In regards to tickets "for passage or accommodations on common carriers", the prohibition does not apply to travel agencies that are required to pay state, county, and city occupational license taxes.¹¹ In regards to tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged", the prohibition applies to travel agencies unless they are registered sellers of travel pursuant

¹ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

² *Id.* at 189-90.

³ *Id.* at 191.

⁴ *Id.* at 192.

⁵ *Id.* at 192.

⁶ <http://www.ncsl.org/programs/lis/ticketscalplaws.htm>

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ A second degree misdemeanor is punishable by a maximum of 60 days in jail and a maximum fine of \$500. See ss. 775.082, 775.083, F.S.

¹¹ s. 817.36(1)(b), F.S.

to part XI of chapter 559, F.S., resell such tickets as part of travel packages, and are reselling such tickets on behalf of the original sellers.¹²

Although there is no express legislative intent in the statute to explain why the statute was enacted, the Fifth District Court of Appeal discussed the purpose of the "ticket scalping" statute in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

We think the statute attempts to regulate areas of legitimate state concern—public events and tourism. Its obvious goal is to protect the consuming public and event promoters from the economic harm done to them by persons who artificially corner the market for tickets to public events. By making an exception for sellers of travel, it seeks to promote tourism, and regulate the travel industry. Similar statutes in other states have been upheld by the state courts... [T]icket scalpers deprive consumers of a valuable service--the availability of low-cost tickets through box office sources. The effect on the ticket market by scalpers who buy up available tickets for resale is to lessen public opportunity to buy tickets at the lowest prices. Statutes like section 817.36 are designed to prevent unfair cornering of the market and limit opportunities to manipulate prices, both of which damage the general public and the promoters of public events.¹³

In regards to tickets to tickets for "passage or accommodations on any common carrier", the bill increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller. As under current law, this prohibition will not apply to travel agencies.

In regards to tickets for admission to "sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged," the bill increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller. The bill further provides that the above prohibition does not apply to tickets purchased through an electronic medium using a credit card or other electronic payment mechanism that offers full reimbursement for fraud, misrepresentation, or nonperformance, unless the ticket is for admission to a theme park, entertainment complex, or permanent exhibitions or recreational activities within such theme parks/entertainment complexes.¹⁴ The bill also provides that its provisions will not affect the application of chapter 212, relating to sales tax, to persons selling or reselling tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged.

Section 559.9335, Florida Statutes.

Part XI of Chapter 559 relates to regulating sellers of travel. Currently, s. 559.9335, F.S., provides, with certain exceptions, that it is a violation of the chapter for a seller of travel to sell or market admissions tickets to theme parks or amusement parks, sporting events, concerts, theater productions, or other entertainment events, in excess of \$1 above the retail admission price charged by the original seller.¹⁵

¹² See s. 817.36(2)(b), F.S. The exemption for registered sellers of travelers was challenged on due process and equal protection ground in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997). However, court looked to the extensive requirements placed upon registered sellers of travel (e.g. they must be bonded and financially answerable to travelers injured by fraud, register annually with the state, provided extensive information concerning their business operations and agents, pay registration fees, keep records, etc...) and held that such heightened duties and responsibilities provided a legitimate basis for allowing them to sell tickets in a manner different from that allowed to the general public.

¹³ *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

¹⁴ Section 509.013(9), F.S., defines "theme park or entertainment complex" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

¹⁵ Section 559.9355, F.S., provides administrative penalties for violating the provisions of Chapter 559, including but not limited to, imposing fines and directing individuals to cease and desist certain activities.

The bill increases the amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., increasing the amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for certain tickets that are resold through a credit card or other electronic payment mechanism that offers reimbursement for fraud, misrepresentation, or nonperformance.

Section 2. Amends s. 559.9335, F.S., clarifying the application of s. 817.36, F.S., to licensed sellers of travel.

Section 3. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments".

2. Expenditures:

See "Fiscal Comments".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Travel Agencies and private individuals may profit in that they will now be able to re-sell certain tickets at a price that is 25% more than the ticket's retail admission price. This could lead to the creation of businesses that resell tickets.

D. FISCAL COMMENTS:

In 2004, the Office of the State Court Administrator reported that only 145 cases were filed for violations of s. 817.36, F.S.¹⁶ The bill would likely reduce the number of filings under the statute and allow judges, prosecutors, and public defenders to devote time and resources to other cases.

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.

¹⁶ The information on filings came from the clerks of the courts in every Florida county except for Brevard, Nassau, St. Lucie, and Seminole.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (c) (lines 51-58) states that "The provisions of paragraph (a) shall not apply to any transaction in which the ticket is purchased through an electronic medium using a credit card...". This language makes it unclear whether the exemption applies to tickets *originally* purchased through an electronic medium or to tickets *resold* using an electronic medium. This could be clarified by stating the following, "The provisions of paragraph (a) shall not apply to any transaction in which the ticket is resold through an electronic medium using a credit card."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 515

2006

1 A bill to be entitled
 2 An act relating to resale of tickets; amending s. 817.36,
 3 F.S.; revising terminology; increasing the maximum amount
 4 above retail price for which specified tickets may be
 5 resold without violating statute; providing an exception
 6 to the criminal penalty for resale of certain admission
 7 tickets for resales made through a credit card or other
 8 electronic payment mechanism that offers reimbursement for
 9 fraud, misrepresentation, or nonperformance; amending s.
 10 559.9335, F.S.; providing that such a resale does not
 11 constitute a regulatory violation for a licensed seller of
 12 travel; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 817.36, Florida Statutes, is amended to
 17 read:

18 817.36 Resale of tickets of common carriers, places of
 19 amusement, etc.--

20 (1) (a) Whoever shall offer for sale or sell any ticket
 21 good for passage or accommodations on any common carrier in this
 22 state and request or receive a price in excess of 25 percent ~~\$1~~
 23 above the retail price charged therefor by the original seller
 24 of said ticket commits ~~shall be guilty of~~ a misdemeanor of the
 25 second degree, punishable as provided in s. 775.082 or s.
 26 775.083.

27 (b) The provisions of paragraph (a) ~~this subsection~~ shall
 28 not apply to travel agencies that have an established place of

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

29 business in this state, which place of business is required to
 30 pay state, county, and city occupational license taxes.

31 (2) (a) Whoever shall offer for sale or sell any ticket
 32 good for admission to any sporting exhibition, athletic contest,
 33 theater, or any exhibition where an admission price is charged
 34 and request or receive a price in excess of 25 percent ~~\$1~~ above
 35 the retail admission price charged therefor by the original
 36 seller of said ticket commits ~~shall be guilty of~~ a misdemeanor
 37 of the second degree, punishable as provided in s. 775.082 or s.
 38 775.083.

39 (b) The provisions of paragraph (a) ~~this subsection~~ shall
 40 apply to travel agencies that have an established place of
 41 business in this state, which place of business is required to
 42 pay state, county, and city occupational license taxes, unless
 43 such agencies are registered sellers of travel pursuant to part
 44 XI of chapter 559 and adhere to the restriction of selling said
 45 tickets as part of the travel packages specified in that part,
 46 and such travel agencies are reselling said tickets on behalf of
 47 the original sellers of said tickets. When any original seller
 48 of tickets provides a travel agency with tickets in bulk, the
 49 travel agent shall be deemed to be reselling the tickets on
 50 behalf of the original seller.

51 (c) The provisions of paragraph (a) shall not apply to any
 52 transaction in which the ticket is purchased through an
 53 electronic medium using a credit card or other electronic
 54 payment mechanism that offers full reimbursement for fraud,
 55 misrepresentation, or nonperformance unless the ticket is for
 56 admission to a theme park or entertainment complex as defined in

57 s. 509.013 or to a permanent exhibition or recreational activity
 58 within such a theme park or entertainment complex.

59 (d) Nothing in this subsection shall affect the
 60 application of chapter 212 to any person with respect to the
 61 sale or resale of any ticket.

62 Section 2. Subsection (8) of section 559.9335, Florida
 63 Statutes, is amended to read:

64 559.9335 Violations.--It is a violation of this part for
 65 any person:

66 (8) Knowingly to sell or market admissions tickets to
 67 theme or amusement parks, sporting events, concerts, theater
 68 productions, or other entertainment events, in excess of 25
 69 percent ~~\$1~~ above the retail admission price charged by the
 70 original seller of said tickets, unless said tickets are part of
 71 a prearranged travel package which includes transportation or
 72 accommodations services, are being resold on behalf of the
 73 original seller of said tickets, and the seller of travel
 74 provides either a Florida seller of travel registration number
 75 or an Airlines Reporting Corporation agency code number in each
 76 advertisement that is placed in newspapers circulated primarily
 77 in Florida. When any original seller of tickets provides a
 78 seller of travel with tickets in bulk, the seller of travel
 79 shall be deemed to be reselling the tickets on behalf of the
 80 original seller. A resale of tickets permitted under s.
 81 817.36(2)(c) shall not constitute a violation of this
 82 subsection.

83 Section 3. This act shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes the Department of Corrections to charge inmates for copying services, to place liens on inmate trust fund accounts, and to adopt rules relating thereto.

B. EFFECT OF PROPOSED CHANGES:

The Department of Corrections (Department) has statutory authority to accept and administer as a trust any money or other property received for the personal use or benefit of any inmate.¹ These "inmate trust fund accounts" are generally used by inmates for canteen purchases and other expenses. The Department, as trustee, is also entitled to use (i.e. withdraw, deposit, invest, commingle, etc...) funds contained in an inmate's trust fund account in certain circumstances.²

Postage

The Department has the authority to adopt rules relating to mail to and from inmates, including rules specifying the circumstances under which an inmate must pay for the cost of postage for mail that the inmate sends.³ The department may not adopt a rule that requires an inmate to pay any postage costs that the state is constitutionally required to pay.⁴ In 1976, the Department promulgated rule 33-210.102, F.A.C., which provides:

The institution shall furnish postage for mail to courts and attorneys and for pleadings to be served upon each of the parties to a lawsuit for those inmates who have insufficient funds to cover the cost of mailing the documents at the time the mail is submitted to the mailroom, but not to exceed payment for the original and two copies except when additional copies are legally required.

Although the above rule provides that the Department is required to pay for postage for legal mail for inmates who have insufficient funds, the rule does not specify that the Department may charge an inmate for such service nor does it authorize the Department to place a lien upon the inmate's trust fund account for postage costs.

Copying Costs

In 1983, in response to federal court decisions involving an inmate's federal constitutional right of access to the courts, rule 33-501.302, F.A.C., entitled "Copying Services for Inmates", was promulgated.⁵ The rule currently contains seven sections that outline how photocopying will be conducted in prison institutions.⁶ Pertinent to the proposed legislation is section (4), which states that "inmates will be charged \$0.15 per page for standard legal or letter size copies, or if special equipment or paper is required, the institution is authorized to charge up to the estimated actual cost of making the copies."⁷ Additionally, section (5) provides that:

¹ s. 944.516, F.S.

² *Id.*

³ s. 944.09, F.S.

⁴ *Id.*

⁵ *Smith v. Fl. Dept. of Corrections*, 30 Fla. L. Weekly D1299 (Fla. 1st DCA May 23, 2005).

⁶ See Rule 33-501.302, F.A.C.

⁷ *Id.*

"Inmates who are without funds shall not be denied copying services for documents and accompanying evidentiary materials needed to initiate a legal or administrative action or which must be filed or served in a pending action that challenges convictions and sentences or prison conditions, or are required to be filed or served per order of the court or administrative body. However, the cost of providing copies for documents to be filed or served is a debt owed by the inmate that shall be collected as follows: At the time the inmate submits his request for copies, the department shall place a hold on the inmate's account for the estimated cost of providing the copies. The cost of providing the copies shall be collected from any existing balance in the inmate's bank trust fund account. If the account balance is insufficient to cover the cost, the account shall be reduced to zero. If costs remain unpaid, a hold will be placed on the inmate's account and all subsequent deposits to the inmate's account will be applied against the unpaid costs until the debt has been paid."⁸

In past years, the Department of Corrections has used the above authority to charge inmates for copying costs related to litigation. However, in 2004, a Department inmate filed an appeal with Florida's First District Court of Appeal seeking to have the above sections of Rule 33-501.302, F.A.C., declared invalid.⁹ Specifically, the inmate alleged that the portions of the rule establishing the amount to be charged prison inmates for photocopying services and authorizing deductions from and liens imposed upon inmate trust accounts to cover incurred costs for photocopying services were invalid because they exceeded the Legislature's grant of rulemaking authority to the Department.¹⁰ The Department argued that ss. 20.315¹¹, 945.04¹², and 944.09¹³ F.S., provided statutory authority for the rule.¹⁴ The court held that because none of the statutes cited by the Department contained a specific grant of legislative authority authorizing the Department to charge for copies and to place liens in inmate accounts,¹⁵ those portions of the rule exceeded the legislature's grant of rulemaking authority to the Department and were thus invalid.¹⁶

This bill authorizes the Department to charge an inmate for:

- costs of duplication of documents and accompanying evidentiary materials needed to *initiate* proceedings in judicial or administrative forums
- costs of duplication of documents and accompanying evidentiary materials which must be filed or served in a *pending* judicial or administrative proceeding
- postage for mail to courts and attorneys for pleadings to be served upon each of the parties to a lawsuit.

⁸ *Id.*

⁹ See *Smith* at 1.

¹⁰ *Id.*

¹¹ s. 20.315, F.S., creates the Department of Corrections and defines its organizational structure and purpose. Among the listed goals of the Department is the duty to ensure that inmates work while they are incarcerated and that the Department make every effort to collect restitution and other monetary assessments from inmates while they are incarcerated or under supervision.

¹² s. 945.04, F.S., sets forth the general functions of the Department. In 2004, the Department amended rule 33-501.302, F.A.C., deleting the reference to s. 945.04, F.S., as statutory authority for the rule, and replaced it with a citation to s. 944.09, F.S.

¹³ s. 944.09, F.S., sets forth the general rulemaking authority of the Department with regard to, among other things, the rights of inmates, the operation and management of the correctional institution or facility and its personnel and functions, visiting hours and privileges, and the determination of restitution.

¹⁴ See *Smith* at 3.

¹⁵ Section 120.52, F.S., provides standards to be used when determining whether a particular rule constitutes an invalid exercise of legislative authority. The court in *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000) interpreted these standards and held that the question is "whether the statute contains a specific grant of legislative authority for the rule."

¹⁶ See *Smith* at 4-5. A petition for review is currently pending before the Florida Supreme Court.

The bill also authorizes the Department to place a lien on the inmate's trust fund account if the inmate does not have sufficient funds at the time the charges are imposed and to adopt rules to implement the bill's provisions.

By creating a statute that specifically authorizes the Department to charge inmates for copies and postage, place liens upon an inmate's trust fund account, and adopt rules to implement these functions, this bill would likely negate the effect of the decision in the *Smith* case.

C. SECTION DIRECTORY:

Section 1. Creates s. 945.6038, F.S., authorizing the Department of Corrections to charge inmates for specified costs relating to inmate litigation and to place liens on inmate trust fund accounts; authorizing the Department to adopt rules.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its analysis of this bill, the Department states that the photocopying rule helped in preventing inmate's from filing frivolous lawsuits. Now that the 1st DCA has deemed the rule invalid, the Department anticipates that more frivolous lawsuits will be filed. This bill would authorize the Department to effectively reinstate the photocopying rule, thus helping prevent the filing of frivolous lawsuits.

Prior to the 1st DCA's ruling, the Department collected approximately \$150,000 annually for legal copies and postage. This money was treated as expenditure refunds and was used to offset the costs of inmate legal actions. Since the 1st DCA's ruling, the Department does not have the authority to make these collections. This bill would give DOC the authority to make such collections.

The Department states that they have accumulated nearly \$800,000 in liens against inmates over a six-year period. Since the 1st DCA's ruling, the Department does not have the authority to collect these

funds, which could adversely affect Departmental operations. This bill would give the Department the authority to collect these funds.

The Department states that they will incur a substantial financial burden because the 1st DCA case requires them to provide free copies to inmates, regardless of their ability to pay. This bill would negate the effects of the 1st DCA case by authorizing the Department to charge for copies/postage.

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 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:

Prisoner's Right of Access to the Courts

The federal constitution does not contain a specific clause providing an inmate a right of access to courts. Nonetheless, the United States Supreme Court has held that there is such a right arising from several constitutional provisions including the First Amendment, the Due Process Clause, and the Equal Protection Clause.¹⁷ In reaching this conclusion, the Supreme Court stated, in dicta, that "[i]t is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents[,] with notarial services to authenticate them, and with stamps to mail them."¹⁸ Inmates nationwide used this dicta to argue that that the federal constitutional right of access to the courts required the provision of free and unlimited photocopies for purposes of litigation.¹⁹ Federal courts disagree and have held that although the right of access to courts requires that an inmate be provided access to photocopying services, inmates may be charged a fee for such services.²⁰

Florida's constitution specifically guarantees a citizen's access to courts.²¹ As such, the Florida constitution grants inmates a right of access to the courts that is broader than the federal constitution.²² Florida courts have recognized this difference, but nevertheless have held that it is "unlikely that inmate access to photocopying services would need to be greater than that required by the federal right in order to conform to the broader state constitutional right of access to the courts."²³

The bill authorizes the Department to charge inmates for photocopying services and postage and to place liens on inmate accounts. The bill does not deny indigent inmates photocopying services or postage. Given the above, it does not appear that the bill would violate an inmate's federal or state constitutional right of access to courts.

B. RULE-MAKING AUTHORITY:

¹⁷ See *Bounds v. Smith*, 430 U.S. 817, 825 (1977) ("It is now established beyond doubt that prisoners have a constitutional right of access to the courts.").

¹⁸ *Id.*

¹⁹ See *Smith* at 1.

²⁰ See, e.g., *Allen v. Sakaj*, 48 F.3d 1082 (9th Cir. 1995); see also *Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991).

²¹ See Art. I, s. 21, Fla. Const.

²² See *Henderson v. Crosby*, 883 So.2d 847, 850-854 (Fla. 1st DCA 2004).

²³ *Smith* at 5; see also *Henderson* at 857, ("We cannot conceive that the access-to-courts provision was intended to require the state to provide inmates with mechanical equipment to facilitate their research and preparation of legal papers.").

This bill provides a general grant of rulemaking power to the Department of Corrections to implement the bill's provisions (lines 24-25). The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled
 An act relating to inmate litigation costs; creating s.
 945.6038, F.S.; authorizing the Department of Corrections
 to charge inmates for specified costs relating to inmate
 litigation; authorizing liens on inmate trust funds;
 authorizing rulemaking; providing intent; providing an
 effective date.

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

Section 1. Section 945.6038, Florida Statutes, is created
 to read:

945.6038 Inmate litigation costs.--

(1) The department is authorized to charge an inmate for
 the following and to place a lien on the inmate's trust fund
 account if the inmate has insufficient funds at the time the
 charges are imposed:

(a) Costs of duplication of documents and accompanying
 evidentiary materials needed to initiate proceedings in judicial
 or administrative forums or which must be filed or served in a
 pending proceeding.

(b) Postage for mail to courts and attorneys for pleadings
 to be served upon each of the parties to a lawsuit.

(2) The department may adopt rules pursuant to ss.
 120.536(1) and 120.54 to implement this section.

(3) This section is not intended to create any legal
 rights or obligations that do not otherwise exist. This section
 is not intended to limit or preclude the department from

HB 585

2006

29 charging for duplication of its records as allowed under chapter
30 119, nor is it intended to create a right to substitute a lien
31 in lieu of payment for public records.

32 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 589 Resale of Tickets
SPONSOR(S): Llorente and others
TIED BILLS: IDEN./SIM. BILLS: SB 1534

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Criminal Justice Committee, Cunningham, Kramer.

SUMMARY ANALYSIS

Currently, s. 817.36, F.S., states that it is a second degree misdemeanor for anyone to offer for sale or sell tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged" for a price in excess of \$1 over the original retail price charged by the original seller.

This bill provides that the above prohibition does not apply to an offer for resale or to the resale of tickets to professional sporting exhibitions or professional athletic contests made through an Internet website that is operated by the manager of the facility at which the exhibition or contest is occurring or that is operated by the management of a sports team or league that has been granted permission to do so by the manager of the facility at which the exhibition or contest is occurring, and the team or league has received from the facility manager the rights to be an original seller of such tickets.

