CRIMINAL JUSTICE COMMITTEE MEETING

Wednesday, March 8, 2006
10:00 a.m. - 12:00 p.m.
404 House Office Building

Revised

MEETING PACKET

Allan G. Bense
Speaker

Dick Kravitz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time:	Wednesday, March 08, 2006 10:00 am
End Date and Time:	Wednesday, March 08, 2006 12:00 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following proposed committee bill(s):

PCB CRJU 06-03a -- Sexual Predators and Offenders
PCB CRJU 06-04 -- Youthful Offenders

Consideration of the following bill(s):

HB 251 High-Risk Offenders by Allen
HB 463 Testing of Inmates for HIV Infection in County and Municipal Detention Facilities by Richardson
HB 669 Criminal Justice Standards and Training Commission by Dean
HB 719 Sealing of Criminal Records by Planas
HB 807 Criminal Acts Committed During a State of Emergency by Benson
HB 809 Assault or Battery on Homeless Persons by Taylor
HB 815 Strangulation by Russell
HB 829 Prison Industries by Holloway
HB 871 Telephone Calling Records by Ryan

Consideration of the following proposed House combined bill(s):

PHCB CRJU 06-01 -- (HB 515 and 589)--Resale of Tickets

NOTICE FINALIZED on 03/06/2006 16:00 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, March 8, 2006
404 House Office Building
10:00 a.m. – 12:00 p.m.

I. Opening remarks by Chair Kravitz

II. Roll call

III. Consideration of the following proposed committee bill(s):

- **PCB CRJU 06-03a—Sexual Predators and Offenders**
- **PCB CRJU 06-04—Youthful Offenders**

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

IV. Consideration of the following bill(s):

- **HB 251 High-Risk Offenders by Allen**
- **HB 463 Testing of Inmates for HIV Infection in County and Municipal Detention Facilities by Richardson**
- **HB 669 Criminal Justice Standards and Training Commission by Dean**
- **HB 719 Sealing of Criminal Records by Planas**
- **HB 807 Criminal Acts Committed During a State of Emergency by Benson**
- **HB 809 Assault or Battery on Homeless Persons by Taylor**
- **HB 815 Strangulation by Russell**
- **HB 829 Prison Industries by Holloway**
- **HB 871 Telephone Calling Records by Ryan**

V. Consideration of the following proposed House combined bill(s):

- **PHCB CRJU 06-01—(HBs 515 and 589)—Resale of Tickets**

VI. Closing comments / Meeting adjourned

PCB CRJU 06-03a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-03a Sexual Predators and Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee		Kramer	Kramer
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Note: This analysis is drafted to the "A" version of this proposed committee bill.

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. The bill had an effective date of September 1, 2005. Section 21 of the act amended section 1012.465, F.S. to require noninstructional contractual personnel who are permitted access on school grounds when students are present to meet level 2 screening requirements. After the legislative session, school districts and businesses contracting with school districts expressed concerns with this provision of the bill.

Currently, a sexual predator or a sexual offender is required to obtain a driver's license or identification card as a part of the registration process. The bill requires that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have markings on the front of the card indicating the section of statute under which they are registered. The bill provides that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings are not displayed or have been altered. A violation of this provision will be a third degree felony.

The bill provides that a sexual predator or sexual offender is not permitted to be on school grounds for business or employment purposes. The bill requires a person on school grounds for business or employment purposes (other than individuals otherwise required to undergo a federal and state criminal history check) to carry his or her driver's license or identification card and present it upon request. The bill provides that before allowing an employee to have access to school grounds, a contractor will be required to provide the school district with certification that the contractor has examined their employee's driver's license or identification card and confirmed that the driver's license or identification card does not indicate that the person is a sexual predator or sexual offender; and has checked the individual against the National Sex Offender Public Registry and confirmed that nothing in that registry requires that the individual be denied access to school grounds.

The bill also authorizes a superintendent, on a case-by-case basis to require any authorized individual to undergo a fingerprint-based background screening and meet level 2 screening requirements.

Except where otherwise provided, the bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may limit the number of individuals who are required to undergo a state and federal criminal history check.

Safeguard individual liberty/Promote personal responsibility: The bill will require sexual predators and sexual offenders to have a marking on their driver's license or identification card indicating the section of statute under which they are registered.

B. EFFECT OF PROPOSED CHANGES:

Background

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Additionally, section 21 of the act amended section 1012.465, F.S. Prior to this bill, this section had required noninstructional school district employees or contractual personnel who had direct contract with students or had access to or control of school funds to meet level 2 screening requirements as described in s. 1012.32, F.S.[1] The bill expanded this requirement to contractual personnel who are permitted access on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

A level 2 screening includes a statewide criminal records check through the Florida Department of Law Enforcement (FDLE) and a federal criminal records check through the Federal Bureau of Investigation (FBI).[2] Section 1012.32, F.S. provides persons "found through fingerprint processing to have been convicted of a crime involving *moral turpitude* shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students."

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the federal check. FDLE sends the results of the state and federal check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

After the legislative session, school districts and businesses that contract with school districts expressed difficulties in implementing the criminal history screening provisions of the bill. The most common complaints can be characterized as follows:

---

[1] Additionally, section 943.04351, F.S .requires that "a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement".

[2] See ss. 1012.465(2) and 435.04, F.S.

- Many contractors work in multiple school districts throughout the state and have been required to undergo a separate criminal history check for each school district. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.
- Contractors claimed that some school districts have charged processing fees for a criminal history screening that are cost prohibitive, particularly if a business has many employees who conduct business in multiple school districts.
- School districts and contractors expressed confusion as to who should be considered contractual personnel and what should be considered school grounds.
- Because there is no statutory definition of the term "moral turpitude", interpretation is left to the school districts. Contractors have claimed that this results in inconsistency – based on different interpretations of the phrase, a contractor could be permitted to work in one school district and barred from working in another. Further, contractors have complained that they have been barred from working in a school district for what they consider minor criminal offenses or offenses that were committed many years ago.
- Contractors who are required to undergo level 2 checks for their other employment have complained that school districts have required them to undergo an additional screening to be permitted on school grounds when students are present.

FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

Sexual Predator Registration: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
    a. kidnapping or false imprisonment[3] where the victim is a minor and the defendant is not the victim's parent;
    b. sexual battery;[4]
    c. lewd or lascivious offenses;[5]
    d. selling or buying a minors for child pornography;[6] or
    e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
    a. kidnapping, false imprisonment or luring or enticing a child[7] where the victim is a minor and the defendant is not the victim's parent,
    b. sexual battery;[8]
    c. procuring a person under the age of 18 for prostitution;[9]

[3] s. 787.01, F.S. or s. 787.02, F.S.,
[4] See chapter 794. F.S.
[5] s. 800.04, F.S.
[6] s. 847.0145, F.S.
[7] s. 787.025, F.S.
[8] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[9] s. 796.03, F.S.

d. lewd or lascivious offenses;
e. lewd or lascivious battery on an elderly person;[10]
f. promoting sexual performance by a child;[11]
g. selling or buying a minors for child pornography; or
h. a violation of a similar law of another jurisdiction.[12]

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.[13]

A sexual predator's failure to comply with registration requirements is a third degree felony.[14] A sexual predator who has been convicted of one a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.[15]

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

---

[10] s. 825.1025(2)(b), F.S.
[11] s. 827.071, F.S.
[12] Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]
[13] s. 775.21(8), F.S.
[14] s. 775.21(10), F.S.
[15] S. 775.21(10)(b), F.S.

a. kidnapping, false imprisonment or luring or enticing a child[16] where the victim is a minor and the defendant is not the victim's parent;
b. sexual battery;[17]
c. procuring a person under the age of 18 for prostitution;[18]
d. lewd or lascivious offenses;
e. lewd or lascivious battery on an elderly person;[19]
f. promoting sexual performance by a child;[20]
g. selling or buying a minors for child pornography;
h. selling or showing obscenity to a minor;[21]
i. using a computer to solicit sexual conduct of or with a minor;[22]
j. transmitting child pornography;[23]
k. transmitting material harmful to minors;[24]
l. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

The United States Department of Justice has recently developed the "National Sex Offender Public Registry" - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual's name.[25] According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

Provisions of PCB CRJU 06-03-A

Driver's license/identification card: The bill amends s. 322.141, F.S. effective August 1, 2006, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have on the front of the card the following:

- For a person designated as a sexual predator under s. 775.21, the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, the marking "943.0435, F.S."

The bill amends s. 322.212, F.S., effective August 15, 2006, to provide that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141 are not displayed or have been altered. A violation of this provision will be a third degree felony.[26]

The bill amends the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3).

Background screening: As discussed above, the Jessica Lunsford Act, s. 1012.465, F.S. added the requirement that noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present be required to undergo level 2 screening to the

[16] s. 787.025, F.S.
[17] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[18] s. 796.03, F.S.
[19] s. 825.1025(2)(b), F.S.
[20] s. 827.071, F.S.
[21] s. 847.0133, F.S.
[22] s. 847.0135, F.S.
[23] s. 847.0137, F.S.
[24] s. 847.0138, F.S.
[25] http://www.nsopr.gov/
[26] s. 322.

previous requirement applying to noninstructional school district employees or contractual personnel who have direct contact with students or access to school funds.

The bill amends this section to provide that the following individuals must meet level 2 screening requirements as described in s. 1012.32:

1. Noninstructional school district employees who have direct contact with students.
2. Other individuals who are specifically authorized by the school district to perform services for compensation that involve direct contact with students.
3. Noninstructional school district personnel who have access to or control of school funds.
4. Any other individuals who, for compensation, are authorized to have access to or control of school funds.

The bill creates s. 1012.4561, F.S. to provide that an authorized individual who is a sexual predator or sexual offender or who appears on the National Sex Offender Public Registry maintained by the United State Department of Justice shall not be entitled to be present on school grounds. The term "authorized individual" is defined as "any individual who is authorized to have access to school grounds[27] for *business or employment purposes* when students are present, other than a school district employee or any other individual referred to in s. 1012.465(1).[28] An authorized individual who is present on school grounds in violation of this provision commits a first degree misdemeanor.

The bill provides that before allowing an authorized individual to have access to school grounds, a contractor[29] must provide the school district with certification that the contractor has:

1. For an individual who holds a state driver's license or identification card, examined the individual's driver's license or identification card and confirmed that the driver's license or identification card does not indicate that the person is a sexual predator or subject to registration as a sexual offender; and
2. Checked the individual against the National Sex Offender Public Registry and confirmed that nothing in that registry requires that the individual be denied access to school grounds.

The contractor will be required to make its records supporting the certification available for inspection at the request of the school district. A person who knowingly and willfully violates this section and who hold a professional license under chapter 455 or 465 commits an act constituting grounds for discipline.

Each authorized individual who has been issued a state driver's license or identification card must possess the card at all times while working on school grounds and must show the card to any school district employee upon request. Each authorized individual who has not been issued or does not have in his or her possession a state driver's license or identification card will be required to submit to a

---

[27] The term "school grounds" is defined by the bill as follows:
"School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, together with the school district land on which the buildings are located. The term "school grounds" does not include:
1. Any other facilities or locations where school classes or activities may be located or take place;
2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school or contiguous school district land during any time period in which students are not permitted access; or
3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004.

[28] As described above, s. 1012.465(1) will require level 2 criminal history checks for certain individuals.

[29] The bill defines the term "contractor" as follows:
"Contractor" means a person or an entity, regardless of form, that is engaged by the school district to provide goods or services and that, in furtherance of such engagement, employs authorized individuals or subcontracts with others who employ authorized individuals. The term "contractor" also includes an authorized individual who is directly engaged by the school district to provide goods or services.

check against the National Sex Offender Public Registry upon request of any school district employee to confirm that nothing in that registry requires that the individual be denied access to school grounds.

Each authorized individual must inform his or her employer or the party with whom he or she is under contract within 48 hours if charged, while he or she is employed or under contract in that capacity, with an offense for which a conviction could lead to the person being designated a sexual predator or subject to registration as a sexual offender.

The bill also authorizes a superintendent, on a case-by-case basis to require any authorized individual to undergo a fingerprint-based background screening and meet level 2 screening requirements as described in s. 1012.32. A recheck of such authorized individual must be performed once every 3 years. The bill requires that for the initial check, each individual subject to the criminal history check must file a set of fingerprints. Fingerprints will be submitted to FDLE for state processing and to the Federal Bureau of Investigation (FBI) for federal processing. The results of each fingerprint-based check must be reported to the requesting district.

The cost of the check and any re-check may be borne by the district school board, the individual fingerprinted or the individual's employer. Any fee for the initial check and each re-check charged by a district school board may not exceed the sum of fees charged by FDLE, the FBI, and the Department of Education, plus an additional administrative fee specified by the school board, which may not exceed 25 percent of the sum of the other fees specified in this paragraph. Currently, the combined fee for the FDLE and FBI check is $47 - $23 for the FDLE check and $24 for the FBI check.

The bill requires FDLE to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts through a secure website or other electronic means. The bill authorizes FDLE to adopt rules to implement this provision. For any required checks during the 3 year period subsequent to the initial check or recheck, the individual must inform the district school board requiring the check that he or she has already completed a current records check and that district must, without charge to the individual, check the individual's history using the shared system described below.

The bill requires FDLE to retain the fingerprints submitted under this provision in the statewide automated fingerprint identification system, authorizes FDLE to search all arrest fingerprint cards received against the retained fingerprints and requires the fingerprints to be purged from the statewide system three years from the date they are submitted.

The bill authorizes school boards and FDLE to adopt rules to implement the provisions of the bill.

The bill provides that the newly created s. 1012.4561, F.S. does not apply to law enforcement officers, as defined in s. 943.10, Florida Statutes, assigned by their employing agencies to work on school grounds as part of their official duties or first responder personnel responding to a request for assistance. For this purpose, the term "first responder personnel" includes law enforcement officers, as defined in s. 943.10, emergency medical technicians, paramedics, and firefighters.

The bill further provides that no provision of the newly created s. 1012.4561, F.S. shall give rise to any private civil liability, nor will the section be construed to create a private cause of action for monetary damages.

The bill has an effective date of July 1, 2006 except as otherwise provided in the act.

C. SECTION DIRECTORY:

Section 1. Amends s. 322.141, F.S. to require markings on driver's licenses or identification cards of sexual predators and sexual offenders.

Section 2. Amends s. 322.212, F.S., to make it unlawful for person to have in his or her possession driver's license or identification card without required markings.

Section 3. Amends s. 775.21, F.S. to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 4. Amends s. 943.0435, F.S. to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 5. Amends s. 944.607, F.S. to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 6. Amends s. 1012.465, F.S. to specify individuals required to meet level 2 screening requirements.

Section 7. Creates s. 1012.4561, F.S. relating to individuals permitted access to school grounds for business or employment purposes when students are present.

Section 8. Provides effective date of July 1, 2006 except as otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures: The following information was provided by the Department of Highway Safety and Motor Vehicles regarding the provision of the bill relating to the driver's license or identification card of sexual predators or sexual offenders.

	Registered Sexual Predators	3,708
	Registered Sexual Offenders	27,023
	Total	30,731
Option 1	Card Cost $1.56	$ 47,940.00
w/ standard postage	Postage (1st Class)	$ 9,465.00
	Programming	$ 30,000.00
	Total	**$ 87,405.00**
Option 2	Card Cost $1.56	$ 47,940.00
w/ return receipt	Postage (Certified/Return receipt)	$ 133,372.00
	Programming	$ 30,000.00
	Total	**$ 211,312.00**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor if required by a district superintendent. Currently, the combined fee for the FDLE and FBI check is $47 - $23 to FDLE and $24 to FBI. The bill provides that any fee for a check of state and federal criminal history that is required by a superintendent under the newly created s. 1012.4561 may not exceed the sum of fees charged by FDLE, the FBI and DOC, plus an additional administrative fee specified by the school board which may not exceed 25 percent of the sum of the other specified fees.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may limit the number of individuals who are required to undergo the state and federal criminal history screening required under the Jessica Lunsford Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to adopt rules to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts. The bill authorizes a school board to adopt rules to implement the provisions of the newly created s. 1012.4561, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to sexual predators and offenders; amending s. 322.141, F.S.; requiring distinctive markings for driver's licenses and identification cards issued to persons who are designated as sexual predators or subject to registration as sexual offenders; amending s. 322.212, F.S.; prohibiting the alteration of sexual predator or sexual offender markings on driver's licenses or identification cards, for which there are criminal penalties; amending s. 775.21, F.S.; requiring sexual predators to obtain a distinctive driver's license or identification card; amending s. 943.0435, F.S.; requiring sexual offenders to obtain a distinctive driver's license or identification card; amending s. 944.607, F.S.; requiring specified offenders who are under the supervision of the Department of Corrections but are not incarcerated to obtain a distinctive driver's license or identification card; amending s. 1012.465, F.S.; revising provisions relating to background screenings of certain noninstructional school district employees and other specified individuals; creating s. 1012.4561, F.S.; providing definitions; prohibiting authorized individuals who are designated as sexual predators, subject to registration as a sexual offenders, or who appear on the National Sex Offender Public Registry from being present on school grounds; providing criminal penalties; requiring authorized individuals working on school grounds to be subject to a check of Florida driver's licenses or identification cards for the purposes of ascertaining

their sexual offender and sexual predator status and checked against the National Sex Offender Public Registry; providing duties for certain authorized individuals; providing penalties; allowing school superintendents on a case-by-case basis to require certain individuals to undergo a fingerprint-based background screening to meet specified standards; providing for submission of fingerprints; providing for fees; requiring creation of an electronic system for sharing screening results among school districts; providing for storage, use, and purging of fingerprints submitted for background checks; providing rulemaking authority to the Department of Law Enforcement; requiring certain individuals to report certain offenses; providing penalties; providing an exception; providing that no provision of the section shall give rise to private civil liability or create a private cause of action for monetary damages; providing rulemaking authority to the school boards; providing effective dates.

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

Section 1. Effective August 1, 2006, subsection (3) is added to section 322.141, Florida Statutes, to read:

322.141 Color or markings of certain licenses or identification cards.--

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the department to persons who are designated as sexual predators under s. 775.21 or subject to registration as sexual offenders

under s. 943.0435 shall have on the front of the license the following:

(a) For a person designated as a sexual predator under s. 775.21, the marking "775.21, F.S."

(b) For a person subject to registration as a sexual offender under s. 943.0435, the marking "943.0435, F.S."

Section 2. Effective August 15, 2006, paragraph (c) is added to subsection (5) of section 322.212, Florida Statutes, to read:

322.212 Unauthorized possession of, and other unlawful acts in relation to, driver's license or identification card.--

(5)

(c) It is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141 are not displayed or have been altered.

Section 3. Paragraph (f) of subsection (6) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.--

(6) REGISTRATION.--

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. <u>The</u>

driver's license or identification card issued shall comply with s. 322.141(3).

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

The sheriff shall promptly provide to the department the information received from the sexual predator.

Section 4. Subsection (3) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.--

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles, unless a driver's license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver's license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed

license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued shall comply with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

Section 5. Subsection (9) of section 944.607, Florida Statutes, is amended to read:

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

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver's license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver's license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 6. Subsection (1) of section 1012.465, Florida Statutes, is amended to read:

1012.465 Background screening requirements for certain noninstructional school district employees and other specified individuals ~~contractors~~.--

(1) The following individuals ~~Noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds~~ must meet level 2 screening requirements as described in s. 1012.32:~~.~~

(a) Noninstructional school district employees who have direct contact with students.

(b) Other individuals who are specifically authorized by the school district to perform services for compensation that involve direct contact with students.

(c) Noninstructional school district personnel who have access to or control of school funds.

(d) Any other individuals who, for compensation, are authorized to have access to or control of school funds.

~~Contractual personnel shall include any vendor, individual, or entity under contract with the school board.~~

Section 7. Section 1012.4561, Florida Statutes, is created to read:

1012.4561 Individuals permitted access to school grounds for business or employment purposes when students are present; exclusions.--

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

(a) "Authorized individual" means any individual who is authorized to have access to school grounds for business or employment purposes when students are present, other than a

school district employee or any other individual referred to in s. 1012.465(1).

(b) "Contractor" means a person or an entity, regardless of form, that is engaged by the school district to provide goods or services and that, in furtherance of such engagement, employs authorized individuals or subcontracts with others who employ authorized individuals. The term "contractor" also includes an authorized individual who is directly engaged by the school district to provide goods or services.

(c) "School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, together with the school district land on which the buildings are located. The term "school grounds" does not include:

1. Any other facilities or locations where school classes or activities may be located or take place;

2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school or contiguous school district land during any time period in which students are not permitted access; or

3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004.

(2) An authorized individual who is designated as a sexual predator under s. 775.21, who is subject to registration as a sexual offender under s. 943.0435, or who appears on the National Sex Offender Public Registry maintained by the United States Department of Justice shall not be entitled to be present on

school grounds. An authorized individual who is present on school grounds in violation of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) Before allowing an authorized individual to have access to school grounds, a contractor must provide the school district with certification that the contractor has:

1. For an individual who holds a Florida driver's license or identification card, examined the individual's driver's license or identification card and confirmed that the driver's license or identification card does not have the markings required by s. 322.141 indicating that the person is a sexual predator or subject to registration as a sexual offender.

2. Checked the individual against the National Sex Offender Public Registry and confirmed that nothing in that registry requires that the individual be denied access to school grounds.

The contractor shall make its records supporting the certification available for inspection at the request of the school district.

(b)1. Each authorized individual who has been issued a Florida driver's license or identification card shall possess the card at all times while working on school grounds and shall show it to any school district employee upon request.

2. Each authorized individual who has not been issued or does not have in his or her possession a Florida driver's license or identification card shall submit to a check against the National Sex Offender Public Registry upon request of any school district employee to confirm that nothing in that registry

requires that the individual be denied access to school grounds.

(c) Any person who knowingly and willfully violates this subsection and who holds a professional license under chapter 455 commits an act constituting grounds for discipline as described in s. 455.227(1)(a). Any person who knowingly and willfully violates this subsection and who holds a professional license under chapter 456 commits an act constituting grounds for discipline as described in s. 456.072(1)(a).

(d) Each authorized individual must inform his or her employer or the party with whom he or she is under contract within 48 hours if charged, while he or she is employed or under contract in that capacity, with an offense for which a conviction could lead to the person being designated as a sexual predator under s. 775.21 or subject to registration as a sexual offender under s. 943.0435. A person who willfully fails to comply with this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) On a case-by-case basis, a superintendent may require any authorized individual to undergo a fingerprint-based background screening and meet level 2 screening requirements as described in s. 1012.32. A recheck of such authorized individual shall be performed at least once every 3 years.

(a) For the initial check of each individual subject to the background criminal history check requirements in this subsection, the individual shall file a complete set of fingerprints. Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing.

(b) The results of each fingerprint-based background screening shall be reported to the requesting district.

(c) The cost of the initial check of state and federal criminal history and a recheck every 3 years may be borne by the district school board, the individual fingerprinted, or the individual's employer. Any fee for the initial check of state and federal criminal history and a recheck every 3 years per person fingerprinted charged by a district school board may not exceed the sum of fees charged by the Department of Law Enforcement, the Federal Bureau of Investigation, and the Department of Education, plus an additional administrative fee specified by the school board, which may not exceed 25 percent of the sum of the other fees specified in this paragraph.

(d) For any required checks during the 3-year period subsequent to the initial check or the 3-year period subsequent to a recheck, the individual shall inform the district school board requiring the check that he or she has already completed a current records check and that district shall, without charge to the individual, check the individual's history using the shared system provided in subsection (5).

(e) An authorized individual who is subject to the case-by-case screening provisions of this subsection must inform the contractor and the school district within 48 hours if he or she is charged with any offense that would require him or her to be barred from school grounds under subsection (2). A person who willfully fails to comply with this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) The Department of Law Enforcement shall implement a system that allows for criminal history record information provided to a school district to be shared with other school districts through a secure website or other electronic means.

(b) As authorized by law, the Department of Law Enforcement shall retain the fingerprints submitted by the school districts pursuant to this subsection to the Department of Law Enforcement for a criminal history background screening in a manner provided by rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system under s. 943.051.

(c) As authorized by law, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b).

(d) School districts may participate in the search process described in this subsection by payment of an annual fee to the Department of Law Enforcement.

(e) A fingerprint retained pursuant to this subsection shall be purged from the automated fingerprint identification system 3 years from the date the fingerprint was initially submitted. The Department of Law Enforcement shall set the amount of the annual fee to be imposed upon each participating agency for performing these searches and establishing the procedures for the retention of fingerprints and the dissemination of search results. The fee may be borne as provided by law. Fees may be

waived or reduced by the executive director of the Department of Law Enforcement for good cause shown.

(f) The Department of Law Enforcement may adopt rules under ss. 120.536(1) and 120.54 to implement the provisions of this subsection.

(6) This section does not apply to law enforcement officers, as defined in s. 943.10, Florida Statutes, assigned by their employing agencies to work on school grounds as part of their official duties or first responder personnel responding to a request for assistance. For purposes of this paragraph, the term "first responder personnel" includes law enforcement officers, as defined in s. 943.10, emergency medical technicians, paramedics, and firefighters.

(7) No provision of this section shall give rise to any private civil liability, nor shall this section be construed to create a private cause of action for monetary damages.

(8) A school board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 8. Except as otherwise expressly provided in this act, 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:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee		Cunningham	Kramer
1)			
2)			
3)			
4)			
5)			

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 alternative[1] 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 offender[4], 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

A bill to be entitled

An act relating to youthful offenders; amending 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; providing an effective date.

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

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

958.045 Youthful offender basic training program.--

(5)

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 High-Risk Offenders
SPONSOR(S): Allen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1666

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

SUMMARY ANALYSIS

The bill provides that the act may be cited as the "Sexual Predator Elimination Act".

The bill prohibits a prosecutor who charges a person with capital sexual battery from presenting or entering into with the accused a plea bargain for a term of less than life in prison without the possibility of parole or eligibility for gain-time. The bill also provides that any person who has been designated a sexual predator who is convicted of an offense under chapter 794 upon a child under the age of 12 that is a capital, life or first degree felony and who was 18 or older at the time of the offense, must be sentenced to life in prison without the possibility of parole or eligibility for gain-time.

During the 2004 session, section 794.065, F.S. was created which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. In recent months, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. HB 251 amends section 794.065, F.S. to provide that no state law shall prevent a county or municipality from enacting an ordinance restricting the residence of sexual predators or sexual offenders within its jurisdiction as it deems appropriate to protect its citizens.

Currently, section 794.0115, F.S. requires a judge to impose a minimum of a 25 year sentence and a maximum of a life sentence upon an offender who is sentenced for a violation of one an enumerated list of sexual offenses and who:

- Caused serious personal injury to the victim as a result of the commission of the offense;
- Used or threatened to use a deadly weapon during the commission of the offense;
- Victimized more than one person during the course of the criminal episode applicable to the offense;
- Committed such offense while under the jurisdiction of the court for a felony offense or;
- Has previously been convicted of a violation of one of the enumerated offenses.

The bill amends this section to require the imposition of a life sentence.

The bill also amends language which passed during the 2005 session as part of the Jessica Lunsford Act which requires criminal history checks of contractual school personnel who are permitted access to school grounds when students are present. The bill creates the Statewide Background Screening Clearinghouse within the Department of Education and requires the issuance of a statewide credential to contractual school personnel who have passed the level 2 screening. *[Note: It is expected that the sponsor of the bill will offer an amendment to remove this language from the bill.]*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill limits the state attorney's discretion in entering into a plea agreement when a defendant is charged with capital sexual battery. As filed, the bill requires the creation of a statewide database of background screening results for contractual school personnel.

Safeguard individual liberty: The bill provides that no state law shall prevent a county or municipality from enacting an ordinance restricting the residence of sexual predators or sexual offenders within its jurisdiction as it deems appropriate to protect its citizens.

Promote personal responsibility: The bill provides for increased sanctions for certain criminal offenses.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that the act may be cited as the "Sexual Predator Elimination Act".

Sexual battery: Section 794.011, F.S. provides that a person 18 years of age or older who commits sexual battery upon, or attempts to commit sexual battery and injures the sexual organs of, a person less than 12 years of age commits a capital felony. This is commonly referred to as "capital sexual battery". A capital felony is punishable by a sentence of death or a sentence of life in prison.[1] However, the Florida Supreme Court has held that a sentence of death for the crime of "capital sexual battery" constitutes cruel and unusual punishment in violation of the Eighth Amendment.[2] As a result, the offense of capital sexual battery is punishable by a mandatory life sentence.[3] A person who receives a life sentence must spend the rest of his or her life in prison and is not eligible for parole or any type of early release other than as a result of a pardon or the granting of clemency.[4]

Plea Agreements: A person charged with a criminal offense has a right under the federal and state constitutions to a trial by jury.[5] However, a significant percentage of all criminal prosecutions are disposed of by a plea agreement between the state, represented by the state attorney, and the criminal defendant. As part of such an agreement, the criminal defendant waives his or her right to trial and, in exchange, the state makes concessions. For example, the state attorney may drop other charges against the defendant, recommend a specific sentence, allow the defendant to enter a plea to a lesser charge than the charge initially filed, or reach some other agreement with the defendant.

For a number of reasons, in capital sexual battery cases (where by definition the victim is less than 12 years of age) a state attorney may offer a defendant the opportunity to plead guilty to a lesser offense. For example, the state attorney may not be sure that the victim, because of his or her age, will be an effective witness, the parents of the victim may be reluctant to allow their child to testify or the state attorney may conclude that testifying would be emotionally damaging to the child. In some cases, the victim may be reluctant to testify because the offender is the parent of the victim or another person in a position of authority. If the state attorney decides that ensuring that the defendant will be sentenced to a term of imprisonment (even if it is less than life in prison) is preferable to risking the defendant being

---

[1] S. 775.082(1), F.S.

[2] *Buford v. State,* 403 So.2d 943 (Fla.1981).

[3] *Huffman v. State*, 813 So.2d 10 (Fla. 2000); *Welsh v. State*, 850 So.2d 467, 468 (Fla. 2003)("The crime of sexual battery on a child less than twelve set forth in Florida Statutes section 794.011(2)(a) is referred to as "capital" sexual battery because the crime historically has been statutorily punishable by death. However, in [*Buford*], this Court determined that the sentence of death for the crime of 'capital sexual battery' constituted cruel and unusual punishment in violation of the Eighth Amendment."

[4] s. 944.275(4)(b)3, F.S.

[5] See U.S. Const. Amend 6, Art. I, s. 22, Fla. Const.

acquitted at trial, the state attorney may offer the defendant the chance to plea to a lesser offense. Currently, nothing in statute limits a state attorney's discretion in offering a plea to a lesser offense.[6]

HB 251 amend s. 794.011, F.S. to provide that any prosecutor who charges a person with a violation of s. 794.011(2)(a), F.S. - sexual battery where the offender is 18 or over and the victim is less than 12 – may not present or enter into with the accused any plea bargain for a term of less than life in prison without the possibility of parole or eligibility for gain-time.

The bill also provides that any person who has been designated a sexual predator who is convicted of an offense under chapter 794 upon a child under the age of 12 that is a capital, life or first degree felony and who was 18 or older at the time of the offense must be sentenced to life in prison without the possibility of parole or eligibility for gain-time. [See DRAFTING ISSUES OR OTHER COMMENTS].

Unlawful place of residence for persons convicted of certain sex offenses: Before the 2004 legislative session, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.[7] In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 session, section 794.065, F.S. was created[8] which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense[9], against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender was previously convicted was classified as a first degree felony or higher. The offense is a first degree misdemeanor if the sexual offense for which the offender was previously convicted was classified as a second or third degree felony.

In recent months, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. Generally, the ordinances appear to be modeled after section 794.065, F.S. but extend the distance from 1,000 feet to 2,500 feet. Many of the ordinances also prohibit an offender from living within 2,500 feet of places such as libraries, churches and bus stops that are not included in the state statute. By request of the staff of the Judiciary Committee, the Legislative Committee on Intergovernmental Relations surveyed 321 municipalities and all 67 counties to determine whether they had passed an ordinance restricting the residence of sexual offenders. As of October 17, 2005, of the 153 municipalities that responded, 50 municipalities indicated that they had passed ordinances and 14 had pending proposed ordinances. Of the 44 counties that responded, two had passed ordinances and 5 had pending proposed ordinances.

HB 251 amends section 794.065, F.S. to provide that no state law shall prevent a county or municipality from enacting an ordinance restricting the residence of sexual predators or sexual offenders within its jurisdiction as it deems appropriate to protect its citizens.

Dangerous sexual felony offender sentencing: Section 794.0115, F.S. is known as the "Dangerous Sexual Felony Offender Act". The section provides that if a person is convicted of sexual battery[10],

---

[6] There does not appear to be any statutory limitation on a *state attorney's* discretion to offer a plea to a lesser offense in any criminal prosecution. However, section 316.656, F.S. provides that no *trial judge* may accept a plea of guilty to a lesser offense from a person charged with DUI manslaughter or with DUI where the breath-alcohol level was in excess of .20.

[7] In cases in which the victim was a minor, a sexual predator is prohibited from *working* in a business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. ss. 775.21(6)(a)1b, 943.0435(2)(b)2, F.S.

[8] See 2004-391, Laws of Florida.

[9] Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

[10] s. 794.011(2), (3), (4), (5) or (8), F.S.

lewd or lascivious battery[11], lewd or lascivious molestation[12], sexual performance by a child[13], selling or buying a minor[14], lewd or lascivious offenses committed upon an elderly person or disabled adult[15] or luring or enticing a child[16] where the offender was 18 years of age or older and the person:

- Caused serious personal injury to the victim as a result of the commission of the offense;
- Used or threatened to use a deadly weapon during the commission of the offense;
- Victimized more than one person during the course of the criminal episode applicable to the offense;
- Committed such offense while under the jurisdiction of the court for a felony offense or;
- Has previously been convicted of a violation of one of the above offenses;

must be sentenced as a "dangerous sexual felony offender" to a mandatory minimum term of 25 years imprisonment up to and including life imprisonment. The enhanced sentencing provision could be applied to offenders upon the commission of a first offense if the facts of the case met one of the first four criteria listed above.

HB 251 amends this section of statute to provide that a person who is sentenced as a dangerous sexual felony offender must be sentenced to a mandatory minimum term of life in prison without the possibility of parole or eligibility for gain time.

Background screening: During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Additionally, section 21 of the act amended section 1012.465, F.S. Prior to the passage of HB 1877, this section had required noninstructional school district employees or contractual personnel who had direct contract with students or had access to or control of school funds to meet level 2 screening requirements as described in s. 1012.32, F.S.[17] The bill expanded this requirement to contractual personnel who are permitted access on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

A level 2 screening includes a statewide criminal records check through the Florida Department of Law Enforcement (FDLE) and a federal criminal records check through the Federal Bureau of Investigation (FBI).[18] Section 1012.32, F.S. provides persons "found through fingerprint processing to have been

---

[11] s. 800.04(4), F.S. This section requires proof that the offender had engaged in sexual activity with a person 12 years of age or older but less than 16 years of age. "Sexual activity" means the oral, anal or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. Consent is not a defense to this offense.