In short, this bill would allow any person who has a ticket to a professional sporting exhibition or professional athletic contest to offer for resale or resell such ticket at any price so long as he or she does so through an Internet website operated by one of the above-listed entities

Currently, s. 212.04(1)(c), F.S., provides that a purchaser of an admissions ticket that subsequently resells the ticket for more than he or she paid for it shall collect tax on the full sales price and may take credit for the amount of tax previously paid.

This bill allows a reseller to remit sales tax only on that portion of the resale ticket price in excess of the price paid on the original sale.

This bill does not appear to have a significant fiscal impact.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill exempts from criminal prosecution persons who resell tickets to professional sporting exhibitions and athletic contests at a price above the original sales price in specified circumstances.

B. EFFECT OF PROPOSED CHANGES:

Ticket scalping is commonly defined as the reselling of tickets at a price higher than the established value.¹ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Commentators argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.² Further, it has been argued that ticket scalping provides a service to those who are not willing to purchase tickets directly from the promoter.³ A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.⁴ Further, ticket scalping can lead to the sale of fraudulent tickets.⁵

There are no federal laws directly governing ticket resales, but several states prohibit the reselling of tickets for an amount in excess of the face price.⁶ At least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.⁷ Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.⁸

Section 817.36, Florida Statutes.

Section 817.36, F.S., (Florida's "ticket scalping statute") was passed in 1945. Although there is no express legislative intent in the statute to explain why the statute was enacted, the Fifth District Court of Appeal discussed the purpose of the "ticket scalping" statute in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

We think the statute attempts to regulate areas of legitimate state concern—public events and tourism. Its obvious goal is to protect the consuming public and event promoters from the economic harm done to them by persons who artificially corner the market for tickets to public events. By making an exception for sellers of travel, it seeks to promote tourism, and regulate the travel industry. Similar statutes in other states have been upheld by the state courts... [T]icket scalpers deprive consumers of a valuable service--the availability of low-cost tickets through box office sources. The effect on the ticket market by scalpers who buy up available tickets for resale is to lessen public opportunity to buy tickets at the lowest prices. Statutes like section 817.36 are designed to prevent unfair cornering of the market and limit opportunities to manipulate prices, both of which damage the general public and the promoters of public events.⁹

¹ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

² *Id.* at 189-90.

³ *Id.* at 191.

⁴ *Id.* at 192.

⁵ *Id.* at 192.

⁶ <http://www.ncsl.org/programs/lis/ticketscalplaws.htm>

⁷ *Id.*

⁸ *Id.*

⁹ *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

Currently, s. 817.36, F.S., states, in part, that it is a second degree misdemeanor¹⁰ for anyone to offer for sale or sell tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged for a price in excess of \$1 over the original retail price charged by the original seller. The prohibition applies to travel agencies unless they are registered sellers of travel pursuant to part XI of chapter 559, F.S., resell such tickets as part of travel packages, and are reselling such tickets on behalf of the original sellers.¹¹

The bill provides that any person may offer for sale and resell tickets for admission to professional sporting exhibitions and professional athletic contests *at any price* through an Internet website that is:

- operated by the manager of the facility at which the exhibition or contest is occurring; or
- operated by the management of a sports team or league that has been granted permission by the manager of the facility at which the exhibition or contest is occurring to offer for resale and to sell tickets to the exhibition or contest and the team or league has received from the facility manager the rights to be an original seller of such tickets.

Section 212.04, F.S.

Currently, s. 212.04(1)(c), F.S., provides that a purchaser of an admissions ticket that subsequently resells the ticket for more than s/he paid for it shall collect tax on the full sales price and may take credit for the amount of tax previously paid.

This bill allows a reseller to remit sales tax only on that portion of the resale ticket price in excess of the price paid on the original sale.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., revising terminology; permitting resales of tickets to professional sporting exhibitions and athletic contests at a price above the original sales price in specified circumstances; providing for the collection of sales tax on such resales.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments".

2. Expenditures:

See "Fiscal Comments".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁰ A second degree misdemeanor is punishable by a maximum of 60 days in jail and a maximum fine of \$500. See ss. 775.082, 775.083, F.S.

¹¹ See s. 817.36(2)(b), F.S. The exemption for registered sellers of travelers was challenged on due process and equal protection ground in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997). However, court looked to the extensive requirements placed upon registered sellers of travel (e.g. they must be bonded and financially answerable to travelers injured by fraud, register annually with the state, provided extensive information concerning their business operations and agents, pay registration fees, keep records, etc...) and held that such heightened duties and responsibilities provided a legitimate basis for allowing them to sell tickets in a manner different from that allowed to the general public.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Ticket holders will profit in that they will now, in certain circumstances, be able to re-sell tickets via the Internet to professional sporting exhibitions and professional athletic contests. This could lead to the creation of businesses that resell such tickets.

Additionally, the facility, the professional sports team, and the company that facilitates the sale of the ticket via the team/facility's website (e.g. Ticketmaster, Ticketron, etc...) may benefit (e.g. a ticket is re-sold at a price that is \$50 higher than the original retail price using the sports team's/facility's website → the website employs a ticket-selling service to sell tickets → both the team/facility and the ticket-selling service may benefit by keeping a percentage of the re-sale price).

D. FISCAL COMMENTS:

In 2004, the Office of the State Court Administrator reported that only 145 cases were filed for violations of s. 817.36, F.S.¹² The bill would likely reduce the number of filings under the statute and allow judges, prosecutors, and public defenders to devote time and resources to other cases.

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:

Section 212.04(1)(c), F.S., states that a purchaser of an admission that subsequently resells the admission for more than he paid for it shall collect tax on the full sales price and may take credit for tax previously paid. The proposed language of the bill conflicts with current law in that it allows a reseller to remit sales tax only on that portion of the resale ticket price in excess of the price paid on the original sale. Generally, criminal statutes do not contain language regarding taxation issues. Thus, the language regarding taxation could be eliminated altogether. However, if such language is to be included, the language should be identical to the language contained in s. 212.04(1)(c), F.S.

The bill's effective date is July 1, 2006. Generally, bills dealing with criminal laws have an effective date of October 1.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹² The information on filings came from the clerks of the courts in every Florida county except for Brevard, Nassau, St. Lucie, and Seminole.

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A bill to be entitled
An act relating to resale of tickets; amending s. 817.36,
F.S.; revising terminology; permitting resale of a ticket
to a professional sporting exhibition or professional
athletic contest at a price above the original sales price
in specified circumstances; providing for sales tax
collection on such resales; providing an effective date.

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

Section 1. Section 817.36, Florida Statutes, is amended to
read:

817.36 Resale of tickets of common carriers, places of
amusement, etc.--

(1)(a) Whoever offers ~~shall offer~~ for resale ~~sale~~ or sells
~~sell~~ any ticket good for passage or accommodations on any common
carrier in this state and requests ~~request~~ or receives ~~receive~~ a
price in excess of \$1 above the retail price charged therefor by
the original seller of said ticket commits ~~shall be guilty of~~ a
misdemeanor of the second degree, punishable as provided in s.
775.082 or s. 775.083.

(b) The provisions of paragraph (a) ~~this subsection~~ shall
not apply to travel agencies that have an established place of
business in this state, which place of business is required to
pay state, county, and city occupational license taxes.

(2)(a) Whoever offers ~~shall offer~~ for resale ~~sale~~ or sells
~~sell~~ any ticket good for admission to any sporting exhibition,
athletic contest, theater, or any exhibition where an admission

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29 price is charged and requests ~~request~~ or receives ~~receive~~ a
 30 price in excess of \$1 above the retail admission price charged
 31 therefor by the original seller of said ticket commits ~~shall be~~
 32 ~~guilty of~~ a misdemeanor of the second degree, punishable as
 33 provided in s. 775.082 or s. 775.083.

34 (b)1. The provisions of paragraph (a) shall not apply to
 35 an offer for the resale or to the resale of a ticket to a
 36 professional sporting exhibition or a professional athletic
 37 contest through an Internet website:

38 a. Operated by the manager of the facility at which the
 39 exhibition or contest is occurring; or

40 b. Operated by the management of a sports team or league
 41 that has been granted permission by the manager of the facility
 42 at which the exhibition or contest is occurring to offer for
 43 resale and to sell tickets to the exhibition or contest and the
 44 team or league has received from the facility manager the rights
 45 to be an original seller of such tickets.

46 2. Sales tax for resales under this paragraph shall be
 47 remitted to the Department of Revenue under s. 212.04 on that
 48 portion of the ticket's resale price received by the reseller in
 49 excess of those amounts that have already been taxed in
 50 connection with prior sales of such ticket, with such excess
 51 portion being deemed the sales price for the purposes of s.
 52 212.04.

53 (c)-(b) The provisions of paragraph (a) ~~this subsection~~
 54 shall apply to travel agencies that have an established place of
 55 business in this state, which place of business is required to
 56 pay state, county, and city occupational license taxes, unless

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57 such agencies are registered sellers of travel pursuant to part
58 XI of chapter 559 and adhere to the restriction of selling said
59 tickets as part of the travel packages specified in that part,
60 and such travel agencies are reselling said tickets on behalf of
61 the original sellers of said tickets. When any original seller
62 of tickets provides a travel agency with tickets in bulk, the
63 travel agent shall be deemed to be reselling the tickets on
64 behalf of the original seller.

65 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591
SPONSOR(S): Ambler
TIED BILLS:

Electronic Monitoring

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Cunningham <i>SC</i>	Kramer <i>TK</i>
2) Judiciary Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

This bill authorizes licensed bail bond agents and a bail bond agent's subcontractor to provide court ordered electronic monitoring of certain pretrial releasees and offenders. The person providing the service may collect a reasonable fee for the service.

The bill requires the chief judge of each circuit to maintain a list of eligible vendors who provide electronic monitoring services. The bill provides standards for electronic monitoring equipment and services which must be met for a vendor to be included on the chief judge's list of eligible vendors.

The bill creates new felony offenses related to tampering, destroying, etc... electronic monitoring equipment and data.

The bill authorizes the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates, juvenile offenders, employees, and visitors under certain circumstances; provides standards for such electronic monitoring systems; creates new felony offenses related to tampering, destroying, etc... electronic monitoring equipment and data; and authorizes both departments to adopt rules relating thereto.

This bill could have a significant fiscal impact. See "Fiscal Analysis."

This bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes licensed bail bond agents to provide electronic monitoring services for certain pretrial releasees; authorizes the Departments of Corrections and Juvenile Justice to use electronic monitoring in their respective institutions and to adopt rules relating thereto.

Promote Personal Responsibility → This bill creates new felony offenses related to tampering with electronic monitoring equipment.

Maintain Public Security → This bill authorizes electronic monitoring of certain pretrial releasees, inmates and juvenile offenders within their respective institutions, and employees and visitors of correctional and juvenile justice facilities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Pretrial Release / Bail Bond Agents

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.¹ If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²

Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial. Bail, one of the most common conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.³ Bail bond agents do not pay the bail amount, but instead act as a surety, promising to pay the bail amount if the defendant absconds. If the defendant absconds, bail bond agents are authorized to locate, detain, and bring the defendant before the sheriff. Florida bail bond agents are licensed through the Department of Financial Services.

Electronic Monitoring

Electronic monitoring is a process whereby a person's whereabouts are tracked through the use of a transmitter securely attached to the person, and a receiver that receives the transmitter's signal. Currently, electronic monitoring may be imposed as a condition of pretrial release.⁴

Currently, Florida statutes do not specifically authorize or preclude any entity from providing electronic monitoring services. Such services are currently provided by private companies that contract with the

¹ The conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130(a), Fla. R. Crim. Proc.

² Rule 3.131(a), Fla. R. Crim. Proc.

³ Section 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

⁴ s. 907.041(4), F.S.

involved agency (DOC, DJJ, counties, etc.). At this time, neither DOC nor DJJ utilize electronic monitoring systems in their respective institutions.

Florida statutes do not currently provide manufacturing standards for electronic monitoring equipment.

Effect of Proposed Changes

Licensure of Bail Bond Agents

This bill authorizes licensed bail bond agents to:

- provide electronic monitoring services;
- subcontract with third-party vendors to provide monitoring services if the bail bond agent can certify that the equipment and services meet the requirements of s. 907.07, F.S. (s. 907.07, F.S. requires bail bond agents to register and comply with certain electronic monitoring equipment standards);
- if the monitoring equipment meets certain statutory requirements (contained in s. 907.08, F.S., and described below), register with governmental entities to provide electronic monitoring services when monitoring has been ordered by a court; and
- charge the person subject to electronic monitoring a reasonable, nonrefundable fee for electronic monitoring services.

Bail bond agents may remand persons subject to electronic monitoring who fail to pay the above fee to the court or sheriff. Additionally, the bill provides that the fee is not considered part of the bail bond premium.⁵

The bill requires bail bond agents to keep electronic monitoring records and receipts separate from bail bond records.

Chapter 907, F.S. – Procedure After Arrest

Chapter 907, F.S., governs all conditions of pretrial release. This bill creates s. 907.06, F.S., related to electronic monitoring. It provides that a court may order, as a condition of pretrial release for a defendant charged with a violent felony or sex-related offense, or who has previously been convicted of a violent felony or sex-related offense, that the defendant be subject to electronic monitoring. The defendant must pay the cost of electronic monitoring, and failure to pay in a timely manner is a violation of pretrial release and is grounds for remand to the custody of the sheriff. Tampering with the electronic monitoring equipment and/or failing to cooperate with the vendor when notified that the equipment is malfunctioning is a violation of pretrial release and grounds for remand to the custody of the sheriff.

The bill further provides criteria for pretrial release electronic monitoring services. Specifically, the service must be capable of continuously receiving and monitoring the electronic signals from the transmitter worn by the defendant so as to be able to identify the defendant's location to within nine (9) meters using Global Positioning Satellite (GPS) technology. Licensed bail bond agents and governmental entities are authorized to provide such monitoring services. Bail bond agents and governmental entities (through competitive bidding) may subcontract with a vendor to provide monitoring services but retain primary responsibility for the monitoring.

The bill requires anyone providing electronic monitoring services to report known violations by the defendant to the appropriate authority. The bill clarifies that simply supplying electronic monitoring services is not an undertaking to protect the public from harm occasioned by a monitored person. Instead, the sole duty of one who provides monitoring services is to give law enforcement the location of a monitored person. Additionally, persons who provide monitoring services are not responsible for equipment failure or the criminal acts of monitored persons.

⁵ Section 948.33, F.S., provides that Florida bail bond agents may not execute a bail bond without charging a premium therefore. Currently, the premium rate for state bonds may not exceed 10%. <http://www.fldfs.com>.

This bill creates s. 907.07, F.S., which requires the chief judge in each circuit to maintain a list of eligible electronic monitoring vendors, and defines eligible vendors as licensed Florida bail bond agents who: certify annually, in writing, that the electronic monitoring equipment and services comply with the requirements discussed below.; register in writing the name and address of the licensed bail bond agent; and register in writing the name and phone number of the bail bond agent's contact person. Failure to comply may result in removal from the eligible vendor list. Governmental entities are also eligible vendors. Eligible vendors must promptly notify the chief judge of any change in vendor registration information. The chief judge may remove a registered vendor from the list if the vendor fails to properly monitor persons or if the vendor charges an excessive fee for monitoring services. The bill provides that a fee is clearly excessive if the fee charged on a per diem basis is at least twice the average charged by other vendors on the list.

This bill creates s. 907.08, F.S., which establishes the minimum standards that privately owned electronic monitoring devices must meet. Such equipment must:

- Be a transmitter unit that meets certification standards approved by the Federal Communications Commission;
- At the court's discretion either:
 - o Emit a signal content 24 hours per day that identifies the specific device being worn by the defendant and the defendant's physical location using GPS technology accurate to within nine (9) meters;
 - o Receive signal content 24 hours per day, determining the defendant's physical location using GPS technology accurate to within nine (9) meters, recording the defendant's physical locations throughout the day, and being capable of transmitting that record of locations to the vendor at least daily;
- With respect to a unit affixed to a defendant, possess an internal power source that provides a minimum of one (1) year of normal operation without recharging or replacing the power source. The device must emit a signal content that indicates its power status and provides the vendor with notification of whether the power source needs to be recharged or replaced;
- Possess and emit a signal content that indicates whether the transmitter has been subjected to tampering or removal;
- Possess encrypted signal content or another feature designed to discourage duplication;
- Be of a design that is shock resistant, waterproof, and capable of reliable function under normal atmospheric and environmental conditions;
- Be capable of wear and use in a manner that does not pose a safety hazard or unduly restrict the activities of the defendant;
- Be capable of being attached to the defendant in a manner that readily reveals any efforts to tamper with or remove the transmitter upon visual inspection;
- Use straps or other mechanisms for attaching the transmitter to the defendant that are either capable of being adjusted to fit a defendant of any size or that are made available in a variety of sizes.

This bill creates s. 907.09, F.S., and establishes three new felony offenses related to electronic monitoring equipment. Specifically, it is a third degree felony⁶ for any person to:

- intentionally alter, tamper with, damage, or destroy electronic monitoring equipment used to monitor a person pursuant to court order, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs;
- develop, build, create, possess, or use any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor the location of a person pursuant to court order;

⁶ A third degree felony is punishable by imprisonment for up to 5 years and a fine of up to \$5,000. ss. 775.082, 775.083, F.S.

- intentionally alter, tamper with, damage, or destroy any data stored or transmitted by any electronic monitoring equipment used to monitor a person pursuant to court order with the intent to violate such court order or to conceal such violation.

These newly created offenses are unranked on the Offense Severity Ranking Chart in the Criminal Punishment Code.⁷ Thus, the second degree felony defaults to a Level 4 offense, and the third degree felonies default to a Level 1 offense.⁸

Electronic Monitoring Within DOC and DJJ Facilities

This bill creates ss. 944.161 and 985.4047, F.S., to authorize and encourage DOC and DJJ to electronically monitor inmates and juveniles in their respective facilities. Any electronic monitoring system used in the above facilities must be capable of continuously receiving and monitor electronic signals from a transmitter worn by an inmate/juvenile offender so as to monitor the inmate/juvenile offender in real time and identify the inmate/juvenile offender's location within the facility at any time. Transmitters must update in at least 5-second intervals and monitor inmates/juvenile offenders to within a 15-foot radius of his or her actual location using Radio Frequency Identification (RFID) technology⁹. Transmitters may also be worn by employees, employees of private-sector companies contracted to operate facilities, and visitors to facilities. Transmitters must include a panic safety button, update in 5-second intervals, and be able to locate a person within a facility to within 15-feet of their actual location using RFID technology. Any RFID electronic monitoring system must also have the following capabilities:

- Be compatible with a commercially recognized wireless network access standard as designated by the utilizing department and have sufficient bandwidth to support additional wireless networking devices;
- Be capable of using an encrypted bar code label or similar unique identification label with a unique ID that can be used to track pharmaceuticals and meals administered to inmates/juvenile offenders, act as a time clock for work details within a correctional facility (DOC), record attendance in classes or other required activities, and act as an auditor for vendor contract compliance;
- Be capable of issuing an alarm to an internal monitoring station within 3 seconds after receiving a panic alert from an employee or visitor transmitter or within 3 seconds after violation of the established parameters for permissible movement of inmates/juvenile offenders, employees, and visitors within the facility;
- Be capable of maintaining a historical storage capacity sufficient to store up to 6 months of complete inmate/juvenile offender, employee, and visitor tracking for purposes of followup investigations and vendor contract auditing. The system must be capable of recording for such purposes the continuous uninterrupted movement of all monitored individuals, including those in close proximity to any selected individual, by specific position, not by area or zone. Such historical information must also be capable of being archived by means of electronic data transfer to an acceptable permanent storage medium. In addition, data collected from each facility each day shall be electronically transmitted to an offsite central clearinghouse designated by the department where the data shall be maintained in a secure storage location in a permanent storage medium designated as acceptable by the department as a supplemental backup in order to protect the archived data from alteration and to prevent loss due to disaster or other cause;
- With respect to a unit affixed to an inmate/juvenile offender, be capable of possessing an internal power source that is field rechargeable or that provides a minimum of 1 year of normal operation without need for recharging or replacing the power source. Batteries used in units must be replaceable by facility employees. The device must emit signal content that indicates

⁷ s. 921.0012, F.S.

⁸ s. 921.0013, F.S.