[12] s. 800.04(5), F.S. This section requires proof that a person intentionally touched in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks or the clothing covering them of a person less than 16 years of age or forced or enticed the victim to so touch the offender.

[13] s. 827.071(2), (3), (4), F.S. This section makes it unlawful for a person to employ a child less than 18 years of age to engage in sexual performance.

[14] s. 847.0145, F.S. This section requires proof that the a person sold or purchased a minor with knowledge that as a consequence of the transfer, the minor will be portrayed in a visual depiction engaging in sexually explicit conduct.

[15] s. 825.1025. This section prohibits various lewd or lascivious offenses committed against a person over the age of 60 or against a disabled adult.

[16] s. 787.025, F.S. This section makes it a third degree felony to lure or entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose.

[17] Additionally, section 943.04351, F.S .requires that "a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement".

[18] See ss. 1012.465(2) and 435.04, F.S.

convicted of a crime involving *moral turpitude* shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students."

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the federal check. FDLE sends the results of the state and federal check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

After the legislative session, school districts and businesses that contract with school districts expressed difficulties in implementing the criminal history screening provisions of the bill. The most common complaints can be characterized as follows:

- Many contractors work in multiple school districts throughout the state and have been required to undergo a separate criminal history check for each school district. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.
- Contractors claimed that some school districts have charged processing fees for a criminal history screening that are cost prohibitive, particularly if a business has many employees who conduct business in multiple school districts.
- School districts and contractors expressed confusion as to who should be considered contractual personnel and what should be considered school grounds.
- Because there is no statutory definition of the term "moral turpitude", interpretation is left to the school districts. Contractors have claimed that this results in inconsistency – based on different interpretations of the phrase, a contractor could be permitted to work in one school district and barred from working in another. Further, contractors have complained that they have been barred from working in a school district for what they consider minor criminal offenses or offenses that were committed many years ago.
- Contractors who are required to undergo level 2 checks for their other employment have complained that school districts have required them to undergo an additional screening to be permitted on school grounds when students are present.

FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

[Note: It is expected that the bill sponsor will offer an amendment to remove the following provisions from the bill, contained in sections 5 and 6.] HB 251 amends section 1012.465, F.S. to require the Department of Education (DOE), in cooperation with the Department of Law Enforcement to create the "Statewide Background Screening Clearinghouse" which will maintain a database of background screening results for contractual personnel. DOE will be required to provide each contractor who passes the required level 2 screening with a statewide credential, bearing a photograph of the contractor, indicating that the contractor has passed the level 2 screening. The credential will be valid for 1 year, at the end of which time the contractor will be required to reapply for a background screening without the requirement that fingerprints be taken. The bill will require all counties to accept the credential during the period that the credential is valid. The cost of the state and federal screening will be borne by the district school board or the contractor. Screening results will be disposed of after 12 months.

Each year, a person who is under a contract with the school district will be required to apply to the local school district to renew his or her credential. The district will then repeat the background screening and if the person meets the screening requirements, will issue a renewed credential.

The bill authorizes the department to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement these provisions.

The bill also provides that each person who is employed or under contract with a school district must agree as a condition of receiving the credential described above to inform his or her employer or the party with whom he or she is under contract and DOE within 48 hours if charged with any disqualifying offense while he or she is employed or under contract in that capacity. A person who willfully fails to comply with this requirement, commits a third degree felony.

C. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as the "Sexual Predator Elimination Act".

Section 1. Amends s. 794.011, F.S. to prohibit certain plea agreements.

Section 3. Amends s. 794.0015, F.S. increase minimum mandatory sentence applicable to dangerous sexual felony offenders.

Section 4. Amends s. 794.065, F.S. to prohibit state law which would prevent a county or municipal ordinance restricting residence of sexual offenders or predators.

Section 5. Amends s. 1012.465, F.S. to create Statewide Background Screening Clearinghouse; requires fingerprint based criminal history checks in certain circumstances.

Section 6. Reenacts portions of s. 1012.32, F.S. for purpose of incorporating amendment made by act to section 1012.465, F.S.

Section 7. Provides that amendments to ss. 794.011 and 794.0115 by the act shall apply to offenses committed on or after effective date of act.

Section 8. Provides that the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures: [Note: It is expected that the bill sponsor will offer an amendment to remove the requirement from the bill that DOE create a "Statewide Background Screening Clearinghouse".] The following information was obtained from DOE's analysis of HB 251 on the bill as filed which requires DOE to maintain a database of background screening results for contractual personnel:

COST SUMMARY

	Recurring			One-Time Costs	
Description	Salary & Benefits	EXP	Human Resource Services	EXP	OCO
Test & Production Servers					$31,046
SAN Storage					$20,818
SQL Server Licenses		$6,524			
OS Software				$10,873	
Laminated badge printers (85 x $1,872)					$159,120
First year printer supplies (200,000 x $.25)		$50,000			
Postage (one mailing annually 200,000 x $.21)		$42,000			
Contract programmers (3 FTE for 5 months @ $75)				$189,000	
Director of Statewide Background Screening Clearinghouse	$95,630	$6,403	$393	$3,343	$1,900
Program Specialist IV (2)	$114,450	$12,806	$786	$6,686	$3,800
Distributed Computer Systems Consultant	$51,156	$6,403	$393	$3,343	$1,900
Senior Attorney	$81,387	$6,403	$393	$3,343	$1,900
Administrative Assistant II	$38,550	$5,195	$393	$2,791	$2,100
TOTAL	**$381,173**	**$135,734**	**$2,358**	**$219,379**	**$222,584**
TOTAL RECURRING COSTS			**$519,265**		
TOTAL ONE-TIME COSTS					**$441,963**

Additional recurring costs of $308,687 and one-time costs of $20,620 would be required if three additional attorneys and one additional support staff are needed to meet the demands of grievance procedures.

The Criminal Justice Impact Conference is charged with forecasting the five year prison bed impact of filed bills on the Department of Corrections. On February 28, 2006, the conference determined the bill would have an insignificant impact over the next five years but could have a long term prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   [Note: It is expected that the bill sponsor will remove the following requirement from the bill.] The bill will require contractual personnel to apply annually to school districts for renewal of the statewide credential indicating that the contractor has passed the level 2 screening.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As filed, the bill will require annual criminal history checks of contractual personnel.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOC to adopt rules to implement the criminal history check requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that any person who has been designated a sexual predator who is convicted of an offense under chapter 794 upon a child under the age of 12 that is a capital, life or first degree felony and who was 18 or older at the time of the offense must be sentenced to life in prison without the possibility of parole or eligibility for gain-time. It is not clear how this provision changes current law. Under s. 794.011(2)(a), F.S. a person 18 years of age or older who commits sexual battery on a person under the age of 12 commits a capital felony. For this offense, a capital felony is punishable by a life sentence. A person who is sentenced to life in prison is ineligible for parole or gain time. The other life or first degree felony offenses that are currently in this section of statute apply to a victim over the age of 12 or an offender under the age of 18 and the language of the bill would not apply to these offenses.

The bill also amends s. 794.011(2)(a), F.S. to provide that "any prosecutor who charges a person with [capital sexual battery under s. 794.011(2)(a), F.S.] shall not present or enter into with the accused any plea bargain for a term of less than life in prison without the possibility of parole or eligibility for gain-time." It is possible that this language could be interpreted to not only prohibit a state attorney from making a plea offer for a violation of s. 794.011(2)(a) to a sentence of less than life in prison (something that is currently prohibited) but to also prohibit a state attorney from making a plea offer that would reduce the charges to a lesser offense at a sentence of less than life in prison in exchange for a guilty plea. It could be argued that this provision may result in acquittals in cases in which the state attorney is forced to go to trial where he or she would otherwise have attempted to reach a plea agreement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to high-risk offenders; providing a short title; amending s. 794.011, F.S., and reenacting subsections (3), (4), and (5), relating to persons committing sexual battery upon certain persons, to incorporate the amendment to s. 794.0115, F.S., in references thereto; prohibiting a prosecutor who charges a person with certain sexual battery violations from presenting or entering into certain plea bargains; providing that sexual predators who commit a sexual battery against certain victims shall be sentenced to life in prison without the possibility of parole or gain-time; amending s. 794.0115, F.S.; increasing the mandatory minimum sentence applicable to dangerous sexual felony offenders; amending s. 794.065, F.S.; providing for county or municipal ordinances relating to the residence of persons subject to registration as sexual offenders or designated as sexual predators; amending s. 1012.465, F.S.; revising provisions relating to background screening requirements for certain noninstructional school district employees and contractors; requiring annual screening; revising and providing definitions; providing for creation of the Statewide Background Screening Clearinghouse for background screening results for contractors; requiring disposal of such results after a specified time; providing for a statewide credential; providing requirements for renewal of the credential; providing rulemaking authority; requiring certain persons to inform their employer or the

party with whom they are under contract and the Department of Education of a charge of a disqualifying offense within a specified period; providing criminal penalties; reenacting s. 1012.32(2)(a), (b), and (c), F.S., relating to qualifications of personnel, to incorporate the amendments to s. 1012.465, F.S., in references thereto; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Sexual Predator Elimination Act."

Section 2. Paragraph (a) of subsection (2) and paragraph (c) of subsection (8) of section 794.011, Florida Statutes, are amended, subsections (3), (4), and (5) are reenacted, and subsection (11) is added to that section, to read:

794.011 Sexual battery.--

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141. Any prosecutor who charges a person with a violation of this paragraph shall not present or enter into with the accused any plea bargain for a term of less than life in prison without the possibility of parole or eligibility for gain-time.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the

process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(f) When the victim is physically incapacitated.

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(11) Notwithstanding any other provision of law, any person who has been designated as a sexual predator under s. 775.21 who is convicted of an offense under this chapter upon a child under 12 years of age that is classified as a capital felony, a life felony, or a first degree felony and who was 18 years of age or older at the time of the offense shall be sentenced to life in prison without the possibility of parole or eligibility for gain-time.

Section 3. Subsection (2) of section 794.0115, Florida Statutes, is amended to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.--

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

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

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

(c) Victimized more than one person during the course of the criminal episode applicable to the offense;

(d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an

offense that would be a felony if that offense were committed in this state; or

(e) Has previously been convicted of a violation of s. 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s. 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph,

is a dangerous sexual felony offender, who must be sentenced to a mandatory minimum term of life in prison without the possibility of parole or eligibility for gain-time ~~25 years imprisonment up to, and including, life imprisonment~~.

Section 4. Subsection (3) is added to section 794.065, Florida Statutes, to read:

794.065 Unlawful place of residence for persons convicted of certain sex offenses.--

(3) No state law shall prevent a county or municipality from enacting an ordinance relating to the residence of persons subject to registration as sexual offenders under s. 943.0435 or designated as sexual predators under s. 775.21 that restricts the residence of such persons within its jurisdiction as it may deem appropriate to protect its citizens.

Section 5. Section 1012.465, Florida Statutes, is amended to read:

1012.465 Background screening requirements for certain noninstructional school district employees and contractors; statewide clearinghouse.--

(1) Noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds must meet level 2 screening requirements as described in s. 1012.32. For purposes of this section, the terms "contractual personnel" and "contractor" shall include any vendor, individual, or entity under contract with the school board who receives remuneration for services performed for the school board but is not otherwise considered an employee of the school board. The terms also include any employee of a contractor who performs services for the school board under the contract.

(2) Annually ~~Every 5 years~~ following employment or entry into a contract in a capacity described in subsection (1), unless otherwise provided in subsection (3), each person who is so employed or under contract with the school district must meet level 2 screening requirements as described in s. 1012.32, at which time the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening, and the background screening results for persons under contract in a capacity as described in subsection (1) shall be stored in the statewide clearinghouse as provided under section (3). If, for any reason following employment or entry into a contract in a capacity described in subsection (1), the fingerprints of a

person who is so employed or under contract with the school district are not retained by the Department of Law Enforcement under s. 1012.32(3)(a) and (b), the person must file a complete set of fingerprints with the district school superintendent of the employing or contracting school district. Upon submission of fingerprints for this purpose, the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under s. 1012.32(3)(a) and (b) and, for persons under contract in a capacity as described in subsection (1), entered in the statewide clearinghouse database as provided under subsection (3). The cost of the state and federal criminal history check required by level 2 screening may be borne by the district school board, the contractor, or the person fingerprinted. Under penalty of perjury, each person who is employed or under contract in a capacity described in subsection (1) must agree to inform his or her employer or the party with whom he or she is under contract within 48 hours if convicted of any disqualifying offense while he or she is employed or under contract in that capacity.

(3)(a) The Department of Education, in cooperation with the Department of Law Enforcement, shall create the Statewide Background Screening Clearinghouse that shall maintain a database of background screening results for contractual personnel screened under subsection (2) and for contractual personnel seeking background screening clearance prior to employment or entry into a contract in a capacity described in

subsection (1). The Department of Education shall provide each contractor who passes the required level 2 screening with a statewide credential, bearing a photograph of the contractor, indicating that the contractor has passed the level 2 screening. The credential shall be valid for 1 year at the end of which time the contractor must reapply for a background screening as provided under section (2) without requiring additional fingerprints to be taken, except as provided in subsection (2). The credential shall be accepted in all counties and in lieu of the background screening that would be required of the individual under this section during the period that the credential is valid. The cost of the initial state and federal criminal history check required by level 2 screening may be borne by the district school board or the contractor. Screening results shall be disposed of after 12 months.

(b) Each year, each person who is under such contract with the school district as described in subsection (1) must apply to the local school district to renew his or her credential. The local school district shall repeat the background screening process pursuant to paragraph (a) and, if the individual continues to meet level 2 screening requirements, issue a renewed credential valid for 1 year. The individual so engaged shall present the school district with his or her renewed credential at the first opportunity following the expiration of the individual's previous credential.

(c) The Department of Education may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this subsection.

(4)~~(3)~~ If it is found that a person who is employed or under contract in a capacity described in subsection (1) does not meet the level 2 requirements, the person shall be immediately suspended from working in that capacity and shall remain suspended until final resolution of any appeals.

(5)(a) Each person who is employed or under contract in a capacity described in subsection (1) must agree as a condition of receiving the credential under subsection (3) to inform his or her employer or the party with whom he or she is under contract and the Department of Education within 48 hours if charged with any disqualifying offense while he or she is employed or under contract in that capacity.

(b) A person who willfully fails to comply with paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. For the purpose of incorporating the amendment made by this act to section 1012.465, Florida Statutes, in references thereto, paragraphs (a), (b), and (c) of subsection (2) of section 1012.32, Florida Statutes, are reenacted to read:

1012.32 Qualifications of personnel.--

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions requiring direct contact with students in any district school system or university lab school shall, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable.

(b) Instructional and noninstructional personnel who are hired or contracted to fill positions in any charter school and

members of the governing board of any charter school, in compliance with s. 1002.33(12)(g), shall, upon employment, engagement of services, or appointment, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(c) Instructional and noninstructional personnel who are hired or contracted to fill positions requiring direct contact with students in an alternative school that operates under contract with a district school system shall, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district to which the alternative school is under contract a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. Persons subject to this subsection found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students. Probationary persons

subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to this subsection.

Section 7. The amendments to ss. 794.011 and 794.0115, Florida Statutes, by this act shall apply to offenses committed on or after the effective date of this act.

Section 8. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 251**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative Allen offered the following:

Amendment (with directory and title amendments)

Remove lines 164-310.

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

Remove line(s) 18-34 and insert:

designated as sexual predators;

000000

251-Allen-01

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 463 Testing of Inmates for HIV Infection in County and Municipal Detention Facilities
SPONSOR(S): Richardson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 796

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

SUMMARY ANALYSIS

This bill allows a local government to adopt a program to require testing of certain local prisoners for HIV. A county or municipal detention facility that operates a testing program must perform an HIV test on each inmate no less than 30 days before the release date of the inmate unless the facility knows that the inmate is HIV positive or unless, within 120 days before the release date, the inmate has been tested for HIV and does not request retesting. This bill also requires a county or municipal jail to notify the Department of Health and the county health department upon release of prisoner who is known to be HIV positive, and requires the jail to provide such prisoners special transitional assistance.

This bill also provides that HIV testing of a county jail prisoner may be conducted without the prisoner's consent, if part of a program of testing all prisoners.

The fiscal impact of this bill on state and local governments is unknown.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government → This bill requires persons to submit to an invasive medical test.

Safeguard individual liberty → This bill requires persons to submit to an invasive medical test.

Promote personal responsibility → This bill may expand the number of persons entitled to receive medical services provided at government expense. This bill does not require the beneficiaries of the legislation to pay any portion of the cost of implementation.

B. EFFECT OF PROPOSED CHANGES:

The prevalence of HIV/AIDS in prisons exceeds its prevalence in the general population. A reason for the high rate of HIV infection in correctional institutions is the high-risk behaviors of inmates. Not only do inmates engage in more of these behaviors, they also engage in them more frequently than members of the general population.[1] Examples of such behaviors include anal intercourse, tattooing, a history of multiple sexual partners, a history of multiple sexually transmitted diseases, and poor physical and/or mental health. Research has shown that female inmates are more likely to be infected with HIV/AIDS than male inmates. The elevated risk of women for HIV infection can be explained by certain pre-incarceration behaviors, including high rates of economic dependency, injection drug use, and prostitution.

Since July 1, 2002, the Department of Corrections has been required to test all inmates for HIV within the 60 days prior to release.[2] If the inmate is found to be HIV-positive, the department is required to:

- Notify the Department of Health and the county health department in the county that the inmate intends to reside in.
- Provide counseling and transition assistance related to HIV.
- Provide a 30 day supply of HIV/AIDS related medicine.[3]

Section 951.27, F.S., requires county and municipal detention facilities to have a written procedure developed, in consultation with the facility medical provider, establishing conditions under which an inmate will be tested for infectious disease, including human immunodeficiency virus, which procedure is consistent with guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority[4]. The person receiving the test results may divulge the test results to the sheriff or chief correctional officer. Such test results are confidential and exempt public records laws.

Effect of Bill

This bill amends s. 951.27, F.S., to provide that a local government may institute a program to test that government's prisoners for HIV prior to release, similar to the requirement related to state prisoners.

---

[1] Florida Corrections Commission 1998 Annual Report, page 52.
[2] Chapter 2002-292, L.O.F.
[3] s. 945.355, F.S.
[4] The Correctional Medical Authority (CMA) was created in 1986 to give independent advice to the Governor, the Legislature, and the Department of Corrections on the conduct of health care and management of costs consistent with quality care. *See* s. 945.601, F.S.

A county or municipal detention facility that operates a testing program must, consistent with s. 381.004(3), F.S.,[5] perform an HIV test on each inmate who is to be released from the facility unless the facility knows that the inmate is HIV positive or unless, within 120 days before the release date, the inmate has been tested for HIV and does not request retesting. The required test must be performed not less than 30 days before the release date of the inmate.

An HIV test is not required if a prisoner is released due to an emergency or a court order and the detention facility receives less than 30 days' notice of the release date, or if the inmate is transferred to the custody of the Department of Corrections for incarceration in the state correctional system.

Because the testing must be within 30 days prior to release, it is likely that counties will forgo testing until the release date is known. Most prisoners in county jails are released pursuant to court order on less than 30 days notice[6], and many are held until they are transferred to the Department of Corrections. The net result is that only persons sentenced to more than 30 additional days in county jail, and less than one year total for the offense, will be required to undergo testing.

If the county or municipal detention facility knows that a prisoner who is to be released from the facility is HIV positive or has received a positive HIV test result, the facility must, before the inmate is released:

- Notify the Department of Health and the county health department where the inmate being released plans to reside of the release date and HIV status of the inmate.
- Provide special transitional assistance to the prisoner, which must include: education on preventing the transmission of HIV to others; the importance of receiving follow-up medical care and treatment; and a written, individualized discharge plan that includes referrals to and contacts with the county health department and local primary medical care services for the treatment of HIV infection that are available where the inmate plans to reside. The prisoner must also be given a copy of his or her medical records from the jail.

This bill amends the current public records exemption for HIV tests conducted by local jails to cover the HIV tests created by this bill.

This bill also provides that: "notwithstanding any statute providing for a waiver of sovereign immunity, the state, its agencies, or subdivisions, and employees of the state, its agencies, or subdivisions are not liable to any person for negligently causing death or personal injury arising out of complying with this section."

This bill also amends s. 381.004(3), F.S., to add this testing to the list of HIV tests that an individual may be compelled to submit to.

C. SECTION DIRECTORY:

Section 1. Amends s. 951.27, F.S., providing for HIV testing of certain county jail prisoners; amending the applicable public records exemption; requiring transitional assistance.

Section 2. Amends s. 381.004, F.S., providing that the testing required in Section 1 of the bill may be performed without the consent of the person being tested.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[5] Section 381.004, F.S., provides procedures for HIV testing, confidentiality, and referral to services.
[6] This appears to include prisoners granted pretrial release. This also appears to include those convicted of an offense who receive the common sentence of "time served", which allows the prisoner to be released that day.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Unknown, but are a local option.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is unknown how many individuals might be tested as a result of this bill. Testing is not required for a prisoner released on less than 30 days notice, so persons arrested and then released on bond will not be tested. This group is the majority of individuals released from local jails. Also not tested are prisoners transferred to the Department of Corrections, which would be felony offenders sentenced to a term in excess of one year.

It appears that the only group that will be tested are prisoners serving more than 30 days of a county jail sentence beyond the sentencing date, in a county or municipality that elects to create and fund the program. This group will include not only misdemeanor offenders, but felony offenders sentenced to a term of less than one year (who by law are incarcerated in county jail). In 2004, there were 25,050 felony offenders sentenced to a term in county jail. It is unknown how many misdemeanor offenders were sentenced to a term in jail longer than 30 days after the date of sentencing.

In 2002, the Department of Corrections estimated the cost of a very similar requirement to be $34.81 per inmate tested.[7] This cost includes basic testing of all, advanced testing for those few whose preliminary test is positive, and pre-release counseling for those known to be infected with HIV.

In 2002, the Department of Health estimated that every person identified as having HIV/AIDS receives services valued at approximately $15,000 annually.[8] To the extent that this bill causes more persons to be referred to the department for the provision of HIV/AIDS services, costs to the Department of Health will increase proportionately. In 2002, the Department of Health estimated that 1% of the prison releasees would be identified as having HIV/AIDS, and would seek services from the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[7] See Bill Analysis to HB 1289, from the 2002 session.
[8] *Id.*

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the testing of inmates for HIV infection in county and municipal detention facilities; amending s. 951.27, F.S.; authorizing counties and municipalities to participate in a program to test each inmate for HIV before the inmate is released if the inmate's HIV status is unknown; providing certain exceptions; requiring that county and municipal detention facilities notify the Department of Health and the county health department in the county where the inmate plans to reside following release if the inmate is HIV positive; requiring the detention facilities to provide special transitional assistance to an inmate who is HIV positive; providing for immunity for complying entities; amending s. 381.004, F.S.; providing that informed consent is not required for an HIV test of an inmate before the inmate's release from a municipal or county detention facility; providing an effective date.

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

Section 1. Section 951.27, Florida Statutes, is amended to read:

951.27 Blood tests of inmates.--

(1) Each county and each municipal detention facility shall have a written procedure developed, in consultation with the facility medical provider, establishing conditions under which an inmate will be tested for infectious disease, including

human immunodeficiency virus pursuant to s. 775.0877, which procedure is consistent with guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority. It is not unlawful for the person receiving the test results to divulge the test results to the sheriff or chief correctional officer.

(2)(a) Each county or municipality has the local option, if authorized by a majority of the respective county's or municipality's governing body, to participate in the testing program provided in this subsection. The county or municipal detention facility that lies within the authority of any participating county or municipality shall, consistent with s. 381.004(3), perform an HIV test as defined in s. 381.004(2) on each inmate who is to be released from the facility unless the facility knows that the inmate is HIV positive or unless, within 120 days before the release date, the inmate has been tested for HIV and does not request retesting. The required test must be performed not less than 30 days before the release date of the inmate. A test is not required under this paragraph if an inmate is released due to an emergency or a court order and the detention facility receives less than 30 days' notice of the release date or if the inmate is transferred to the custody of the Department of Corrections for incarceration in the state correctional system.

(b) If the county or municipal detention facility knows that an inmate who is to be released from the facility is HIV positive or has received a positive HIV test result, that facility shall, before the inmate is released:

1. Notify, consistent with s. 381.004(3), the Department of Health and the county health department in the county where the inmate being released plans to reside of the release date and HIV status of the inmate.

2. Provide special transitional assistance to the inmate, which must include:

a. Education on preventing the transmission of HIV to others and on the importance of receiving followup medical care and treatment.

b. A written, individualized discharge plan that includes records of all laboratory and diagnostic test results, medication and treatment information, and referrals to and contacts with the county health department and local primary medical care services for the treatment of HIV infection which are available in the area where the inmate plans to reside.

(3) ~~(2)~~ Except as otherwise provided in this subsection, serologic blood test results obtained pursuant to subsection (1) or subsection (2) are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in ss. 381.004(3), 775.0877, and 960.003. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate who has been arrested for any sexual offense involving oral, anal, or vaginal

penetration by, or union with, the sexual organ of another, shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in s. 960.003(3).

(4) ~~(3)~~ The results of any serologic blood test on an inmate are a part of that inmate's permanent medical file. Upon transfer of the inmate to any other correctional facility, such file is also transferred, and all relevant authorized persons must be notified of positive HIV test results, as required in s. 775.0877.

(5) Notwithstanding any statute providing for a waiver of sovereign immunity, the state, its agencies, or subdivisions, and employees of the state, its agencies, or subdivisions, are not liable to any person for negligently causing death or personal injury arising out of complying with this section.

Section 2. Subsection (3) of section 381.004, Florida Statutes, is amended to read:

381.004 HIV testing.--

(3) ~~HUMAN IMMUNODEFICIENCY VIRUS TESTING;~~ INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

(a) No person in this state shall order a test designed to identify the human immunodeficiency virus, or its antigen or

antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in paragraph (h). Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test to the extent provided by law. Information shall also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (4)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, phone numbers, and hours of operation of the sites. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.

(b) Except as provided in paragraph (h), informed consent must be obtained from a legal guardian or other person authorized by law when the person:

1. Is not competent, is incapacitated, or is otherwise unable to make an informed judgment; or

2. Has not reached the age of majority, except as provided in s. 384.30.

(c) The person ordering the test or that person's designee shall ensure that all reasonable efforts are made to notify the test subject of his or her test result. Notification of a person with a positive test result shall include information on the availability of appropriate medical and support services, on the

importance of notifying partners who may have been exposed, and on preventing transmission of HIV. Notification of a person with a negative test result shall include, as appropriate, information on preventing the transmission of HIV. When testing occurs in a hospital emergency department, detention facility, or other facility and the test subject has been released before being notified of positive test results, informing the county health department for that department to notify the test subject fulfills this responsibility.

(d) A positive preliminary test result may not be revealed to any person except in the following situations:

1. Preliminary test results may be released to licensed physicians or the medical or nonmedical personnel subject to the significant exposure for purposes of subparagraphs (h)10., 11., and 12.

2. Preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of, or recommendation to, the person tested and, in the case of an intrapartum or postpartum woman, when care, treatment, or recommendations regarding her newborn, cannot await the results of confirmatory testing. Positive preliminary HIV test results may not be characterized to the patient as a diagnosis of HIV infection. Justification for the use of preliminary test results must be documented in the medical record by the health care provider who ordered the test.

3. The results of rapid testing technologies shall be considered preliminary and may be released in accordance with the manufacturer's instructions as approved by the federal Food

and Drug Administration.

4. Corroborating or confirmatory testing must be conducted as followup to a positive preliminary test. Results shall be communicated to the patient according to statute regardless of the outcome. Except as provided in this section, test results are confidential and exempt from the provisions of s. 119.07(1).

(e) Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1). No person who has obtained or has knowledge of a test result pursuant to this section may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative.

2. Any person, including third-party payors, designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative. The test subject may in writing authorize the disclosure of the test subject's HIV test results to third party payors, who need not be specifically identified, and to other persons to whom the test subject subsequently issues a general release of medical information. A general release without such prior written authorization is not sufficient to release HIV test results.

3. An authorized agent or employee of a health facility or

health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee participates in the administration or provision of patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information. The department shall adopt a rule defining which persons have a need to know pursuant to this subparagraph.

4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment. For purposes of this subparagraph, health care providers shall include licensed health care professionals employed by or associated with state, county, or municipal detention facilities when such health care professionals are acting exclusively for the purpose of providing diagnoses or treatment of persons in the custody of such facilities.

5. The department, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law.

6. A health facility or health care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to July 6, 1988, for the purpose of artificial insemination.

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews pursuant to chapters 395 and 766.

8. Authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information.

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and

the proper administration of justice.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

10. A person allowed access by order of a judge of compensation claims of the Division of Administrative Hearings. A judge of compensation claims shall not issue such order unless he or she finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means.

11. Those employees of the department or of child-placing or child-caring agencies or of family foster homes, licensed pursuant to s. 409.175, who are directly involved in the placement, care, control, or custody of such test subject and who have a need to know such information; adoptive parents of such test subject; or any adult custodian, any adult relative, or any person responsible for the child's welfare, if the test subject was not tested under subparagraph (b)2. and if a reasonable attempt has been made to locate and inform the legal guardian of a test result. The department shall adopt a rule to implement this subparagraph.

12. Those employees of residential facilities or of community-based care programs that care for developmentally disabled persons, pursuant to chapter 393, who are directly involved in the care, control, or custody of such test subject

and who have a need to know such information.

13. A health care provider involved in the delivery of a child can note the mother's HIV test results in the child's medical record.

14. Medical personnel or nonmedical personnel who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties, or individuals who are the subject of the significant exposure as provided in subparagraphs (h)10.-12.

15. The medical examiner shall disclose positive HIV test results to the department in accordance with rules for reporting and controlling the spread of disease.

(f) Except as provided in this section, the identity of a person upon whom a test has been performed is confidential and exempt from the provisions of s. 119.07(1). No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by this subsection and by ss. 951.27 and 960.003. Whenever disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by

oral notice and followed by a written notice within 10 days, except that this notice shall not be required for disclosures made pursuant to subparagraphs (e)3. and 4.

(g) Human immunodeficiency virus test results contained in the medical records of a hospital licensed under chapter 395 may be released in accordance with s. 395.3025 without being subject to the requirements of subparagraph (e)2., subparagraph (e)9., or paragraph (f); provided the hospital has obtained written informed consent for the HIV test in accordance with provisions of this section.

(h) Notwithstanding the provisions of paragraph (a), informed consent is not required:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule including the following situations:

a. HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.

b. HIV testing of inmates pursuant to s. 945.355 prior to their release from prison by reason of parole, accumulation of gain-time credits, or expiration of sentence.

c. Testing for HIV by a medical examiner in accordance with s. 406.11.

d. HIV testing of pregnant women pursuant to s. 384.31.

e. HIV testing of inmates pursuant to s. 951.27 before their release from a county or municipal detention facility.

2. Those exceptions provided for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.0041.

3. For the performance of an HIV-related test by licensed

medical personnel in bona fide medical emergencies when the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to the person being tested and the patient is unable to consent, as supported by documentation in the medical record. Notification of test results in accordance with paragraph (c) is required.

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, obtaining informed consent would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical diagnostic purposes to provide appropriate care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) is required if it would not be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without informed consent.

5. When HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

6. For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery where a blood sample is taken from the defendant voluntarily, pursuant to court order for any purpose, or pursuant to the provisions of s. 775.0877, s. 951.27, or s. 960.003; however, the results of any HIV test performed shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877, 951.27, and 960.003.

7. When an HIV test is mandated by court order.

8. For epidemiological research pursuant to s. 381.0032, for research consistent with institutional review boards created by 45 C.F.R. part 46, or for the performance of an HIV-related test for the purpose of research, if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

9. When human tissue is collected lawfully without the consent of the donor for corneal removal as authorized by s. 765.5185 or enucleation of the eyes as authorized by s. 765.519.

10. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice and where a blood sample is available that was taken from that individual voluntarily by medical personnel for other purposes. The term "medical personnel" includes a licensed or certified health care professional; an employee of a health care professional or health care facility; employees of a laboratory licensed under chapter 483; personnel of a blood bank or plasma center; a medical student or other student who is receiving training as a health care professional at a health care facility; and a paramedic or emergency medical technician certified by the department to perform life-support procedures under s. 401.23.

a. Prior to performance of an HIV test on a voluntarily obtained blood sample, the individual from whom the blood was obtained shall be requested to consent to the performance of the test and to the release of the results. The individual's refusal to consent and all information concerning the performance of an

HIV test and any HIV test result shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. Reasonable attempts to locate the individual and to obtain consent shall be made, and all attempts must be documented. If the individual cannot be found, an HIV test may be conducted on the available blood sample. If the individual does not voluntarily consent to the performance of an HIV test, the individual shall be informed that an HIV test will be performed, and counseling shall be furnished as provided in this section. However, HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel.

c. Costs of any HIV test of a blood sample performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment may not be borne by the medical personnel or the employer of the medical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel must either be tested for HIV pursuant to this section or provide the results of an HIV test taken within 6 months prior to the significant exposure if

such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample is not available, the medical personnel or the employer of such person acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

11. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice of the medical personnel while the medical personnel provides emergency medical treatment to the individual; or who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility

that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. An individual who is capable of providing consent shall be requested to consent to an HIV test prior to the testing. The individual's refusal to consent, and all information concerning the performance of an HIV test and its result, shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel or nonmedical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

c. Costs of any HIV test performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment may not be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel or nonmedical personnel shall be tested for HIV pursuant to this section or shall provide the results of an HIV test taken within 6 months prior

to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample was not obtained during treatment for the medical emergency, the medical personnel, the employer of the medical personnel acting on behalf of the employee, or the nonmedical personnel may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

12. For the performance of an HIV test by the medical examiner or attending physician upon an individual who expired or could not be resuscitated while receiving emergency medical assistance or care and who was the source of a significant exposure to medical or nonmedical personnel providing such assistance or care.

a. HIV testing may be conducted only after a licensed physician documents in the medical record of the medical personnel or nonmedical personnel that there has been a significant exposure and that, in the physician's medical

judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

b. Costs of any HIV test performed under this subparagraph may not be charged to the deceased or to the family of the deceased person.

c. For the provisions of this subparagraph to be applicable, the medical personnel or nonmedical personnel must be tested for HIV under this section or must provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative.

d. A person who receives the results of an HIV test pursuant to this subparagraph shall comply with paragraph (e).