⁹ RFID is an automatic identification method, relying on storing and remotely retrieving data using devices called RFID tags or transponders. An RFID tag is a small object that can be attached to or incorporated into a product, animal, or person. RFID tags contain silicon chips and antennas to enable them to receive and respond to radio-frequency queries from an RFID transceiver. <http://en.wikipedia.org/wiki/RFID>

- the power status of the transmitter and provides the facility monitoring station with notification of whether the power source needs to be recharged or replaced;
- Possess and emit signal content that indicates whether the transmitter has been subjected to tampering or removal;
 - Possess encrypted signal content or another feature designed to discourage duplication;
 - Be of a design that is shock resistant, waterproof, and capable of reliable function under normal atmospheric and environmental conditions;
 - Be capable of wear and use in a manner that does not pose a safety hazard or unduly restrict the activities of the inmate/juvenile offender;
 - Be capable of being attached to the inmate/juvenile offender in a manner that readily reveals any efforts to tamper with or remove the transmitter upon visual inspection;
 - Either possess straps or other mechanisms for attaching the transmitter to the inmate/juvenile offender which are capable of being adjusted to fit an inmate/juvenile offender of any size or must be made available in a variety of sizes;
 - Be designed and constructed in such a way as to resist tampering with or removal by the inmate/juvenile offender; and
 - Provide a backup power source in the event of a power failure.

The bill further provides that it is a third degree felony for any person to:

- intentionally alter, tamper with, damage, or destroy electronic monitoring equipment used to monitor a person in a DOC/DJJ facility, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs;
- develop, build, create, possess, or use any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor a person in a DOC/DJJ facility;
- intentionally alter, tamper with, damage, or destroy specific data stored by any electronic monitoring equipment used to monitor a person in a DOC/DJJ facility unless done so with written permission from an authorized department official or in compliance with a data-retention policy of the department adopted by rule.

C. SECTION DIRECTORY:

Section 1. Amends s. 648.387, F.S., authorizing bail bond agents to be vendors of electronic monitoring services; authorizing bail bond agents to contract with third-party vendors to provide electronic monitoring of pretrial releasees in certain circumstances; authorizing bail bond agents to register with a governmental entity to provide electronic monitoring services in certain circumstances; authorizing bail bond agents to collect a fee for electronic monitoring services; providing that failure to timely pay fees constitutes grounds for remand; providing that fees are exempt from specified premium requirements.

Section 2. Creates s. 903.135, F.S., authorizing issuance of a probation appearance bond for certain offenders; authorizing electronic monitoring of a person subject to a probation appearance bond; providing procedures for revocation of the bond.

Section 3. Creates s. 907.06, F.S., providing for electronic monitoring of certain persons on pretrial release; requiring the monitored person to pay fees; authorizing bail bond agents and governmental entities to provide electronic monitoring services; authorizing bail bond agents and governmental entities to subcontract to a third-party vendor for electronic monitoring services in certain circumstances; requiring the entity providing electronic monitoring services to report a monitored defendant's violations of pretrial release; providing that the provision of electronic monitoring services is not an undertaking to protect the public from harm; prohibiting a monitored person from tampering with the monitoring equipment.

Section 4. Creates s. 907.07, F.S., requiring the chief judge of each circuit to maintain a list of eligible electronic monitoring vendors; requiring eligible electronic monitoring vendors to register and certify electronic monitoring equipment; providing grounds for removal from the list.

Section 5. Creates s. 907.08, F.S., providing standards for privately owned electronic monitoring devices.

Section 6. Creates s. 907.09, F.S., providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device.

Section 7. Amends s. 948.039, F.S., authorizing a court to require a probation appearance bond as a condition of probation or community control for certain offenses; authorizing the bond to include the condition of electronic monitoring and requiring the offender to pay the cost of such monitoring.

Section 8. Amends s. 948.11, F.S., authorizing the Department of Corrections to refer certain offenders who are required to submit to electronic monitoring to a vendor that has been selected using through competitive bidding; requiring offenders to pay the vendor for the cost of electronic monitoring; requiring the vendor to report noncompliance; providing that noncompliance is a violation of probation or community control.

Section 9. Creates s. 944.161, F.S., providing for electronic monitoring of inmates within correctional facilities; requiring electronic monitoring of certain employees and visitors to correctional facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Corrections to adopt rules.

Section 10. Creates s. 985.4047, F.S., providing for electronic monitoring of juveniles within juvenile facilities; requiring electronic monitoring of certain employees and visitors to juvenile facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Juvenile Justice to adopt rules.

Section 11. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Juvenile Justice

The following fiscal analysis reflects the estimated cost of using RFIS technology system-wide (if it were required):

Total Non-Recurring Costs:	\$3,060,000
Total Recurring Costs:	\$3,022,521

Residential Facilities – 144

Non-Recurring Total = \$2,592,000

Servers required: 144 programs x \$15,000 (cost of server) = \$2,160,000

Antennae required: 144 programs x \$3,000 (cost of antennae sensors) = \$432,000

Recurring Total = \$2,187,258

Number of staff: 5,500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$1,100,000

Number of youth: 6,534 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$543,629

Number of visitors: 6,534 beds x 2 (weekly visitors) x 52 weeks x \$.80 (ID cost) = \$543,629

Detention Facilities - 26

Non-Recurring Total = \$468,000

Servers required: 26 programs x \$15,000 (cost of server) = \$390,000

Antennae required: 26 programs x \$3,000 (cost of antennae) = \$78,000

Recurring Total = \$835,236

Number of staff: 2500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$500,000

Number of Youth: 2,057 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$171,143

Visitors: 17,093 (monthly visitors) x 12 months x \$.80 = \$164,093

Department of Corrections

DOC states it would be a significant financial burden on their budget if they were required to use EM systems in prisons (the bill does not require the use of EM systems, only authorizes the use). For example, should DOC be required to use an electronic monitoring system at each of their institutions, this would represent a cost of approximately \$31,000,000 (86,000 inmates x \$1 x 365 days). The cost of monitoring employees (approximately 20,000) and visitors would be in addition to this figure. DOC states that the cost of implementing and using such a system would be at the expense of repair, replacement, and enhancement of existing facilities. For example, critical security infrastructure at several institutions could be replaced and/or enhanced for the cost of implementing an EM monitoring system at one institution. DOC cites little potential for staff savings should EM systems be implemented. Ultimately, DOC states that the cost effectiveness relative to the department's priorities does not justify the significant resource investment involved.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

DJJ states that counties pay for the cost of pre-adjudicatory detention and thus fund approximately 82% of DJJ's total detention budget. The numbers below reflect approximately 82% of the state detention costs outlined above.

\$384,000 – Non-recurring costs for the purchasing of startup equipment in detention centers.

\$700,000 – Recurring costs for operating the system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed bail bond agents who meet the requirements specified in the bill will benefit in that they will be permitted to provide EM services for certain pretrial releasees and offenders. Additionally, companies who meet the requirements specified in the bill may benefit in that they would be eligible to provide EM services for correctional and juvenile justice facilities.

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 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:

This bill provides a general grant of rulemaking power to the Departments of Corrections and Juvenile Justice to implement the bill's provisions (lines 497-499 and lines 627-629). The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section One

1. In paragraph (a), lines 67-68 state that "licensed bail bond agents may be a vendor of electronic monitoring services." However, according to Section 4 of the bill, only those licensed bail bond agents who comply with the requirements of s. 907.07, F.S. (i.e. registration, certification that the equipment being used meets the requirements of s. 907.08, F.S., etc...) may be vendors of electronic monitoring services. Thus, it appears the sentence in Section 1 is too broad. If the bill's intent is to ensure that licensed bail bond agents who provide electronic monitoring services comply with s. 907.07, the following language could be substituted:

"A licensed bail bond agent who meets the requirements of s. 907.07 may be a vendor of electronic monitoring services."

2. A similar concern is raised by the language in lines 74-78, which states, "A licensed bail bond agent may additionally register with a governmental entity to provide electronic monitoring services when monitoring has been ordered by the court if the electronic monitoring devices meet the requirements of s. 907.07." This sentence permits *all* licensed bail bond agents to register with governmental entities to provide electronic monitoring services, the only caveat being that the bail bond agent certify that the *devices* being used meet the requirements of s. 907.07 (note that if the language is to remain as is, the statutory reference should probably be to s. 907.08, F.S., which outlines the requirements of electronic monitoring *equipment*). If the intent is to require all licensed bail bond agents who provide electronic monitoring services to comply with s. 907.07, F.S. (which requires licensed bail bond agents to do more than ensure their equipment meets certain criteria), then the following language could be substituted:

"A licensed bail bond agent who meets the requirements of s. 907.07 may additionally register with a governmental entity to provide electronic monitoring services when monitoring has been ordered by the court."

3. Paragraph (b) authorizes licensed bail bond agents to charge persons subject to electronic monitoring a reasonable fee for electronic monitoring services. Lines 81-83 state that "failure to timely pay such fees constitutes grounds for agent to remand such person to the court or sheriff." However, subsequent sections of the bill provide state that if an offender (i.e. a probationer or community controllee) fails to timely pay the electronic monitoring services fee, the bail bond agent may file an affidavit of nonpayment with the DOC. Thus, the failure to timely pay a fee does not

always authorize the bail bond agent to remand an individual to the court or sheriff – for offenders, the remedy is to file an affidavit with DOC.

Sections Two, Seven, and Eight

1. In regards to offenders under supervision for a “violent felony” or “sex-related” offense, this section authorizes a court to order, as a condition of such supervision, the posting of a surety bond to secure the appearance of the offender at any subsequent court proceedings. Lines 101-103 then state that the “*appearance bond shall be filed by a licensed bail bond agent...*” To be consistent, the term “surety bond” should replace the term “appearance bond.”
2. The bill does not define the terms “violent felony offense” and “sex-related offense.” Additionally, unlike s. 907.06, F.S., the language of these sections does not include offenders “charged with a crime and who have been previously convicted of a violent felony or sex-related offense.”
3. Lines 101-103 provide that “the appearance bond *shall* be filed by a licensed bail bond agent.” This appears to require an offender to utilize a bail bond agent and preclude the offender from personally posting the appearance bond. If an offender is to be allowed to personally post his or her own surety bond, then questions arise as to whether an offender gets the bond amount back upon termination of supervision.
4. This section further provides that a surety bond may include a condition that the offender be subject to electronic monitoring services as set forth in s. 907.06, F.S. Referencing s. 907.06, F.S., in this section causes confusion in that s. 907.06, F.S., relates to *pretrial releasees* while this section specifically relates to certain *offenders* (i.e. individuals on probation, community control). The confusion arises when trying to resolve what happens if the offender fails to timely pay the bail bond agent’s reasonable electronic monitoring services fee. For example, s. 907.06, F.S., provides that a bail bond agent can remand a *pretrial releasee* to the court, sheriff, or law enforcement agency for failure to pay the fee, while a subsequent section of the bill states that for *offenders*, failure to pay the fee results in the bail bond agent filing an affidavit with DOC (lines 355-360).
5. The bill requires offenders to pay a reasonable fee for electronic monitoring services. If an offender does not timely pay the fee, the vendor is authorized to file an affidavit of nonpayment with the DOC. DOC is then *required* to charge the offender with a violation of supervision. It should be noted that offenders cannot be revoked for failure to pay supervisory fees unless there is a finding that the offender was financially able to make such payments. *Taylor v. State*, 407 So.2d 353 (Fla. 2nd DCA 1981).
6. In regards to section 8, the bill creates subsection (6), which states, “Any offender sentenced to community control or probation for a violent felony or sex-related offense and required to submit to electronic monitoring pursuant to statute, court order, *or the discretion of the Department of Corrections*, may be referred by the department to a vendor who has been selected through a competitive bidding process for the provision of electronic monitoring services...” The current statutory language in s. 948.11, F.S., provides that, “the Department of Corrections may, at its discretion, electronically monitor an offender sentenced to community control.” However, it should be noted that courts have held that despite the statutory language, the department does *not* have the authority to impose electronic monitoring as a condition of community control *unless ordered by the court*. *Carson v. State*, 531 So.2d 1069, 1070 (Fla. 4th DCA 1988).

Section Three

1. This section also references the terms “violent felony” and “sex-related” offenses without defining them (line 127).
2. Although this section relates primarily to pretrial releasees, lines 130-132 state that this section shall also apply to persons subject to electronic monitoring pursuant to s. 903.135 (probationers).

As noted above, this causes confusion in that procedures differ depending on whether the person being monitored is a pretrial releasee or an offender.

Section Five

1. There is a grammatical error on line 269. The following would correct the error:
“(3) With respect to a unit affixed to the defendant, possess an...”

Section Six

1. This section creates three new felony offenses related to tampering with electronic monitoring devices. Two of the offenses are listed as 3rd degree felonies, while one offense is listed as a 2nd degree felony. This same section is mirrored later in the bill, but in the later version all three are listed as 3rd degree felonies. It is unclear whether this difference was intentional.

Sections Nine and Ten

1. Both sections use the term “Radio Frequency Identification Technology” without defining what such technology is.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

29 of such vendors and certification of electronic monitoring
 30 devices; providing grounds for removal from the list;
 31 creating s. 907.08, F.S.; providing standards for
 32 privately owned electronic monitoring devices; creating s.
 33 907.09, F.S.; providing criminal penalties for tampering
 34 with electronic monitoring devices; providing criminal
 35 penalties for cloning the signal of an electronic
 36 monitoring device; providing criminal penalties for the
 37 alteration or destruction of data stored or transmitted by
 38 an electronic monitoring device with specified intent;
 39 amending s. 948.039, F.S.; allowing a court to require a
 40 probation appearance bond as a condition of probation or
 41 community control for certain offenses; authorizing the
 42 bond to include the condition of electronic monitoring and
 43 requiring the offender to pay the reasonable cost of such
 44 monitoring; amending s. 948.11, F.S.; allowing private
 45 vendors to provide electronic monitoring of offenders
 46 subject to community control or probation for violent
 47 felonies and sex-related offenses; requiring the offender
 48 to pay the cost of such monitoring to the vendor;
 49 requiring the vendor to report noncompliance; providing
 50 that noncompliance is a violation of probation or
 51 community control; creating ss. 944.161 and 985.4047,
 52 F.S.; providing for electronic monitoring of inmates
 53 within correctional facilities and juvenile offenders
 54 within juvenile facilities, respectively; requiring such
 55 monitoring of certain employees and visitors to such
 56 facilities; providing system requirements; prohibiting

57 specified actions relating to such monitoring systems and
 58 data from such systems; providing penalties; providing
 59 rulemaking authority; providing an effective date.

60

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

62

63 Section 1. Subsection (6) is added to section 648.387,
 64 Florida Statutes, to read:

65 648.387 Primary bail bond agents; duties; electronic
 66 monitoring services by licensed bail bond agents.--

67 (6) (a) A licensed bail bond agent may be a vendor of
 68 electronic monitoring services. A licensed bail bond agent may
 69 also subcontract for such services with a third-party vendor of
 70 the bail bond agent's choice provided the licensed bail bond
 71 agent can certify that the equipment and services rendered by
 72 such third-party vendor on the bail bond agent's behalf meet the
 73 requirements of s. 907.07 for monitoring of a defendant for whom
 74 the bail bond agent has provided a criminal surety bail bond. A
 75 licensed bail bond agent may additionally register with a
 76 governmental entity to provide electronic monitoring services
 77 when monitoring has been ordered by a court if the electronic
 78 monitoring devices meet the requirements of s. 907.07.

79 (b) A licensed bail bond agent may charge a reasonable,
 80 nonrefundable fee for electronic monitoring services from a
 81 person who is subject to electronic monitoring. Failure to
 82 timely pay such fees constitutes grounds for the agent to remand
 83 such person to the court or sheriff. Fees charged by a bail bond
 84 agent associated with required electronic monitoring services

85 are not considered part of the bail bond premium and shall be
 86 exempt from the provisions of s. 648.33.

87 (c) Records and receipts for electronic monitoring
 88 provided by a licensed bail bond agent shall be kept separate
 89 and apart from bail bond records.

90 Section 2. Section 903.135, Florida Statutes, is created
 91 to read:

92 903.135 Probation appearance bond.--As a condition of
 93 probation, community control, or any other court-ordered
 94 community supervision for a violent felony or sex-related
 95 offense authorized pursuant to chapter 948, the court may order
 96 the posting of a surety bond to secure the appearance of the
 97 defendant at any subsequent court proceeding. Such bond may
 98 include a condition that the defendant be placed on an
 99 electronic monitoring device and be subject to electronic
 100 monitoring services, in a like manner and under like conditions
 101 as set forth in s. 907.06. The appearance bond shall be filed by
 102 a licensed bail bond agent with the sheriff who shall provide a
 103 copy to the clerk of the court. Upon 72 hours' notice by the
 104 clerk of court, the licensed bail bond agent shall produce the
 105 person on probation, community control, or other court-ordered
 106 community supervision to the court. The licensed bail bond agent
 107 shall surrender to the sheriff a person on probation, community
 108 control, or court-ordered community supervision upon notice by
 109 the probation officer that the person has violated the terms of
 110 probation, community control, or court-ordered community
 111 supervision. Under this section, notice shall be in writing or
 112 by electronic data transmission. If the licensed bail bond agent

113 fails to produce the defendant in the court at the time noticed
 114 by the court or the clerk of court, the bond shall be estreated
 115 and forfeited according to the procedures set forth in this
 116 chapter. Failure to appear shall be the sole grounds for
 117 forfeiture and estreatment of the appearance bond. Where not
 118 inconsistent with this section, this chapter and chapter 648
 119 shall regulate the relationship between the bail bond agent and
 120 the probationer.

121 Section 3. Section 907.06, Florida Statutes, is created to
 122 read:

123 907.06 Electronic monitoring.--

124 (1) The court may order a defendant who has been charged
 125 with a violent felony or sex-related offense, or who has been
 126 charged with any crime and who has been previously convicted of
 127 a violent felony or sex-related offense, to be released from
 128 custody on a surety bond subject to conditions that include,
 129 without limitation, electronic monitoring, if electronic
 130 monitoring is available in the jurisdiction. This section also
 131 applies to persons subject to electronic monitoring pursuant to
 132 s. 903.135.

133 (2) A defendant required to submit to electronic
 134 monitoring shall pay a reasonable fee for equipment use and
 135 monitoring as an additional condition of pretrial release. The
 136 failure of the defendant to timely pay such fees constitutes a
 137 violation of pretrial release and grounds for the defendant to
 138 be remanded to the court or appropriate sheriff or law
 139 enforcement agency.

140 (3) Electronic monitoring shall include the provision of

141 services to continuously receive and monitor the electronic
142 signals from the transmitter worn by the defendant so as to be
143 capable of identifying the defendant's geographic position at
144 any time to within 9 meters using Global Positioning Satellite
145 (GPS) technology, subject to the limitations related to the
146 technology and to circumstances of force majeure. Such
147 electronic monitoring services may be undertaken as a primary
148 responsibility by a governmental entity or by a licensed bail
149 bond agent who may provide both bail bond services and have
150 primary responsibility or oversight for electronic monitoring
151 services. A governmental entity or licensed bail bond agent may
152 subcontract to a third-party vendor for electronic monitoring
153 services provided such third-party vendor complies with all
154 provisions of this subsection and s. 907.08, and operates under
155 the direction and control of the governmental entity or licensed
156 bail bond agent with primary responsibility as the vendor for
157 electronic monitoring. A governmental entity that elects to
158 subcontract for electronic monitoring services shall be required
159 to select such third-party vendor through a competitive bidding
160 process.

161 (4) (a) Any person who provides electronic monitoring
162 services shall report forthwith any known violation of the
163 defendant's pretrial release conditions to the appropriate
164 court, sheriff or law enforcement agency, state attorney, and
165 licensed bail bond agent, if any.

166 (b)1. Notwithstanding paragraph (a), the provision of
167 electronic monitoring services shall not be deemed to constitute
168 an undertaking to protect members of the public from harm

169 occasioned by a monitored person. The sole duty owed by a person
 170 who provides electronic monitoring is to give a law enforcement
 171 officer, upon request, an indication of the physical location of
 172 the monitored person at any point in time.

173 2. A person who provides electronic monitoring is not
 174 responsible to other persons for equipment failure or for the
 175 criminal acts of a monitored person. A provider of electronic
 176 monitoring services cannot control the activities of a monitored
 177 person. It is unreasonable for any member of the public to
 178 expect that a provider of electronic monitoring services will
 179 provide protection against harm occasioned by a monitored
 180 person.

181 (5) A defendant who has been released in accordance with
 182 this section shall not alter, tamper with, damage, or destroy
 183 any electronic monitoring equipment or data recorded by such
 184 equipment. A defendant who is notified of a malfunction in the
 185 equipment shall immediately cooperate with the vendor in
 186 restoring the equipment to proper functioning. A violation of
 187 this subsection constitutes a violation of pretrial release and
 188 grounds for the defendant to be remanded to the court or
 189 appropriate sheriff or law enforcement agency.

190 Section 4. Section 907.07, Florida Statutes, is created to
 191 read:

192 907.07 Vendor requirements for provision of electronic
 193 monitoring services; vendor registration and certification
 194 process.--

195 (1) This section shall not apply to electronic monitoring
 196 provided directly by the state, a county, or a sheriff.

197 (2) The chief judge of each judicial circuit shall
 198 maintain a list of all eligible vendors of electronic monitoring
 199 in the circuit. To be an eligible vendor, a person must be a
 200 licensed bail bond agent in this state who has registered in
 201 accordance with this section as a vendor capable of providing
 202 electronic monitoring services in that judicial circuit. The
 203 chief judge shall place on such list of eligible vendors any
 204 licensed bail bond agent in this state who certifies in writing,
 205 as part of the vendor registration, that all electronic
 206 monitoring equipment and electronic monitoring services shall be
 207 operated and maintained in compliance with this section, and who
 208 agrees as part of such certification to comply with the terms of
 209 this section.

210 (3) Only a governmental entity or a licensed bail bond
 211 agent who is included on a list of eligible vendors under
 212 subsection (2) shall be permitted to undertake primary
 213 responsibility as a vendor of electronic monitoring services in
 214 a judicial circuit of this state.

215 (4) A licensed bail bond agent shall agree to abide by the
 216 following minimum terms as a condition of being included on the
 217 list of eligible vendors of electronic monitoring in a given
 218 judicial circuit of this state:

219 (a) The vendor shall register in writing the name of the
 220 vendor, who must be a licensed bail bond agent in this state;
 221 the name of an individual employed by the vendor who is to serve
 222 as a contact person for the vendor; the address of the vendor;
 223 and the telephone number of the contact person.

224 (b) The vendor must initially certify as part of the

225 registration, and must certify in writing at least annually
 226 thereafter on a date set by the chief judge, that all of the
 227 electronic monitoring devices used by the vendor and any of the
 228 vendor's subcontractors comply with the requirements for
 229 privately owned electronic monitoring devices in s. 907.08.

230 (5) A vendor shall promptly notify the chief judge of any
 231 changes in the vendor's registration information that is
 232 required under this section.

233 (6) Failure to comply with the registration or
 234 recertification requirements of this section shall be grounds
 235 for removal from any chief judge's list of eligible vendors for
 236 electronic monitoring.

237 (7) The chief judge, in his or her discretion, may also
 238 remove any registered vendor from the list of eligible vendors
 239 if the vendor:

240 (a) Fails to properly monitor any person that the vendor
 241 was required to monitor; or

242 (b) Charges a defendant a clearly excessive fee for use
 243 and monitoring of electronic monitoring equipment. Such fees
 244 shall be considered clearly excessive if the fees charged on a
 245 per diem basis are at least twice the average fee charged by
 246 other vendors on the eligible vendor list who provide comparable
 247 electronic monitoring equipment and services in that judicial
 248 circuit.

249 Section 5. Section 907.08, Florida Statutes, is created to
 250 read:

251 907.08 Standards for privately owned electronic monitoring
 252 devices.--A privately owned electronic monitoring device

253 provided by a vendor must, at a minimum, meet the standards set
 254 forth in this section to be used for electronic monitoring of a
 255 person under s. 907.06 or s. 903.135. A device must:

256 (1) Be a transmitter unit that meets certification
 257 standards approved by the Federal Communications Commission.

258 (2) At the court's discretion, either:

259 (a) Emit signal content 24 hours per day that identifies
 260 the specific device being worn by the defendant and the
 261 defendant's physical location using Global Positioning Satellite
 262 (GPS) technology accurate to within 9 meters; or

263 (b) Receive signal content 24 hours per day, determining
 264 the defendant's physical location using Global Positioning
 265 Satellite (GPS) technology accurate to within 9 meters,
 266 recording the defendant's physical locations throughout the day,
 267 and being capable of transmitting that record of locations to
 268 the vendor at least daily.

269 (3) A unit affixed to the defendant must possess an
 270 internal power source that provides a minimum of 1 year of
 271 normal operation without recharging or replacing the power
 272 source. The device must emit signal content that indicates its
 273 power status and provides the vendor with notification of
 274 whether the power source needs to be recharged or replaced.

275 (4) Possess and emit signal content that indicates whether
 276 the transmitter has been subjected to tampering or removal.

277 (5) Possess encrypted signal content or another feature
 278 designed to discourage duplication.

279 (6) Be of a design that is shock resistant, waterproof,
 280 and capable of reliable function under normal atmospheric and

281 environmental conditions.

282 (7) Be capable of wear and use in a manner that does not
 283 pose a safety hazard or unduly restrict the activities of the
 284 defendant.

285 (8) Be capable of being attached to the defendant in a
 286 manner that readily reveals any efforts to tamper with or remove
 287 the transmitter upon visual inspection.

288 (9) Use straps or other mechanisms for attaching the
 289 transmitter to the defendant that are either capable of being
 290 adjusted to fit a defendant of any size or that are made
 291 available in a variety of sizes.

292 Section 6. Section 907.09, Florida Statutes, is created to
 293 read:

294 907.09 Offenses related to electronic monitoring
 295 devices.--

296 (1) It is illegal for any person to intentionally alter,
 297 tamper with, damage, or destroy any electronic monitoring
 298 equipment used for monitoring the location of a person pursuant
 299 to court order, unless such person is the owner of the equipment
 300 or an agent of the owner performing ordinary maintenance and
 301 repairs. A person who violates this subsection commits a felony
 302 of the third degree, punishable as provided in s. 775.082, s.
 303 775.083, or s. 775.084.

304 (2) It is illegal for any person to develop, build,
 305 create, possess, or use any device that is intended to mimic,
 306 clone, interfere with, or jam the signal of an electronic
 307 monitoring device used to monitor the location of a person
 308 pursuant to court order. A person who violates this subsection

309 commits a felony of the second degree, punishable as provided in
 310 s. 775.082, s. 775.083, or s. 775.084.

311 (3) A person may not intentionally alter, tamper with,
 312 damage, or destroy any data stored or transmitted by any
 313 electronic monitoring equipment used for monitoring the location
 314 of a person pursuant to court order with the intent to violate
 315 such court order or to conceal such a violation. A person who
 316 violates this subsection commits a felony of the third degree,
 317 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

318 Section 7. Subsection (3) is added to section 948.039,
 319 Florida Statutes, to read:

320 948.039 Special terms and conditions of probation or
 321 community control imposed by court order.--The court may
 322 determine any special terms and conditions of probation or
 323 community control. The terms and conditions should be reasonably
 324 related to the circumstances of the offense committed and
 325 appropriate for the offender. The court shall impose the special
 326 terms and conditions by oral pronouncement at sentencing and
 327 include the terms and conditions in the written sentencing
 328 order. Special terms and conditions may include, but are not
 329 limited to, requirements that the offender:

330 (3) Effective October 1, 2006, and applicable for violent
 331 felonies and sex-related offenses committed on or after that
 332 date, the court may order the posting of a probation bond
 333 pursuant to s. 903.135 to secure the appearance of the offender
 334 at any subsequent court proceeding. Such bond may include a
 335 condition that the offender be placed on an electronic
 336 monitoring device and be subject to electronic monitoring

337 services, in a like manner and under like conditions as in s.
 338 907.06. The offender shall be ordered to pay the reasonable cost
 339 of the electronic monitoring service.

340 Section 8. Subsection (6) of section 948.11, Florida
 341 Statutes, is amended to read:

342 948.11 Electronic monitoring devices.--

343 (6) Any offender sentenced to community control or
 344 probation for a violent felony or sex-related offense and
 345 required to submit to electronic monitoring pursuant to statute,
 346 court order, or the discretion of the Department of Corrections
 347 may be referred by the department to a vendor who has been
 348 selected through a competitive bidding process for the provision
 349 of electronic monitoring services, subject to the requirements
 350 of s. 907.07. Notwithstanding subsection (5) and s. 948.09(2),
 351 such offender shall be responsible for the cost of monitoring
 352 and shall pay the cost directly to the vendor. A vendor shall
 353 report noncompliance to the assigned probation officer or
 354 community control officer pursuant to the procedures applicable
 355 to the Department of Corrections under subsection (3). If an
 356 offender fails to timely pay any cost related to electronic
 357 monitoring services to the vendor, the vendor may file an
 358 affidavit of nonpayment with the department and, upon receipt of
 359 the affidavit, the department shall charge the offender with a
 360 violation of the probation or community control For
 361 ~~probationers, community controllees, or conditional releasees~~
 362 ~~who have current or prior convictions for violent or sexual~~
 363 ~~offenses, the department, in carrying out a court or commission~~
 364 ~~order to electronically monitor an offender, must use a system~~

365 ~~that actively monitors and identifies the offender's location~~
 366 ~~and timely reports or records the offender's presence near or~~
 367 ~~within a crime scene or in a prohibited area or the offender's~~
 368 ~~departure from specified geographic limitations. Procurement of~~
 369 ~~electronic monitoring services under this subsection shall be by~~
 370 ~~invitation to bid as defined in s. 287.057.~~

371 Section 9. Section 944.161, Florida Statutes, is created
 372 to read:

373 944.161 Electronic monitoring of inmates within
 374 correctional facilities.--

375 (1) The department is authorized and encouraged to employ
 376 electronic monitoring of inmates within its custody who are
 377 incarcerated within state and private correctional facilities.

378 (a) Electronic monitoring services must have the
 379 capability to continuously receive and monitor electronic
 380 signals from a transmitter worn by an inmate so as to
 381 continuously monitor the inmate in real time and identify the
 382 inmate's specific geographic position within the facility at any
 383 time. Such transmitters must update in at least 5-second
 384 intervals and monitor the inmate to within at least a 15-foot
 385 radius of his or her actual location indoors using Radio
 386 Frequency Identification (RFID) technology, subject to the
 387 limitations relating to such technology and to circumstances of
 388 force majeure.

389 (b) Any electronic monitoring system employed shall also
 390 provide transmitters to be worn by department employees,
 391 employees of private-sector companies contracted to operate
 392 correctional facilities, and any visitors to correctional

393 facilities who are provided access to areas that are designated
 394 for authorized personnel only. Such transmitters shall include a
 395 panic safety button and must have the capability to continuously
 396 receive and monitor electronic signals from a transmitter worn
 397 by an employee or visitor so as to continuously monitor
 398 employees and visitors in real time and identify their specific
 399 geographic positions at any time. Such transmitters must update
 400 in at least 5-second intervals and monitor employees and
 401 visitors to within a 15-foot radius of their actual location
 402 indoors using Radio Frequency Identification (RFID) technology,
 403 subject to the limitations relating to such technology and to
 404 circumstances of force majeure.

405 (c) Any RFID electronic monitoring system employed shall
 406 also have the following technological and functional
 407 capabilities:

408 1. Be compatible with a commercially recognized wireless
 409 network access standard as designated by the department and have
 410 sufficient bandwidth to support additional wireless networking
 411 devices in order to increase the capacity for usage of the
 412 system by the correctional facility.

413 2. Be capable of using an encrypted bar code label or
 414 similar unique identification label with a unique ID that can be
 415 used to track pharmaceuticals and meals administered to inmates,
 416 act as a time clock for work details within a correctional
 417 facility, record attendance in classes or other required
 418 activities, and act as an auditor for vendor contract
 419 compliance.

420 3. Be capable of issuing an alarm to an internal

421 correctional monitoring station within 3 seconds after receiving
422 a panic alert from an employee or visitor transmitter or within
423 3 seconds after violation of the established parameters for
424 permissible movement of inmates, employees, and visitors within
425 the facility.

426 4.a. Be capable of maintaining a historical storage
427 capacity sufficient to store up to 6 months of complete inmate,
428 employee, and visitor tracking for purposes of followup
429 investigations and vendor contract auditing. The system must be
430 capable of recording for such purposes the continuous
431 uninterrupted movement of all monitored individuals, including
432 those in close proximity to any selected individual, by specific
433 position, not by area or zone. Such historical information must
434 also be capable of being archived by means of electronic data
435 transfer to a permanent storage medium designated as acceptable
436 by the department.

437 b. In addition, data collected from each facility each day
438 shall be electronically transmitted to an offsite central
439 clearinghouse designated by the department where the data shall
440 be maintained in a secure storage location in a permanent
441 storage medium designated as acceptable by the department as a
442 supplemental backup in order to protect the archived data from
443 alteration and to prevent loss due to disaster or other cause.

444 5. With respect to a unit affixed to an inmate, be capable
445 of possessing an internal power source that is field
446 rechargeable or that provides a minimum of 1 year of normal
447 operation without need for recharging or replacing the power
448 source. Batteries used in units must be replaceable by

449 correctional employees. The device must emit signal content that
 450 indicates the power status of the transmitter and provides the
 451 correctional facility monitoring station with notification of
 452 whether the power source needs to be recharged or replaced.

453 6. Possess and emit signal content that indicates whether
 454 the transmitter has been subjected to tampering or removal.

455 7. Possess encrypted signal content or another feature
 456 designed to discourage duplication.

457 8. Be of a design that is shock resistant, waterproof, and
 458 capable of reliable function under normal atmospheric and
 459 environmental conditions.

460 9. Be capable of wear and use in a manner that does not
 461 pose a safety hazard or unduly restrict the activities of the
 462 inmate.

463 10. Be capable of being attached to the inmate in a manner
 464 that readily reveals any efforts to tamper with or remove the
 465 transmitter upon visual inspection.

466 11. Either posses straps or other mechanisms for attaching
 467 the transmitter to the inmate which are capable of being
 468 adjusted to fit an inmate of any size or must be made available
 469 in a variety of sizes.

470 12. Be designed and constructed in such a way as to resist
 471 tampering with or removal by the inmate.

472 13. Provide a backup power source in the event of a power
 473 failure.

474 (2) A person may not intentionally alter, tamper with,
 475 damage, or destroy any electronic monitoring equipment used to
 476 monitor the location of a person within a correctional facility,

477 unless the person is the owner of the equipment or an agent of
 478 the owner performing ordinary maintenance and repairs. A person
 479 who violates this subsection commits a felony of the third
 480 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 481 775.084.

482 (3) A person may not develop, build, create, possess, or
 483 use any device that is intended to mimic, clone, interfere with,
 484 or jam the signal of an electronic monitoring device used to
 485 monitor the location of a person within a correctional facility.
 486 A person who violates this subsection commits a felony of the
 487 third degree, punishable as provided in s. 775.082, s.
 488 775.083, or s. 775.084.

489 (4) A person may not intentionally alter, tamper with,
 490 damage, or destroy any data stored pursuant to subparagraph
 491 (1)(c)4. unless done so with written permission from an
 492 authorized official of the department or in compliance with a
 493 data-retention policy of the department adopted by rule. A
 494 person who violates this subsection commits a felony of the
 495 third degree, punishable as provided in s. 775.082, s. 775.083,
 496 or s. 775.084.

497 (5) The department is authorized to adopt rules pursuant
 498 to ss. 120.536(1) and 120.54 to implement the provisions of this
 499 section.

500 Section 10. Section 985.4047, Florida Statutes, is created
 501 to read:

502 985.4047 Electronic monitoring of juvenile offenders
 503 within juvenile facilities.--

504 (1) The department is authorized and encouraged to employ

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505 electronic monitoring of juvenile offenders within its custody
 506 who are incarcerated within state and private juvenile offender
 507 facilities for the purpose or reducing offender on offender
 508 violence and reducing employee sexual misconduct as defined in
 509 s. 985.4045.

510 (a) Electronic monitoring services must have the
 511 capability to continuously receive and monitor electronic
 512 signals from a transmitter worn by a juvenile offender so as to
 513 continuously monitor an offender in real time and identify at
 514 any time the offender's specific geographic position within the
 515 facility. Such transmitters must update in at least 5-second
 516 intervals and monitor the offender to within at least a 15-foot
 517 radius of his or her actual location indoors using Radio
 518 Frequency Identification (RFID) technology, subject to the
 519 limitations relating to such technology and to circumstances of
 520 force majeure.

521 (b) Any electronic monitoring system employed shall also
 522 provide transmitters to be worn by department employees,
 523 employees of private-sector companies contracted to operate
 524 juvenile facilities, and any visitors to juvenile facilities who
 525 are provided access to areas that are designated for authorized
 526 personnel only. Such transmitters shall include a panic button
 527 and must have the capability to continuously receive and monitor
 528 electronic signals from a transmitter worn by an employee or
 529 visitor so as to continuously monitor employees and visitors in
 530 real time and identify their specific geographic positions at
 531 any time. Such transmitters must update in at least 5-second
 532 intervals and monitor employees and visitors to within a 15-foot

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533 radius of their actual location indoors using Radio Frequency
534 Identification (RFID) technology, subject to the limitations
535 relating to such technology and to circumstances of force
536 majeure.

537 (c) Any RFID electronic monitoring system employed shall
538 also:

539 1. Be compatible with a commercially recognized wireless
540 network access standard as designated by the department and have
541 sufficient bandwidth to support additional wireless networking
542 devices in order to increase the capacity for usage of the
543 system by the facility.

544 2. Be capable of using an encrypted bar code label or
545 similar unique identification label with a unique ID that can be
546 used to track pharmaceuticals and meals administered to
547 juveniles, record attendance in classes or other required
548 activities, and act as an auditor for vendor contract
549 compliance.

550 3. Be capable of issuing an alarm to an internal facility
551 monitoring station within 3 seconds after receiving a panic
552 alert from an employee or visitor transmitter or within 3
553 seconds after violation of the established parameters for
554 permissible movement of offenders, employees, and visitors
555 within the facility.

556 4.a. Be capable of maintaining a historical storage
557 capacity sufficient to store up to 6 months of complete
558 offender, employee, and visitor tracking for purposes of
559 followup investigations and vendor contract auditing. The system
560 must be capable of recording for such purposes the continuous

561 uninterrupted movement of all monitored individuals, including
 562 those in close proximity to any selected individual, by specific
 563 position, not by area or zone. Such historical information must
 564 also be capable of being archived by means of electronic data
 565 transfer to a permanent storage medium designated as acceptable
 566 by the department.

567 b. In addition, data collected from each facility each day
 568 shall be electronically transmitted to an offsite central
 569 clearinghouse designated by the department where the data shall
 570 be maintained in a secure storage location in a permanent
 571 storage medium designated as acceptable by the department as a
 572 supplemental backup in order to protect the archived data from
 573 alteration and to prevent loss due to disaster or other cause.

574 5. With respect to a unit affixed to an offender, be
 575 capable of possessing an internal power source that is field
 576 rechargeable or that provides a minimum of 1 year of normal
 577 operation without need for recharging or replacing the power
 578 source and batteries must be replaceable by facility employees.
 579 The device must emit signal content that indicates the power
 580 status of the transmitter and provides the facility monitoring
 581 station with notification of whether the power source needs to
 582 be recharged or replaced.

583 6. Possess and emit signal content that indicates whether
 584 the transmitter has been subjected to tampering or removal.

585 7. Possess encrypted signal content or another feature
 586 designed to discourage duplication.

587 8. Be of a design that is shock resistant, waterproof, and
 588 capable of reliable function under normal atmospheric and

589 environmental conditions.

590 9. Be capable of wear and use in a manner that does not
 591 pose a safety hazard or unduly restrict the activities of the
 592 offender.

593 10. Be capable of being attached to the offender in a
 594 manner that readily reveals any efforts to tamper with or remove
 595 the transmitter upon visual inspection.

596 11. Either possess straps or other mechanisms for
 597 attaching the transmitter to the offender which are capable of
 598 being adjusted to fit an offender of any size or must be made
 599 available in a variety of sizes.

600 12. Be designed and constructed in such a way as to resist
 601 tampering with or removal by the offender.

602 13. Provide a backup power source in the event of a power
 603 failure.