13. For the performance of an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant as necessary to provide appropriate care and treatment of the infant when, after a reasonable attempt, a parent cannot be contacted to provide consent. The medical records of the infant shall reflect the reason consent of the parent was not initially obtained. Test results shall be provided to the parent when the parent is located.

14. For the performance of HIV testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive.

15. For the performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 Criminal Justice Standards and Training Commission
SPONSOR(S): Dean and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2032

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

SUMMARY ANALYSIS

In 2004, Congress passed the "Law Enforcement Officers Safety Act of 2004". According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a "qualified law enforcement officer" or "qualified retired law enforcement officer" as defined by the bill and who is carrying specified identification is authorized to carry a concealed firearm. Under this act, the definition of the term "qualified retired law enforcement officer" includes a requirement that the person has met the state's standards for training and qualification for active law enforcement officers to carry firearms. Florida currently does not have a statewide standard for training and qualifications in firearms. The Florida Department of Law Enforcement (FDLE) has issued proposed rules which would create a statewide standard for active officers but those rules are not yet in effect.

HB 669 requires the Criminal Justice Standards and Training Commission within FDLE to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to qualified law enforcement officers and qualified retired law enforcement officers who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by range instructors certified by the commission.

The bill also provides that facilities operating firing ranges on which range instructors certified by the commission administer the firing range testing component of the minimum firearms proficiency course for active law enforcement officers may open the firing range under terms and conditions established by the operating entity to other persons for purposes of allowing such persons to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires the Criminal Justice Standards and Training Commission to develop a manner of implementing the federal Law Enforcement Officers Safety Act of 2004 which authorizes qualified law enforcement officers and authorized retired law enforcement officers to carry concealed firearms.

B. EFFECT OF PROPOSED CHANGES:

Criminal Justice Standards and Training Commission: The Criminal Justice Standards and Training Commission (CJSTC) is established within the Florida Department of Law Enforcement, pursuant to s. 943.11, F.S., and has a number of responsibilities relating to the training, certification, and discipline of law enforcement officers, correctional officers, and correctional probation officers [1] The CJSTC requires training in the use of firearms and a demonstration of proficiency in order to receive initial law enforcement officer, correctional officer or correctional probation officer certification.[2] After an officer is certified, there are no statewide standards for firearm proficiency. Firearms training and proficiency standards are then the responsibility of the employing agency.

The CJSTC also certifies individuals who provide instruction in law enforcement officer and correctional officer training courses.[3] The CJSTC certifies instructors to teach specialized topics. For example, the commission certifies vehicle operations instructors, defensive tactics instructors and firearms instructors.[4]

Concealed weapons: Section 790.01, F.S. provides that it is a first degree misdemeanor to carry a concealed weapon and a third degree felony to carry a concealed firearm. The provision does not apply to a person licensed to carry a concealed weapon or firearm. The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or firearms to qualified persons.[5] There are a number of statutory requirements that must be met before a license can be issued including the following:

- The applicant is a resident of the United States;
- The applicant is 21 years of age or older;
- The applicant does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- The applicant has not been convicted of a felony or other disqualifying offense;
- The applicant demonstrates competence by completing specified training;
- The applicant has not recently been committed to a mental institution;

Upon approval by the department and payment of an $85 fee, the applicant is issued a license card that the applicant must carry when possessing a concealed weapon or firearm. The license is valid for 5 years. Even if a person holds a concealed weapon license, there are a large number of places that the licensee is prohibited from carrying a concealed weapon[6]:

---

[1] s. 943.12, F.S.
[2] See 11B-35.0024, F.A.C.
[3] S. 943.14(3), F.S.
[4] See 11B-20.0013(3)(b) and (c), F.A.C. and 11B-20.0014(2)(c) and (d), F.A.C.
[5] See generally, S. 790.06, F.S.
[6] s. 790.06(12), F.S.

A law enforcement officer, correctional officer or correctional probation officer holding active certification from the CJSTC is exempt from the above licensing requirements.[7] If off duty, the officer is required to have a license in order to carry a concealed firearm or have the permission of his or her superior officer.[8] A law enforcement, correctional or correctional probation officer who wishes to receive a concealed weapons or firearm license is exempt from the background investigation and the fees for such investigation.[9] A retired law enforcement, correctional or correctional probation officer is exempt from the required fees and background investigation for one year after his or her retirement.[10]

Currently, Florida law permits a non-resident of Florida to carry a concealed weapon or firearm within the state if he or she has a license from a state that honors Florida licenses. The Division of Licensing within the Department of Agriculture and Consumer services has established reciprocity agreements with 29 states.[11]

Law Enforcement Officers Safety Act of 2004: In 2004, Congress passed the "Law Enforcement Officers Safety Act of 2004".[12] According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a "qualified law enforcement officer" and who is carrying identification issued by the officer's employing agency may carry a concealed firearm. The term qualified law enforcement officer is defined to mean an employee of a governmental agency who:

> (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
>
> (2) is authorized by the agency to carry a firearm;
>
> (3) is not the subject of any disciplinary action by the agency;
>
> (4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
>
> (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
>
> (6) is not prohibited by Federal law from receiving a firearm.

The bill also provides that notwithstanding any state or local law, a "qualified *retired* law enforcement officer" that is carrying identification discussed further below is permitted to carry a concealed firearm.

The act defines the term "qualified retired law enforcement officer" to mean an individual who:

> (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
>
> (2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

---

[7] s. 790.06(5)(b), F.S.
[8] See ss. 790.052 and 790.06, F.S.
[9] s. 790.06(5)(b), F.S.
[10] s. 790.06(5)(b), F.S.
[11] http://licgweb.doacs.state.fl.us/news/concealed_carry.html
[12] H.R. 218; 18 U.S.C. 926C.

(3) (A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

(5) *during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;*

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

The act specifies that the identification required to be carried by the retired law enforcement officer is:

(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2) (A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Until recently, Florida has not had a statewide standard for firearms proficiency for active law enforcement officers. The responsibility for ensuring firearms proficiency has rested with the employing law enforcement agency. According to a recent Attorney General's opinion, "retired law enforcement officers may carry concealed weapons permits pursuant to 18 U.S.C. 926C even though the state does not currently have statewide firearms training and qualifications standards for active law enforcement officers."[13] On December 30, 2005, FDLE published proposed rules which will create a statewide proficiency standard for active law enforcement officers.[14] According to FDLE, this will facilitate retired law enforcement officer's attempts to demonstrate that they fall under HR 218 because they will be able to demonstrate that they are able to pass their state's proficiency standard for active officers.[15] The rule will become effective on March 27, 2006 and beginning on July 1, 2006, law enforcement officers will be required to qualify under the new standards.

Effect of HB 669: HB 669 requires the CJSTC to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to qualified

[13] AGO 2005-45, August 2, 2005.
[14] Volume 31, Number 52, F.A.W. (December 30, 2005)
[15] http://www.fdle.state.fl.us/hr218/attach/hr218update-fall05.html

law enforcement officers and qualified retired law enforcement officers who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by range instructors certified by the commission.

The bill also provides that facilities operating firing ranges on which range instructors certified by the commission administer the firing range testing component of the minimum firearms proficiency course for active law enforcement officers may open the firing range under terms and conditions established by the operating entity to other persons for purposes of allowing such persons to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

C. SECTION DIRECTORY:

Section 1. Creates s. 943.132, F.S. to implement federal Law Enforcement Officers Safety Act of 2004.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the fiscal analysis provided by FDLE, this bill will have a "negligible" impact on that department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will authorize retired law enforcement officers to demonstrate their ability to achieve a passing score on the firing range testing component of the minimum firearms proficiency course. Costs associated with this demonstration will be at the expense of the person being tested.

A qualified retired law enforcement officer, as this term is defined in the Law Enforcement Officers Safety Act, with a firearms proficiency verification card issued by a range instructor will be authorized to carry a concealed firearm without obtaining a license.

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:

B. RULE-MAKING AUTHORITY:

The bill requires the CJSTC to adopt rules relating to the carrying of concealed firearms by active and retired law enforcement officers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to "range instructors" certified by the CJSTC. The administrative code governing the commission's certification of instructors refer to "firearms instructors".

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the Criminal Justice Standards and Training Commission; creating s. 943.132, F.S.; requiring the Criminal Justice Standards and Training Commission to adopt rules for the implementation of the federal Law Enforcement Officers Safety Act of 2004; requiring the commission to develop and authorize a uniform firearms proficiency verification card to be issued to certain qualified law enforcement officers and qualified retired law enforcement officers; authorizing the use of specified facilities operating firing ranges for testing of persons other than law enforcement officers; providing an effective date.

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

Section 1. Section 943.132, Florida Statutes, is created to read:

943.132 Implementation of federal Law Enforcement Officers Safety Act of 2004.--

(1) The commission shall by rule establish the manner in which Title 18, 44 U.S.C. ss. 926B and 926C, the federal Law Enforcement Officers Safety Act of 2004, relating to the carrying of concealed firearms by qualified law enforcement officers and qualified retired law enforcement officers, as defined in the act, shall be implemented in the state. In order to facilitate the implementation within the state of Title 18, 44 U.S.C. ss. 926B and 926C, the commission shall develop and

authorize a uniform firearms proficiency verification card to be issued to qualified law enforcement officers and qualified retired law enforcement officers who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers, indicating the person's name and the date upon which he or she achieved the passing score. Each such card shall be issued only by range instructors certified by the commission.

(2) Facilities operating firing ranges on which range instructors certified by the commission administer the firing range testing component of the minimum firearms proficiency course for active law enforcement officers may open the firing range under terms and conditions established by the operating entity to other persons for purposes of allowing such persons to demonstrate their ability to achieve a passing score on the firing range testing component of the minimum firearms proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course shall be at the expense of the person being tested.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 719 Sealing of Criminal Records
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 1276

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

SUMMARY ANALYSIS

Currently, criminal history records relating to certain offenses (these offenses are commonly referred to as "list offenses") in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication is withheld, may not be sealed.

This bill clarifies, in accordance with current law, that a criminal history record involving any of the "list offenses" may be sealed:

- If an indictment, information, or other charging document was not filed or issued;
- If a charging document was filed and the case was dismissed or a nolle prosequi was entered by the state attorney;
- If a charging document was filed and the case was dismissed by a court; or
- If a charging document was filed and the defendant was acquitted or found not guilty.

Current law states that a person seeking to have a record sealed must have never had a prior record sealed (or expunged). The bill provides that a person can have a record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of*.

This bill takes effect upon becoming a law.

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty → This bill provides that a person can have a criminal history record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of.*

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 943.059, F.S., provides that courts have jurisdiction to maintain, seal, and correct judicial records containing criminal history information. Currently, any court may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with certain requirements.[1]

When a criminal history record is sealed[2], it is confidential and exempt from the public records provisions of s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, and to certain specified agencies for their respective licensing and employment purposes.[3] Except as provided above, it is a first degree misdemeanor to divulge information relating to the existence of a sealed record.[4]

Persons petitioning to have their criminal record sealed must first obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE).[5] One of the criteria to receive a certificate of eligibility requires that an applicant must have never secured a prior sealing or expunction of a criminal history record.[6]

If the person meets certain statutory criteria and obtains a certificate of eligibility, he or she can petition the court to have his or her record sealed.[7] The court then decides whether sealing is appropriate.[8]

Criminal history records relating to certain offenses[9] (FDLE commonly refers to the offenses specified in this section as "list offenses") in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, *regardless of whether adjudication is withheld*[10], may not be sealed.

---

[1] s. 943.059, F.S.
[2] *Sealing* a criminal history record differs from having the record *expunged.* The *expunction* of a criminal history record requires that the record is physically destroyed. *See* s. 943.0585, F.S.
[3] s. 943.059, F.S.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

Effect of Proposed Changes

The bill specifies, in accordance with current law, that a criminal history record involving any of the "list offenses" may be sealed:

- If an indictment, information, or other charging document was not filed or issued;
- If a charging document was filed and the case was dismissed or a nolle prosequi[11] was entered by the state attorney;
- If a charging document was filed and the case was dismissed by a court; or
- If a charging document was filed and the defendant was acquitted or found not guilty.

The bill also changes one of the requirements necessary to have any criminal record sealed. As noted above, current law states that a person seeking to have a record sealed must have never had a prior record sealed (or expunged). The bill provides that a person can have a record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of*. For example, under the bill, if an individual had a case *dismissed* 5 years ago and had that record sealed, that individual would be able to petition for another record seal for any new eligible criminal record. However, if the same individual *pled guilty* to the crime 5 years ago, they would not be permitted to petition for another record seal.

C. SECTION DIRECTORY:

Section 1. Amends s. 943.059, F.S., providing that a prohibition against sealing certain criminal history records does not apply if a charging document is not filed, if the case is dismissed, if a nolle prosequi is entered, or if the defendant is acquitted or found not guilty; providing that a certificate of eligibility for sealing is available if the person seeking the certificate has never secured a prior sealing or expunction under specified provisions involving an offense for which he or she was found guilty or nolo contendere; makes grammatical/technical changes.

Section 2. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

FDLE reported the following fiscal impact in their analysis[12]:

1. **Revenues:**	(FY 05-06)	(FY 06-07)	(FY 07-08)
Recurring	$225,000.00	$225,000.00	$225,000.00
Non-Recurring	N/A	N/A	N/A
2. Expenditures:			
Recurring	$38,381.00	$38,381.00	$38.381.00
Non-Recurring	$10,600.00	N/A	N/A

[10] A withhold of adjudication is a manner of disposition in which the court does not pronounce a formal judgment of conviction. http://www.flcourts.org/gen_public/pubs/bin/srsmanual/Glossary_2002.pdf

[11] A "nolle prosequi" is a declaration that the prosecutor in a criminal case will drop prosecution of all or part of an indictment. http://dictionary.reference.com/.

[12] FDLE states that an analysis of Criminal History Files shows that there are a potential 58,000 additional records for individuals who have already had a record sealed that could qualify for an additional seal application. If only 5% of the potential is realized over a year, the workload would increase by approximately 2900 application a year, which would require one additional specialist to process the applications. For purposes of this analysis, FDLE anticipates 3,000 additional applications x $75.00 processing fee.

This would impact the overall volume of Applications for Certification of Eligibility requests for FDLE's Seal and Expunge Section. The number of certificates of eligibility issued would increase along with court orders for compliance and the need to modify additional judicial segments of the record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take 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:

Lines 35-57 of the bill appear to restate current law. A careful reading of the current law reveals that only records in which someone was *found guilty* or *pled guilty or nolo contendere* would be precluded from being sealed. Thus, by implication, the law currently provides that if a charging document is not filed; or if a case was dismissed, a nolle prosequi was entered, or if a defendant was acquitted; the record could be sealed. It appears that the bill attempts to clarify when someone may have a record sealed. However, FDLE states in their analysis that the law, as presently written, should preclude any misinterpretation. FDLE is concerned that the bill raises the potential for misinterpretation and conflicting readings of the law.

If clarifying language is to be added to s. 943.059, F.S., FDLE suggested that the corresponding provision in the expunge statute (s. 943.0585, F.S.) should be amended.

As to the portion of the bill allowing multiple seals in certain instances, FDLE states that this is a major policy change in the state's approach to sealing records. Currently, a person may only seal or expunge a record *once* in their lifetime. This bill would allow a person to seal *multiple* records so long as the

record did not involve an offense for which the defendant was found guilty or pled guilty or nolo contendere to.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the sealing of criminal records; amending s. 943.059, F.S.; providing that a prohibition against sealing the criminal history record of certain offenses does not apply if a charging document is not filed, if the case is dismissed, if a nolle prosequi is entered in the case, or if the defendant is acquitted or found not guilty; providing that a certificate of eligibility for sealing is available if the person seeking the certificate has never secured a prior sealing or expunction of a criminal history record under specified provisions involving an offense for which he or she was found guilty or pled guilty or nolo contendere; providing an effective date.

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

Section 1. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent the ~~such~~ procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an

adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (3) ~~(2)~~.

(1) PROHIBITION ON SEALING CERTAIN RECORDS.--A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be sealed~~, without regard to whether adjudication was withheld,~~ if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act, even if the adjudication was withheld. The prohibition applies only to cases in which the defendant, including a minor, was found guilty of or pled guilty or nolo contendere to the offense. In all other cases involving the offenses enumerated in this subsection, if an indictment, information, or other charging document was not filed or issued, the criminal history record may be sealed. If a charging document was filed or issued in the case, the criminal history record may be sealed if the case was dismissed or a nolle prosequi was entered by the state attorney or statewide prosecutor, if the case was dismissed by a court of competent jurisdiction, or if the defendant was acquitted or found not

guilty. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to the ~~such~~ additional arrests, the ~~such~~ intent must be specified in the order. A criminal justice agency may not seal any record pertaining to the ~~such~~ additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(2) ~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each petition to a court to seal a criminal history record is complete only when accompanied by:

(a) A certificate of eligibility for sealing issued by the department pursuant to subsection (3) ~~(2)~~.

(b) The petitioner's sworn statement attesting that the

petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Except as otherwise provided in this section, has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on the ~~such~~ sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) ~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and

issuance of certificates of eligibility for sealing. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that the ~~such~~ person:

(a) Has submitted to the department a certified copy of the disposition of the charge to which the petition to seal pertains.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the ~~such~~ fee is waived by the executive director.

(c) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

(e) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058 involving an offense for which the defendant has been found guilty or pled guilty or nolo contendere.

(f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(4) ~~(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.--

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of the ~~such~~ notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the

court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to seal entered by a court when the ~~such~~ order does not comply with the requirements of this section. Upon receipt of ~~such~~ an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to seal when the petitioner for the ~~such~~ order failed to obtain the certificate of eligibility as required by this section or when the ~~such~~ order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to this section does not require that the ~~such~~ record be surrendered to the court, and the ~~such~~ record shall continue to be maintained by the department and other criminal justice agencies.