604 (2) A person may not intentionally alter, tamper with,
 605 damage, or destroy any electronic monitoring equipment used to
 606 monitor the location of a person within a juvenile facility,
 607 unless the person is the owner of the equipment or an agent of
 608 the owner performing ordinary maintenance and repairs. A person
 609 who violates this subsection commits a felony of the third
 610 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 611 775.084.

612 (3) A person may not develop, build, create, possess, or
 613 use any device that is intended to mimic, clone, interfere with,
 614 or jam the signal of an electronic monitoring device used to
 615 monitor the location of a person within a juvenile facility. A
 616 person who violates this subsection commits a felony of the

617 third degree, punishable as provided in s. 775.082, s. 775.083,
 618 or s. 775.084.

619 (4) A person may not intentionally alter, tamper with,
 620 damage, or destroy any data stored pursuant to subparagraph
 621 (1)(c)4. unless done so with written permission from an
 622 authorized official of the department or in compliance with a
 623 data-retention policy of the department adopted by rule. A
 624 person who violates this subsection commits a felony of the
 625 third degree, punishable as provided in s. 775.082, s. 775.083,
 626 or s. 775.084.

627 (5) The department is authorized to adopt rules pursuant
 628 to ss. 120.536(1) and 120.54 to implement the provisions of this
 629 section.

630 Section 11. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 627 License Plates
SPONSOR(S): Brummer
TIED BILLS: IDEN./SIM. BILLS: SB 538

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 627 requires the Department of Highway Safety and Motor Vehicles to develop a DUI license plate that must be displayed on any vehicle that is operated by a person whose driving privileges are restricted pursuant to s. 316.193, F.S. because of a violation related to driving under the influence of alcoholic beverages or other specified substances.

The license plate must be a bright pink color that is easily distinguished from other license plates issued by the department. The bill requires the first three letters of the plate to be "DUI". The bill requires an additional annual surcharge of \$20 to be collected for each DUI plate and the proceeds from the surcharge to be deposited into the Trauma Services Trust Fund.

The bill also provides that a law enforcement officer may stop any vehicle that bears a DUI plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. [See Constitutional Issues section for further discussion.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires a person who has been convicted of DUI to use a DUI license plate in certain circumstances. The bill authorizes a law enforcement officer to stop a vehicle that has a DUI license plate without probable cause to check the operator for a DUI offense.

B. EFFECT OF PROPOSED CHANGES:

Upon conviction for driving under the influence (DUI)¹, the court must revoke the driver's license of the convicted person as follows:

- For a first conviction, the driver's license must be revoked for not less than 180 days or more than 1 year.
- For a second conviction for an offense that occurs within 5 years after the date of a prior conviction, the driver's license must be revoked for not less than 5 years.
- For a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction, the driver's license must be revoked for not less than 10 years.
- For a fourth conviction, the driver's license must be permanently revoked.²

Section 322.271, F.S. authorizes the department to issue what is commonly known as a "hardship" license upon a showing that the revocation of an offender's license causes a serious hardship and precludes the person's carrying out his or her normal business, occupation, trade or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family. A person whose license has been revoked for a DUI offense for 5 years or less is required to wait 12 months before applying for a hardship license. A person whose license has been revoked for more than 5 years is required to wait 24 months before applying for a hardship license.³ A person whose license has been permanently revoked because of a fourth DUI conviction is not eligible to apply for a hardship license.⁴

HB 627 requires the Department of Highway Safety and Motor Vehicles to develop a DUI license plate that must be displayed on any vehicle that is operated by a person whose driving privileges are restricted pursuant to s. 316.193, F.S. because of a violation related to driving under the influence of alcoholic beverages or other specified substances.

The license plate must be a bright pink color that is easily distinguished from other license plates issued by the department. The bill requires the word "Florida" to appear at the top of the plate and the first three letters of the plate to be "DUI". The bill requires an additional annual surcharge of \$20 to be collected for each DUI plate and the proceeds from the surcharge to be deposited into the Trauma Services Trust Fund created by s. 395.4035, F.S.⁵

The bill also provides that a law enforcement officer may stop any vehicle that bears a DUI plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. [See Constitutional Issues section for further discussion.]

¹ s. 316.193, F.S.

² s. 322.28(2)(a),

³ s. 322.271(2)(b), F.S.

⁴ s. 322.28(2)(e), F.S.

⁵ Section 395.4035, F.S. creates the Trauma Services Trust Fund which is required to be used for the development and support of a system of state-sponsored trauma centers.

C. SECTION DIRECTORY:

Section 1. Requires a driver whose driving privilege is restricted for a DUI offense to have a DUI license plate.

Section 2. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates that the bill will generate \$240,000 annually from use fees for deposit into the Trauma Services Trust Fund based on the issuance of 12,000 hardship licenses per year.

2. Expenditures:

The department estimates that the bill will have an annual \$44,520 impact for the design, manufacture and distribution of a new license plate - \$15,000 in personnel costs and \$29,520 in license plate costs. The bill will also require contracted programming modifications to the Motor Vehicle software systems at an estimated cost of \$26,915.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person who is issued a DUI license plate will be required to pay a \$20 annual surcharge for the license plate.

D. FISCAL COMMENTS:

See above.

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:

Special license plate: In *Goldschmitt v. State*,⁶ the Second District Court of Appeal ruled on the constitutionality of a DUI offender being required to place a bumper sticker on his vehicle which read, "CONVICTED D.U.I. – RESTRICTED LICENSE". The court rejected the offender's claim that the order infringed upon his First Amendment rights by "forcing him to broadcast an ideological message via the bumper sticker."⁷ The court also ruled that the bumper sticker did not constitute cruel and unusual punishment. See also, *Lindsay v. State*, 606 So.2d 652 (Fla. 4th DCA 1992)(requirement that probationer place and pay for advertisement in newspaper consisting of defendant's mug shot, name and caption indicating defendant was "DUI –convicted" did not violate constitution).

Traffic stops: The portion of the bill which authorizes a law enforcement officer to stop a vehicle that bears a DUI license plate without probable cause to check the operator for compliance with the restrictions provided in s. 316.193, F.S. may be subject to a constitutional challenge. A traffic stop of a motor vehicle by a law enforcement officer is considered a seizure under the Fourth Amendment to the United States Constitution. An officer must have a reasonable articulable suspicion of wrongdoing in order to justify a traffic stop.⁸ In the case of *State v. Henning*,⁹ the Minnesota Supreme Court struck down a statute which authorized a peace officer to stop a vehicle bearing "special series registration plates" issued to a DUI offender for the purpose of determining whether the driver was operating vehicle lawfully under a valid driver's license. The court noted that, as with HB 627, the statute would allow an officer to stop a vehicle, even when the person driving the vehicle was not the person who had committed the DUI offense. The court held that the presence of the special license plate did not amount to reasonable articulable suspicion of criminal activity justifying a stop. The court stated, "[w]hile the special series plates may be a factor for law enforcement to consider and would provide a basis for closer scrutiny of these vehicles, the special series plates may not provide the sole justification for a stop."¹⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the use of a DUI license plate for a person whose driving privilege is "restricted pursuant to s. 316.193". Section 316.193, F.S. provides penalties for DUI but does not provide for suspension of the offender's driving privilege – these requirements are elsewhere in statute.

The bill analysis of the Department of Highway Safety and Motor Vehicles indicates that several issues could be clarified including:

- What is the effect of the bill on drivers operating company owned vehicles?
- How should hardship licenses for partial years be handled in terms of registration fees?
- If the offender owns multiple vehicles, how should this be handled?

The effective date of the bill is July 1, 2006. The department recommends changing this to October 1, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁶ *Goldschmitt v. State*, 490 So.2d 123 (Fla. 2nd DCA 1986)

⁷ *Goldschmitt*, 490 So.2d at 125.

⁸ *Delaware v. Prouse*, 99 S.Ct. 1391, 1401 (1979)("Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment..")

⁹ *State v. Henning*, 666 N.W. 379 (Minn. 2003).

¹⁰ *Henning*, 666 N.W. 2d at 386.

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A bill to be entitled
 An act relating to license plates; requiring a driver whose driving privileges are restricted because of a violation related to driving under the influence to have a DUI plate on any vehicle that he or she operates; providing for the Department of Highway Safety and Motor Vehicles to develop such plate; providing requirements for such a plate; providing an annual surcharge for the plate; providing for the use of such surcharge; authorizing a law enforcement officer to stop a vehicle bearing such plate without probable cause; providing an effective date.

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

Section 1. (1) The Department of Highway Safety and Motor Vehicles shall develop a DUI license plate that must be displayed on any vehicle that is operated by a person whose driving privileges are restricted pursuant to s. 316.193, Florida Statutes, because of a violation related to driving under the influence of alcoholic beverages or other specified substances.

(2) The plate shall be a bright pink color that is easily distinguishable from other plates issued in this state. The word "Florida" must appear at the top of the plate, and the first three letters in the alphanumeric numbering system used on the plate must be "DUI".

(3) In addition to the other license plate fees and charges collected, an annual surcharge of \$20 shall be collected

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

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29 for each DUI plate. The proceeds from the surcharge shall be
 30 deposited into the Trauma Services Trust Fund created by s.
 31 395.4035, Florida Statutes, and used for purposes provided in
 32 that section.

33 (4) A law enforcement officer may stop any vehicle that
 34 bears a DUI plate without probable cause to check the operator
 35 for compliance with the restrictions provided in s. 316.193,
 36 Florida Statutes.

37 Section 2. 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 627**

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 _____

1 Council/Committee hearing bill: Criminal Justice Committee
2 Representative(s) Brummer offered the following:

3

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

5 Remove line(s) 22 and insert:

6 (2) The plate shall be a bright coral color that is easily

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 627**

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	_____	

1 Council/Committee hearing bill: Criminal Justice Committee
 2 Representative(s) Brummer offered the following:

Amendment (with directory and title amendments)

Remove line(s) 33-36.

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

Remove line(s) 9-11 and insert:

providing for the use of such surcharge; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. **HB 627**

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 _____

1 Council/Committee hearing bill: Criminal Justice Committee
2 Representative(s) Brummer offered the following:

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Amendment (with directory and title amendments)

Remove line(s) 18-21 and insert:

driving privileges are restricted pursuant to 322.271, because
of a conviction relating to driving under the influence in
violation of s. 316.193.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Secondhand Dealers
SPONSOR(S): Kottkamp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	_____	Ferguson <i>KE</i>	Kramer <i>JK</i>
2) <u>Business Regulation Committee</u>	_____	_____	_____
3) <u>Governmental Operations Committee</u>	_____	_____	_____
4) <u>Justice Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Pawnbrokers were formerly regulated as secondhand dealers but are now separately regulated under ch. 539, F.S.

This bill adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. Changes include:

- Revising definitions of what constitutes secondhand goods and exempting persons.
- Specifically exempting certain internet business from regulation as a secondhand dealer.
- Revising the recordkeeping requirements and increases criminal penalties.
- Increasing time law enforcement can order hold on stolen goods.

This bill does not appear to have a fiscal impact on state or local governments, although it is likely to have a negative fiscal impact on secondhand dealers.

Provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases regulation of secondhand dealers.

B. EFFECT OF PROPOSED CHANGES:

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Regulation of secondhand dealers is pursuant to ch. 538, F.S. The minimal registration requirements are administered by the Department of Revenue. Initial registration as a secondhand dealer is \$6.00 per location, plus \$47.00 for each principal to conduct a criminal history background check. Annual renewal is \$6.00 per location.

Prior to 1996, pawnbrokers were also regulated by ch. 538, F.S., but pawnbrokers are now regulated pursuant to ch. 539, F.S.

This bill deletes references to pawnbrokers from ch. 538, F.S., and in general increases some of the regulation of secondhand dealers to be similar to the regulation of pawnbrokers.

Items Regulated

Section 538.03(1)(g), F.S., currently defines "secondhand goods". That definition is limited to a list of specified items. This bill removes the current list and instead defines secondhand goods as personal property previously owned or used, which is not regulated metals property otherwise regulated and which is purchased, consigned, or traded as used property and specifically excludes: office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

Mail Order Sales

Section 538.03(2), F.S., currently list entities and types of sales that are exempt from regulation pursuant to ch. 538, F.S. Included in the list of exemptions is the sale of secondhand goods by mail order, including internet sales.¹

This bill deletes the exemption, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail, or through computer services, is subject to regulation as a secondhand goods dealer under ch. 538, F.S. However, this bill adds an exception for a business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an internet website, and that maintains a shop, store, or other business premises for this purpose are exempt if:

- The secondhand goods are available for viewing on the website at no charge;
- The records of the sale, purchase, consignment, or trade are maintained for 2 years;
- The records of the sale, purchase, consignment, or trade contain the serial number of each item, if any;
- The secondhand goods are searchable by state or zip code on the website;

¹ Specifically, the exemption deleted is for: "Any person purchasing, consigning, or pawning secondhand goods ordered by mail, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited shopping or shopping by other means of media communication, including, but not limited to, direct mail advertising, unsolicited distribution of catalogs, television, radio, or other electronic media, telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order."

- The name under which it conducts business on the website is provided to the appropriate law enforcement agency;
- The business allows the appropriate law enforcement agency to inspect its premises any time during normal business hours;
- Any payment form sale, purchase, consignment, or trade must be made by check or via a money transmitter licensed under part II of chapter 560; and
 - At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business verifies the item is not stolen via its serial number against the FDLE stolen property database; or
 - The business provides the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods within 24 hours after entering into the contract unless other arrangements are made between the business and law enforcement.

This bill also exempts any person offering his or her own personal property for sale, purchase, consignment, or trade via an internet website when that person is not required to have a local occupational or business license for this purpose.

This bill also exempts a business whose primary business is the sale, rental, or trade of motion picture videos or video games if the business:

- Requires the sellers to have a current account with the business;
- Has on file the name, address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
- Purchases secondhand goods from the property owner or representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states the seller is the lawful owner;
- Retains such purchase agreements for at least 1 year; and
- Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or authorized user of seller's account.

Recordkeeping Requirements

Section 538.04, F.S., currently requires a secondhand dealer to maintain records of all goods purchased, and requires that a copy of each purchase record be forwarded to local law enforcement within 24 hours of purchase. The form for providing that information must be approved the Florida Department of Law Enforcement. Section 538.06(4), F.S., currently requires a secondhand dealer to keep the forms for 5 years.

This bill increases the amount of information that must be obtained on the form to match the information that a pawnbroker must collect. The increased information includes a requirement that the person selling or consigning goods to the secondhand dealer must furnish a thumbprint. The retention time for the forms is reduced from 5 years to 3 years and forms must be maintained at the licensed premises for the first year. This bill also provides that, if local law enforcement provides the software and the equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulation under ch. 539, F.S.

Criminal Penalties

Section 538.04(4), F.S., currently provides that it is a criminal offense for any person to knowingly give false verification of ownership or to give false or altered identification, and who receives money from a secondhand dealer for goods sold. If the value of the money received is less than \$300, it is a first degree misdemeanor; if greater than \$300, it is a third degree felony.

This bill includes goods consigned or traded and increases the criminal penalties to a felony of the third degree if the value to the money received is less than \$300; if greater than \$300 it is a second degree felony. These penalties are analogous with the statute applicable to pawnbrokers.²

The felony criminal offenses in s. 538.04(4), F.S., are not classified in the offense severity ranking chart of the Criminal Punishment Code. Accordingly, the amended third degree felony will be a Level 1 offense, and the second degree felony will be a Level 4 offense.³

Section 538.07(2), F.S., currently provides that, upon a conviction for theft, violation of the secondhand dealer law, or dealing in stolen property, a court must order the defendant to make restitution to the secondhand dealer. This bill provides that restitution must be made to the secondhand dealer or to the lawful owner of the property, as applicable.

Inspection by Law Enforcement

Currently, the registered premises of a secondhand dealer, including the purchase records, may be inspected by the police department, if the premises is located in a municipality, or the sheriff, if located outside a municipality, during regular business hours.

This bill specifies that the "entire" registered premises is open to inspection, and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Thus, this bill provides that county sheriffs may inspect secondhand dealers located anywhere in their county.

Minimum Holding Period

Section 538.06(1), F.S., provides that a secondhand dealer must hold property 15 days before re-selling the property, unless the person who sold the property to the dealer buys it back. Chapter 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

Law Enforcement Hold

Section 538.06(3), F.S., currently provides that a law enforcement officer may extend the hold period for 60 days if the law enforcement officer has probable cause to believe the property is stolen.

This bill amends the law enforcement hold period for secondhand dealers to 90 days. This bill also provides that, if a 90 day hold is in effect, the secondhand dealer may be compelled to surrender property believed to be stolen property to local law enforcement for use in a criminal proceeding. The criminal court may order the property returned to the person from whom it was stolen, in which case the thief must pay restitution, including attorney's fees and costs, to the secondhand dealer. This provision is identical to one currently applicable to pawnbrokers.⁴

Registration as a Secondhand Dealer

Section 538.09(5), F.S., currently provides the requirements for registration as a secondhand goods dealer. Included is a requirement that any principal in the business not have been convicted of, or entered a plea of guilty or no contest to a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of section 812.015, or any fraudulent dealing, within the previous 5 years.

² See section 539.001(8)(b) .8.a and .b, F.S.

³ Section 921.0023, F.S.

⁴ Section 539.001(16)(e)2., F.S.

This bill changes the time period from the previous 5 years to the previous 10 years, and adds that "adjudication withheld" for any of the enumerated offenses will also disqualifying a person from being a principal in a business acting as a secondhand dealer.⁵

This bill also amends section 538.09, F.S., to add upon the request of a law enforcement official, the Department of Revenue shall release the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

The effective date of this bill is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to ch. 538, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements to provide criminal penalties.

Section 3 amends s. 538.05, F.S., regarding provisions relating to the inspection or records and premises.

Section 4 amends s. 538.06, F.S., regarding how long a secondhand goods dealer must hold stolen goods.

Section 5 amends s. 538.07, F.S., regarding restitution from a secondhand dealer.

Section 6 amends s. 538.09, F.S., regarding registration as a secondhand goods dealer.

Section 7 repeals s. 538.16, F.S., regarding disposal of pawned property.

Section 8 amends s. 516.02, F.S., to remove cross-references.

Section 9 reenacts s. 790.335 (3)(f), F.S., regarding firearm records to provide criminal penalties.

Section 10 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁵ Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. See section 539.001(4)(a)4., F.S.

This bill will have a direct negative fiscal impact on businesses that deal in secondhand goods and are not exempt from the regulation. They will be required to hold merchandise longer before selling it, which is likely to increase storage costs and floor plan interest costs. They will also have increased transactional and recordkeeping costs related to the increased amount of information required for the secondhand transaction form.

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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to secondhand dealers; amending s. 538.03,
3 F.S.; revising definitions; revising applicability of ch.
4 538, F.S.; exempting persons or entities offering
5 secondhand goods or personal property for sale, purchase,
6 consignment, or trade via the Internet from the provisions
7 of ch. 538, F.S., under certain circumstances; exempting
8 certain businesses that sell, rent, or trade motion
9 picture videos or video games from ch. 538, F.S.; amending
10 s. 538.04, F.S.; revising recordkeeping requirements for
11 secondhand dealers; providing penalties for knowingly
12 giving false verification of ownership or a false or
13 altered identification, and for receiving money from a
14 secondhand dealer for goods sold, consigned, or traded if
15 the value of the money received is less than \$300, and if
16 the value of the money received is \$300 or more; providing
17 for the electronic transfer of secondhand dealer
18 transactions under specified circumstances; authorizing
19 appropriate law enforcement agencies to provide a
20 secondhand dealer with a computer and other equipment
21 necessary to electronically transfer secondhand dealer
22 transactions; providing procedures with respect to
23 electronic transfer of secondhand dealer transactions;
24 amending s. 538.05, F.S.; revising provisions relating to
25 the inspection of records and premises of secondhand
26 dealers; amending s. 538.06, F.S.; revising provisions
27 with respect to the holding of goods upon probable cause
28 that the goods are stolen; providing for payment of

29 restitution, attorney's fees, and costs to a secondhand
 30 dealer under specified circumstances; revising the time
 31 limit for maintenance of transaction records by dealers in
 32 secondhand property; amending s. 538.07, F.S.; revising
 33 provisions relating to restitution for stolen property
 34 recovered from a secondhand dealer; amending s. 538.09,
 35 F.S.; revising provisions with respect to registration as
 36 a secondhand dealer; revising conditions under which
 37 registration may be denied, revoked, restricted, or
 38 suspended by the Department of Revenue; repealing s.
 39 538.16, F.S., relating to disposal of property by
 40 secondhand dealers; amending s. 516.02, F.S.; removing
 41 cross-references; reenacting s. 790.335(3)(f), F.S., which
 42 provides a second degree felony penalty for any secondhand
 43 dealer who contracts with a specified third-party provider
 44 or electronically transmits certain records of firearms
 45 transactions to any third-party provider; providing an
 46 effective date.

47

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

49

50 Section 1. Section 538.03, Florida Statutes, is amended to
 51 read:

52 538.03 Definitions; applicability.--

53 (1) As used in this part, the term:

54 (a) "Secondhand dealer" means any person, corporation, or
 55 other business organization or entity which is not a secondary
 56 metals recycler subject to part II and which is engaged in the

57 business of purchasing, consigning, or trading ~~pawning~~
 58 secondhand goods. ~~However, secondhand dealers are not limited to~~
 59 ~~dealing only in items defined as secondhand goods in paragraph~~
 60 ~~(g). Except as provided in subsection (2), the term means~~
 61 ~~pawnbrokers, jewelers, precious metals dealers, garage sale~~
 62 ~~operators, secondhand stores, and consignment shops.~~

63 (b) "Precious metals dealer" means a secondhand dealer who
 64 normally or regularly engages in the business of buying used
 65 precious metals for resale. The term does not include those
 66 persons involved in the bulk sale of precious metals from one
 67 secondhand or precious metals dealer to another.

68 ~~(c) "Pawnbroker" means any person, corporation, or other~~
 69 ~~business organization or entity which is regularly engaged in~~
 70 ~~the business of making pawns but does not include a financial~~
 71 ~~institution as defined in s. 655.005 or any person who regularly~~
 72 ~~loans money or any other thing of value on stocks, bonds, or~~
 73 ~~other securities.~~

74 ~~(d) "Pawn" means either of the following transactions:~~

75 1. ~~Loan of money. A written or oral bailment of personal~~
 76 ~~property as security for an engagement or debt, redeemable on~~
 77 ~~certain terms and with the implied power of sale on default.~~

78 2. ~~Buy sell agreement. An agreement whereby a purchaser~~
 79 ~~agrees to hold property for a specified period of time to allow~~
 80 ~~the seller the exclusive right to repurchase the property. A~~
 81 ~~buy sell agreement is not a loan of money.~~

82 (c) ~~(e)~~ "Secondhand store" means the place or premises at
 83 which a secondhand dealer is registered to conduct business as a
 84 secondhand dealer, or conducts business, ~~including pawn shops.~~

85 (d)~~(f)~~ "Consignment shop" means a shop engaging in the
 86 business of accepting for sale, on consignment, secondhand goods
 87 which, having once been used or transferred from the
 88 manufacturer to the dealer, are then received into the
 89 possession of a third party.

90 (e) "Acquire" means to obtain by purchase, consignment, or
 91 trade.

92 (f)~~(g)~~ "Secondhand goods" means personal property
 93 previously owned or used, which is not regulated metals property
 94 regulated under part II and which is purchased, consigned, or
 95 traded pawned as used property. Such secondhand goods shall not
 96 include office furniture, pianos, books, clothing, organs,
 97 coins, motor vehicles, costume jewelry, and secondhand sports
 98 equipment that is not permanently labeled with a serial number.

99 For purposes of this paragraph, "secondhand sports equipment"
 100 does not include golf clubs. be limited to watches, diamonds,
 101 gems, and other precious stones, fishing rods, reels, and
 102 tackle, audio and video electronic equipment, including
 103 television sets, compact disc players, radios, amplifiers,
 104 receivers, turntables, tape recorders, video tape recorders,
 105 speakers and citizens' band radios, computer equipment, radar
 106 detectors, depth finders, trolling motors, outboard motors,
 107 sterling silver flatware and serving pieces, photographic
 108 equipment, including cameras, video and film cameras, lenses,
 109 electronic flashes, tripods, and developing equipment, microwave
 110 ovens, animal fur coats, marine equipment, video games and
 111 cartridges, power lawn and landscape equipment, office equipment
 112 such as copiers, fax machines, and postage machines but

113 ~~excluding furniture; sports equipment; golf clubs; weapons,~~
 114 ~~including knives, swords, and air guns; telephones, including~~
 115 ~~cellular and portable; firearms; tools; calculators; musical~~
 116 ~~instruments, excluding pianos and organs; lawnmowers; bicycles;~~
 117 ~~typewriters; motor vehicles; gold, silver, platinum, and other~~
 118 ~~precious metals excluding coins; and jewelry, excluding costume~~
 119 ~~jewelry.~~

120 (g) ~~(h)~~ "Transaction" means any purchase, consignment, or
 121 trade pawn of secondhand goods by a secondhand dealer.

122 (h) ~~(i)~~ "Precious metals" means any item containing any
 123 gold, silver, or platinum, or any combination thereof,
 124 excluding:

125 ~~1.~~ any chemical or any automotive, photographic,
 126 electrical, medical, or dental materials or electronic parts.

127 ~~2. Any coin with an intrinsic value less than its~~
 128 ~~numismatic value.~~

129 ~~3. Any gold bullion coin.~~

130 ~~4. Any gold, silver, or platinum bullion that has been~~
 131 ~~assayed and is properly marked as to its weight and fineness.~~

132 ~~5. Any coin which is mounted in a jewelry setting.~~

133 (i) ~~(j)~~ "Department" means the Department of Revenue.

134 ~~(k)~~ "Pledge" means pawn or buy-sell agreement.

135 (2) This chapter does not apply to:

136 (a) Any secondhand goods transaction involving an
 137 organization or entity registered with the state as a nonprofit,
 138 religious, or charitable organization or any school-sponsored
 139 association or organization other than a secondary metals
 140 recycler subject to the provisions of part II.

- 141 (b) A law enforcement officer acting in an official
142 capacity.
- 143 (c) A trustee in bankruptcy, executor, administrator, or
144 receiver who has presented proof of such status to the
145 secondhand dealer.
- 146 (d) Any public official acting under judicial process or
147 authority who has presented proof of such status to the
148 secondhand dealer.
- 149 (e) A sale on the execution, or by virtue of any process
150 issued by a court, if proof thereof has been presented to the
151 secondhand dealer.
- 152 (f) Any garage sale operator who holds garage sales less
153 than 10 weekends per year.
- 154 (g) Any person at antique, coin, or collectible shows or
155 sales.
- 156 (h) Any person who sells household personal property as an
157 agent for the property owner or their representative pursuant to
158 a written agreement at that person's residence.
- 159 (i) The purchase, consignment, or trade pawn of secondhand
160 goods from one secondhand dealer to another secondhand dealer
161 when the selling secondhand dealer has complied with the
162 requirements of this chapter.
- 163 (j) Any person accepting a secondhand good as a trade-in
164 for a similar item of greater value.
- 165 (k) Any person purchasing, consigning, or trading pawning
166 secondhand goods at a flea market regardless of whether at a
167 temporary or permanent business location at the flea market.
- 168 (l) Any auction business as defined in s. 468.382(1).

169 (m) Any business that is registered with the Department of
 170 Revenue for sales tax purposes as an antique dealer pursuant to
 171 chapter 212 and that purchases secondhand goods from the
 172 property owner or her or his representative at the property
 173 owner's residence pursuant to a written agreement that states
 174 the name, address, and telephone number of the property owner
 175 and the type of property purchased.

176 (n) A business that contracts with other persons or
 177 entities to offer its secondhand goods for sale, purchase,
 178 consignment, or trade via an Internet website, and that
 179 maintains a shop, store, or other business premises for this
 180 purpose, if all of the following apply:

181 1. The secondhand goods must be available on the website
 182 for viewing by the general public at no charge;

183 2. The records of the sale, purchase, consignment, or
 184 trade must be maintained for at least 2 years;

185 3. The records of the sale, purchase, consignment, or
 186 trade, and the description of the secondhand goods as listed on
 187 the website, must contain the serial number of each item, if
 188 any;

189 4. The secondhand goods listed on the website must be
 190 searchable based upon the state or zip code;

191 5. The business must provide the appropriate law
 192 enforcement agency with the name or names under which it
 193 conducts business on the website;

194 6. The business must allow the appropriate law enforcement
 195 agency to inspect its business premises at any time during
 196 normal business hours;

197 7. Any payment by the business resulting from such a sale,
198 purchase, consignment, or trade must be made to the person or
199 entity with whom the business contracted to offer the goods and
200 must be made by check or via a money transmitter licensed under
201 part II of chapter 560; and

202 8.a. At least 48 hours after the estimated time of
203 contracting to offer the secondhand goods, the business must
204 verify that any item having a serial number is not stolen
205 property by entering the serial number of the item into the
206 Department of Law Enforcement's stolen article database located
207 at the Florida Crime Information Center's public access system
208 website. The business shall record the date and time of such
209 verification on the contract covering the goods. If such
210 verification reveals that an item is stolen property, the
211 business shall immediately remove the item from any website on
212 which it is being offered and notify the appropriate law
213 enforcement agency; or

214 b. The business must provide the appropriate law
215 enforcement agency with an electronic copy of the name, address,
216 phone number, driver's license number, and issuing state of the
217 person with whom the business contracted to offer the goods, as
218 well as an accurate description of the goods, including make,
219 model, serial number, and any other unique identifying marks,
220 numbers, names, or letters that may be on an item, in a format
221 agreed upon by the business and the appropriate law enforcement
222 agency. This information must be provided to the appropriate law
223 enforcement agency within 24 hours after entering into the
224 contract unless other arrangements are made between the business

225 ~~and the law enforcement agency. Any person purchasing,~~
 226 ~~consigning, or pawning secondhand goods ordered by mail,~~
 227 ~~computer-assisted shopping, media-assisted, media-facilitated,~~
 228 ~~or media-solicited shopping or shopping by other means of media~~
 229 ~~communication, including, but not limited to, direct mail~~
 230 ~~advertising, unsolicited distribution of catalogs, television,~~
 231 ~~radio, or other electronic media, telephone, magazine, or~~
 232 ~~newspaper advertising, so long as such person is in this state~~
 233 ~~at the time of the order.~~

234 (o) Any person offering his or her own personal property
 235 for sale, purchase, consignment, or trade via an Internet
 236 website, or a person or entity offering the personal property of
 237 others for sale, purchase, consignment, or trade via an Internet
 238 website, when that person or entity does not have, and is not
 239 required to have, a local occupational or business license for
 240 this purpose.

241 (p) A business whose primary business is the sale, rental,
 242 or trade of motion picture videos or video games, if the
 243 business:

244 1. Requires the sellers of secondhand goods to have a
 245 current account with the business;

246 2. Has on file in a readily accessible format the name,
 247 current residential address, home and work telephone numbers,
 248 government-issued identification number, place of employment,
 249 date of birth, gender, and right thumbprint of each seller of
 250 secondhand goods;

251 3. Purchases secondhand goods from the property owner or
 252 his or her representative at the place of business pursuant to

253 an agreement in writing and signed by the property owner which
 254 describes the property purchased, states the date and time of
 255 the purchase, and states that the seller is the lawful owner of
 256 the property;

257 4. Retains such purchase agreements for not less than 1
 258 year; and

259 5. Pays for the purchased property in the form of a store
 260 credit that is issued to the seller and is redeemable solely by
 261 the seller or another authorized user of the seller's account
 262 with that business.

263 (g) ~~(e)~~ A motor vehicle dealer as defined in s. 320.27.

264 (3) This part does not apply to secondary metals recyclers
 265 regulated under part II, except for s. 538.11, which applies to
 266 both secondhand dealers and secondary metals recyclers.

267 Section 2. Section 538.04, Florida Statutes, is amended to
 268 read:

269 538.04 Recordkeeping requirements; penalties.--

270 (1) Secondhand dealers shall complete a secondhand dealers
 271 transaction form at the time of the actual transaction. A
 272 secondhand dealer shall maintain a copy of a completed
 273 transaction form on the registered premises for at least 1 year
 274 after the date of the transaction. However, the secondhand
 275 dealer shall maintain a copy of the transaction form for a
 276 period of no less than 3 years. ~~Secondhand dealers shall~~
 277 ~~maintain records of all transactions of secondhand goods on the~~
 278 ~~premises. Unless other arrangements have been agreed upon by the~~
 279 ~~secondhand dealer and the appropriate law enforcement agency,~~
 280 the secondhand dealer shall, within 24 hours after ~~of~~ the

281 acquisition of any secondhand goods, ~~by purchase or pledge as~~
 282 ~~security for a loan, a secondhand dealer shall deliver to the~~
 283 police department of the municipality where the goods were
 284 acquired ~~purchased~~ or, if the goods were acquired ~~purchased~~
 285 outside of a municipality, to the sheriff's department of the
 286 county where the goods were acquired ~~purchased~~, a record of the
 287 transaction on a form approved by the Department of Law
 288 Enforcement. Such record shall contain:

- 289 (a) The time, date, and place of the transaction.
- 290 (b) A complete and accurate description of the goods
 291 acquired, including the following information, if applicable:
 292 ~~any serial numbers, manufacturer's numbers, or other identifying~~
 293 ~~marks or characteristics.~~

- 294 1. Brand name.
- 295 2. Model number.
- 296 3. Manufacturer's serial number.
- 297 4. Size.
- 298 5. Color, as apparent to the untrained eye.
- 299 6. Precious metal type, weight, and content, if known.
- 300 7. Gemstone description, including the number of stones,
 301 if applicable.
- 302 8. In the case of firearms, the type of action, caliber or
 303 gauge, number of barrels, barrel length, and finish.
- 304 9. Any other unique identifying marks, numbers, or
 305 letters.

- 306 (c) A description of the person from whom the goods were
 307 acquired, including:
 308 1. Full name, current residential address, workplace, and

309 home and work phone numbers.

310 2. Height, weight, date of birth, race, gender, hair
311 color, eye color, and any other identifying marks.

312 3. The right thumbprint, free of smudges and smears, of
313 the person from whom the goods were acquired.

314 (d) Any other information required by the form approved by
315 the Department of Law Enforcement.

316 (2) The secondhand dealer shall require verification of
317 the identification by the exhibition of a government-issued
318 photographic identification card such as a driver's license or
319 military identification card. The record shall contain the type
320 of identification exhibited, the issuing agency, and the number
321 thereon.

322 (3) The seller shall sign a statement verifying that the
323 seller is the rightful owner of the goods or is entitled to
324 sell, consign, or trade pledge the goods.

325 (4) Any person who knowingly gives false verification of
326 ownership or who gives a false or altered identification, and
327 who receives money from a secondhand dealer for goods sold,
328 consigned, or traded pledged commits:

329 (a) If the value of the money received is less than \$300,
330 a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as
331 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

332 (b) If the value of the money received is \$300 or more, a
333 felony of the second ~~third~~ degree, punishable as provided in s.
334 775.082, s. 775.083, or s. 775.084.

335 (5) Secondhand dealers are exempt from the provisions of
336 this section for all transactions involving secondhand sports

337 equipment except secondhand sports equipment that is permanently
338 labeled with a serial number.

339 (6) If the appropriate law enforcement agency supplies a
340 secondhand dealer with appropriate software and the secondhand
341 dealer has computer capability, secondhand dealer transactions
342 shall be electronically transferred. If a secondhand dealer does
343 not have computer capability, the appropriate law enforcement
344 agency may provide the secondhand dealer with a computer and all
345 necessary equipment for the purpose of electronically
346 transferring secondhand dealer transactions. The appropriate law
347 enforcement agency shall retain ownership of the computer,
348 unless otherwise agreed upon. The secondhand dealer shall
349 maintain the computer in good working order, ordinary wear and
350 tear excepted. In the event the secondhand dealer transfers
351 secondhand dealer transactions electronically, the secondhand
352 dealer is not required to also deliver to the appropriate law
353 enforcement agency the original or copies of the secondhand
354 transaction forms. For the purpose of a criminal investigation,
355 the appropriate law enforcement agency may request that the
356 secondhand dealer produce an original of a transaction form that
357 has been electronically transferred. The secondhand dealer shall
358 deliver this form to the appropriate law enforcement agency
359 within 24 hours after the request.

360 (7) If the original transaction form is lost or destroyed
361 by the appropriate law enforcement agency, a copy may be used by
362 the secondhand dealer as evidence in court. When an electronic
363 image of a customer's identification is accepted for a
364 transaction, the secondhand dealer must maintain the electronic

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365 image in order to meet the recordkeeping requirements applicable
 366 to the original transaction form. If a criminal investigation
 367 occurs, the secondhand dealer shall, upon request, provide a
 368 clear and legible copy of the image to the appropriate law
 369 enforcement agency.

370 Section 3. Section 538.05, Florida Statutes, is amended to
 371 read:

372 538.05 Inspection of records and premises of secondhand
 373 dealers.--

374 (1) The entire registered premises and required records of
 375 each secondhand dealer are subject to inspection during regular
 376 business hours by any law enforcement officer with jurisdiction
 377 ~~the police department if the premises are located within a~~
 378 ~~municipality or, if located outside a municipality, by the~~
 379 ~~sheriff's department of the county in which the premises are~~
 380 ~~located, and by any state law enforcement officer who has~~
 381 ~~jurisdiction over the dealer.~~

382 (2) The inspection authorized by subsection (1) shall
 383 consist of an examination on the registered premises of the
 384 inventory and required records to determine whether the records
 385 and inventory are being maintained on the registered premises as
 386 required by s. 538.04 and whether the holding period required by
 387 s. 538.06 is being complied with.

388 Section 4. Section 538.06, Florida Statutes, is amended to
 389 read:

390 538.06 Holding period.--

391 (1) A secondhand dealer shall not sell, barter, exchange,
 392 alter, adulterate, use, or in any way dispose of any secondhand

393 goods within 15 calendar days after ~~of~~ the date of acquisition
 394 of the goods. Such holding periods are not applicable when the
 395 person known by the secondhand dealer to be the person from whom
 396 the goods were acquired desires to redeem, repurchase, or
 397 recover the goods, provided the dealer can produce the record of
 398 the original transaction with verification that the customer is
 399 the person from whom the goods were originally acquired.

400 (2) A secondhand dealer must maintain actual physical
 401 possession of all secondhand goods throughout a transaction. It
 402 is unlawful for a secondhand dealer to accept title or any other
 403 form of security in secondhand goods in lieu of actual physical
 404 possession. A secondhand dealer who accepts title or any other
 405 form of security in secondhand goods in lieu of actual physical
 406 possession commits a misdemeanor of the first degree, punishable
 407 as provided in s. 775.082 or s. 775.083.

408 (3) Upon probable cause that goods held by a secondhand
 409 dealer are stolen, a law enforcement officer with jurisdiction
 410 may place a 90-day written hold order on the goods ~~extend the~~
 411 ~~holding period to a maximum of 60 days~~. However, the hold
 412 ~~holding period~~ may be extended beyond 90 ~~60~~ days by a court of
 413 competent jurisdiction upon a finding of probable cause that the
 414 property is stolen and further holding is necessary for the
 415 purposes of trial or to safeguard such property. The dealer
 416 shall assume all responsibility, civil or criminal, relative to
 417 the property or evidence in question, including responsibility
 418 for the actions of any employee with respect thereto.

419 (4) While a hold order is in effect, the secondhand dealer
 420 must, upon request, release the property subject to the hold

421 order to the custody of a law enforcement officer with
 422 jurisdiction for use in a criminal investigation. The release of
 423 the property to the custody of the law enforcement officer is
 424 not considered a waiver or release of the secondhand dealer's
 425 rights or interest in the property. Upon completion of the
 426 criminal proceeding, the property must be returned to the
 427 secondhand dealer unless the court orders other disposition.
 428 When such other disposition is ordered, the court shall
 429 additionally order the person from whom the secondhand dealer
 430 acquired the property to pay restitution to the secondhand
 431 dealer in the amount that the secondhand dealer paid for the
 432 property together with reasonable attorney's fees and costs.

433 (5)-(4) All dealers in secondhand property regulated by
 434 this chapter shall maintain transaction records for 3 5 years.