(5) ~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is

available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by the ~~such~~ contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial

school, or any local governmental entity that licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of the ~~such~~ person's failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment or licensure with the ~~such~~ entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) ~~(5)~~ STATUTORY REFERENCES.--Any reference to any other chapter, section, or subdivision of the Florida Statutes in this

section constitutes a general reference under the doctrine of incorporation by reference.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 Criminal Acts Committed During a State of Emergency
SPONSOR(S): Benson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson KF	Kramer
2) Domestic Security Committee			
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

This bill increases the penalties for burglary and theft when the offender commits such crimes after a state of emergency is declared by the Governor, such crimes are committed within the county subject to the state of emergency, and the perpetration of such crimes are facilitated by conditions arising from the emergency. This bill defines the term "conditions arising from the emergency." This bill also provides that a person arrested for committing such an offense may not be released until they appear before a committing magistrate at a first-appearance hearing.

This bill provides an effect date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Provide limited government -- This bill increases criminal penalties for certain acts committed during a state of emergency.

Promote personal responsibility -- This bill seeks to deter wrongful conduct by increasing criminal penalties for certain acts committed after a state of emergency.

B. EFFECT OF PROPOSED CHANGES:

Background

Looting is a common term that applies to crimes such as burglary and theft that occur during a riot or civil emergency. Florida law does not have a separate crime for looting. Looting crimes are prosecuted under criminal laws prohibiting burglary[1] and theft.[2]

Chapter 252 regulates the Governor's powers and duties during an emergency. Section 252.36(2), F.S., provides that the Governor must issue an executive order or proclamation if an emergency has occurred or is imminent. The Governor's powers during an emergency are broad.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

2005 Legislative Actions

HB 207 was introduced in 2005 and passed favorably through the House and Senate. HB 207 increased criminal penalties for burglary and theft acts committed within an area that is subject to a state of emergency. However, HB 207 was vetoed on June 2, 2005[3] because of concerns with the scope of the bill being overly broad. As the Governor explained in his veto message:

> The enhanced penalties would have application beyond just looting in the days following a disaster. The consequences of this wording are sweeping, considering that states of emergency can last for months following a disaster. Although this bill is well intended, it creates a significant unintended consequence, therefore: enhanced penalties for looting would carry on long beyond the existence of a disaster-induced "looting" scenario.

Effect of Bill

---

[1] Section 810.02, F.S.
[2] Section 812.014, F.S.
[3] *See* http://eogtmp.sto.fl.gov/html/2005_legislative_actions.html

This bill increases the penalties for burglary and theft when the offender commits such crimes after a state of emergency is declared by the Governor, such crimes are committed within the county subject to the state of emergency, and the perpetration of such crimes are facilitated by conditions arising from the emergency. The term "conditions arising from the emergency", as defined by this bill, means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel.

This bill appears to address the concerns of the veto message for HB 207 since it narrows the scope to burglary and theft offenses committed after a state of emergency is declared, within the county subject to the state of emergency, and only when the commission of the offense is facilitated by conditions arising from the emergency as defined by the bill.

This bill also requires that a person arrested for burglary or theft during a state of emergency must be held until the person appears before a committing magistrate at a first appearance hearing pursuant to rule 3.130 Crim. Pro.

The following chart summarizes all of the offenses reclassified by this bill and the increased ranking:

Looting Offenses		**Reclassification if committed during a state of emergency**
Description of Offense	**Current Penalty**	
Burglary of a dwelling, whether occupied or not, if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. ss. 810.02(3)(a)-(b), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an occupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(c), F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Burglary of an occupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(d), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an unoccupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(a), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Burglary of an unoccupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(b), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between $20,000 and $100,000. s. 812.014(2)(b)1., F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Theft of cargo that has entered the stream of commerce and is valued less than $50,000. s. 812.014(2)(b)2., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of certain emergency medical equipment valued in excess of $300. s. 812.014(2)(b)3., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of property valued between $10,000 and $20,000. s. 812.014(2)(c)3., F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between $5,000 and $10,000. s. 812.014(2)(c)2., F.S.	3rd degree felony, Level 3	2nd degree felony, Level 4

C. SECTION DIRECTORY:

Section 1 amends s. 810.02, F.S., reclassifying certain burglary offenses committed during a state of emergency.

Section 2 amends s. 812.014, F.S., reclassifying certain theft offenses committed during a state of emergency.

Section 3 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 Estimating Conference (CJEC) met February 28, 2006 to determine the fiscal impact of this bill; however, the consideration of the bill was temporarily postponed in order to collect additional data.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Provisions requiring a person to be held pending first appearance may increase local government expenditures due to increased jail bed utilization.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

If provisions of the bill requiring offenders to be held pending first appearance increases jail bed utilization, the bill would require counties to expend funds. Even if the required expenditures were determined to be significant, the bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to criminal acts committed during a state of emergency; amending s. 810.02, F.S.; providing enhanced penalties for specified burglaries that are committed during, and facilitated by specified conditions arising from, a state of emergency declared by the Governor; prohibiting the release of a person arrested for committing a burglary during such a state of emergency until that person appears before a magistrate at a first-appearance hearing; requiring that a felony burglary committed during a state of emergency be reclassified one level above the current ranking of the offense committed; amending s. 812.014, F.S.; providing enhanced penalties for the theft of certain property stolen during, and facilitated by specified conditions arising from, a state of emergency declared by the Governor; requiring that a felony theft committed during a state of emergency be reclassified one level above the current ranking of the offense committed; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 810.02, Florida Statutes, are amended to read:

810.02 Burglary.--

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an

assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains; or

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed after the declaration of emergency within a county that is subject to a state of emergency declared by the Governor under chapter 252 and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above

the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed after the declaration of emergency within a county that is subject to a state of emergency declared by the Governor under chapter 252 and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing. For purposes of sentencing under chapter 921, a felony offense that

is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 2. Paragraphs (b) and (c) of subsection (2) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.--

(2)

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(10) or to treat medical emergencies. However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency, and the perpetration of the theft is facilitated by conditions arising from the emergency, the

theft is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (2)(a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, and including aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more

individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 809 Assault or Battery on Homeless Persons
SPONSOR(S): Taylor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1992

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

SUMMARY ANALYSIS

HB 809 reclassifies assault or battery offenses that are committed upon a homeless person as follows:

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

The offense would be reclassified regardless of whether the offender knew or had reason to know the housing status of the victim. The offense would be reclassified regardless of whether the offender was also homeless. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The bill also requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. The bill authorizes the judge to impose a fine of up to $10,000 and to order the defendant to perform up to 500 hours of community service.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: HB 809 will have the effect of increasing the maximum sentence which may be imposed for assault or battery offenses committed against a homeless person.

Provide limited government: The bill increases the maximum sanctions for offenses committed against a homeless person and will require the imposition of minimum mandatory sentences in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Assault or Battery on Victim Age 65 or Older: Currently, section 784.08 provides that when a person is charged with committing assault[1], aggravated assault[2], battery[3] or aggravated battery[4] against a victim age 65 or older, the assault of battery offense is reclassified as follows:

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

The section also requires the imposition of a three year minimum mandatory sentence[5] against an offender who has been convicted of aggravated assault or aggravated battery against an elderly person.

There are a number of other sections of statute that reclassify assault or battery offenses if they are committed against specified types of victims.[6]

Effect of HB 809 – reclassification of assault or battery offenses on homeless person: HB 809 reclassifies assault or battery offenses that are committed upon a homeless person in the same manner as assault or battery offenses committed on a victim age 65 or older, discussed above. The offense will be reclassified regardless of whether the offender knew or had reason to know the housing status of the victim. The offense would be reclassified regardless of the housing status of the offender.

---

[1] An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011, F.S.
[2] An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.
[3] A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S
[4] An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.
[5] s. 784.08(1), F.S.
[6] Section 784.07(2), F.S. reclassifies assault and battery offenses committed against a list of people such as law enforcement officers, firefighters, emergency medical care providers and public transit employees and requires the imposition of a three year minimum mandatory sentence for aggravated assault of a law enforcement officer and a five year minimum mandatory sentence for aggravated battery of a law enforcement officer. See also, ss. 784.074, 784.081, 784.082, 784.083, F.S.

As a result of the bill, assault will be reclassified from a second degree misdemeanor to a first degree misdemeanor; battery will be reclassified from a first degree misdemeanor and a third degree felony; aggravated assault will be reclassified from a third degree felony to a second degree felony and aggravated battery will be reclassified from a second degree felony to a first degree felony if the offense is committed on a homeless person. The bill requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. The bill also authorizes the judge to impose a fine of up to $10,000 and to order the defendant to perform up to 500 hours of community service. The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor is one year of incarceration; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.[7]

The bill defines the term "homeless" in conformity with s. 420.621, F.S. which contains the following definition:

> "Homeless" refers to an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:
> (a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
> (b) An institution that provides a temporary residence for individuals intended to be institutionalized; or
> (c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.
> The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

C. SECTION DIRECTORY:

Section 1. Creates s. 784.0815, F.S. relating to assault or battery on homeless persons.

Section 2. Provides effective date of October 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 maximum sentence for assault or battery offenses will be increased if they are committed on a homeless person. The impact of the bill would depend on how often assault or battery offenses are committed on a homeless person. This will likely be difficult to estimate.

[7] s. 775.082, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to assault or battery on homeless persons; creating s. 784.0815, F.S.; providing a definition; providing a minimum sentence for a person convicted of an aggravated assault or aggravated battery upon a homeless person; providing for reclassification of certain offenses when committed against homeless persons; providing that adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld for such offenses; providing an effective date.

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

Section 1. Section 784.0815, Florida Statutes, is created to read:

784.0815 Assault or battery on homeless persons.--

(1) For purposes of this section, the term "homeless" shall have the same meaning as provided in s. 420.621.

(2) A person who is convicted of an aggravated assault or aggravated battery upon a homeless person shall be sentenced to a minimum term of imprisonment of 3 years and fined not more than $10,000 and shall also be ordered by the sentencing judge to make restitution to the victim of the offense and to perform up to 500 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and shall not be in lieu thereof.

(3) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery

upon a homeless person, regardless of whether he or she knows or has reason to know the housing status of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

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

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

(4) Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 815 Strangulation
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill amends felony battery to include the act of strangulation. Currently, a battery by strangulation where there is no great bodily harm, permanent disability, or permanent disfigurement is a misdemeanor; this bill makes battery by strangulation a third degree felony. This bill defines the act of strangulation and provides an affirmative defense.

The Criminal Justice Estimating Conference met February 28, 2006 and determined that this bill would have an unquantifiable prison bed impact on the Department of Corrections.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for battery by strangulation.

B. EFFECT OF PROPOSED CHANGES:

Under Florida law a simple battery occurs when a person actually and intentionally touches or strikes another person against the will of the other[1] or intentionally causes bodily harm to another person.[2] The crime of felony battery[3] requires that the offender cause great bodily harm, permanent disability, or permanent disfigurement. The crime of aggravated battery[4] requires intent to cause great bodily harm, permanent disability, permanent disfigurement, or use of a deadly weapon.

Currently, Florida does not have statutes in place that specifically address strangulation unlike other states[5]. The act of strangulation can be potentially fatal; however, non-fatal strangulations rarely cause visible injuries. Consequently, non-fatal strangulations are charged as a simple battery because a prosecutor can not establish great bodily harm, permanent disability, or permanent disfigurement. Simple battery is a first degree misdemeanor which is punishable by a term of imprisonment not exceeding 1 year[6] and a fine of $1,000.[7]

This bill amends felony battery to include the act of strangulation. This bill provides that the act of strangulation is committed by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. A felony battery is a third degree felony punishable by a term of imprisonment not exceeding 5 years[8] and a fine of $5,000.[9]

This bill also provides it is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

C. SECTION DIRECTORY:

Section 1 amends section 784.041, F.S., to include the act of strangulation and to provide an affirmative defense.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

---

[1] Section 784.03(1)(a)1., F.S.
[2] Section 784.03(1)(a)2., F.S.
[3] Section 784.041, F.S.
[4] Section 784.045, F.S.
[5] *See* North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.
[6] Section 775.082(4)(a), F.S.
[7] Section 775.083(1)(d), F.S.
[8] Section 775.082(3)(d), F.S.
[9] Section 778.083(1)(c), F.S.

None.

2. Expenditures:

   The Criminal Justice Impact Conference met February 28, 2006 and determined this bill would have an unquantifiable prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to strangulation; amending s. 784.041, F.S.; providing that knowingly or intentionally impeding the normal breathing or circulation of the blood of another person in specified ways constitutes felony battery; providing an affirmative defense; providing penalties; providing an effective date.

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

Section 1. Section 784.041, Florida Statutes, is amended to read:

784.041 Felony battery.--

(1) A person commits felony battery if he or she:

(a) Actually and intentionally touches or strikes another person against the will of the other; and

(b)1. Causes great bodily harm, permanent disability, or permanent disfigurement; or

2. Commits the act of strangulation by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. It is an affirmative defense to a charge under this subparagraph that an act constituting strangulation was the result of a legitimate medical procedure.

(2) A person who commits felony battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 829 Prison Industries
SPONSOR(S): Holloway
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 192

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

SUMMARY ANALYSIS

This bill creates a task force to examine how well the prison industries program has fulfilled its purposes and missions and then report those findings to the Governor and the Legislature. It also amends s. 946.505, F.S., to clarify the state's reversionary interest in property owned by PRIDE.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill creates a task force to examine how well the prison industries program has fulfilled its purposes and missions and then report those findings to the Governor and the Legislature.

B. EFFECT OF PROPOSED CHANGES:

PRIDE'S History

Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) was created by the Legislature in 1981 as a private, non-profit corporation.[1] In 1983, the Legislature authorized PRIDE to lease and manage the state prison industries program which had been operated by the Department of Corrections. Section 946.501(1), F.S., notes that it is essential to the state that the correctional work programs provide inmates with activities that can then "lead to meaningful employment after release" to help reduce the number of inmates who return to the correctional system. Section 946.501, F.S., defines PRIDE's mission as:

- providing education, training, and post-release job placement to inmates to help reduce recommitment;
- enhancing security by reducing inmate idleness and providing an incentive for good behavior in prison;
- reducing the cost of state government by operating enterprises primarily with inmate labor while not unreasonably competing with private enterprise; and
- rehabilitating inmates by duplicating, as nearly as possible, the activities of a profit-making enterprise.

PRIDE was given several advantages to help offset some of its competitive disadvantages in the marketplace. It has sovereign immunity and is not required to pay unemployment compensation for inmate workers.[2] State agencies are required by statute to purchase products from PRIDE if the products are of similar quality and price to those offered by outside vendors.[3] Also, PRIDE is not under the authority of any state agency, although it is subject to the auditing and investigatory powers of the Legislature and the Governor.[4]

PRIDE currently operates 36 industrial training programs in 20 state prisons and offers 366 on-the-job training programs.[5] In 2004 alone, 3,794 inmates were trained in jobs and worked 3,702,290 hours in the 36 industries.[6] Some of the industries operated by PRIDE are raising dairy calves, furniture manufacturing, agriculture, printing, binding, data entry, and document imaging services.[7] PRIDE does not receive funding from the Legislature and is supported by the revenues it generates from selling its products.[8] The State of Florida is its major purchaser, accounting for 51 percent of its revenues in 2004. Total revenues for that year were $65,694,450.[9]

---

[1] http://www.pride-enterprises.org/compay_info_img/pdf/WorkerHistory.pdf
[2] ss. 946.5026 and 946.513, F.S.
[3] s. 946.515, F.S.
[4] s. 946.517, F.S.
[5] http://www.pride-enterprises.org/table_company_information.aspx
[6] http://www.pride-enterprises.org/compay_info_img/pdf/2004AnnualReport.pdf
[7] *Id.*
[8] *Id.*
[9] *Id.*

PRIDE reports that its recidivism rate is lower than that of the general inmate population and that for fiscal years 2002, 2003, and 2004, that rate has steadily declined.[10] PRIDE also reported that it offers a program which helps inmates begin making restitution payments while in prison so that their financial burden is reduced upon release from prison.[11]

Financial and Managerial Issues

In the late 1990's, PRIDE developed a new business plan which involved the creation of separate but related business companies to help PRIDE find ways to increase the number of inmate jobs and expand its mission. PRIDE formed Industries Training Corporation (ITC) in July 1999, to enter into business relationships and manage work programs for PRIDE. However, the number of inmate workstations declined by more than 500 between 2000 and 2002, and there are no statistics indicating any increase in the subsequent two years.

In its 2002 Annual Report issued December 2, 2002, the Florida Corrections Commission extensively reviewed PRIDE's history and current operations. The report focused attention on PRIDE's fulfillment of its mission, particularly noting that the number of inmate workstations had not kept pace with the growth of the inmate population. The Corrections Commission also raised questions about the new corporate structure and affiliated entities.

In December 2003, OPPAGA issued Report No. 03-68, "PRIDE Benefits the State but Needs to Improve Transparency in Operations." OPPAGA focused on many of the same issues as the Corrections Commission, particularly concerning Pride's organizational structure. OPPAGA also noted some of the challenges faced by PRIDE in the current business operating environment, and that PRIDE sales had declined by more than $20 million over the preceding 5 years. The OPPAGA report prompted Governor Bush to request his Chief Inspector General to conduct an audit of PRIDE and its related entities.