435 Section 5. Section 538.07, Florida Statutes, is amended to
 436 read:

437 538.07 Penalty for violation of chapter.--

438 (1) Except as ~~where~~ otherwise provided herein, a person
 439 who knowingly violates any provision of this chapter commits a
 440 misdemeanor of the first degree, punishable as provided in s.
 441 775.082 and by a fine not to exceed \$10,000.

442 (2) When the lawful owner recovers stolen property from a
 443 secondhand dealer and the person who sold or pledged the stolen
 444 property to the secondhand dealer is convicted of theft, a
 445 violation of this section, or dealing in stolen property, the
 446 court shall order the defendant to make restitution to either
 447 the secondhand dealer or the lawful owner, as applicable,
 448 pursuant to s. 775.089.

449 Section 6. Section 538.09, Florida Statutes, is amended to
 450 read:

451 538.09 Registration.--

452 (1) A secondhand dealer shall not engage in the business
 453 of purchasing, consigning, or trading ~~pawning~~ secondhand goods
 454 from any location without registering with the Department of
 455 Revenue. A fee equal to the federal and state costs for
 456 processing required fingerprints must be submitted to the
 457 department with each application for registration. One
 458 application is required for each dealer. If a secondhand dealer
 459 is the owner of more than one secondhand store location, the
 460 application must list each location, and the department shall
 461 issue a duplicate registration for each location. For purposes
 462 of subsections (4) and (5) of this section, these duplicate
 463 registrations shall be deemed individual registrations. A dealer
 464 shall pay a fee of \$6 per location at the time of registration
 465 and an annual renewal fee of \$6 per location on October 1 of
 466 each year. All fees collected, less costs of administration,
 467 shall be transferred into a trust fund to be established and
 468 entitled the Secondhand Dealer and Secondary Metals Recycler
 469 Clearing Trust Fund. The Department of Revenue shall forward the
 470 full set of fingerprints to the Department of Law Enforcement
 471 for state and federal processing, provided the federal service
 472 is available, to be processed for any criminal justice
 473 information as defined in s. 943.045. The cost of processing
 474 such fingerprints shall be payable to the Department of Law
 475 Enforcement by the Department of Revenue. The department may
 476 issue a temporary registration to each location pending

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477 completion of the background check by state and federal law
 478 enforcement agencies, but shall revoke such temporary
 479 registration if the completed background check reveals a
 480 prohibited criminal background. An applicant for a secondhand
 481 dealer registration must be a natural person who has reached the
 482 age of 18 years.

483 (a) If the applicant is a partnership, all the partners
 484 must apply.

485 (b) If the applicant is a joint venture, association, or
 486 other noncorporate entity, all members of such joint venture,
 487 association, or other noncorporate entity must make application
 488 for registration as natural persons.

489 (c) If the applicant is a corporation, the registration
 490 must include the name and address of such corporation's
 491 registered agent for service of process in the state and a
 492 certified copy of statement from the Secretary of State that the
 493 corporation is duly organized in the state or, if the
 494 corporation is organized in a state other than Florida, a
 495 certified copy of statement from the Secretary of State that the
 496 corporation is duly qualified to do business in this state. If
 497 the dealer has more than one location, the application must list
 498 each location owned by the same legal entity and the department
 499 shall issue a duplicate registration for each location.

500 (2) The secondhand dealer shall furnish with her or his
 501 registration a complete set of her or his fingerprints,
 502 certified by an authorized law enforcement officer, and a recent
 503 fullface photographic identification card of herself or himself.
 504 The Department of Law Enforcement shall report its findings to

505 the Department of Revenue within 30 days after the date
 506 fingerprint cards are submitted for criminal justice
 507 information.

508 (3) The secondhand dealer's registration shall be
 509 conspicuously displayed at her or his registered location
 510 ~~principal place of business~~. A secondhand dealer must hold
 511 secondhand goods at the registered location until 15 days after
 512 the secondhand transaction or until any extension of the holding
 513 period has expired, whichever is later, ~~and must retain records~~
 514 ~~of each transaction which is not specifically exempted by this~~
 515 ~~chapter. A secondhand dealer shall not dispose of property at~~
 516 ~~any location until the holding period has expired unless the~~
 517 ~~transaction is specifically exempted by this chapter.~~

518 (4) The department may impose a civil fine of up to
 519 \$10,000 for each violation of this section, which fine shall be
 520 transferred into the General Revenue Fund. If the fine is not
 521 paid within 60 days, the department may bring a civil action
 522 under s. 120.69 to recover the fine.

523 (5) In addition to the fine provided in subsection (4),
 524 registration under this section may be denied or any
 525 registration granted may be revoked, restricted, or suspended by
 526 the department if the department determines that the applicant
 527 or registrant:

528 (a) Has violated any provision of this chapter or any rule
 529 or order made pursuant to this chapter;

530 (b) Has made a material false statement in the application
 531 for registration;

532 (c) Has been guilty of a fraudulent act in connection with

533 | any purchase or sale or has been or is engaged in or is about to
 534 | engage in any practice, purchase, or sale which is fraudulent or
 535 | in violation of the law;

536 | (d) Has made a misrepresentation or false statement to, or
 537 | concealed any essential or material fact from, any person in
 538 | making any purchase or sale;

539 | (e) Is making purchases or sales through any business
 540 | associate not registered in compliance with the provisions of
 541 | this chapter;

542 | (f) Has, within the preceding 10-year ~~5-year~~ period for
 543 | new registrants who apply for registration on or after October
 544 | 1, 2005, been convicted of, or has entered a plea of guilty or
 545 | nolo contendere to, or had adjudication withheld for, a crime
 546 | against the laws of this state or any other state or of the
 547 | United States which relates to registration as a secondhand
 548 | dealer or which involves theft, larceny, dealing in stolen
 549 | property, receiving stolen property, burglary, embezzlement,
 550 | obtaining property by false pretenses, possession of altered
 551 | property, any felony drug offense, any violation of s. 812.015,
 552 | or any fraudulent ~~or dishonest~~ dealing;

553 | (g) Has had a final judgment entered against her or him in
 554 | a civil action upon grounds of fraud, embezzlement,
 555 | misrepresentation, or deceit; or

556 | (h) Has failed to pay any sales tax owed to the Department
 557 | of Revenue.

558 |
 559 |

560 | In the event the department determines to deny an application or

561 revoke a registration, it shall enter a final order with its
 562 findings on the register of secondhand dealers and their
 563 business associates, if any; and denial, suspension, or
 564 revocation of the registration of a secondhand dealer shall also
 565 deny, suspend, or revoke the registration of such secondhand
 566 dealer's business associates.

567 (6) Upon the request of a law enforcement official, the
 568 Department of Revenue shall release to the official the name and
 569 address of any secondhand dealer registered to do business
 570 within the official's jurisdiction.

571 Section 7. Section 538.16, Florida Statutes, is repealed.

572 Section 8. Subsection (4) of section 516.02, Florida
 573 Statutes, is amended to read:

574 516.02 Loans; lines of credit; rate of interest;
 575 license.--

576 (4) This chapter does not apply to any person who does
 577 business under, and as permitted by, any law of this state or of
 578 the United States relating to banks, savings banks, trust
 579 companies, building and loan associations, credit unions, or
 580 industrial loan and investment companies. ~~This chapter also does~~
 581 ~~not apply to title loans as defined in s. 538.03(1)(i) or pawns~~
 582 ~~as defined in s. 538.03(1)(d).~~ A pawnbroker may not be licensed
 583 to transact business under this chapter.

584 Section 9. For the purpose of incorporating the amendment
 585 made by this act to section 538.03, Florida Statutes, in a
 586 reference thereto, paragraph (f) of subsection (3) of section
 587 790.335, Florida Statutes, is reenacted to read:

588 790.335 Prohibition of registration of firearms.--

589 (3) EXCEPTIONS.--The provisions of this section shall not
 590 apply to:

591 (f) Firearm records, including paper pawn transaction
 592 forms and contracts on firearm transactions, required by
 593 chapters 538 and 539.

594 1. Electronic firearm records held pursuant to chapter 538
 595 may only be kept by a secondhand dealer for 30 days after the
 596 date of the purchase of the firearm by the secondhand dealer.

597 2. Electronic firearm records held pursuant to chapter 539
 598 may only be kept by a pawnbroker for 30 days after the
 599 expiration of the loan that is secured by a firearm or 30 days
 600 after the date of purchase of a firearm, whichever is
 601 applicable.

602 3. Except as required by federal law, any firearm records
 603 kept pursuant to chapter 538 or chapter 539 shall not, at any
 604 time, be electronically transferred to any public or private
 605 entity, agency, business, or enterprise, nor shall any such
 606 records be copied or transferred for purposes of accumulation of
 607 such records into lists, registries, or databases.

608 4. Notwithstanding subparagraph 3., secondhand dealers and
 609 pawnbrokers may electronically submit firearm transaction
 610 records to the appropriate law enforcement agencies as required
 611 by chapters 538 and 539; however, the law enforcement agencies
 612 may not electronically submit such records to any other person
 613 or entity and must destroy such records within 60 days after
 614 receipt of such records.

615 5. Notwithstanding subparagraph 3., secondhand dealers and
 616 pawnbrokers may electronically submit limited firearms records

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617 consisting solely of the manufacturer, model, serial number, and
 618 caliber of pawned or purchased firearms to a third-party private
 619 provider that is exclusively incorporated, exclusively owned,
 620 and exclusively operated in the United States and that restricts
 621 access to such information to only appropriate law enforcement
 622 agencies for legitimate law enforcement purposes. Such records
 623 must be destroyed within 30 days by the third-party provider. As
 624 a condition of receipt of such records, the third-party provider
 625 must agree in writing to comply with the requirements of this
 626 section. Any pawnbroker or secondhand dealer who contracts with
 627 a third-party provider other than as provided in this act or
 628 electronically transmits any records of firearms transactions to
 629 any third-party provider other than the records specifically
 630 allowed by this paragraph commits a felony of the second degree,
 631 punishable as provided in s. 775.082 or s. 775.083.

632 Section 10. This act shall take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- This bill provides criminal penalties for trespassing upon a domestic violence center.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Florida Department of Children and Families, "domestic violence is a pattern of behaviors that adults or adolescents use against their intimate partners or former partners to establish power and control. It may include physical abuse, sexual abuse, emotional abuse, and economic abuse. It may also include threats, isolation, pet abuse, using children and a variety of other behaviors used to maintain fear, intimidation and power over one's partner. Domestic violence knows no boundaries. It occurs in intimate relationships, regardless of race, religion, culture or socioeconomic status."¹

Domestic violence centers

In 1998, "the Legislature recognize[d] that certain persons who assault, batter, or otherwise abuse their spouses and the persons subject to such domestic violence are in need of treatment and rehabilitation. It is the intent of the Legislature to assist in the development of domestic violence centers for the victims of domestic violence and to provide a place where the parties involved may be separated until they can be properly assisted."²

A domestic violence center is defined as an agency that provides services to victims of domestic violence, as its primary mission.³

Section 741.28, F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

Section 741.28, F.S., defines "family or household member" to mean spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Effective of bill

Section 810.09, F.S., currently provides that it is a first degree misdemeanor to commit trespass on lands.⁴ The offense level is increased to a third degree felony in certain circumstances. For example, 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

¹ <http://www.dcf.state.fl.us/domesticviolence/whatisdv.shtml>

² Section 39.901, F.S.

³ See section 39.902(2), F.S.

⁴ Trespass in a dwelling, structure or conveyance is considered a more serious offense.

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

HB 761 amends section 810.09, F.S., to increase criminal penalties from a first degree misdemeanor to a third degree felony for trespassing upon a domestic violence center.⁵ In order for the felony penalties to apply, the domestic violence center must be certified under section 39.905, F.S. and must be legally posted and identified in substantially the following manner: THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.

C. SECTION DIRECTORY:

Section 1 amends section 810.09, F.S., to provide criminal penalties for trespassing on a domestic violence center.

Section 2 provides an effective date of July 1, 2006

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 creates a third degree felony offense. The offense is not ranked in the offense severity ranking chart. As such, it is expected that the conference will determine that the bill will have insignificant prison bed impact.

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:

⁵ As a result, the maximum penalty for the offense will be increased from one year in county jail to five years in prison. See section 775.082, F.S.

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

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1 A bill to be entitled
 2 An act relating to trespass on the property of a certified
 3 domestic violence center; amending s. 810.09, F.S.;
 4 providing that a person commits a felony of the third
 5 degree if he or she trespasses on the property of a
 6 certified domestic violence center; providing a penalty;
 7 providing an effective date.
 8

9 Be It Enacted by the Legislature of the State of Florida:
 10

11 Section 1. Subsection (2) of section 810.09, Florida
 12 Statutes, is amended to read:

13 810.09 Trespass on property other than structure or
 14 conveyance.--

15 (2) (a) Except as provided in this subsection, trespass on
 16 property other than a structure or conveyance is a misdemeanor
 17 of the first degree, punishable as provided in s. 775.082 or s.
 18 775.083.

19 (b) If the offender defies an order to leave, personally
 20 communicated to the offender by the owner of the premises or by
 21 an authorized person, or if the offender willfully opens any
 22 door, fence, or gate or does any act that exposes animals,
 23 crops, or other property to waste, destruction, or freedom;
 24 unlawfully dumps litter on property; or trespasses on property
 25 other than a structure or conveyance, the offender commits a
 26 misdemeanor of the first degree, punishable as provided in s.
 27 775.082 or s. 775.083.

28 (c) If the offender is armed with a firearm or other

29 dangerous weapon during the commission of the offense of
 30 trespass on property other than a structure or conveyance, he or
 31 she is guilty of a felony of the third degree, punishable as
 32 provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or
 33 person authorized by the owner may, for prosecution purposes,
 34 take into custody and detain, in a reasonable manner, for a
 35 reasonable length of time, any person when he or she reasonably
 36 believes that a violation of this paragraph has been or is being
 37 committed, and that the person to be taken into custody and
 38 detained has committed or is committing the ~~such~~ violation. If
 39 ~~In the event~~ a person is taken into custody, a law enforcement
 40 officer shall be called as soon as is practicable after the
 41 person has been taken into custody. The taking into custody and
 42 detention in compliance with the requirements of this paragraph
 43 does not result in criminal or civil liability for false arrest,
 44 false imprisonment, or unlawful detention.

45 (d) The offender commits a felony of the third degree,
 46 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 47 if the property trespassed is a construction site that is
 48 legally posted and identified in substantially the following
 49 manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE
 50 WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

51 (e) The offender commits a felony of the third degree,
 52 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 53 if the property trespassed upon is commercial horticulture
 54 property and the property is legally posted and identified in
 55 substantially the following manner: "THIS AREA IS DESIGNATED
 56 COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO

57 TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

58 (f) The offender commits a felony of the third degree,
 59 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 60 if the property trespassed upon is an agricultural site for
 61 testing or research purposes that is legally posted and
 62 identified in substantially the following manner: "THIS AREA IS
 63 A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES,
 64 AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

65 (g) The offender commits a felony of the third degree,
 66 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 67 if the property trespassed upon is a domestic violence center
 68 certified under s. 39.905 which is legally posted and identified
 69 in substantially the following manner: "THIS AREA IS A
 70 DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS
 71 PROPERTY COMMITS A FELONY."

72 (h) ~~(g)~~ Any person who in taking or attempting to take any
 73 animal described in s. 372.001(10) or (11), or in killing,
 74 attempting to kill, or endangering any animal described in s.
 75 585.01(13) knowingly propels or causes to be propelled any
 76 potentially lethal projectile over or across private land
 77 without authorization commits trespass, a felony of the third
 78 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 79 775.084. For purposes of this paragraph, the term "potentially
 80 lethal projectile" includes any projectile launched from any
 81 firearm, bow, crossbow, or similar tensile device. This section
 82 does shall not apply to any governmental agent or employee
 83 acting within the scope of his or her official duties.

84 Section 2. This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates a new misdemeanor offense.

Promote personal responsibility: This bill creates a sanction for potentially injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

Luring or Enticing a Child

Section 787.025, F.S., makes it unlawful for a person over the age of 18, who has been previously convicted of a sexual offense under Chapter 794 or s. 800.04, F.S., to intentionally lure or entice or attempt to lure or entice a child under the age of 12 into a structure¹, dwelling², or conveyance³ for other than a lawful purpose. The offense is a third degree felony.

The section further provides that the luring or enticing of a child under the age of 12 into a structure, dwelling or conveyance without the consent of the child's parent or legal guardian shall be prima facie evidence of other than a lawful purpose. The section also provides that it is an affirmative defense to a prosecution for this offense that:

- the person reasonably believed that his or her action was necessary to prevent the child from being seriously injured;
- the person lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling or conveyance for a lawful purpose or
- the person's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

"An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." State v. Cohen, 568 So.2d 49, 51 (Fla.1990). A defendant has the burden of initially offering evidence to establish an affirmative defense, after which the burden shifts to the state to disprove the defense beyond a reasonable doubt.⁴

In State v. Brake, 796 So.2d 522 (Fla. 2001), the Florida Supreme Court overturned the Second District Court of Appeal who had found section 787.025, F.S. to be unconstitutionally vague. The lower court had ruled that the term "other than for a lawful purpose" failed to give "persons of common intelligence adequate warning of the proscribed conduct".⁵ The Supreme Court ruled that the requirement that the offender lured or enticed a child "for other than a lawful purpose" can be construed to require that the state prove "that the defendant lured or enticed a child into the structure, dwelling or conveyance for an 'illegal' purpose, i.e. with intent to violate Florida law by committing a crime." However, the court ruled that the part of the statute which provides that luring a child "without the consent of the child's parent or

¹The term "structure" is defined as "a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof." Sec. 787.025(1)(a), F.S.

² The term "dwelling" is defined as a "building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof." Sec. 787.025(1)(b), F.S.

³ The term "conveyance" is defined as any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car". Sec. 787.025(1)(c), F.S.

⁴ Hansman v. State, 679 So.2d 1216, 1217 (Fla. 4th DCA 1996).

⁵ Brake v. State, 746 So. 2d 527 (Fla. 2nd DCA 1999).

legal guardian shall be prima facie evidence of other than a lawful purpose” created a unconstitutional statutory presumption.⁶ The presumption that was struck down in Brake has not been removed from the statute.

HB 763 amends s. 787.025, F.S. to create a first degree misdemeanor offense for a person over the age of 18 who intentionally lures or entices or attempts to lure or entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose. Unlike the current felony offense, this newly created offense will not require proof that the offender has previously been convicted of a sexual offense.

The bill also amends the felony luring offense to add a prior conviction of the section as a qualifying offense. In other words, a person who unlawfully lures or entices a child will commit a felony offense if he or she has a prior conviction for the misdemeanor offense.

The bill also defines the term “convicted” for the purposes of the section to mean “a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld”.

The bill also amends current cross-references in the dangerous sexual felony offender statute (s. 794.0115, F.S.), and other statutes related to sexual offenders (ss. 943.0435, 944.606, 944.607, 948.32, F.S.) in order to specifically designate the felony luring or enticing offense. The new misdemeanor offense would not be included in these sections of statute which apply only to felonies.

Warrantless arrests

Currently, section 901.15(8), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed child abuse, as defined in s. 827.03, F.S. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action. HB 763 adds the luring or enticing a child offense to this statute. Because section 901.15, F.S. already authorizes an officer to arrest a person without a warrant for any felony offense if the officer has probable cause, the specific inclusion of section 787.025, F.S. to the warrantless arrest statute will serve to authorize an officer to arrest a person without a warrant for the newly created misdemeanor offense.

C. SECTION DIRECTORY:

Section 1. Amends s. 787.025, F.S.; creating misdemeanor offense.

Section 2. Amends s. 794.0115, F.S. to modify cross-reference

Section 3. Amends s. 943.0435, F.S. to modify cross-reference.

Section 4. Amends s. 944.606, F.S. to modify cross-reference.

Section 5. Amends s. 944.607, F.S. to modify cross-reference

Section 6. Amends s. 948.32, F.S. to modify cross-reference to section 787.025, F.S.

⁶ The court explained its holding as follows:

[T]he statute permits the State to prove the mens rea element of the offense (“for other than a lawful purpose”) by proving lack of parental consent for the child to enter the structure, dwelling or conveyance with the defendant. We cannot say with substantial assurance that a defendant’s unlawful intent can be so presumed. For example, a neighbor who invited a child into their house for a perfectly innocent reason is not likely to seek parental permission. Thus, section 787.025(2)(b) must be deleted as an unconstitutional statutory presumption.

Section 7. Amends s. 901.15, F.S.; adding offense of luring or enticing a child to warrantless arrest statute.

Section 8. Provides effective date of July 1, 2006.

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:

The bill creates a new misdemeanor offense that may have an indeterminate impact on county jail bed population.

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

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1 A bill to be entitled
 2 An act relating to luring or enticing a child; amending s.
 3 787.025, F.S.; defining the term "convicted"; providing
 4 that a person over the age of 18 who intentionally lures
 5 or entices, or attempts to lure or entice, a child under
 6 the age of 12 into a structure, dwelling, or conveyance
 7 for other than a lawful purpose commits a misdemeanor of
 8 the first degree; providing criminal penalties; providing
 9 that a person who has previously been convicted of this
 10 offense and who intentionally lures or entices, or
 11 attempts to lure or entice, a child under the age of 12
 12 into a structure, dwelling, or conveyance for other than a
 13 lawful purpose commits a felony of the third degree;
 14 providing criminal penalties; amending ss. 794.0115,
 15 943.0435, 944.606, 944.607, and 948.32, F.S.; conforming
 16 cross-references; amending s. 901.15, F.S.; authorizing a
 17 law enforcement officer to arrest a person without a
 18 warrant if there is probable cause to believe that the
 19 person is intentionally luring or enticing, or attempting
 20 to lure or entice, a child under the age of 12 into a
 21 structure, dwelling, or conveyance for other than a lawful
 22 purpose; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 787.025, Florida Statutes, is amended
 27 to read:

28 787.025 Luring or enticing a child.--

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29 (1) As used in this section, the term:

30 (a) "Structure" means a building of any kind, either
 31 temporary or permanent, which has a roof over it, together with
 32 the curtilage thereof.

33 (b) "Dwelling" means a building or conveyance of any kind,
 34 either temporary or permanent, mobile or immobile, which has a
 35 roof over it and is designed to be occupied by people lodging
 36 together therein at night, together with the curtilage thereof.

37 (c) "Conveyance" means any motor vehicle, ship, vessel,
 38 railroad car, trailer, aircraft, or sleeping car.

39 (d) "Convicted" means a determination of guilt which is
 40 the result of a trial or the entry of a plea of guilty or nolo
 41 contendere, regardless of whether adjudication is withheld.

42 (2) (a) A person over the age of 18 who intentionally lures
 43 or entices, or attempts to lure or entice, a child under the age
 44 of 12 into a structure, dwelling, or conveyance for other than a
 45 lawful purpose commits a misdemeanor of the first degree,
 46 punishable as provided in s. 775.082 or s. 775.083.

47 (b) A person over the age of 18 who, having been
 48 previously convicted of a violation of this section, chapter
 49 794, or s. 800.04, or a violation of a similar law of another
 50 jurisdiction, intentionally lures or entices, or attempts to
 51 lure or entice, a child under the age of 12 into a structure,
 52 dwelling, or conveyance for other than a lawful purpose commits
 53 a felony of the third degree, punishable as provided in s.
 54 775.082, s. 775.083, or s. 775.084.

55 (3) ~~(b)~~ For purposes of this section, the luring or
 56 enticing, or attempted luring or enticing, of a child under the

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57 age of 12 into a structure, dwelling, or conveyance without the
 58 consent of the child's parent or legal guardian is ~~shall be~~
 59 prima facie evidence of other than a lawful purpose.

60 (4) ~~(3)~~ It is an affirmative defense to a prosecution under
 61 this section that:

62 (a) The person reasonably believed that his or her action
 63 was necessary to prevent the child from being seriously injured.

64 (b) The person lured or enticed, or attempted to lure or
 65 entice, the child under the age of 12 into a structure,
 66 dwelling, or conveyance for a lawful purpose.

67 (c) The person's actions were reasonable under the
 68 circumstances and the defendant did not have any intent to harm
 69 the health, safety, or welfare of the child.

70 Section 2. Subsection (2) of section 794.0115, Florida
 71 Statutes, is amended to read:

72 794.0115 Dangerous sexual felony offender; mandatory
 73 sentencing.--

74 (2) Any person who is convicted of a violation of s.
 75 787.025(2)(b) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or (8);
 76 s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3),
 77 or (4); or s. 847.0145; or of any similar offense under a former
 78 designation, which offense the person committed when he or she
 79 was 18 years of age or older, and the person:

80 (a) Caused serious personal injury to the victim as a
 81 result of the commission of the offense;

82 (b) Used or threatened to use a deadly weapon during the
 83 commission of the offense;

84 (c) Victimized more than one person during the course of

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85 the criminal episode applicable to the offense;

86 (d) Committed the offense while under the jurisdiction of

87 a court for a felony offense under the laws of this state, for

88 an offense that is a felony in another jurisdiction, or for an

89 offense that would be a felony if that offense were committed in

90 this state; or

91 (e) Has previously been convicted of a violation of s.

92 787.025(2)(b) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or (8);

93 s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3),

94 or (4); s. 847.0145; of any offense under a former statutory

95 designation which is similar in elements to an offense described

96 in this paragraph; or of any offense that is a felony in another

97 jurisdiction, or would be a felony if that offense were

98 committed in this state, and which is similar in elements to an

99 offense described in this paragraph,

100

101 is a dangerous sexual felony offender, who must be sentenced to

102 a mandatory minimum term of 25 years imprisonment up to, and

103 including, life imprisonment.

104 Section 3. Paragraph (a) of subsection (1) of section

105 943.0435, Florida Statutes, is amended to read:

106 943.0435 Sexual offenders required to register with the

107 department; penalty.--

108 (1) As used in this section, the term:

109 (a) "Sexual offender" means a person who:

110 1. Has been convicted of committing, or attempting,

111 soliciting, or conspiring to commit, any of the criminal

112 offenses proscribed in the following statutes in this state or

113 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
 114 or s. 787.025(2)(b) ~~s. 787.025~~, where the victim is a minor and
 115 the defendant is not the victim's parent; chapter 794, excluding
 116 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s. 825.1025;
 117 s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s. 847.0138;
 118 s. 847.0145; or any similar offense committed in this state
 119 which has been redesignated from a former statute number to one
 120 of those listed in this subparagraph; and

121 2. Has been released on or after October 1, 1997, from the
 122 sanction imposed for any conviction of an offense described in
 123 subparagraph 1. For purposes of subparagraph 1., a sanction
 124 imposed in this state or in any other jurisdiction includes, but
 125 is not limited to, a fine, probation, community control, parole,
 126 conditional release, control release, or incarceration in a
 127 state prison, federal prison, private correctional facility, or
 128 local detention facility; or

129 3. Establishes or maintains a residence in this state and
 130 who has not been designated as a sexual predator by a court of
 131 this state but who has been designated as a sexual predator, as
 132 a sexually violent predator, or by another sexual offender
 133 designation in another state or jurisdiction and was, as a
 134 result of such designation, subjected to registration or
 135 community or public notification, or both, or would be if the
 136 person were a resident of that state or jurisdiction; or

137 4. Establishes or maintains a residence in this state who
 138 is in the custody or control of, or under the supervision of,
 139 any other state or jurisdiction as a result of a conviction for
 140 committing, or attempting, soliciting, or conspiring to commit,

141 any of the criminal offenses proscribed in the following
 142 statutes or similar offense in another jurisdiction: s. 787.01,
 143 s. 787.02, or s. 787.025(2)(b) ~~s. 787.025~~, where the victim is a
 144 minor and the defendant is not the victim's parent; chapter 794,
 145 excluding ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.
 146 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s.
 147 847.0138; s. 847.0145; or any similar offense committed in this
 148 state which has been redesignated from a former statute number
 149 to one of those listed in this subparagraph.

150 Section 4. Paragraph (b) of subsection (1) of section
 151 944.606, Florida Statutes, is amended to read:

152 944.606 Sexual offenders; notification upon release.--

153 (1) As used in this section:

154 (b) "Sexual offender" means a person who has been
 155 convicted of committing, or attempting, soliciting, or
 156 conspiring to commit, any of the criminal offenses proscribed in
 157 the following statutes in this state or similar offenses in
 158 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(b)
 159 ~~s. 787.025~~, where the victim is a minor and the defendant is not
 160 the victim's parent; chapter 794, excluding ss. 794.011(10) and
 161 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
 162 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
 163 any similar offense committed in this state which has been
 164 redesignated from a former statute number to one of those listed
 165 in this subsection, when the department has received verified
 166 information regarding such conviction; an offender's
 167 computerized criminal history record is not, in and of itself,
 168 verified information.

169 Section 5. Paragraph (a) of subsection (1) of section
 170 944.607, Florida Statutes, is amended to read:

171 944.607 Notification to Department of Law Enforcement of
 172 information on sexual offenders.--

173 (1) As used in this section, the term:

174 (a) "Sexual offender" means a person who is in the custody
 175 or control of, or under the supervision of, the department or is
 176 in the custody of a private correctional facility:

177 1. On or after October 1, 1997, as a result of a
 178 conviction for committing, or attempting, soliciting, or
 179 conspiring to commit, any of the criminal offenses proscribed in
 180 the following statutes in this state or similar offenses in
 181 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(b)
 182 ~~s. 787.025~~, where the victim is a minor and the defendant is not
 183 the victim's parent; chapter 794, excluding ss. 794.011(10) and
 184 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
 185 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
 186 any similar offense committed in this state which has been
 187 redesignated from a former statute number to one of those listed
 188 in this paragraph; or

189 2. Who establishes or maintains a residence in this state
 190 and who has not been designated as a sexual predator by a court
 191 of this state but who has been designated as a sexual predator,
 192 as a sexually violent predator, or by another sexual offender
 193 designation in another state or jurisdiction and was, as a
 194 result of such designation, subjected to registration or
 195 community or public notification, or both, or would be if the
 196 person were a resident of that state or jurisdiction.

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197 Section 6. Subsection (1) of section 948.32, Florida
 198 Statutes, is amended to read:

199 948.32 Requirements of law enforcement agency upon arrest
 200 of persons for certain sex offenses.--

201 (1) When any state or local law enforcement agency
 202 investigates or arrests a person for committing, or attempting,
 203 soliciting, or conspiring to commit, a violation of s.
 204 787.025(2)(b) ~~s. 787.025~~, chapter 794, s. 796.03, s. 800.04, s.
 205 827.071, s. 847.0133, s. 847.0135, or s. 847.0145, the law
 206 enforcement agency shall contact the Department of Corrections
 207 to verify whether the person under investigation or under arrest
 208 is on probation, community control, parole, conditional release,
 209 or control release.

210 Section 7. Subsection (8) of section 901.15, Florida
 211 Statutes, is amended to read:

212 901.15 When arrest by officer without warrant is
 213 lawful.--A law enforcement officer may arrest a person without a
 214 warrant when:

215 (8) There is probable cause to believe that the person has
 216 committed child abuse, as defined in s. 827.03, or has violated
 217 s. 787.025, relating to luring or enticing a child for unlawful
 218 purposes. The decision to arrest does ~~shall~~ not require consent
 219 of the victim or consideration of the relationship of the
 220 parties. It is the public policy of this state to protect abused
 221 children by strongly encouraging the arrest and prosecution of
 222 persons who commit child abuse. A law enforcement officer who
 223 acts in good faith and exercises due care in making an arrest
 224 under this subsection is immune from civil liability that

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225 | otherwise might result by reason of his or her action.

226 | Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-04 Youthful Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Criminal Justice Committee, Cunningham, Kramer. Rows 2-6 are empty.

SUMMARY ANALYSIS

The Youthful Offender Act provides a sentencing alternative for an offender guilty of a non-capital or non-life felony that was committed before his or her 21st birthday. If classified as a youthful offender, the offender may only receive one of the following four types of sanctions: (1) probation or community control; (2) incarceration for up to 364 days, as a condition of probation or community control; (3) a split sentence that provides for incarceration followed by probation or community control; or (4) commitment to the custody of the Department of Corrections. The total sanction may not exceed six years.

The Department of Corrections must offer a basic training program for youthful offenders. If an offender successfully completes basic training, the court must place the offender on probation. If the offender later violates that probation, the court is limited to sentencing the offender to no more 364 days in jail, rather than choosing one of the other sanctions originally available to the court in the youthful offender's case.

This bill amends s. 958.045(5)(c), F.S., to remove the phrase "as a condition of probation." This amendment will have the effect of removing the 364-day jail limit found to exist by Florida courts and will permit the court to sentence a youthful offender who has violated probation after completing basic training to any of the four sanctions that it could have originally imposed.

The bill takes effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility → Under the bill, sanctions greater than those authorized in current law may be imposed by a trial court for an offender who has violated his or her probation following the completion of the Department of Correction's (DOC's) basic training program.

B. EFFECT OF PROPOSED CHANGES:

Youthful Offenders

Chapter 958, F.S., contains Florida's Youthful Offender Act, the purpose of which is to provide a sentencing alternative¹ that will improve the chances for rehabilitation of an offender who: (1) is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.; (2) has entered a plea to, or has been found guilty of, a felony, other than a capital or life felony, that was committed before the offender's 21st birthday; and (3) has not been previously sentenced as a youthful offender by a court.²

Section 958.04, F.S., provides that courts who elect to adjudicate and sentence a defendant as a youthful offender may: (1) impose probation or community control; (2) impose incarceration for up to 364 days, as a condition of probation or community control; (3) impose a split sentence that provides for incarceration followed by probation or community control; or (4) commit the youthful offender to the custody of the DOC.³ These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender⁴, and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.⁵

In cases where the court has elected adult, rather than youthful offender, adjudication and sentencing, the DOC may administratively classify a defendant as a youthful offender if that person: (1) is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.; (2) has not been previously sentenced as a youthful offender by a court; (3) is less than 24 years old; and (4) has received a sentence that does not exceed 10 years.⁶ Unlike court youthful offender adjudication, which results in limited sentence length and the sealing of court records, DOC youthful offender classification only determines the programs and institutions in which youthful offenders may be placed.⁷ Such DOC classification does not affect the original sentence imposed by the court.⁸

Basic Training

Section 958.045, F.S., requires the DOC to create a basic training program for youthful offenders (both those adjudicated as such by the court and those classified as such by the DOC), which lasts at least 120 days and includes marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training, personal development training, general education and adult basic education courses, and drug counseling and other rehabilitation programs.⁹ In determining eligibility for the basic training program, the DOC must find that a youthful offender: (1) has no physical limitations that preclude

¹ In *Allen v. State*, 526 So.2d 69, 70 (Fla. 1988), the Court explained that youthful offender sentencing is more stringent than that of the juvenile system, but less harsh than the adult system.

² ss. 958.021, 958.04(1), F.S.

³ s. 958.04(2), F.S.

⁴ *Whitlock v. State*, 404 So.2d 795 (Fla. 3rd DCA 1981).

⁵ s. 958.04(2), F.S.

⁶ ss. 958.03(5), 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1st DCA 2002).

⁷ *Lezcano v. State*, 586 So.2d 1287 (Fla. 3rd DCA 1991).

⁸ *Johnson v. State*, 586 So.2d 1322, 1324-1325 (Fla. 2nd DCA 1991).

⁹ s. 958.045, F.S.

strenuous activity; (2) is not impaired; and (3) has not previously been incarcerated in a federal or state correctional facility.¹⁰ Additionally, the DOC must consider the offender's criminal history and potential rehabilitative benefits of "shock" incarceration.¹¹ If the statutory criteria are satisfied and space is available, the DOC must submit a written request to the sentencing court's seeking approval for placement of the youthful offender in a basic training program.¹² If a youthful offender satisfactorily completes basic training: (1) the court must issue an order modifying the offender's sentence and placing the offender on probation; and (2) the releasing authority must establish a release date for the offender within 30 days following program completion.¹³

In the event a youthful offender subsequently violates his or her probation after completing basic training, the court, pursuant to s. 958.045(5)(c), F.S., may "... revoke probation and impose any sentence that it might have originally imposed **as a condition of probation.**" (emphasis added). Section 958.04(2)(b), F.S., provides that one of the sentencing options that a court may originally impose is, "... a period of incarceration **as a condition of probation** ...," for up to 364 days. (emphasis added).¹⁴ The Fourth District Court of Appeals has explained that, "Read together, these two [sections of] statutes have been consistently construed as limiting to 364 days the period of incarceration which may be imposed following successful completion of basic training."¹⁵ Most recently in March 2004, the Third District Court of Appeals stated:

The language of section 958.045(5)(c) may warrant further review by the legislature. We doubt that the legislature actually intended the result this language has created. We are inclined to believe that the legislature intended to permit the court to impose any sentence "that it might have originally imposed." Indeed, a judge may be hesitant to recommend boot camp in an effort to rehabilitate a youth if the judge realizes that the youth's sentence upon a future violation of probation will be limited to such a short term of incarceration. Nevertheless, the legislature has not amended the statutes since our opinion in *Bloodworth*, 769 So.2d 1117, and we are constrained by the plain language of the statutes.¹⁶

Effect of Bill

This bill amends s. 958.045(5)(c), F.S., to remove the phrase "as a condition of probation." This amendment will have the effect of removing the 364-day jail limit found to exist by Florida courts and will permit the court to sentence a youthful offender who has violated probation after completing basic training to any of the four sentencing alternatives that were originally available to the judge under s. 958.04(2), F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 958.045, F.S., deleting a provision limiting certain sentencing options available to the court following a violation of the conditions of probation by a youthful offender.

Section 2. This act takes effect July 1, 2006.

¹⁰ s. 958.045(2), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ ss. 958.045(5)(c) and (8)(d), F.S.

¹⁴ *Bloodworth v. State*, 769 So.2d 1117 (Fla. 2nd DCA 2000); *Burkett v. State*, 816 So.2d 767 (Fla. 1st DCA 2002).

¹⁵ *Lee v. State*, 884 So.2d 460, 461 (Fla. 4th DCA 2004).

¹⁶ *Blaxton v. State*, 868 So.2d 620, 621 (Fla. 2nd DCA 2004).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

In their analysis of this PCB, the Department of Corrections states that approximately 200 youthful offenders successfully complete basic training each year and are released on supervision. Of these, approximately 22 percent violate the conditions of their supervision. In most instances, pursuant to current law, violators are sentenced to up to 364 days in county jail. This bill may have a prison bed impact in that it will permit youthful offenders who have violated probation following completion of DOC's basic training program to be sentenced to prison rather than jail.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Because youthful offenders who have violated probation following completion of DOC's basic training program may be sentenced to prison rather than jail, the bill may result in an indeterminate reduction in local government costs for jails.

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 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:

Art. I, s. 10, Fla. Const., prohibits passage of an ex post facto law. Accordingly, the portion of this bill increasing the possible penalty for violation of probation or community control by a basic training program graduate may only apply to an offender who committed his or her offense on or after the effective date of the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A 2005, Senate Criminal Justice staff survey of circuit court judges revealed that the vast majority of judges want greater discretion in sentencing youthful offenders who violate probation following completion of DOC's basic training program. The survey further revealed that, as a result of the sentencing limitation, many judges are reluctant to sentence defendants as youthful offenders or to approve a youthful offender's placement in basic training. After reviewing the statutes, caselaw, and survey responses, the Senate Criminal Justice Committee concluded that s. 958.045(5)(c), F.S., be amended to remove the language limiting the trial court's discretion to sentence a youthful offender who violates the terms of his or her probation after completing basic training.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

PCB CRJU 06-04

ORIGINAL

2006

1 A bill to be entitled
 2 An act relating to youthful offenders; amending s.
 3 958.045, F.S.; deleting a provision limiting certain
 4 sentencing options available to the court following a
 5 violation of the conditions of probation by a youthful
 6 offender; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (c) of subsection (5) of section
 11 958.045, Florida Statutes, is amended to read:

12 958.045 Youthful offender basic training program.--

13 (5)

14 (c) The portion of the sentence served prior to placement
 15 in the basic training program may not be counted toward program
 16 completion. Upon the offender's completion of the basic training
 17 program, the department shall submit a report to the court that
 18 describes the offender's performance. If the offender's
 19 performance has been satisfactory, the court shall issue an order
 20 modifying the sentence imposed and placing the offender on
 21 probation. The term of probation may include placement in a
 22 community residential program. If the offender violates the
 23 conditions of probation, the court may revoke probation and
 24 impose any sentence that it might have originally imposed ~~as a~~
 25 ~~condition of probation.~~

26 Section 2. This act shall take effect July 1, 2006.

27