On February 28, 2005, the Office of the Chief Inspector General issued its findings. In general, the audit noted the significant financial decline of PRIDE and its affiliates, was critical of PRIDE's internal controls and its business and organizational operation, a breakdown in accountability, as well as the Board of Director's lack of oversight.

According to one published article, the PRIDE Board of Directors asked its attorneys in March 2005, to attempt to negotiate and collect up to $12.9 million from Industries Training Corporation, or ITC.

In September 2005, PRIDE filed suit against ITC, two of its affiliates, and its Treasurer and Chief Financial Officer. The suit sought monetary damages for actions which allegedly promoted the financial interests of some of the management groups while compromising the financial interests of PRIDE. This case is pending and has not been resolved.

Reversionary Interest

Section 946.505, F.S., provides for the reversion of certain PRIDE property to the state if PRIDE dissolves or if a correctional work program ceases to function. Unless PRIDE intends to use the property for another correctional work program, all buildings, land, furnishings, equipment, and other chattels originally leased from the department automatically revert to full ownership by the department. The state also has a reversionary interest in any facilities that are subsequently constructed or otherwise acquired in connection with the operation of the program. "Facilities" is defined in s. 946.503(4), F.S., to mean buildings and land used in the operation of an industry program on state property. In its report, OPPAGA noted that the statute does not provide for reversion of all PRIDE property to the state, nor address the state's interest in property that is transferred by PRIDE during its existence. In its response to the OPPAGA report, PRIDE noted that the state's reversionary interest is

[10] *Id.*
[11] *Id.*

ensured in PRIDE's articles of incorporation and further protected by its designation as a 501(c)(3) organization under the Internal Revenue Code.

Effect of Proposed Changes:
Section 1 of the bill creates the Prison Industries Task Force to examine and report on the state's prison industries program. Previous reports concerning PRIDE have focused on structural and management issues, examining whether PRIDE is accomplishing its statutory missions. The bill provides a broader mission for the task force, which will determine: (1) how well the program has fulfilled its statutory missions and purposes; and (2) whether the program's statutory missions are still feasible and relevant and whether they will remain so in the future.

The task force will be housed within the Office of Legislative Services, with staff support provided by the Legislative Committee on Intergovernmental Relations. Its first meeting must be held by July 15, 2006, and at least 3 public meetings must be held. The meetings will be open to the public and subject to the provisions of s. 286.011, F.S., the public meetings law. Task force records will be public records subject to the provisions of ch. 119, F.S., except as otherwise provided by law. The task force must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 15, 2007. The bill abolishes the task force on July 1, 2007.

The task force will consist of the following 14 members:
- The Secretary of the Department of Corrections and 2 wardens of institutions that have prison industries programs;
- A representative from the Agency for Workforce Innovation;
- A representative from the Department of Education's Office of Workforce Education;
- A representative from Florida TaxWatch;
- A member of the Senate, appointed by the President of the Senate;
- A member of the House of Representatives, appointed by the Speaker of the House;
- A representative from the PRIDE board of directors;
- A representative from a local governmental entity that purchases products produced by prison industries;
- A representative from a private industry that regularly employs former inmates;
- A representative from a private industry that regularly trains inmates;
- A representative from the academic community with expertise in research concerning reentry of prisoners into society and the employment of former felons; and
- A former inmate who worked in the prison industries program.

The President of the Senate and the Speaker of the House of Representatives must jointly appoint the representatives of PRIDE, local government, private industry, and academia by July 1, 2006.

The bill requires the task force to receive testimony from the Auditor General, the Governor's Inspector General, OPPAGA, PRIDE, and other appropriate officials to address a number of questions regarding the correctional work program's missions:
- Whether the statutory missions of the program, as defined in s. 946.501(2), F.S., are still valid; whether there are other valid missions that should be included; and whether any of the valid current or recommended missions are in conflict;
- Whether the missions should be ranked in order of priority and the extent to which accomplishment of a higher-priority mission can be reduced to accomplish a lower-priority mission;
- Whether duplicating a free-world operation as closely as possible is the most effective way of accomplishing the program's missions;
- Whether the program's management structure should be changed to facilitate accomplishment of the missions;
- Whether operating the program independently of state government is the most effective manner to accomplish its valid missions;

- Whether PRIDE can fulfill the legislative intent in s. 946.502(6), F.S., that correctional work programs use inmates in all levels of custody, with emphasis on reducing idleness among inmates in close custody;
- The extent to which privatization and market changes have reduced PRIDE's sales and impeded its ability to expand training; and
- What creative strategies could enhance the program's ability to accomplish its valid missions.

Section 2 of the bill addresses the concern raised in OPPAGA Report No. 03-68 that state property interests in reversion of PRIDE property to the state need to be clarified. Section 946.505(1), F.S., is amended to clarify that all property and assets related to a correctional work program will revert to state ownership if the program closes and PRIDE does not intend to use the property and assets in another correctional work program. The property and assets would also revert to the state if PRIDE were dissolved. The bill does not address the status of property that is sold or otherwise transferred by PRIDE. However, PRIDE does not have authority to transfer title to property originally leased from the department or the state, or to permanent enhancements to facilities or work programs.

C. SECTION DIRECTORY:

Section 1. Creates the Prison Industries Task Force within the Office of Legislative Services; requiring the task force to determine how well the prison industries program has fulfilled its statutory mission and purpose; providing for the appointment of members to the task force; requiring the task force to hold a minimum number of public meetings; providing that the meetings and records of the task force are subject to public meetings requirements and the public records law; providing for members of the task force to be reimbursed for per diem travel expenses; requiring the Legislative Committee on Intergovernmental Relations to provide staff support for the task force; specifying the duties of the task force with respect to taking testimony; requiring the task force to submit a report to the Governor and the Legislature; abolishing the task force on a future date.

Section 2. Amending s. 946.505, F.S., clarifying the state's reversionary interest in the facilities, property, and assets of the corporation operating a correctional work program.

Section 3. 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:

   The fiscal impact to the government is expected to be insignificant. There will be some expense to the state for reimbursement of travel and per diem costs for task force members, but members are not authorized additional compensation. There will also be some administrative costs, although the task force will be supported by current state personnel.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take 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:

The bill has conflicting provisions concerning who will serve as the chair of the task force. Subparagraph (1)(b)1. states that the Secretary of Corrections will be the chair and paragraph (1)(d) provides that the members will elect the chair from among the members at the first meeting.

Paragraph (1)(c) states that the President of the Senate and the Speaker of the House shall jointly appoint the members of the task force set forth in "subparagraphs (b)7.–11." This reference fails to include and provide for the appointment of the former inmate in subparagraph (b)12. An amendment should be drafted if the intent is to include the former inmate in the group of people jointly appointed by the President and Speaker.

Subsection (1)(g) requires that the legislative task force be subject to *executive branch* open meetings (Chapter 286, F.S.) and public records (Chapter 119, F.S.) requirements. The Legislature has its own joint policies regarding open meetings and public records and is not obligated to comply with executive requirements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to prison industries; creating the Prison Industries Task Force within the Office of Legislative Services; requiring the task force to determine how well the prison industries program has fulfilled its statutory mission and purpose; providing for the appointment of members to the task force; requiring the task force to hold a minimum number of public meetings; providing that the meetings and records of the task force are subject to public meetings requirements and the public records law; providing for members of the task force to be reimbursed for per diem and travel expenses; requiring the Legislative Committee on Intergovernmental Relations to provide staff support for the task force; specifying the duties of the task force with respect to taking testimony; requiring the task force to submit a report to the Governor and the Legislature; abolishing the task force on a future date; amending s. 946.505, F.S.; clarifying the state's reversionary interest in the facilities, property, and assets of the corporation operating a correctional work program; providing an effective date.

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

Section 1. Prison Industries Task Force.--

(1)(a) There is created within the Office of Legislative Services the Prison Industries Task Force to review how well PRIDE has fulfilled its statutory missions and purposes and

whether the statutory missions of the prison industries program are feasible and relevant today and in the future.

(b) The task force shall consist of the following 14 members:

1. The Secretary of Corrections, who shall serve as chair, and two wardens of prisons that have prison industries programs;

2. A representative from the Agency for Workforce Innovation;

3. A representative from the Office of Workforce Education within the Department of Education;

4. A representative from Florida TaxWatch;

5. A member of the Senate, appointed by the President of the Senate;

6. A member of the House of Representatives, appointed by the Speaker of the House of Representatives;

7. A representative from the board of directors of the private nonprofit prison industries corporation, as defined in s. 946.503, Florida Statutes;

8. A representative from a local governmental entity that purchases products that are produced by prison industries;

9. A representative from a private industry that regularly employs former inmates;

10. A representative from a private industry that regularly trains inmates;

11. A representative from the academic community who has expertise in research concerning the reentry of former prisoners into society and the employment of former felons; and

12. A former inmate who has worked in the prison

industries program.

(c) The President of the Senate and the Speaker of the House of Representatives shall jointly appoint the members of the task force specified in subparagraphs (b)7.-11. by July 1, 2006.

(d) The task force shall hold its first meeting by July 15, 2006, at which time the members shall select by majority vote a chairperson from among themselves.

(e) All recommendations of the task force shall be by majority vote.

(f) The task force shall meet at the call of the chairperson and shall conduct at least three public meetings.

(g) Meetings of the task force shall be open to the public and are subject to the requirements of s. 286.011, Florida Statutes. Records of the task force are public records and subject to chapter 119, Florida Statutes, except to the extent that public access to any of those records is restricted by law.

(h) Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(i) The Legislative Committee on Intergovernmental Relations shall provide staff support for the task force.

(2)(a) The task force shall receive testimony from the Auditor General, the Chief Inspector General, the Office of Program Policy Analysis and Government Accountability, PRIDE, and other appropriate officials to address the following:

1. Are the statutory missions of the prison industries program as defined in s. 946.501(2), Florida Statutes, still

valid?

2. Should other valid missions be included within the program?

3. How do the current or recommended missions conflict with any other valid missions?

4. Should the missions be ranked in order of priority and, if so, to what extent can accomplishment of a higher-priority mission be reduced in order to accomplish a lower-priority mission?

5. Is the method of addressing the legislative finding in s. 946.501(3), Florida Statutes, which is that it is in the best interest of the state, inmates, and the general public to duplicate as closely as possible free-enterprise production and service operations, also the most effective manner in which to accomplish the missions of the prison industries program?

6. Should the structure for managing the correctional work program be changed in order to facilitate accomplishing the missions of the program?

7. Is operating the prison industries program independently of state government the most effective manner in which to accomplish its valid mission?

8. To what extent can PRIDE fulfill the legislative intent stated in s. 946.502(6), Florida Statutes, which is that prison industries programs use inmates in all levels of custody, with specific emphasis on reducing idleness among inmates in close custody?

9. To what extent, if any, have privatization of governmental functions and changing markets reduced sales by

PRIDE or impeded its ability to expand prison industry training?

10. What creative strategies could enhance the prison industries program's ability to meet its valid missions?

(b) The task force shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2007.

(3) All meetings of the task force and all business of the task force for which reimbursement may be requested must be concluded before the report is filed. The task force is abolished July 1, 2007.

Section 2. Subsection (1) of section 946.505, Florida Statutes, is amended to read:

946.505 Reversion upon dissolution of corporation or termination of lease.--

(1) In the event the corporation is dissolved or its lease of any correctional work program expires or is otherwise terminated, all property relating to such correctional work program which ceases to function because of such termination or dissolution, including all buildings, land, furnishings, equipment, and other chattels and assets, whether originally leased from the department or~~, as well as any~~ subsequently constructed or otherwise acquired ~~facilities in connection with its continued operation of that program~~, automatically reverts to full ownership by the department unless the corporation intends to use ~~utilize~~ such property in another correctional work program. Such a reversionary ownership interest of the state in any and all such after-acquired facilities, property,

and assets by the corporation is in furtherance of the goals established in s. 946.502(4), and such a present ownership interest by the state is a continuing and insurable state interest.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 871 Telephone Calling Records
SPONSOR(S): Ryan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1488

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

SUMMARY ANALYSIS

There are a number of companies which offer telephone calling records for sale. Numerous websites offer to obtain detailed information regarding the numbers that have been called from a particular telephone number.

The bill makes it a first degree misdemeanor to:

- Obtain or attempt to obtain the calling record of another person by:
  - Making a false, fictitious, or fraudulent statement or representation to an officer, employee or agent of a telecommunications company;
  - Making a false, fictitious or fraudulent statement or representation to a customer of a telecommunications company; or
  - Providing any document to an officer, employee or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious or fraudulent statement or representation.
- Ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in a manner described above.
- Sell or offer to sell a calling records obtained in any manner described above.

The bill contains a number of exceptions to this prohibition. A second or subsequent violation of this section will be a third degree felony.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

Promote personal responsibility: The bill makes it a crime to obtain a telephone calling record of another person by using fraudulent means.

B. EFFECT OF PROPOSED CHANGES:

There are a number of businesses which offer telephone calling records for sale. Numerous websites offer to obtain detailed information regarding the numbers that have been called by a particular telephone number. According to the Federal Trade Commission, records are obtained by "pretexting" – a practice where a person calls a telephone company pretending to be the account holder in order to gain access to the records from the company. Calling records are also illicitly obtained by unauthorized access of accounts via the internet. [1] According to the FTC, "[a]lthough the acquisition of telephone records does not present the opportunity for immediate financial harm as the acquisition of financial records does, it nonetheless is a serious intrusion into consumers' privacy and could result in stalking, harassment and embarrassment."[2]

Federal legislation has been filed entitled the "Consumer Telephone Records Protection Act of 2006".[3] This bill prohibits obtaining confidential phone records information from a telecommunications carrier without authorization from the customer by knowingly and intentionally: making false or fraudulent statements or representations to an employee or customer of a telecommunications carrier; providing false documentation to a telecommunications carrier knowing that the document is false; or accessing customer accounts of a telecommunications carrier via the internet. Each occurrence would be punishable by up to five years in prison. The bill also prohibits any person from knowingly selling confidential phone records from a telecommunications carrier without authorization from the customer.

Currently, section 817.568, F.S. makes it a third degree felony for any person to willfully and without authorization fraudulently use or possess with intent to use, personal identification information concerning an individual without first obtaining that individual's consent.

Part II of Chapter 501, Florida Statutes is known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Section 501.204, F.S. provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive.[4] A person willfully violating the provisions of the FDUTPA is liable for a civil penalty of not more than $10,000 per violation. This penalty is increased to $15,000 for each violation if the willful violation victimizes or attempts to victimize senior citizens or handicapped persons. Individuals aggrieved by a violation of the act can seek a declaratory judgment that an act or practice violates the act and to enjoin a person from continuing the deceptive or unfair act. An individual harmed by a person who has violated the act may also seek actual damages from that person, plus attorney's fees and court costs.[5] The state attorneys and the Department of Legal Affairs are the

[1] *Prepared Statement of the Federal Trade Commission before the Committee on Commerce, Science and Transportation, Subcommitee on Consumer Affairs, Product Safety and Insurance, U.S. Senate on Protecting Consumers' Phone Records, February 8, 2006.* http://www.ftc.gov/os/2006/02/commissiontestimonypretexting060208.pdf
[2] *Id. at 7.*
[3] See S. 2178, sponsored by Senate Schumer.
[4] See s. 501.2075, F.S.
[5] See s. 501.211(1) and (2), F.S.

enforcing authorities for the FDUTPA. Section 501.207, F.S., specifies the actions that the enforcing authority may bring.

In January 2006, the Attorney General's office filed suit against a Florida corporation claiming that its actions in using personal identification information of a consumer without the consumer's consent in order to obtain calling records (which the company then sold) violated section 817.568, F.S. and was therefore a per se violation of FDUTPA.[6] According to the Attorney General's office, the company's website has since been shut down.

HB 871 makes it a first degree misdemeanor to:

1. Obtain or attempt to obtain the calling record of another person by:
    a. Making a false, fictitious, or fraudulent statement or representation to an officer, employee or agent of a telecommunications company;
    b. Making a false, fictitious or fraudulent statement or representation to a customer of a telecommunications company; or
    c. Providing any document to an officer, employee or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious or fraudulent statement or representation.
2. Ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in a manner described above.
3. Sell or offer to sell a calling records obtained in any manner described above.

A second or subsequent violation is a third degree felony. The bill defines the term "calling record" to mean a record held by a telecommunications company[7] of the telephone calls made by a customer[8] of that company.

The bill provides that it is not a violation of this section for:

1. A law enforcement agency[9] to obtain a calling record in connection with the performance of the official duties of that agency.
2. A telecommunications company, or an officer, employee, or agent of the telecommunications company, to obtain a calling record of that company in the course of:
    a. Testing the security procedures or systems of the telecommunications company for maintaining the confidentiality of customer information;
    b. Investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent of the telecommunications company; or
    c. Recovering a calling record that was obtained or received by another person in a fraudulent manner, described above.

---

[6] http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6L8KGC/$file/1stSource_Complaint.pdf

[7] The bill defines the term "telecommunications company" in conformity with s. 364.02, F.S. which defines the term as follow:

"Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

(a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;

(b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;

(c) A commercial mobile radio service provider;

(d) A facsimile transmission service;

(e) A private computer data network company not offering service to the public for hire;

(f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or

(g) An intrastate interexchange telecommunications company.

The bill also provides that the term includes providers of "VoIP service" (an acronym for voice-over-the internet-protocol) and excludes providers of broadband service.

[8] The bill defines the term "customer" to mean a person who has received telephone service from a telecommunications company.

[9] The bill references the definition of the term "law enforcement agency" in s. 23.1225(1)(d), F.S.

3. A person to obtain a calling record that otherwise is available as a public record.
4. A licensed private investigator, or an officer, employee or agent of the investigator to obtain a calling record to the extent reasonably necessary to collect child support from a person adjudged to be delinquent in his or her obligations by a court and as authorized by a court order.

C. SECTION DIRECTORY:

Section 1. Prohibits obtaining calling records of another person.

Section 2. Provides 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 determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would criminalize selling telephone calling records that are obtained through fraudulent means.

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:

The bill makes it a crime to obtain a telephone calling record of another person by making a false statement to an employee of a telecommunications company. Unlike the pending federal legislation, discussed above, the bill does not require proof that the records were obtained without the permission of the owner of the records. This would make it a misdemeanor to, for example, obtain a calling record of a family member by calling the telephone company and using the name of the family member - even if the family member had given the person permission to use his or her name.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to telephone calling records; prohibiting a person from obtaining or attempting to obtain the calling record of another person by making false or fraudulent statements or by providing false or fraudulent documents to a telecommunications company, or by selling or offering to sell a calling record that was obtained in a fraudulent manner; providing that it is a first-degree misdemeanor to commit a first violation and a third-degree felony to commit a second or subsequent violation; providing penalties; providing that it is not a violation of the act for a law enforcement agency, telecommunications company, or private investigator to obtain calling records for specified purposes; providing an effective date.

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

Section 1. Obtaining telephone calling records by fraudulent means.--

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

(a) "Calling record" means a record held by a telecommunications company of the telephone calls made by a customer of that company.

(b) "Customer" means a person who has received telephone service from a telecommunications company.

(c) "Law enforcement agency" has the same meaning as in s. 23.1225(1)(d), Florida Statutes.

(d) "Telecommunications company" has the same meaning as in s. 364.02, Florida Statutes, except that the term includes providers of VoIP service and excludes providers of broadband service.

(2) It is a violation of this section for a person to:

(a) Obtain or attempt to obtain the calling record of another person by:

1. Making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a telecommunications company;

2. Making a false, fictitious, or fraudulent statement or representation to a customer of a telecommunications company; or

3. Providing any document to an officer, employee, or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in any manner described in paragraph (a).

(c) Sell or offer to sell a calling record obtained in any manner described in paragraph (a) or paragraph (b).

(3) A person who violates this section for the first time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes. A second or subsequent violation constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.

775.084, Florida Statutes.

(4) It is not a violation of this section for:

(a) A law enforcement agency to obtain a calling record in connection with the performance of the official duties of that agency.

(b) A telecommunications company, or an officer, employee, or agent of a telecommunications company, to obtain a calling record of that company in the course of:

1. Testing the security procedures or systems of the telecommunications company for maintaining the confidentiality of customer information;

2. Investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent of the telecommunications company; or

3. Recovering a calling record that was obtained or received by another person in any manner described in subsection (2).

(c) A person to obtain a calling record that otherwise is available as a public record under chapter 119, Florida Statutes.

(d) A private investigator licensed under part II of chapter 493, Florida Statutes, or an officer, employee, or agent of such an investigator, to obtain a calling record to the extent reasonably necessary to collect child support from a person adjudged to be delinquent in his or her obligations by a court and as authorized by a court order.

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

PHCB CRJU 06-01
(HB 515 & 589)

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PHCB CRJU 06-01 (HB 515 and 589)--Resale of Tickets
SPONSOR(S): Stargel, Llorente, and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee		Cunningham	Kramer
1)			
2)			
3)			
4)			
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 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 Proposed House Combined Bill adds "theme, amusement, or recreation park" tickets and tickets to "entertainment complexes" to the above list, and 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 provides an exception to the criminal penalty for tickets resold *at any price* so long as the resale is authorized by the ticket's original seller.

The bill also provides an exception to the criminal penalty for non-park tickets resold *at any price*, so long as the resale is made through an Internet website and the website operator makes and posts certain guarantees and disclosures to which a prospective purchaser is directed before completing the resale transaction. The bill defines "non-park ticket."

The bill further provides that sales tax for resales of admissions tickets must be submitted to the Department of Revenue in accordance with s. 212.04, F.S.

In short, this bill would allow *any person* to:

- Resell an admission ticket at an amount that is up to 25% more than the original retail price charged by the original seller;
- Resell an admission ticket *at any price* so long as the resale is authorized by the ticket's original seller;
- Resell a non-park ticket *at any price* through an Internet website where the website operator makes certain guarantees and disclosures.

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 increases the amount above retail price for which specified tickets may be resold without committing a second degree misdemeanor.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

---

[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.*

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]

Currently, s. 817.36, F.S., states, in part, that it is a second degree misdemeanor[10] 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]

Effect of the Bill

As noted above, current law provides 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 The bill adds "theme, amusement, or recreation park" tickets and tickets to "entertainment complexes" to the above list, and 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 provides an exception to the criminal penalty for tickets resold *at any price* so long as the resale is authorized by the ticket's original seller.

The bill also provides an exception to the criminal penalty for non-park tickets resold *at any price*, so long as the resale is made through an Internet website and the website operator makes and posts the following guarantees and disclosures to which a prospective purchaser is directed before completing the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket if:
    a. The ticketed event is cancelled;
    b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or
    c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantee made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
2. The website operator discloses through Internet web pages on which are visibly posted text, or links to web pages on which are posted text that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than its original value.

The bill clarifies that refunds must include servicing, handling, or processing fees unless such fees are declared non-refundable under the terms of the guarantee. "Non-park ticket" is defined by the bill as a ticket that is not for admission to a theme, amusement, or recreation park or entertainment complex or to a permanent exhibition or recreational activity within such a park.

---

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

[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.

The bill further provides that sales tax for resales of admissions tickets must be submitted to the Department of Revenue in accordance with s. 212.04, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., increasing the maximum amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for resale of tickets authorized by the original seller; providing an exception to the criminal penalty for resale of certain tickets through an Internet website in specified circumstances; providing for sales tax collection on ticket 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.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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. Private individuals may also profit in that certain tickets may be resold *at any price* in certain circumstances.

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:

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

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:

Currently, s. 509.013, 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. The terms, "amusement or recreation park" are not defined by the bill or by statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to resale of tickets; amending s. 817.36, F.S.; increasing the maximum amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for resale of tickets authorized by the original seller; providing an exception to the criminal penalty for resale of certain tickets through an Internet website in specified circumstances; providing for sales tax collection on ticket resales; providing an effective date.

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

Section 1. Subsection (2) of section 817.36, Florida Statutes, is amended to read:

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

(2)(a) Whoever shall resell or offer for resale ~~sale or sell~~ any ticket good for admission to any sporting exhibition, athletic contest, theater, or other ~~any~~ exhibition, or to any theme, amusement, or recreation park or entertainment complex, where an admission price is charged and request or receive a price in excess of 25% ~~$1~~ above the retail admission price charged therefor by the original seller of the ~~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) shall not prohibit the resale or offer for resale of a ticket, at any price, if

such resale or offer is authorized by the ticket's original seller.

(c) The provisions of paragraph (a) also shall not prohibit the resale or offer for resale of a non-park ticket, at any price, if such resale or offer is made through an Internet website and the website operator makes and posts the following guarantees and disclosures to which a prospective purchaser is directed before completion of the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket if:

a. The ticketed event is cancelled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or

c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The website operator discloses through Internet web pages on which are visibly posted text, or links to web pages on which are posted text that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than its original value.

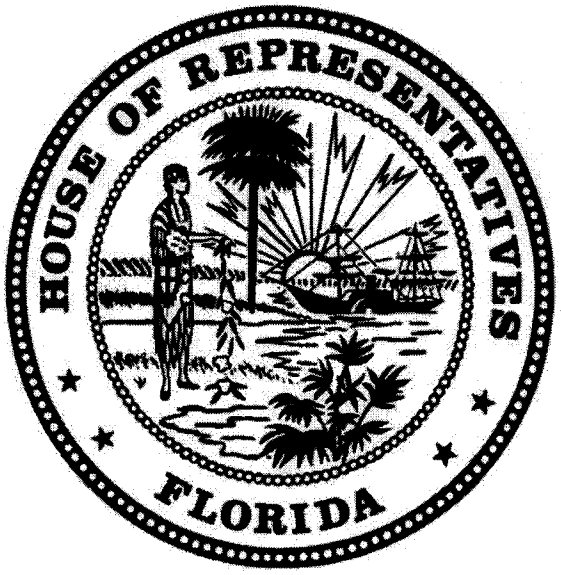
A refund under subparagraph 1. shall include any servicing, handling, or processing fees unless such fees are declared non-refundable under the terms of the guarantee. For purposes of this paragraph, "non-park ticket" means a ticket that is not for

admission to a theme, amusement, or recreation park or entertainment complex or to a permanent exhibition or recreational activity within such a park or complex.

(d) ~~(b)~~ The provisions of paragraph (a) ~~this subsection~~ shall 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, unless such agencies are registered sellers of travel pursuant to part XI of chapter 559 and adhere to the restriction of selling said tickets as part of the travel packages specified in that part, and such travel agencies are reselling said tickets on behalf of the original sellers of said tickets. When any original seller of tickets provides a travel agency with tickets in bulk, the travel agent shall be deemed to be reselling the tickets on behalf of the original seller.

(e) Sales tax for any resales under subsection (2) shall be remitted to the Department of Revenue in accordance with s. 212.04.

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



CRIMINAL JUSTICE COMMITTEE MEETING

Wednesday, March 8, 2006
10:00 a.m. - 12:00 p.m.
404 House Office Building

AMENDMENT PACKET

Allan G. Bense
Speaker

Dick Kravitz
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 251**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative Allen offered the following:

Amendment (with directory and title amendments)

Remove lines 164-310.

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

Remove line(s) 18-34 and insert:

designated as sexual predators;

000000

251-Allen-01

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 0463

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative Richardson offered the following:

Amendment

Remove line 42 and insert:

each sentenced inmate who is to be released from the facility unless the

000000

463-Richardson-01

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. 0463

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative Richardson offered the following:

Amendment (with title amendments)

Remove line 53 and insert:

(b) Each county or municipal detention facility that elects to participate in the testing program authorized in paragraph (a) must comply with the requirements of this paragraph. If the county or municipal detention facility knows

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

Remove lines 8-12 and insert:

exceptions; requiring that certain county and municipal detention facilities notify the Department of Health and the county health department in the county where the inmate plans to reside following release if the inmate is HIV positive; requiring certain detention facilities to provide special

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. HB 669

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Dean offered the following:

Amendment (with directory and title amendments)

On lines 36 and 37 remove: range

and insert: firearms

000000

669-Dean-01

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 669**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Dean offered the following:

Amendment (with directory and title amendments)

Remove line(s) 30-31 and insert:

issued to persons who achieve a passing score on

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

Remove line(s) 9-10 and insert:

authorizing the use of specified

000000

669-Dean-02

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 871**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Ryan offered the following:

Amendment to Amendment (1) by Representative Ryan (with directory and title amendments)

Remove line(s) 47 and insert:

agency in accordance with other applicable laws.

871-Ryan-02

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 871**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Ryan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Obtaining telephone calling records by fraudulent means prohibited.--

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

(a) "Calling record" means a record held by a telecommunications company of the telephone calls made or text messages sent or received by a customer of that company.

(b) "Customer" means a person who has received telephone service from a telecommunications company.

(c) "Law enforcement agency" has the same meaning as in s. 23.1225(1)(d), Florida Statutes.

(d) "Telecommunications company" has the same meaning as in s. 364.02, Florida Statutes, except that the term includes VoIP service and commercial mobile radio service providers.

(2) It is a violation of this section for a person to:

(a) Obtain or attempt to obtain the calling record of another person without the permission of that person by:

1. Making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a telecommunications company;

2. Making a false, fictitious, or fraudulent statement or representation to a customer of a telecommunications company; or

3. Providing any document to an officer, employee, or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in any manner described in paragraph (a).

(c) Sell or offer to sell a calling record obtained in any manner described in paragraph (a) or paragraph (b).

(3) A person who violates this section for the first time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes. A second or subsequent violation constitutes a felony of the third-degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(4) It is not a violation of this section for:

(a) A law enforcement agency to obtain a calling record in connection with the performance of the official duties of that agency.

(b) A telecommunications company, or an officer, employee, or agent of a telecommunications company, to obtain a calling record of that company in the course of:

1. Testing the security procedures or systems of the telecommunications company for maintaining the confidentiality of customer information;

2. Investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent of the telecommunications company; or

3. Recovering a calling record that was obtained or received by another person in any manner described in subsection (2).

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

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

Remove the entire title and insert:

A bill to be entitled

An act relating to telephone calling records; providing definitions; prohibiting a person from obtaining or attempting to obtain the calling record of another person by making false or fraudulent statements or by providing false or fraudulent documents to a telecommunications company, or by selling or offering to sell a calling record that was obtained in a fraudulent manner; providing that it is a first-degree misdemeanor to commit a first violation and a third-degree felony to commit a second or subsequent violation; providing penalties; providing that it is not a violation of the act for a law enforcement agency or telecommunications company to obtain calling records for specified purposes; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 0829

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative Holloway offered the following:

Amendment (with title amendment)

Remove lines 31-80 and insert:

(b) The task force shall consist of the following 13 members:

1. The Secretary of Corrections, who shall serve as chair, and two wardens of prisons that operate prison industries programs;

2. A representative from the Agency for Workforce Innovation;

3. A representative from the Office of Workforce Education within the Department of Education;

4. A member of the Senate, appointed by the President of the Senate;

5. A member of the House of Representatives, appointed by the Speaker of the House of Representatives;

6. A representative from the board of directors of the private nonprofit prison industries corporation, as defined in s. 946.503, Florida Statutes;

7. A representative from a local governmental entity that purchases products that are produced by prison industries;

8. A representative from a private industry that regularly employs former inmates;

9. A representative from a private industry that regularly trains inmates;

10. A representative from the academic community who has expertise in research concerning the reentry of former prisoners into society and the employment of former felons; and

11. A former inmate who has worked in the prison industries program.

(c) The President of the Senate and the Speaker of the House of Representatives shall jointly appoint the members of the task force specified in subparagraphs (b)6.-11. by July 1, 2006.

(d) The task force shall hold its first meeting by July 15, 2006.

(e) All recommendations of the task force shall be by majority vote.

(f) The task force shall meet at the call of the chairperson and shall conduct at least three meetings.

(g) Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(h) The Legislative Committee on Intergovernmental Relations shall provide staff support for the task force.

(2)(a) The task force shall receive testimony from the Auditor General, the Governor's Inspector General, the Office of

Amendment No. 1

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

52 Remove lines 8-10 and insert:

53 hold a minimum number of meetings;

Amendment No. 1

Bill No. 0719

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative Planas offered the following:

Amendment (with title amendments)

Remove everything after the enacting clause and insert:

Section 1. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent the ~~such~~ procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection

(2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may ~~not~~ be sealed, if eligible under subsections (1) and (2) unless, without regard to whether adjudication was withheld, ~~if~~ the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. If the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act, a record that relates to any of the violations specified above may not be sealed, without regard to whether adjudication was withheld. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to the ~~such~~ additional arrests, the ~~such~~ intent must be specified in the order. A criminal justice agency may not seal any record pertaining to the ~~such~~ additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one

incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each petition to a court to seal a criminal history record is complete only when accompanied by:

(a) A certificate of eligibility for sealing issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. <u>Except as otherwise provided in this section,</u> has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on the ~~such~~ sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that the ~~such~~ person:

(a) Has submitted to the department a certified copy of the disposition of the charge to which the petition to seal pertains.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the ~~such~~ fee is waived by the executive director.

(c) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

(e) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058 involving an offense for which the defendant has been found guilty or pled guilty or nolo contendere.

(f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency

which the records of the court reflect has received the criminal history record from the court.

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of the ~~such~~ notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to seal entered by a court when the ~~such~~ order does not comply with the requirements of this section. Upon receipt of ~~such~~ an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to seal when the petitioner for the ~~such~~ order failed to obtain the certificate of eligibility as required by this section or when the ~~such~~ order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to this section does not require that the ~~such~~ record be surrendered to the court, and the ~~such~~ record shall continue to be maintained by the department and other criminal justice agencies.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by the ~~such~~ contractor or licensee in a sensitive position having

direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of the ~~such~~ person's failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment or licensure with the ~~such~~ entity or contractor, except to the person to whom the criminal history

record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.--Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 2. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may ~~not~~ be expunged, <u>if eligible under subsections (1) and (2). If,</u> without regard to whether adjudication was withheld, ~~if~~ the defendant

was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act, ~~.~~ a record that relates to any of the violations specified above may not be sealed or expunged. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to petitioning the court to expunge a criminal history record, a

person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(g) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(h) Is not required to wait a minimum of 10 years prior to being eligible for an expunction of such records because all charges related to the arrest or criminal activity to which the petition to expunge pertains were dismissed prior to trial, adjudication, or the withholding of adjudication. Otherwise, such criminal history record must be sealed under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for at least 10 years before such record is eligible for expunction.

(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon

the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with

the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge

the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.--Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

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

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

Remove lines 2-14 and insert:

An act relating to the sealing and expunction of criminal records; amending s. 943.059, F.S.; clarifying that a criminal

record that relates to certain offenses may not be sealed, regardless of whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense; providing that a certificate of eligibility for sealing is available if the person seeking the certificate has never secured a prior sealing or expunction of a criminal history record under specified provisions involving an offense for which he or she was found guilty or pled guilty or nolo contendere; amending s. 943.0585, F.S.; clarifying that a criminal record that relates to certain offenses may not be expunged, regardless of whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense