



**CRIMINAL JUSTICE
COMMITTEE MEETING**

**Tuesday, March 28, 2006
10:15 a.m. - 12:00 noon
404 House Office Building**

**MEETING
PACKET**

Revised

Allan G. Bense
Speaker

Dick Kravitz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time: Tuesday, March 28, 2006 10:15 am
End Date and Time: Tuesday, March 28, 2006 12:00 pm
Location: 404 HOB
Duration: 1.75 hrs

Consideration of the following proposed committee bill(s):

PCB CRJU 06-07 -- Death Penalty/Mental Retardation
PCB CRJU 06-10 -- Voyeurism

Consideration of the following bill(s):

HB 25 Violent Felony Offenders by Negrón
HB 97 Safety Belt Law Enforcement by Slosberg
HB 561 CS Offenses Involving Insurance by Rivera
HB 681 Electronic Recording of Custodial Interrogations by Holloway
HB 1505 Domestic Violence by Meador
HB 1507 Public Records by Meador
HB 1577 Personal Identification Information by Brandenburg
HB 1593 Cybercrime by Barreiro
HB 7127 Disturbance of Assemblies by Military & Veteran Affairs Committee
HB 7145 Seaport Security by Domestic Security Committee
HB 7147 Seaport Security by Domestic Security Committee

NOTICE FINALIZED on 03/24/2006 15:52 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
Tuesday, March 28, 2006
10:15 a.m. – 12:00 p.m.
404 House Office Building

- I. Opening remarks by Chair Kravitz**
- II. Roll call**
- III. Consideration of the following proposed committee bill(s):**
 - PCB CRJU 06-07—Death Penalty/Mental Retardation**
 - PCB CRJU 06-10—Voyeurism**

IV. Consideration of the following bill(s):

- **HB 25 Violent Felony Offenders by Negrón**
- **HB 97 Safety Belt Law Enforcement by Slosberg**
- **HB 561 CS Offenses involving Insurance by Rivera**
- **HB 681 Electronic Recording of Custodial Interrogations by Holloway**
- **HB 1505 Domestic Violence by Meador**
- **HB 1507 Public Records by Meador**
- **HB 1577 Personal Identification Information by Brandenburg**
- **HB 1593 Cybercrime by Barreiro**
- **HB 7127 Disturbance of Assemblies by Military & Veteran Affairs Committee**
- **HB 7145 Seaport Security by Domestic Security Committee**
- **HB 7147 Seaport Security by Domestic Security Committee**

IV. Closing comments / Meeting adjourned

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any House principles.

B. EFFECT OF PROPOSED CHANGES:

In 2001, the legislature created section 921.137, F.S. which prohibited the imposition of a death sentence upon a mentally retarded defendant. Specifically, the section provides that a sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined, in accordance with the section, that the defendant has mental retardation.¹ After a defendant who has been given notice of his or her intention to raise mental retardation as a bar to a death sentence is convicted of a capital felony and the jury has recommended a sentence of death, the defendant may file a motion to determine whether the defendant has mental retardation. The judge then must appoint two experts in the field of mental retardation to evaluate the defendant. At the final sentencing hearing, the court must consider the findings of the experts and the findings of any other expert which is offered by the state or defense on the issue of whether the defendant has mental retardation. If the court finds by clear and convincing evidence that the defendant has mental retardation, the court may not impose a sentence of death and must enter a written order that sets forth the findings in support of the determination. The bill specified that the section does not apply to a defendant who was sentenced to death before the effective date of the act.

After this law was enacted, the United States Supreme Court ruled that the execution of a mentally retarded criminal is prohibited by the Eighth Amendment of the United States constitution which bars cruel and unusual punishment.² The court did not provide guidance as to how the term mentally retarded should be defined and left it up to the individual states to establish their own methods of determining whether an offender is mentally retarded.

In 2003, the Criminal Procedure Rules Committee of the Florida Bar proposed a new rule of criminal procedure to the Florida Supreme Court to implement section 921.137, F.S. The Criminal Court Steering Committee submitted proposed alternative rules. These proposed rules differed from the statute adopted by the legislature in two primary respects. First, the statute requires that the court find by *clear and convincing evidence* that the defendant has mental retardation. The proposed rule did not reference the necessary burden of proof. Second, the statute required that the hearing on whether a defendant was mentally retarded take place after the defendant is found guilty and the jury has recommended a sentence of death. The proposed rule required that the hearing be conducted before the trial commenced.

Several members of the House of Representatives [Representatives Kottkamp, Barreiro, and Kyle] filed comments in the case in opposition to the conflicting parts of the proposed rule and asserted that the legislature and not the court has the authority to set policy. The Attorney General's office filed comments that objected to aspects of the proposed rule and specifically objected on several grounds to the rule's requirement that the hearing be held pre-trial. The brief stated that "[t]here is neither authority

¹The section defines the term "mental retardation" to mean significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

² Atkins v. Virginia, 122 S.Ct. 2242 (2002)

nor justification for the Court to substitute its judgment for the clearly-expressed intent of the legislature regarding this substantive right."³

In May of 2004, the Florida Supreme Court adopted the Rule of Criminal Procedure 3.203 which contained the provisions which are in conflict with the statute passed by the legislature.⁴ The opinion acknowledged that under the Atkins decision "individual states are free to establish their own methods for determining which offenders are mentally retarded".⁵ The majority opinion of the court did not suggest that the statute was constitutionally inform or give any reasons for adopting a rule which is in conflict with the statute. A concurring opinion indicated that the provision "allowing the determination to be made before trial promotes the most efficient use of increasingly scarce judicial and legal resources."

The Florida Constitution provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts". Art. V. Section 2(a), Fla. Const. According to the constitution, a rule of court "may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature."

This proposed committee bill repeals Rule of Criminal Procedure 3.203.⁶

C. SECTION DIRECTORY:

Section 1. Repeals Rule of Criminal Procedure 3.203.

Section 2. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³ See comments filed on August 10, 2004.

⁴ Amendments to Florida Rules of Criminal Procedure and Florida Rules of Appellate Procedure, 875 So.2d 563 (Fla. 2004).

⁵ Id. at 565.

⁶ The bill contains the following "whereas" clauses:

WHEREAS, in 2001 section 921.137, Florida Statutes, was created to establish the public policy for the State of Florida exempting mentally retarded persons convicted of capital crimes from the death penalty, and

WHEREAS, section 921.137, Florida Statutes, is a current and validly enacted law, and

WHEREAS, it is the public policy of this state that all persons charged by indictment of a capital crime shall be tried before a death-qualified jury, and that hearings for the determination of mental retardation shall be conducted as prescribed in section 921.137, Florida Statutes, and

WHEREAS, the Florida Supreme Court in Amendments to the Florida Rules of Criminal Procedure and Rules of Appellate Procedure, 875 So.2d 563 (Fla. 2004) adopted Rule 3.203, which contradicts and conflicts with the express provisions of section 921.137, Florida Statutes, and

WHEREAS, the United States Supreme Court said in Atkins v. Virginia, 536 U.S. 304 (2002), that it ". . . found no reason to disagree with the judgment of the legislatures which have recently addressed the matter and concluded that death is not a suitable punishment for a mentally retarded criminal," and

WHEREAS, all nine justices of the United States Supreme Court in Atkins agreed that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by this country's legislatures,"

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have any fiscal impact on the state or local government or the private sector.

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:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
 2 An act relating to the death penalty; repealing Rule
 3 3.203, Florida Rules of Criminal Procedure, relating to
 4 imposition of the death penalty; providing an effective
 5 date.

6
 7 WHEREAS, in 2001 section 921.137, Florida Statutes, was
 8 created to establish the public policy for the State of Florida
 9 exempting mentally retarded persons convicted of capital crimes
 10 from the death penalty, and

11 WHEREAS, section 921.137, Florida Statutes, is a current and
 12 validly enacted law, and

13 WHEREAS, it is the public policy of this state that all
 14 persons charged by indictment of a capital crime shall be tried
 15 before a death-qualified jury, and that hearings for the
 16 determination of mental retardation shall be conducted as
 17 prescribed in section 921.137, Florida Statutes, and

18 WHEREAS, the Florida Supreme Court in Amendments to the
 19 Florida Rules of Criminal Procedure and Rules of Appellate
 20 Procedure, 875 So.2d 563 (Fla. 2004) adopted Rule 3.203, which
 21 contradicts and conflicts with the express provisions of section
 22 921.137, Florida Statutes, and

23 WHEREAS, the United States Supreme Court said in Atkins v.
 24 Virginia, 536 U.S. 304 (2002), that it ". . . found no reason to
 25 disagree with the judgment of the legislatures which have
 26 recently addressed the matter and concluded that death is not a
 27 suitable punishment for a mentally retarded criminal," and

28 WHEREAS, all nine justices of the United States Supreme
 29 Court in Atkins agreed that the "clearest and most reliable

PCB CRJU 06-07

ORIGINAL

2006

30 objective evidence of contemporary values is the legislation
31 enacted by this country's legislatures," NOW, THEREFORE,

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Rule 3.203, Florida Rules of Criminal Procedure,
36 is repealed.

37 Section 2. This act shall take effect upon becoming a law,
38 but only if this act is enacted by a two-thirds vote of the
39 membership of each house of the Legislature.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-10 Voyeurism
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee		Ferguson <i>KF</i>	Kramer <i>TK</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill amends s. 810.14, F.S., to remove references to photographing, filming, videotaping, or recording from the definition of the offense of voyeurism. These activities would be covered by s. 810.145, F.S, which prohibits video voyeurism. This proposed change clarifies that someone who uses an imaging device to commit voyeurism should be charged under s. 810.145, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Voyeurism

Section 810.14, F.S., which became law in 1998, provides that the offense of voyeurism is committed when a person, having lewd, lascivious, or indecent intent, secretly observes, photographs, films, videotapes, or records another person when the second person is in a dwelling, structure, or conveyance that provides a reasonable expectation of privacy. The Florida Standard Jury Instructions in Criminal Cases 11.13 for s. 810.14, F.S., states that the words lewd, lascivious, and indecent mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act. The phrase "reasonable expectation of privacy" is not defined in this section or in the Standard Jury Instructions.

A violation is a first-degree misdemeanor, punishable by imprisonment not exceeding one year or by a fine of not more than \$1,000. If a person who violates this section has been previously convicted or adjudicated delinquent two or more times of any violation of this section, the subsequent violation is a third-degree felony, punishable by a term of imprisonment not exceeding five years, by a fine of not more than \$5,000, or by a term of imprisonment not exceeding 10 years for certain violent or habitual offenders.

Video Voyeurism

Section 810.145, F.S., which became law in 2004, prohibits video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Video voyeurism dissemination and commercial video voyeurism dissemination involve the distribution of images that are created as a result of video voyeurism.

The offense of video voyeurism may be committed in three ways. Each involves the use of an imaging device without the victim's knowledge and consent. "Imaging device" is defined as any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment or format capable of recording, storing, or transmitting visual images of another person. This definition embraces the devices that could be used to observe, photograph, film, videotape, or record another person under the general voyeurism statute.

- A person can commit the offense by intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy. In order to violate the statute, the act must be done for the offender's own amusement, entertainment, sexual arousal, or profit, or for the purpose of degrading or abusing another person.
- A person can commit the offense by intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy.

- A person can commit the offense by intentionally using an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person for the purpose of viewing the person's body or undergarments. The act must be done on the voyeur's own behalf or on the behalf of another person, or for the amusement, entertainment, sexual arousal, gratification, or profit of the voyeur or another person.

The video voyeurism statute defines "place and time when a person has a reasonable expectation of privacy." It is a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without concern for being viewed, recorded, or broadcast. Examples include the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.

The punishment range for video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination under s. 810.145, F.S., are identical to that of voyeurism under s. 810.14, F.S. The first violation is a first degree misdemeanor and a subsequent violation results in a third degree felony.

Similarities and Differences between Voyeurism and Video Voyeurism

In most cases, a person who is committing voyeurism or attempted voyeurism by means other than unaided visual observation would also be committing video voyeurism. There are undoubtedly theoretical exceptions, but these do not seem to have significance in the real world. For example, it is theoretically possible that someone could have lewd, lascivious, or indecent intent in viewing another person but not have the purpose of seeing the other person dressing, undressing, or exposing a sexual organ.

While there may be narrow exceptions to the general rule that the offense of video voyeurism includes the offense of voyeurism using an artificial device, the converse is not true. The offense of video voyeurism embraces criminal behavior that could not be charged as voyeurism under s. 810.14, including "up-skirt" photography in a public place.

Additionally, the penalties for voyeurism and video voyeurism are identical as noted above.

Effect of this bill

This bill amends s. 810.14, F.S., to remove references to photographing, filming, videotaping, or recording. This clarifies that the proper charge for voyeuristic activities using an imaging device is video voyeurism as set forth in s. 810.145, F.S. Because almost any activity using such devices to commit voyeurism can also be charged as video voyeurism under s. 810.145, F.S., there is no significant change in the law.

C. SECTION DIRECTORY:

Section 1 amends s. 810.14, F.S., relating to video voyeurism.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine this bills 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

A bill to be entitled
An act relating to voyeurism; amending s. 810.14, F.S.;
revising the elements of the offense of voyeurism in order
to eliminate acts of photographing, filming, videotaping,
or recording, which are made a crime under the offense of
video voyeurism; providing that a person commits the
offense of voyeurism when he or she secretly observes
another person when the other person is in a location that
provides a reasonable expectation of privacy; providing an
effective date.

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

Section 1. Section 810.14, Florida Statutes, is amended to
read:

810.14 Voyeurism prohibited; penalties.--

(1) A person commits the offense of voyeurism when he or
she, with lewd, lascivious, or indecent intent, secretly
~~observes, photographs, films, videotapes, or records~~ another
person when the ~~such~~ other person is located in a dwelling,
structure, or conveyance and such location provides a reasonable
expectation of privacy.

(2) A person who violates this section commits a
misdemeanor of the first degree for the first violation,
punishable as provided in s. 775.082 or s. 775.083.

(3) A person who violates this section and who has been
previously convicted or adjudicated delinquent two or more times
of any violation of this section commits a felony of the third
degree, punishable as provided in s. 775.082, s. 775.083, or s.

PCB CRJU 06-10

ORIGINAL

2006

30 | 775.084.

31 | (4) For purposes of this section, a person has been
32 | previously convicted or adjudicated delinquent of a violation of
33 | this section if the violation resulted in a conviction sentenced
34 | separately, or an adjudication of delinquency entered separately,
35 | prior to the current offense.

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

37 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 25 Violent Felony Offenders
SPONSOR(S): Negron and others
TIED BILLS: IDEN./SIM. BILLS: SB 2622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Appropriations Committee	6 Y, 0 N	DeBeaugrine	DeBeaugrine
2) Criminal Justice Committee		Cunningham <i>SM</i>	Kramer <i>TK</i>
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a class of persons who violate the conditions of their probation or community control, known as a "violent felony offender of special concern." "Violent felony offenders of special concern" are persons who commit violent crimes, and whose violation of probation or community control is not for a failure to pay money.

A "violent felony offender of special concern" must be held without bail until the violation is resolved.

The Criminal Punishment Code provides a mathematical formula that determines the minimum sentence that a criminal offender must serve. Under current law, a probation violator is assessed an additional 12 points for a felony violation, or 6 points for any other violation. This bill increases those points for violent felony offenders of special concern by 50%.

On March 21, 2006 the Criminal Justice Estimating Conference determined that the bill would increase the inmate population by 1,336 inmates by the end of FY 2010-11. Please see section II, the fiscal and economic impact section of this analysis, for further information.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal responsibility -- This bill encourages responsible behavior by persons subject to probation or community control by increasing the penalties for violation of probation or community control.

B. EFFECT OF PROPOSED CHANGES:

Probation is a form of community supervision requiring specified contacts with parole and probation officers, standard terms and conditions in statute, and any specific terms and conditions required by the sentencing court.¹ Community Control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.²

The statutory terms and conditions required of persons on probation or community control, as provided by s. 948.03, F.S., are that the offender must:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victims compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation or community control. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the

¹ Section 948.001(5), F.S.

² Section 948.001(2), F.S.

offender admits the charge, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If the offender denies having violated the terms of the probation or community control, the court may commit him or her or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. Unless dismissed, the court must conduct a hearing and determine whether the offender has violated. If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If probation or community control is revoked, the court must adjudicate the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed before placing the probationer on probation or the offender into community control.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all offenses committed on or after October 1, 1998. The code provides a mathematical formula that determines the minimum sentence that a court may impose upon an offender. The minimum sentence is calculated based upon the total number of points assessed against the offender. If the total points exceed 44, the court must subtract 28 points and multiply by 75%. The resulting number is the minimum number of months in state prison that the offender must serve. However, the court may find that one of the mitigating circumstances at s. 921.0026, F.S., warrants a downward departure. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence.

If an offender is resentenced after being found guilty of violating the terms of his or her probation or community control, the total points are re-calculated, adding 12 points for a violation resulting from committing a new felony offense, or 6 points for any violation other than a new felony offense. The effect of the additional points may compel the sentencing court to impose a new state prison sentence, unless the court finds grounds for a downward departure.

Effect of Bill

This bill creates the "Anti-Murder Act".

This bill creates s. 903.0351, F.S., which provides that a violent felony offender of special concern arrested for violation of probation or community control may not be granted bail prior to the resolution of the probation or community control violation hearing unless the violation is based solely on a failure to pay costs, fines, or restitution payments. A corresponding change is made to s. 948.06(4), F.S., regarding violent felony offenders of special concern who are captured in a county other than the sentencing county, denying bail to such offenders unless the violation is for a failure to pay costs, fines, or restitution payments.

This bill amends s. 948.06, F.S., regarding violation of probation, creating a new subsection (8) regarding violent felony offenders of special concern. The bill defines "violent felony offenders of special concern" as a person who is:

- On probation or community control related to the commission of a qualifying offense committed on or after July 1, 2006,
- On probation or community control for any offense committed on or after July 1, 2006, and who then commits a qualifying offense, or
- On probation or community control for any offense committed on or after July 1, 2006, and is found to have violated that probation or community control by committing a qualifying offense.

- On probation or community control and has previously been found by a court to be a habitual violent felony offender pursuant to s. 775.084(1)(b) and has committed a qualifying offense on or after July 1, 2006.
- On probation or community control and has previously been found by a court to be a three-time violent felony offender pursuant to s. 775.084(1)(c) and has committed a qualifying offense on or after July 1, 2006.
- Probation or community control and has previously been found by a court to be a sexual predator pursuant to s. 775.21 and has committed a qualifying offense on or after July 1, 2006.

This bill provides that commission of any listed offense on or after July 1, 2006 is a "qualifying offense." The listed offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025, F.S..
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious batter under s. 800.04, F.S. or lewd or lascivious molestation under s. 800.04(5)(b).
- Robbery or attempted robbery under s. 812.13, F.S., carjacking under s. 812.133, F.S., or home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance of a child or attempted sexual performance of a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.
- An offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

This bill provides that, as to any person who is a violent felony offender of special concern, who violates any condition of probation other than a failure to pay costs, fines, or restitution:

- No bail is allowed.
- The court may not dismiss the violation unless the court conducts a recorded hearing at which the state and the offender are represented.

If the court finds that a violent felony offender of special concern has violated any nonmonetary terms of probation or community control, the court must decide whether to revoke the probation or community control. If the court determines by a preponderance of the evidence that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation or community control and shall sentence the offender up to the statutory maximum under the Criminal Sentencing Code, s. 921.0024, F.S. The court is allowed to consider a number of factors in determining the danger

to the community posed by the offender's release. The court must enter a written order in support of its finding in determining whether the offender poses a danger to the community.

This bill amends s. 921.0024, F.S., to modify the formula for determining the Total Sentence Points under the Criminal Punishment Code. A violent felony offender of special concern violator is assessed 9 points for a violation that does not involve a new felony conviction (as opposed to the 6 points assessed under current law), and is assessed 18 points for a violation that involves a new felony conviction (as opposed to the 12 points assessed under current law). These additional points will have the effect of lengthening the minimum sentence required by the Criminal Punishment Code.

C. SECTION DIRECTORY:

Section 1. Names the act.

Section 2. Creates s. 903.0351, F.S., denying bail for violent felony offenders of special concern.

Section 3. Amends s. 948.06, F.S., defining violent felony offender of special concern and requiring a violation of probation hearing.

Section 4. Amends s. 921 .0024, F.S., to increase points for community sanction violations.

Sections 5, 6 and 7. Republishes sections of law that may be affected by the changes made in the bill.

Section 8. 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:

On March 21, 2006 the Criminal Justice Estimating Conference determined that the bill would result in 32 additional inmates for FY 2006-07, increasing to 251 additional inmates by the end of FY 2007-08. The 32 additional inmates would result in additional costs of \$305,184 for operations. Construction costs are estimated by the conference at \$40,273 per bed which would result in construction costs of \$10.1 million which would cover the additional inmates expected in FY 2006-07 plus the additional inmates expected to be incarcerated during FY 2007-08.

The current bed construction phase-in schedule recommended by the Governor and under consideration by the House would be sufficient to accommodate the additional inmates expected to result from passage of this bill through the three year planning cycle that ends June 30, 2009.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires a violent felony offender of special concern to be detained without bail pending the final hearing on the violation. As such, the violator will be held in a county jail at county expense. The impact could be significant, but it should be noted that offenders who meet

the definition of a violent felony offender of special concern are more serious offenders who may not be as likely to be granted bail under existing law.

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 could have a significant fiscal impact on counties but would appear to be exempt from the provisions of Article VII, Section 18 (a) of the state constitution because it amends 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 violent felony offenders; providing a short title; creating s. 903.0351, F.S.; prohibiting bail or other pretrial release for specified violent felony offenders of special concern without a hearing; amending s. 948.06, F.S.; providing definitions; providing that certain alleged violations of probation or community control by violent felony offenders of special concern require hearings and require the alleged offenders to remain in custody pending hearing; providing requirements for such hearings; amending s. 921.0024, F.S.; revising Criminal Punishment Code worksheet computations to provide additional community sanction violation points for certain community sanction violations committed by violent felony offenders of special concern; reenacting ss. 948.012(2)(b), 948.10(9), and 958.14, F.S., relating to split sentence of probation or community control and imprisonment, community control programs, and violation of probation or community control, respectively, to incorporate the amendment to s. 948.06, F.S., in references thereto; providing an effective date.

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

Section 1. This act may be cited as the "Anti-Murder Act."

Section 2. Section 903.0351, Florida Statutes, is created to read:

28 903.0351 Violent felony offenders of special concern;
 29 pretrial release hearing required.--A violent felony offender of
 30 special concern, as defined in s. 948.06, who has been arrested
 31 for an alleged violation of probation or community control shall
 32 not be granted bail or any other form of pretrial release prior
 33 to the resolution of the probation or community control
 34 violation hearing, unless the violation charge or arrest is
 35 based solely on failure to pay costs, fines, or restitution
 36 payments.

37 Section 3. Subsection (4) of section 948.06, Florida
 38 Statutes, is amended, and subsection (8) is added to that
 39 section, to read:

40 948.06 Violation of probation or community control;
 41 revocation; modification; continuance; failure to pay
 42 restitution or cost of supervision.--

43 (4) Notwithstanding any other provision of this section, a
 44 probationer or an offender in community control who is arrested
 45 for violating his or her probation or community control in a
 46 material respect may be taken before the court in the county or
 47 circuit in which the probationer or offender was arrested. That
 48 court shall advise him or her of such charge of a violation and,
 49 if such charge is admitted, shall cause him or her to be brought
 50 before the court which granted the probation or community
 51 control. If such violation is not admitted by the probationer or
 52 offender, the court may commit him or her or release him or her
 53 with or without bail to await further hearing. However, if the
 54 probationer or offender is under supervision for any criminal
 55 offense proscribed in chapter 794, s. 800.04(4), (5), (6), s.

56 827.071, or s. 847.0145, or is a registered sexual predator or a
57 registered sexual offender, or is under supervision for a
58 criminal offense for which he or she would meet the registration
59 criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the
60 effective date of those sections, the court must make a finding
61 that the probationer or offender is not a danger to the public
62 prior to release with or without bail. In determining the danger
63 posed by the offender's or probationer's release, the court may
64 consider the nature and circumstances of the violation and any
65 new offenses charged; the offender's or probationer's past and
66 present conduct, including convictions of crimes; any record of
67 arrests without conviction for crimes involving violence or
68 sexual crimes; any other evidence of allegations of unlawful
69 sexual conduct or the use of violence by the offender or
70 probationer; the offender's or probationer's family ties, length
71 of residence in the community, employment history, and mental
72 condition; his or her history and conduct during the probation
73 or community control supervision from which the violation arises
74 and any other previous supervisions, including disciplinary
75 records of previous incarcerations; the likelihood that the
76 offender or probationer will engage again in a criminal course
77 of conduct; the weight of the evidence against the offender or
78 probationer; and any other facts the court considers relevant.
79 The court, as soon as is practicable, shall give the probationer
80 or offender an opportunity to be fully heard on his or her
81 behalf in person or by counsel. After such hearing, the court
82 shall make findings of fact and forward the findings to the
83 court which granted the probation or community control and to

84 the probationer or offender or his or her attorney. The findings
 85 of fact by the hearing court are binding on the court which
 86 granted the probation or community control. Upon the probationer
 87 or offender being brought before it, the court which granted the
 88 probation or community control may revoke, modify, or continue
 89 the probation or community control or may place the probationer
 90 into community control as provided in this section. However, if
 91 any violation other than a failure to pay costs, fines, or
 92 restitution payments is alleged to have been committed by a
 93 violent felony offender of special concern, as defined in
 94 subsection (8), the probationer or offender shall not be
 95 released and shall not be admitted to bail, but shall be brought
 96 before the court that granted the probation or community
 97 control.

98 (8) (a) In addition to complying with the provisions of
 99 subsections (1)-(7), a probationer or offender in community
 100 control who is a violent felony offender of special concern
 101 shall comply with this subsection. The provisions of this
 102 subsection shall control over any conflicting provisions in
 103 subsections (1)-(7).

104 (b) For purposes of this subsection and ss. 903.0351 and
 105 921.0024, the term "violent felony offender of special concern"
 106 means a person who is on:

107 1. Probation or community control related to the
 108 commission of a qualifying offense committed on or after July 1,
 109 2006;

110 2. Probation or community control for any offense
 111 committed on or after July 1, 2006, and has previously been

112 convicted of or had adjudication withheld for a qualifying
 113 offense;

114 3. Probation or community control for any offense
 115 committed on or after July 1, 2006, and is found to have
 116 violated that probation or community control by committing a
 117 qualifying offense;

118 4. Probation or community control and has previously been
 119 found by a court to be a habitual violent felony offender as
 120 defined in s. 775.084(1)(b) and has committed a qualifying
 121 offense on or after July 1, 2006;

122 5. Probation or community control and has previously been
 123 found by a court to be a three-time violent felony offender as
 124 defined in s. 775.084(1)(c) and has committed a qualifying
 125 offense on or after July 1, 2006; or

126 6. Probation or community control and has previously been
 127 found by a court to be a sexual predator under s. 775.21 and has
 128 committed a qualifying offense on or after July 1, 2006.

129 (c) For purposes of this section, the term "qualifying
 130 offense" means any of the following:

131 1. Kidnapping or attempted kidnapping under s. 787.01,
 132 false imprisonment of a child under the age of 13 under s.
 133 787.02(3), or luring or enticing a child under s. 787.025.

134 2. Murder or attempted murder under s. 782.04, attempted
 135 felony murder under s. 782.051, or manslaughter under s. 782.07.

136 3. Aggravated battery or attempted aggravated battery
 137 under s. 784.045.

138 4. Sexual battery or attempted sexual battery under s.
 139 794.011(2), (3), or (4).

140 5. Lewd or lascivious battery or attempted lewd or
141 lascivious battery under s. 800.04(4) or lewd or lascivious
142 molestation under s. 800.04(5)(b).

143 6. Robbery or attempted robbery under s. 812.13,
144 carjacking under s. 812.133, or home invasion robbery under s.
145 812.135.

146 7. Lewd or lascivious offense upon or in the presence of
147 an elderly or disabled person or attempted lewd or lascivious
148 offense upon or in the presence of an elderly or disabled person
149 under s. 825.1025.

150 8. Sexual performance by a child or attempted sexual
151 performance by a child under s. 827.071.

152 9. Computer pornography under s. 847.0135(2) or (3),
153 transmission of child pornography under s. 847.0137, or selling
154 or buying of minors under s. 847.0145.

155 10. Poisoning food or water under s. 859.01.

156 11. Abuse of a dead human body under s. 872.06.

157 12. Any burglary offense or attempted burglary offense
158 that is either a first or second degree felony under s.
159 810.02(2) or (3).

160 13. Arson or attempted arson under s. 806.01(1).

161 14. Aggravated assault under s. 784.021.

162 15. Aggravated stalking under s. 784.048(3), (4), (5), or
163 (7).

164 16. Aircraft piracy under s. 860.16.

165 17. Unlawful throwing, placing, or discharging of a
166 destructive device or bomb under s. 790.161(2), (3), or (4).

167 18. Treason under s. 876.32.

168 19. Any offense committed in another jurisdiction that
 169 would be an offense listed in this paragraph if that offense had
 170 been committed in this state.

171 (d) In the case of an alleged violation of probation or
 172 community control by a violent felony offender of special
 173 concern, other than a failure to pay costs, fines, or
 174 restitution, the offender shall remain in custody pending the
 175 resolution of the probation or community control violation. The
 176 court shall not dismiss the probation or community control
 177 violation warrant pending against a violent felony offender of
 178 special concern without holding a recorded violation of
 179 probation hearing at which both the state and the offender are
 180 represented.

181 (e) If the court, after conducting the hearing required by
 182 paragraph (d), determines that a violent felony offender of
 183 special concern has committed a violation of probation or
 184 community control other than a failure to pay costs, fines, or
 185 restitution, the court shall decide whether to revoke the
 186 probation or community control.

187 1. If the court determines, by a preponderance of the
 188 evidence, that a violent felony offender of special concern
 189 poses a danger to community, the court shall revoke probation or
 190 community control and shall sentence the offender under s.
 191 921.0024 up to the statutory maximum.

192 2. In determining the danger to the community posed by the
 193 offender's release, the court may consider:

194 a. The nature and circumstances of the violation and any
 195 new offenses charged.

- 196 b. The offender's past and present conduct, including
197 convictions of crimes.
- 198 c. The offender's family ties, length of residence in the
199 community, employment history, and mental condition.
- 200 d. The offender's amenability to nonincarcerative
201 sanctions based on his or her history and conduct during the
202 probation or community control supervision from which the
203 violation hearing arises and any other previous supervisions,
204 including disciplinary records of previous incarcerations.
- 205 e. The likelihood that the offender will engage again in a
206 criminal course of conduct.
- 207 f. The weight of the evidence against the offender.
- 208 g. Any other facts the court considers relevant.
- 209 3. The court must enter a written order in support of its
210 finding.

211 Section 4. Paragraph (b) of subsection (1) of section
212 921.0024, Florida Statutes, is amended to read:
213 921.0024 Criminal Punishment Code; worksheet computations;
214 scoresheets.--

215 (1)

216 (b) WORKSHEET KEY:

217

218 Legal status points are assessed when any form of legal status
219 existed at the time the offender committed an offense before the
220 court for sentencing. Four (4) sentence points are assessed for
221 an offender's legal status.

222

223 Community sanction violation points are assessed when a
224 community sanction violation is before the court for sentencing.
225 Six (6) sentence points are assessed for each community sanction
226 violation, and each successive community sanction violation,
227 unless any of the following apply: ~~however,~~

228 1. If the community sanction violation includes a new
229 felony conviction before the sentencing court, twelve (12)
230 community sanction violation points are assessed for the such
231 violation, and for each successive community sanction violation
232 involving a new felony conviction.

233 2. If the community sanction violation is committed by a
234 violent felony offender of special concern as defined in s.
235 948.06, but does not include a new felony conviction, nine (9)
236 community sanction violation points are assessed for the
237 violation and for each successive community sanction violation
238 not involving a new felony conviction.

239 3. If the community sanction violation is committed by a
240 violent felony offender of special concern as defined in s.
241 948.06, and includes a new felony conviction before the
242 sentencing court, eighteen (18) community sanction violation
243 points are assessed for the violation and for each successive
244 community sanction violation involving a new felony conviction.

245

246 Multiple counts of community sanction violations before the
247 sentencing court shall not be a basis for multiplying the
248 assessment of community sanction violation points.

249

250 Prior serious felony points: If the offender has a primary
 251 offense or any additional offense ranked in level 8, level 9, or
 252 level 10, and one or more prior serious felonies, a single
 253 assessment of thirty (30) ~~30~~ points shall be added. For purposes
 254 of this section, a prior serious felony is an offense in the
 255 offender's prior record that is ranked in level 8, level 9, or
 256 level 10 under s. 921.0022 or s. 921.0023 and for which the
 257 offender is serving a sentence of confinement, supervision, or
 258 other sanction or for which the offender's date of release from
 259 confinement, supervision, or other sanction, whichever is later,
 260 is within 3 years before the date the primary offense or any
 261 additional offense was committed.

262
 263 Prior capital felony points: If the offender has one or more
 264 prior capital felonies in the offender's criminal record, points
 265 shall be added to the subtotal sentence points of the offender
 266 equal to twice the number of points the offender receives for
 267 the primary offense and any additional offense. A prior capital
 268 felony in the offender's criminal record is a previous capital
 269 felony offense for which the offender has entered a plea of nolo
 270 contendere or guilty or has been found guilty; or a felony in
 271 another jurisdiction which is a capital felony in that
 272 jurisdiction, or would be a capital felony if the offense were
 273 committed in this state.

274
 275 Possession of a firearm, semiautomatic firearm, or machine gun:
 276 If the offender is convicted of committing or attempting to
 277 commit any felony other than those enumerated in s. 775.087(2)

278 while having in his or her possession: a firearm as defined in
279 s. 790.001(6), an additional eighteen (18) ~~18~~ sentence points
280 are assessed; or if the offender is convicted of committing or
281 attempting to commit any felony other than those enumerated in
282 s. 775.087(3) while having in his or her possession a
283 semiautomatic firearm as defined in s. 775.087(3) or a machine
284 gun as defined in s. 790.001(9), an additional twenty-five (25)
285 ~~25~~ sentence points are assessed.

286

287 Sentencing multipliers:

288

289 Drug trafficking: If the primary offense is drug trafficking
290 under s. 893.135, the subtotal sentence points are multiplied,
291 at the discretion of the court, for a level 7 or level 8
292 offense, by 1.5. The state attorney may move the sentencing
293 court to reduce or suspend the sentence of a person convicted of
294 a level 7 or level 8 offense, if the offender provides
295 substantial assistance as described in s. 893.135(4).

296

297 Law enforcement protection: If the primary offense is a
298 violation of the Law Enforcement Protection Act under s.
299 775.0823(2), the subtotal sentence points are multiplied by 2.5.
300 If the primary offense is a violation of s. 775.0823(3), (4),
301 (5), (6), (7), or (8), the subtotal sentence points are
302 multiplied by 2.0. If the primary offense is a violation of s.
303 784.07(3) or s. 775.0875(1), or of the Law Enforcement
304 Protection Act under s. 775.0823(9) or (10), the subtotal
305 sentence points are multiplied by 1.5.

306
 307 Grand theft of a motor vehicle: If the primary offense is grand
 308 theft of the third degree involving a motor vehicle and in the
 309 offender's prior record, there are three or more grand thefts of
 310 the third degree involving a motor vehicle, the subtotal
 311 sentence points are multiplied by 1.5.

312
 313 Offense related to a criminal street gang: If the offender is
 314 convicted of the primary offense and committed that offense for
 315 the purpose of benefiting, promoting, or furthering the
 316 interests of a criminal street gang as prohibited under s.
 317 874.04, the subtotal sentence points are multiplied by 1.5.

318
 319 Domestic violence in the presence of a child: If the offender is
 320 convicted of the primary offense and the primary offense is a
 321 crime of domestic violence, as defined in s. 741.28, which was
 322 committed in the presence of a child under 16 years of age who
 323 is a family or household member as defined in s. 741.28(3) with
 324 the victim or perpetrator, the subtotal sentence points are
 325 multiplied by 1.5.

326 Section 5. For the purpose of incorporating the amendment
 327 made by this act to section 948.06, Florida Statutes, in a
 328 reference thereto, paragraph (b) of subsection (2) of section
 329 948.012, Florida Statutes, is reenacted to read:

330 948.012 Split sentence of probation or community control
 331 and imprisonment.--

332 (2) The court may also impose a split sentence whereby the
 333 defendant is sentenced to a term of probation which may be

334 followed by a period of incarceration or, with respect to a
 335 felony, into community control, as follows:

336 (b) If the offender does not meet the terms and conditions
 337 of probation or community control, the court may revoke, modify,
 338 or continue the probation or community control as provided in s.
 339 948.06. If the probation or community control is revoked, the
 340 court may impose any sentence that it could have imposed at the
 341 time the offender was placed on probation or community control.
 342 The court may not provide credit for time served for any portion
 343 of a probation or community control term toward a subsequent
 344 term of probation or community control. However, the court may
 345 not impose a subsequent term of probation or community control
 346 which, when combined with any amount of time served on preceding
 347 terms of probation or community control for offenses pending
 348 before the court for sentencing, would exceed the maximum
 349 penalty allowable as provided in s. 775.082. Such term of
 350 incarceration shall be served under applicable law or county
 351 ordinance governing service of sentences in state or county
 352 jurisdiction. This paragraph does not prohibit any other
 353 sanction provided by law.

354 Section 6. For the purpose of incorporating the amendment
 355 made by this act to section 948.06, Florida Statutes, in a
 356 reference thereto, subsection (9) of section 948.10, Florida
 357 Statutes, is reenacted to read:

358 948.10 Community control programs.--

359 (9) Procedures governing violations of community control
 360 shall be the same as those described in s. 948.06 with respect
 361 to probation.

362 Section 7. For the purpose of incorporating the amendment
 363 made by this act to section 948.06, Florida Statutes, in a
 364 reference thereto, section 958.14, Florida Statutes, is
 365 reenacted to read:

366 958.14 Violation of probation or community control
 367 program.--A violation or alleged violation of probation or the
 368 terms of a community control program shall subject the youthful
 369 offender to the provisions of s. 948.06. However, no youthful
 370 offender shall be committed to the custody of the department for
 371 a substantive violation for a period longer than the maximum
 372 sentence for the offense for which he or she was found guilty,
 373 with credit for time served while incarcerated, or for a
 374 technical or nonsubstantive violation for a period longer than 6
 375 years or for a period longer than the maximum sentence for the
 376 offense for which he or she was found guilty, whichever is less,
 377 with credit for time served while incarcerated.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill expands the authority of law enforcement to detain motor vehicle operators, arguably increasing the scope of government rather than decreasing it. Details are provided in the discussion below.

Promote Personal Responsibility—Currently, a person over 18 years of age may not be stopped for a safety belt violation as a primary enforcement action by a law enforcement officer. To the extent that primary enforcement allows more effective enforcement of the safety belt law, the bill tends to increase personal accountability of drivers and passengers for failure to comply with the law.

Safeguard individual liberty—Although the bill does not impose any new regulation upon motor vehicle operators, it does authorize law enforcement officials to detain an individual operating a motor vehicle in circumstances that under current law would not be reasonable grounds for stopping the motorist. Details are provided in the discussion below.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1986, the Legislature enacted the "Florida Safety Belt Law." Section 316.614, F.S., requires a motor vehicle operator, front seat passengers, and all passengers less than 18 years of age to wear safety belts. The law is enforced against any adult driver or adult front seat passenger who is not restrained by a safety belt. If a person under 18 years of age is unrestrained, the law is enforced against the driver. The "Florida Safety Belt Law" is enforced as a secondary offense; that is, law enforcement officers cannot stop motorists solely for not using their safety belts unless the operator or passengers are under 18. Instead, the officer must first stop the motorist for a suspected violation of Chapters 316, 320, or 322, F.S., before the officer can issue a uniform traffic citation for failure to wear a safety belt. In 2005, HB 1697 was passed to amend s. 316.614, F.S., making it a primary offense to operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 years is restrained by a safety belt or by a child restraint device.¹

The penalty for failure to wear a safety belt is \$30, plus administrative and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from \$68.50 to \$89.50. Revenues collected from citations issued for safety belt violations are distributed like other traffic citation revenues, pursuant to s. 318.21, F.S., except that \$5 of each citation paid is directed to the Epilepsy Services Trust Fund. According to the Uniform Traffic Citation Statistics compiled by the Department of Highway Safety and Motor Vehicles, there were 300,213 safety belt violations during the 2004 calendar year.

Those not subject to the safety belt law include:

- Persons certified by a physician as having a medical condition that would cause the use of a safety belt to be inappropriate or dangerous;
- Persons delivering newspapers on home delivery routes during the course of their employment;
- Front seat passengers of a pickup truck in excess of the number of safety belts installed;

¹ This act also amended section 316.614, F.S. to provide that, by January 1, 2006, each law enforcement agency must adopt departmental policies to prohibit the practice of racial profiling. Further, the section requires law enforcement officers to record the race and ethnicity of a violator of the safety belt law and requires DHSMV to annually report this information to the legislature and the Governor.

- Employees of a solid waste or recyclable collection service on designated routes during the course of their employment;
- Persons occupying the living quarters of a recreational vehicle or the space within the body of a truck used for the storage of merchandise.

According to the National Highway Traffic Safety Administration (NHTSA) there are 22 primary states, 27 secondary states, and 1 state (New Hampshire) that effectively has no belt use law. The National Occupant Protection Use Survey (NOPUS) is an observational survey of safety belt use that began in 1994 and has been used by NHTSA to measure the nation's safety belt use. NOPUS has consistently found higher usage rates in the presence of primary laws, with collective statistically different rates of 83 percent in primary states compared to 75 percent in secondary ones in 2003. Through statewide enforcement/education efforts such as the Buckle Up Florida/Click It or Ticket campaign, Florida has shown an overall increase in seat belt usage rates from 59 percent in 1999 to 76.3 percent in 2004. As of January 23, 2006 Florida's safety belt usage rate was 73.9 percent. Research has found that lap/shoulder belts, when used properly, reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent (for occupants of light trucks, 60 percent and 65 percent, respectively).

The SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act) is the current federal transportation act and includes a federal grant program² that encourages states to raise safety belt usage. In order to qualify for this program, a state must enact a primary safety belt law, or achieve 85 percent safety belt usage for 2 consecutive years.

Effect of Proposed Changes

HB 97 gives the act the popular name the "Dori Slosberg Safety Belt Law" and amends the Florida Safety Belt Law to provide for primary enforcement for all drivers. A law enforcement officer would be authorized to stop a motorist and issue a citation for a safety belt violation upon reasonable suspicion that the driver, any passenger under the age of 18 years, or any passenger in the front seat who is 18 years of age or older, is not restrained. A person violating this provision would be cited for a nonmoving violation, punishable by a \$30 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from \$68.50 to \$89.50.

If Florida enacted a primary safety belt enforcement law, National Highway Traffic Safety Administration (NHTSA) studies forecast that 192 lives would be saved, 2,792 serious injuries would be prevented, and over \$589 million in economic costs would be saved annually. Also, if Florida enacts a primary safety belt law, it will be eligible to receive a one-time grant of \$35.5 million from the SAFETEA-LU safety belt incentive program.

C. SECTION DIRECTORY:

Section 1. Gives the act the popular name the "Dori Slosberg Safety Belt Law."

Section 2. Amends s. 316.614, F.S., to provide for primary enforcement of the safety belt law.

Section 3. Provides that the act shall take effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section.

D. FISCAL COMMENTS:

Enforcement Impacts

Primary enforcement of some safety belt violations may result in the issuance of an increased number of citations, and the assessment of additional traffic penalties and court costs. However, because it is impossible to forecast how many additional violations will occur and be cited, the fiscal impact on state and local government is unknown.

Safety Impacts

To the extent that the bill increases safety belt usage in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs. NHTSA studies forecast that 192 lives would be saved, 2,792 serious injuries would be prevented, and over \$589 million in economic costs would be saved annually, if a primary safety belt enforcement law were enacted.

Federal Funds Issues

Section 157 in Title 23, of the United States Code as established by the previous federal transportation act authorized incentive funds for Federal Fiscal Years (FFY) 1999 through 2003. These incentive funds were awarded annually to states whose seat belt use rates for a given year either exceeded the national average or exceeded the state's highest achieved seat belt usage rate during certain designated previous years.

Through statewide enforcement/education efforts under the Buckle Up Florida/Click It or Ticket campaign, administered by the Florida Department of Transportation (FDOT) Safety Office, Florida had an overall increase in seat belt usage rates from 59 percent in 1999 to 76.3 percent in 2004. This enabled the state to receive Section 157 incentive funds in FFY 2002 (\$1,255,600) and FFY 2003 (\$2,863,600). FDOT has used these funds for enhancing the Buckle Up Florida/Click It or Ticket Campaign to help insure continued seat belt usage increases.

The SAFETEA-LU is the current federal transportation act and includes a federal grant program³ that encourages states to raise safety belt usage. In order to qualify for this program, a state must enact a primary safety belt law, or achieve 85 percent safety belt usage for 2 consecutive years. As of January 23, 2006 Florida's safety belt usage rate was 73.9 percent. This is a decline from 76.3 percent in 2004. According to the National Highway Traffic Safety Administration of the U.S. Department of

³ 23 U.S.C. 406.

Transportation,⁴ if Florida enacts a primary safety belt law it will be eligible to receive a one-time federal grant of \$35.5 million from the safety belt incentive program contained in SAFETEA-LU with no requirement for a state match. The grant funds could be used for any highway safety related purpose including highway safety infrastructure improvements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require 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:

HB 97 does not require any grant or exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁴ Letter from Ms. Jacqueline Glassman, Acting Administrator, NHTSA, dated January 23, 2006, on file with House Transportation Committee.

1 A bill to be entitled
 2 An act relating to safety belt law enforcement; creating
 3 the Dori Slosberg Safety Belt Law; amending s. 316.614,
 4 F.S.; deleting requirement for enforcement of the Florida
 5 Safety Belt Law as a secondary action; providing an
 6 effective date.

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

9
 10 Section 1. This act may be cited as the "Dori Slosberg
 11 Safety Belt Law."

12 Section 2. Subsection (8) of section 316.614, Florida
 13 Statutes, is amended to read:

14 316.614 Safety belt usage.--

15 (8) Any person who violates the provisions of this section
 16 commits a nonmoving violation, punishable as provided in chapter
 17 318. ~~However, except for violations of s. 316.613 and paragraph~~
 18 ~~(4)(a), enforcement of this section by state or local law~~
 19 ~~enforcement agencies must be accomplished only as a secondary~~
 20 ~~action when a driver of a motor vehicle has been detained for a~~
 21 ~~suspected violation of another section of this chapter, chapter~~
 22 ~~320, or chapter 322.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: **HB 561 CS**
 SPONSOR(S): **Rivera**
 TIED BILLS:

Offenses Involving Insurance
 IDEN./SIM. BILLS: **SB 1596**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Insurance Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Freire</u>	<u>Cooper</u>
2) <u>Criminal Justice Committee</u>	<u></u>	<u>Kramer</u> <i>JK</i>	<u>Kramer</u> <i>JK</i>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill relates primarily to insurance fraud in various types of insurance. The bill:

- requires specified information in police reports and creates rebuttable presumption that only passengers mentioned in police report were involved in the accident;
- provides an extra fee for reinstating a driver's license revoked because of insurance fraud;
- provides that any person convicted of certain insurance frauds will have their driver's license revoked;
- requires, and provides enforcement for, every health care clinic licensed under Chapter 400 to post a sign that indicates individuals may receive rewards for furnishing to the Division of Insurance Fraud (DIF) reports and information about crimes investigated by DIF that lead to arrest and conviction;
- eliminates a misdemeanor penalty for the violation of a stop work order to clarify that offense is a felony;
- updates the definition of "kickback" by broadening its scope;
- provides any willful violation of a rule of the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR), or the Financial Services Commission (FSC) would be a second degree misdemeanor;
- makes each willful violation of an emergency rule or emergency order of DFS, OIR, or FSC by an unlicensed or unauthorized person a third degree felony, with each willful violation considered a separate offense;
- clarifies that any person who knowingly engages in insurance activities without a license commits a third degree felony;
- clarifies what is meant by independent procurement of coverage (IPC) to state that IPC is coverage which is not solicited, marketed, negotiated, or sold in Florida;
- clarifies that insurers must timely submit final acceptable anti-fraud plans, and provides for imposition of administrative fines for a violation of that requirement;
- provides that service providers cannot bill usual and customary charges if a provider agrees with patient to waive deductible or co-payment, and that a person may not participate in a scheme to create documentation of a motor vehicle crash that did not occur;
- clarifies that fraudulent proof of motor vehicle insurance is a third degree felony;
- requires insurers to provide a fraud advisory notice to an insured who filed a claim for reimbursement;
- provides an exception to the statute pertaining to fraudulently obtaining goods and services from a health care provider for investigative actions taken by law enforcement officers for law enforcement purposes;
- enhances the definition of patient brokering, and defines that a health care provider or facility is one that is licensed, certified, or registered with ACHA or the Department of Health;
- includes falsely personating an officer of DFS in the list of officers it is unlawful to personate;
- creates a forfeiture account in the Insurance Regulatory Trust Fund for deposit of criminal and forfeiture proceeds obtained by DIF; and
- provides that if any provision of this act is found invalid, the invalidity does not affect the other provisions.

The fiscal impact on the private sector includes increased penalties, including criminal prosecution, for various acts specified in the bill. The effective date of the bill is July 1, 2006.

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

STORAGE NAME: h0561c.CRJU.doc
 DATE: 3/24/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires a health care clinic to post a sign relating to rewards for information regarding insurance fraud. Enforcement of the sign posting requirement will be done by the Department of Financial Services (DFS).

Safeguard Individual Liberty & Promote Personal Responsibility: The bill creates new penalties for violations of a department rule, emergency rule or emergency order. It creates a new penalty for insurance licensees transacting insurance or engaging in insurance activities without a license. It creates a new penalty for fabrication of "paper" motor vehicle accidents. It adds new circumstances constituting unlawful patient brokering.

B. EFFECT OF PROPOSED CHANGES:

General Background

Insurance Fraud Investigations by the Division of Insurance Fraud: Currently, the Division of Insurance Fraud (DIF) within the Department of Financial Services (DFS) employs sworn law enforcement officers who investigate allegations of unauthorized insurance activities, fraudulent insurance acts, unfair methods of insurance competition or unfair or deceptive insurance acts or practices.¹ These officers may make warrantless arrests upon probable cause for criminal violations established as a result of an investigation.² The general laws applicable to arrests by state law enforcement officers apply to Division investigators.

As of 2005, the DIF had arrested over 900 people allegedly connected to more than \$25 million in personal injury fraud in the past five years. More than 70 people faced or were serving the minimum prison sentence.³

Crash Report

Section 316.066, F.S. requires certain written reports of crashes to be filed with the Department of Highway Safety and Motor Vehicles. The section provides for a "short-form report" which is required to include the following information:

- The date, time, and location of the crash;
- A description of the vehicles involved;
- The names and addresses of the parties involved;
- The names and addresses of all drivers and passengers in the vehicles involved;
- The names and addresses of witnesses;
- The name, badge number, and law enforcement agency of the officer investigating the crash; and
- The names of the insurance companies for the respective parties involved in the crash unless not available.

The bill amends s. 316.068(2), F.S., to provide that each crash report required to be made in writing must contain all of the information specified above. The bill provides that the absence of information

¹ s. 626.989(2), F.S. (2004).

² s. 626.989(7), F.S. (2004).

³ Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005.

regarding the existence of a passenger in a police report creates a rebuttable presumption that no such passengers were involved in the reported crash.

Revocation of Licenses

Section 322.21(8), F.S., governs fees relating to applying for reinstatement of a suspended or revoked driver's license. It provides that a person must pay a \$35 service fee to apply for reinstatement of a suspended driver's license and a \$60 fee to apply for reinstatement of a revoked driver's license, in addition to the fee for a license. The fees are divided between the General Revenue Fund and the Highway Safety Operating Trust Fund.

The bill provides that if the revocation or suspension of the driver's license was for a conviction of patient brokering (s. 817.505, F.S.), or for solicitation (s. 817.234(8), F.S.), or for participating in a staged crash (s. 817.234(9), F.S.), there is an additional fee of \$180 for each offense. The bill provides that the Department of Highway Safety and Motor Vehicles (DHSMV) will deposit the additional fee into the Highway Safety Operating Trust Fund.

The bill amends s. 322.21, F.S. to require the DHSMV to revoke the driving privileges of anyone convicted under s. 817, 505, F.S., or s. 817.234(8) or (9), F.S.

Health Care Clinics

Health care clinics are defined as entities at which health care services are provided to individuals and which tender charges for reimbursement for such services.⁴

Health care clinics are primarily licensed by the Agency for Health Care Administration (AHCA).⁵ The term "medical director" means a physician, employed by or under contract with a clinic, who maintains an unencumbered physician license in accordance with chs. 458 (physicians), 459 (osteopathic physicians), 460 (chiropractors), or 461 (podiatrists), F.S.⁶

Under current law, there is no requirement in the health care licensure statute (ch. 400) for health care clinics to post signs relating to rewards for insurance fraud. Current law provides for an Anti-Fraud Reward Program to be established within the DFS which is funded from the Insurance Regulatory Trust Fund.⁷ Under the program the DFS may pay rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from specified violations. Only a single reward amount may be paid out for claims arising from the same transaction.

Additionally, current law requires the AHCA to make inspections of health care clinics as part of the initial license application and renewal application procedures.⁸ AHCA may also make unannounced inspections of licensed clinics as necessary to determine compliance with the Health Care Clinic Act under Part XIII of chapter 400, F.S.

The bill amends s. 400.9935, F.S. to require that every medical clinic licensed under Chapter 400 post a sign that indicates that individuals may receive rewards for furnishing to the Division of Insurance Fraud (DIF) reports and information about committing crimes investigated by DIF that lead to arrest and conviction. The sign must be posted in a conspicuous location visible to all patients. The crimes the posting would disclose are:

⁴ s. 400.9905(4), F.S. (2004).

⁵ See s. 400.9905(4), F.S. for a listing of entities that are not required to be licensed by AHCA.

⁶ s. 400.9905(5), F.S. (2004).

⁷ s. 626.9892, F.S. (2004).

⁸ s. 400.9915, F.S. (2004).

- s. 440.105, F.S., relating to prohibited activities under the workers' compensation law;
- s. 624.15, F.S., relating to willful violations of the Insurance Code;
- s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts under the Insurance Code;
- s. 626.989, F.S., relating to resisting an arrest or otherwise interfering with DIF investigators; or
- s. 817.234, F.S., relating to false and fraudulent insurance claims.

The DFS will enforce the posting requirement. Sworn law enforcement investigators of DIF would have the authority to make unannounced inspections of licensed clinics to ensure that such requirement is being met. The bill requires the clinics to allow "full and complete access to the premises" to DIF employees to determine whether the clinic is complying with the posting requirements. The clinic would be required to post the sign in a conspicuous location visible to all patients.

Similarly, section 12 of the bill adds subsection 14 to s. 627.736, F.S., requiring an insurer to provide a person who has filed a claim of reimbursement to provide the insured with a Fraud Advisory Notice. The notice must state that the DFS may pay rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from the crimes disclosed in the posted signs.

Workers' Compensation

The Division of Workers' Compensation (DWC) within DFS and the DIF within DFS work closely together to carry out their statutory duties. The DWC enforces administrative compliance with the workers' compensation law, pursuant to s. 440.107, F.S. The DIF enforces the criminal provisions of the workers' compensation law, pursuant to s. 440.105, F.S. The divisions have developed and implemented a referral program to facilitate the referral of cases between the divisions so that each division can determine if an investigation will be initiated from the referral. According to the DWC, referrals are made to each division within 24 hours of a suspected violation of the law, and are considered a priority to be acted upon immediately.

In 2003, the Legislature passed worker's compensation reform that included making a violation of a stop work order a felony of the third degree.⁹ However, a separate statutory provision making a violation of a stop work order a misdemeanor was not repealed.¹⁰ The bill removes the conflicting statutory penalty provision for violation of a stop work order. Accordingly, a violation of a stop work order is punishable as a third degree felony.

Regulation of Professions and Occupations:

Chapter 456, F.S., regulates Health Professions and Occupations. Currently, s. 456.054, F.S., prohibits kickbacks. The bill expands the definition of "kickback" to mean a remuneration or payment by or on behalf of a provider of health care services or items to any person as incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

Violations of Administrative Rules, Emergency Rules, or Emergency Orders

The Florida Insurance Code (Code) is contained in chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.¹¹ The Code contains numerous penalty provisions in it which are specific to a particular violation. However, the Code also contains general penalty provisions that apply for violations of the Code when no other penalty is provided in the Code or in other applicable laws. Section 624.15, F.S. is

⁹ Ch. 2003-412, L.O.F.; see s. 440.105(4)(b)8., F.S. (2004).

¹⁰ s. 440.105(2)(a)4., F.S. (2004).

¹¹ s. 624.01, F.S. (2004).

a general penalty provision in the Code. It makes any willful violation of the Code a second degree misdemeanor.

The bill amends the general penalty provision in s. 624.15, F.S. to include willful violations of an administrative rule of DFS, the Office of Insurance Regulation (OIR), or the Financial Services Commission. Therefore, any willful violation of an administrative rule of DFS, OIR, or the Financial Services Commission would be a second degree misdemeanor. Each instance of the willful violation will be considered a separate offense. According to DFS, this provision would allow DIF investigators to enforce violations of DFS rules (by misdemeanor arrest) the same way they may currently enforce violations of the Insurance Code. This provision would be in addition to current penalties pertaining to the denial, suspension, or revocation of a certificate of authority, license or permit.¹²

Under current law, the DFS may issue emergency rules after a natural disaster (hurricane) or other types of emergencies depending on the nature of the insurance issue.¹³ During the 2004 hurricane season, the DFS issued approximately 12 emergency rules pertaining to public adjusters, mediation, and insurance agents.

The bill adds a provision to the general penalty provision in s. 624.15, F.S. The added provision makes each willful violation of an emergency rule or emergency order of DFS, OIR, or the Financial Services Commission by someone who is not licensed, authorized or eligible to engage in business in accordance with the Insurance Code a third degree felony with each willful violation considered a separate offense. There is no criminal penalty in current law for willful violations of emergency rules or emergency orders.

Unauthorized Insurers

Section 626.112, F.S., provides that no person may hold himself or herself out to be an insurance agent unless he or she is licensed by the department and appointed by an appropriate entity or person. The bill amends s. 622.112, F.S., by adding subsection 9. Subsection 9 provides that "any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section commits a felony of the third degree."

Independently Procured Coverage:

Independently procured coverage (IPC) is insurance coverage that an insured in Florida, typically a business, obtains by directly contacting an unauthorized foreign or alien¹⁴ insurer, or self insurer.¹⁵ The insured must file specific information about the policy with the Florida Surplus Lines Service Office (Office) and must pay 5 percent of the gross amount of the premium and a 0.3 percent service fee to the Office.

Currently, subsection (4) of s. 626.901, F.S., exempts *independently procured coverage* (IPC) from being included within the definition of unauthorized insurance. The bill clarifies that IPC coverage is *not coverage which is solicited, marketed, negotiated, or sold* in Florida. This clarification is necessary, according to OIR officials, because some unauthorized insurers have asserted the defense that they are soliciting or selling IPC and therefore are not in violation of the unauthorized entities provisions.

¹² In *Avatar Development Corporation v. State*, 723 So.2d 199 (Fla. 1998), the Florida Supreme Court held that a statute making it a misdemeanor to willfully violate any administrative rule, regulation or permit condition promulgated by the Department of Environmental Protection was a constitutionally valid delegation of legislative authority to an administrative agency.

¹³ Under s. 120.54, F.S., agencies are authorized to issue emergency rules if necessary to protect the public health, safety or welfare.

¹⁴ Insurers are divided into three categories under the Insurance Code: *domestic insurers* are formed under the laws of Florida; *foreign insurers* are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and *alien insurers* are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must meet certain capital, surplus, and operational requirements.

¹⁵ s. 626.938, F.S. (2004).

The bill amends s. 626.938, F.S., pertaining to reporting and taxing of IPC. The law currently allows persons in Florida to independently procure insurance from foreign (out of state) or alien (out of country) insurers that do not hold a Florida certificate of authority (COA) and to pay all necessary taxes and fees. The bill clarifies independently procured coverage to provide that every insured who "resides" in Florida and procures insurance "from another state or country" with an unauthorized insurer "legitimately licensed in that other jurisdiction," or any self-insurer who "resides" in this state and so procures insurance, must within 30 days file a report with the Florida Surplus Lines Service Office. This clarification is necessary because some unauthorized insurers have asserted the defense that they are soliciting or selling IPC and therefore are not in violation of the unauthorized entities provisions of the Insurance Code.

The bill also provides that IPC may not be secured for workers' compensation coverage.

Anti-fraud Investigative Unit

Section 626.9891, F.S., is entitled "Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance." The statute requires insurers who had \$10 million or more in direct premiums in the previous calendar year to establish or contract a unit to investigate fraudulent claims. The bill amends s. 626.9891(7), F.S., to provide that an insurer must timely submit a final acceptable anti-fraud plan or anti-fraud investigative unit description, and it gives the department, office, or commission the right to impose fines if insurers fail to submit an acceptable anti-fraud plan.

Forfeiture Account

Under current law, unless otherwise provided in the law, proceeds a state agency accrues under the Florida Contraband Forfeiture Act are put into the General Revenue Fund.¹⁶ According to DFS, DIF is one the few law enforcement organizations in the state not to have forfeiture fund or account into which to deposit proceeds from criminal or forfeiture proceedings.¹⁷ Thus, any proceeds DIF collects from such proceedings are deposited into the General Revenue Fund.

The bill creates a forfeiture account in the Insurance Regulatory Trust Fund into which proceeds derived from DFS' criminal and forfeiture proceedings are to be deposited. Thus, such proceeds will no longer be deposited into the General Revenue Fund. According to DFS, once the forfeiture account is created, it may be used to purchase special equipment and other non-budgeted items that enhance the DFS's ability to detect crime and enforce criminal laws.¹⁸ The department also indicates that the existence of the forfeiture account would create the necessary incentive for officers or investigators to pursue forfeiture actions in conjunction with their cases, and for DFS to take on the considerable expense in seeing these actions to fruition.¹⁹

False and Fraudulent Insurance Claims

Under current law, any physician and other healthcare provider (except hospitals) who waives deductibles or co-payments as a general business practice commits insurance fraud. The bill would extend the application of the statute to any "service" provider. The proposal also deletes the term 'patient' and inserts the term 'insured' pertaining to the waiver of deductibles or copayments with the provider.²⁰

¹⁶ s. 932.7055(6), F.S. (2004). For example, under s. 626.9893, proceeds obtained by the Florida Department of Law Enforcement is deposited in the Forfeiture Investigative Support Trust Fund and proceeds obtained by the Department of Environmental Protection is deposited in the Internal Improvement Trust Fund.

¹⁷ Personal communication from DFS on file with the Insurance Committee.

¹⁸ Id.

¹⁹ Id.

²⁰ s. 817.234(7)(a), F.S.

Current law provides that it is a second degree felony (with a 2 year minimum term of imprisonment) to plan or organize an intentional motor vehicle crash for the purpose of making a tort claim.²¹ The bill expands this provision to make it a second degree felony to plan or organize a “scheme to create documentation of a motor vehicle crash that did not occur” for purposes of a tort claim or personal injury protection benefits claim. According to representatives with DFS, adding the crime of a “paper accident” would deter motor vehicle insurance fraud. DFS officials estimate that bogus automobile insurance claims add \$240 to every automobile insurance policy each year and increase costs for goods and services.²²

Current law makes it a third degree felony to create, market, or present a false or fraudulent insurance card. The bill expands the applicability of the statute to provide that any person who presents false or fraudulent “proof of” motor vehicle insurance commits a third degree felony.²³

Under current law, giving a false or fictitious name to a health care provider, giving a false or fictitious address to a health care provider, or assigning the proceeds of any health maintenance contract or insurance contract to a health care provider knowing the contract is invalid or void is prima facie evidence the person giving false information has intent to defraud the health care provider.²⁴ According to staff at DFS, during the course of an insurance fraud investigation by DFS, a DFS investigator may give a false name or address or false information relating to a health insurance policy to a health care provider DFS is investigating. This information is given to a health care provider in order for DFS to obtain information about the medical treatment given by and billing practices of the health care provider.

There are no exceptions for activities of law enforcement officers giving false or fictitious information for law enforcement purposes under current law. The bill amends current law to provide such an exception. The bill’s provision in this regard will protect investigators who are engaged in undercover police investigations.

Patient Brokering

Presently, it is a third degree felony for a person or health care provider or facility to pay or bribe in cash or in kind to induce the referral of patients from or to a health care provider or health care facility.²⁵ The bill would add a provision stating that it is a third degree felony to solicit or receive any commission, bonus, rebate, kickback, or bribe in cash or in kind or engage in a split-fee arrangement in any form whatsoever in return for the acceptance or acknowledgment of treatment from a health care provider or facility.

Under current law, for the purposes of patient brokering, a health care provider or health care facility is defined, in part, as “any person or entity licensed, certified, or registered.” The bill amends the definition of a health care provider or health care facility to include providers “required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered” with the Agency for Health Care Administration.

Falsely Personating Officer

A person who falsely assumes or pretends to be an officer and “takes upon himself or herself to act as such” commits a third degree felony pursuant to s. 843.08, F.S. The officers specified in s. 843.08, F.S. are:

²¹ s. 817.234(9), F.S.

²² Baird Helgeson, “Bill Targets Insurance Shenanigans,” The Tampa Tribune, 5 April 2005; Personal communication from DFS on file with the Insurance Committee.

²³ s. 817.2361, F.S.

²⁴ s. 817.50,(2), F.S. (2004).

²⁵ s. 817.505, F.S.

- Sheriff,
- Officer of the Florida Highway Patrol,
- Officer of the fish and Wildlife Conservation Commission,
- Office of the Department of Environmental Protection,
- Officer of the Department of Transportation,
- Officer of the Department of Corrections,
- Correctional Probation Officer,
- Deputy Sheriff,
- State Attorney,
- Assistant State Attorney,
- Statewide Prosecutor,
- Assistant Statewide Prosecutor,
- State Attorney Investigator,
- Coroner,
- Police Officer,
- Lottery Special Agent,
- Lottery Investigator,
- Beverage Enforcement Agent,
- Watchman,
- Any member of the Parole Commission,
- Any administrative aide of the Parole Commission,
- Any supervisor of the Parole Commission, or
- Any personnel or representative of the Florida Department of Law Enforcement.

The bill adds “officer of the Department of Financial Services” to the list of officers. Thus, falsely assuming or pretending to be an officer of DFS will be a third degree felony, unless the officer is personated during the commission of a felony in which case personating an officer of DFS is a second degree felony. However, if the commission of a felony results in death or personal injury of another, then the penalty for personating a DFS officer becomes a first degree felony.²⁶

Severability Clause

The bill provides that if any section of the bill is found invalid that the invalidity does not affect other provisions or applications of the act which can be given effect. It declares each provision of the act severable.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.068(2), F.S., to specify what information is required in a police report, and creates a rebuttable presumption that passengers not mentioned in the report were not in the vehicle.

Section 2. Amends s. 322.21(8), F.S., to provide additional fee for reinstatement of suspended or revoked driver’s license when license suspended or revoked for violation of s. 817.234(8) or (9), insurance fraud, or s. 817.505, prohibiting patient brokering.

Section 3. Creates s. 322.26(9), F.S., providing the department shall revoke the license of any person convicted under s. 817.234 (8) or 9, F.S., or s. 817.505, F.S.

Section 4. Creates s. 400.9935(13), F.S., requiring clinics to post signs with information regarding insurance fraud.

²⁶ In *State v. Alecia*, 692 So.2d 263 (Fla. 5th DCA 1997), the Fifth District Court of Appeal held that the statute was not unconstitutionally vague or overbroad as applied to a defendant who identified himself as deputy sheriff while trying to obtain information about recent suspicious activity in his neighborhood.

Section 5. Amends s. 440.105, F.S., by removing a prohibited activity from subsection 2.

Section 6. Amends s. 456.054, F.S., defining "kickback."

Section 7. Amends s. 624.15, F.S., to include general penalties for violation of rules of the department, office, or commission.

Section 8. Amends s. 626.1123, F.S., to provide penalty for violation of insurance license requirements.

Section 9. Amends s. 626.938, F.S., relating to report and tax of independently procured coverages.

Section 10. Amends s. 626.9891, F.S., concerning penalties for non-compliance of anti-fraud investigative units.

Section 11. Creates s. 626.9893, F.S., relating to the disposition of revenues and criminal or forfeiture proceedings.

Section 12. Creates s. 627.736(14), F.S., requiring insurance companies to provide a fraud advisory notice when an insured files a claim.

Section 13. Amends s. 817.234, F.S. relating to false and fraudulent claims.

Section 14. Amends s. 817.2361, F.S., relating to false or fraudulent proof of motor vehicle insurance.

Section 15. Amends s. 817.50(2), F.S., relating to the fraudulent obtaining of goods and services.

Section 16. Amends s. 817.505, F.S., relating to patient brokering.

Section 17. Amends s. 843.08, F.S., relating to falsely personating officer.

Section 18. Creates s. 932.7055(6)(n), F.S., relating to the disposition of liens and forfeited property.

Section 19. Provides that if any provision of this act is invalid, that the invalidity does not affect other provisions in the act.

Section 20. 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care clinics would be responsible for placing anti-fraud reward signs in conspicuous locations within their clinics and must allow complete access to their premises to law enforcement personnel within the DIF to make inspections to determine compliance with the signage requirement.

Persons would be subject to increased penalties, including criminal prosecution, for various acts specified by the bill. Criminal fines ordered by a Court pursuant to s. 775.083, F.S., states that such criminal fines must be deposited in the trust fund for the clerk of the circuit court for that particular county, such fund being created by s. 142.01, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DIF is authorized to adopt rules relating to the manner in which suspected fraudulent activity is reported to DIF in a standardized referral form.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Office of Insurance Regulation (OIR) suggests an amendment to section 11 of the bill. Section 11 amends s. 627.736, F.S. and adds a requirement that an insurer shall provide a notice to the insured or to a person for whom a claim for reimbursement for diagnosis or treatment of injuries has been filed, stating that the DIF may pay monetary rewards to persons giving information leading to the arrest and conviction of persons charged with certain crimes.²⁷

OIR stated that s. 627.7401, F.S. requires the Financial Services Commission (FSC) to adopt a "Notification of Insured Rights" form for use with PIP claims. In lieu of creating a new notice document, as required by the newly created s. 627.736(14), F.S., OIR suggests an amendment to s. 627.7401, F.S., which accomplishes the notice provision in a single form. This would eliminate any increased administrative expense by insurers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the March 23, 2006 meeting, the Insurance Committee approved HB 561 with an amendment. The amendment amended s. 316.068(2), F.S., by requiring crash report forms to include certain information about the accident, specifically, the amendment requires a crash report to include the name of all

²⁷ OIR Legislative Analysis, on file with the insurance committee.

passengers in a vehicle. The amendment makes the absence of information in a crash report concerning the existence of passengers in the vehicles a rebuttable presumption that no such passengers were in the vehicle. The bill as originally filed did not affect s. 316.068(2), F.S.

This analysis has been updated to reflect the changes made by the Insurance Committee at its March 23, 2006, meeting.

1 A bill to be entitled
2 An act relating to offenses involving insurance; amending
3 s. 322.21, F.S.; providing an additional fee for certain
4 offenses relating to insurance crimes; providing for
5 deposit of the fee into the Highway Safety Operating Trust
6 Fund; amending s. 322.26, F.S.; providing an additional
7 circumstance relating to insurance crimes for mandatory
8 revocation of a person's driver's license; amending s.
9 400.9935, F.S.; requiring health care clinics to display
10 signs containing certain information relating to insurance
11 fraud; authorizing compliance inspections by the Division
12 of Insurance Fraud; requiring clinics to allow inspection
13 access; amending s. 440.105, F.S.; deleting the provision
14 that a violation of a stop-work order is a misdemeanor of
15 the first degree; amending s. 456.054, F.S.; revising the
16 definition of the term "kickback" for criminal prosecution
17 purposes; amending s. 624.15, F.S.; specifying violations
18 of rules of the Department of Financial Services, Office
19 of Insurance Regulation, or Financial Services Commission
20 as misdemeanors; specifying a violation of emergency rules
21 or orders as a felony of the third degree; providing
22 penalties; providing for nonapplication to certain
23 persons; amending s. 626.112, F.S.; providing a criminal
24 penalty for knowingly transacting insurance without a
25 license; amending s. 626.938, F.S.; revising provisions
26 requiring a report and taxation of independently procured
27 coverages; specifying nonauthorization of independent
28 procurement of workers' compensation, life, or health

29 insurance; amending s. 626.9891, F.S.; expanding
 30 authorization to impose administrative fines on insurers
 31 for failure to comply with certain anti-fraud plan or
 32 anti-fraud investigative unit description requirements;
 33 creating s. 626.9893, F.S.; authorizing the division to
 34 deposit certain revenues into the Insurance Regulatory
 35 Trust Fund; specifying accounting and uses of such
 36 revenues; providing for appropriation and use of such
 37 revenues; amending s. 627.736, F.S.; requiring insurers to
 38 provide certain persons with notice of the department's
 39 Anti-Fraud Reward Program and the criminal violations that
 40 may be reported in pursuit of a reward; amending s.
 41 817.234, F.S.; revising provisions specifying material
 42 omission and insurance fraud; prohibiting scheming to
 43 create documentation of a motor vehicle crash that did not
 44 occur; providing a criminal penalty; amending s. 817.2361,
 45 F.S.; providing that creating, marketing, or presenting
 46 fraudulent proof of motor vehicle insurance is a felony of
 47 the third degree; amending s. 817.50, F.S.; specifying
 48 nonapplication of provisions specifying evidence of intent
 49 to defraud to certain investigative actions taken by law
 50 enforcement officers; amending s. 817.505, F.S.; providing
 51 an additional patient brokering prohibition, to which
 52 penalties apply; revising a definition; amending s.
 53 843.08, F.S.; providing a criminal penalty for falsely
 54 assuming or pretending to be an officer of the Department
 55 of Financial Services; amending s. 932.7055, F.S.;

56 requiring certain proceeds seized by the division under

57 the Florida Contraband Forfeiture Act to be deposited into
58 certain trust funds; providing severability; providing an
59 effective date.

60

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

62

63 Section 1. Subsection (8) of section 322.21, Florida
64 Statutes, is amended to read:

65 322.21 License fees; procedure for handling and collecting
66 fees.--

67 (8) Any person who applies for reinstatement following the
68 suspension or revocation of the person's driver's license shall
69 pay a service fee of \$35 following a suspension, and \$60
70 following a revocation, which is in addition to the fee for a
71 license. Any person who applies for reinstatement of a
72 commercial driver's license following the disqualification of
73 the person's privilege to operate a commercial motor vehicle
74 shall pay a service fee of \$60, which is in addition to the fee
75 for a license. The department shall collect all of these fees at
76 the time of reinstatement. The department shall issue proper
77 receipts for such fees and shall promptly transmit all funds
78 received by it as follows:

79 (a) Of the \$35 fee received from a licensee for
80 reinstatement following a suspension, the department shall
81 deposit \$15 in the General Revenue Fund and \$20 in the Highway
82 Safety Operating Trust Fund.

83 (b) Of the \$60 fee received from a licensee for
84 reinstatement following a revocation or disqualification, the

HB 561

2006

85 department shall deposit \$35 in the General Revenue Fund and \$25
 86 in the Highway Safety Operating Trust Fund.

87
 88 If the revocation or suspension of the driver's license was for
 89 a violation of s. 316.193, or for refusal to submit to a lawful
 90 breath, blood, or urine test, an additional fee of \$115 must be
 91 charged. However, only one \$115 fee may be collected from one
 92 person convicted of violations arising out of the same incident.

93 The department shall collect the \$115 fee and deposit the fee
 94 into the Highway Safety Operating Trust Fund at the time of
 95 reinstatement of the person's driver's license, but the fee may
 96 not be collected if the suspension or revocation is overturned.

97 If the revocation or suspension of the driver's license was for
 98 a conviction for a violation of s. 817.234(8) or (9) or s.
 99 817.505, an additional fee of \$180 is imposed for each offense.

100 The department shall collect and deposit the additional fee into
 101 the Highway Safety Operating Trust Fund at the time of
 102 reinstatement of the person's driver's license.

103 Section 2. Subsection (9) is added to section 322.26,
 104 Florida Statutes, to read:

105 322.26 Mandatory revocation of license by department.--The
 106 department shall forthwith revoke the license or driving
 107 privilege of any person upon receiving a record of such person's
 108 conviction of any of the following offenses:

109 (9) Conviction in any court having jurisdiction over
 110 offenses committed under s. 817.234(8) or (9) or s. 817.505.

111 Section 3. Subsection (13) is added to section 400.9935,
 112 Florida Statutes, to read:

113 400.9935 Clinic responsibilities.--

114 (13) The clinic shall display a sign in a conspicuous
 115 location within the clinic readily visible to all patients
 116 indicating that, pursuant to s. 626.9892, the Department of
 117 Financial Services may pay rewards of up to \$25,000 to persons
 118 providing information leading to the arrest and conviction of
 119 persons committing crimes investigated by the Division of
 120 Insurance Fraud arising from violations of s. 440.105, s.
 121 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
 122 employee of the Division of Insurance Fraud may make unannounced
 123 inspections of a clinic licensed under this part as necessary to
 124 determine whether the clinic is in compliance with this
 125 subsection. A licensed clinic shall allow full and complete
 126 access to the premises to such authorized employee of the
 127 division who makes an inspection to determine compliance with
 128 this subsection.

129 Section 4. Paragraph (a) of subsection (2) of section
 130 440.105, Florida Statutes, is amended to read:

131 440.105 Prohibited activities; reports; penalties;
 132 limitations.--

133 (2) Whoever violates any provision of this subsection
 134 commits a misdemeanor of the first degree, punishable as
 135 provided in s. 775.082 or s. 775.083.

136 (a) It shall be unlawful for any employer to knowingly:

137 1. Coerce or attempt to coerce, as a precondition to
 138 employment or otherwise, an employee to obtain a certificate of
 139 election of exemption pursuant to s. 440.05.

140 2. Discharge or refuse to hire an employee or job

141 applicant because the employee or applicant has filed a claim
 142 for benefits under this chapter.

143 3. Discharge, discipline, or take any other adverse
 144 personnel action against any employee for disclosing information
 145 to the department or any law enforcement agency relating to any
 146 violation or suspected violation of any of the provisions of
 147 this chapter or rules promulgated hereunder.

148 4. ~~Violate a stop work order issued by the department~~
 149 ~~pursuant to s. 440.107.~~

150 Section 5. Subsection (1) of section 456.054, Florida
 151 Statutes, is amended to read:

152 456.054 Kickbacks prohibited.--

153 (1) As used in this section, the term "kickback" means a
 154 remuneration or payment ~~back pursuant to an investment interest,~~
 155 ~~compensation arrangement, or otherwise, by or on behalf of a~~
 156 provider of health care services or items, ~~of a portion of the~~
 157 ~~charges for services rendered to any person a referring health~~
 158 ~~care provider~~ as an incentive or inducement to refer patients
 159 for past or future services or items, when the payment is not
 160 tax deductible as an ordinary and necessary expense.

161 Section 6. Section 624.15, Florida Statutes, is amended to
 162 read:

163 624.15 General penalty.--

164 (1) Each willful violation of this code or rule of the
 165 department, office, or commission as to which a greater penalty
 166 is not provided by another provision of this code or rule of the
 167 department, office, or commission or by other applicable laws of
 168 this state is a misdemeanor of the second degree and is, in

169 addition to any prescribed applicable denial, suspension, or
 170 revocation of certificate of authority, license, or permit,
 171 punishable as provided in s. 775.082 or s. 775.083. Each
 172 instance of such violation shall be considered a separate
 173 offense.

174 (2) Each willful violation of an emergency rule or order
 175 of the department, office, or commission by a person who is not
 176 licensed, authorized, or eligible to engage in business in
 177 accordance with the Florida Insurance Code is a felony of the
 178 third degree, punishable as provided in s. 775.082, s. 775.083,
 179 or s. 775.084. Each instance of such violation is a separate
 180 offense. This subsection does not apply to licensees or
 181 affiliated parties of licensees.

182 Section 7. Subsection (9) is added to section 626.112,
 183 Florida Statutes, to read:

184 626.112 License and appointment required; agents, customer
 185 representatives, adjusters, insurance agencies, service
 186 representatives, managing general agents.--

187 (9) Any person who knowingly transacts insurance or
 188 otherwise engages in insurance activities in this state without
 189 a license in violation of this section commits a felony of the
 190 third degree, punishable as provided in s. 775.082, s. 775.083,
 191 or s. 775.084.

192 Section 8. Subsections (1), (2), and (9) of section
 193 626.938, Florida Statutes, are amended to read:

194 626.938 Report and tax of independently procured
 195 coverages.--

196 (1) Every insured who in this state procures or causes to
 197 be procured or continues or renews insurance from another state
 198 or country with an unauthorized foreign or alien insurer
 199 legitimately licensed in that jurisdiction, or any self-insurer
 200 who in this state so procures or continues excess loss,
 201 catastrophe, or other insurance, upon a subject of insurance
 202 resident, located, or to be performed within this state, other
 203 than insurance procured through a surplus lines agent pursuant
 204 to the Surplus Lines Law of this state or exempted from tax
 205 under s. 626.932(4), shall, within 30 days after the date such
 206 insurance was so procured, continued, or renewed, file a report
 207 of the same with the Florida Surplus Lines Service Office in
 208 writing and upon forms designated by the Florida Surplus Lines
 209 Service Office and furnished to such an insured upon request, or
 210 in a computer readable format as determined by the Florida
 211 Surplus Lines Service Office. The report shall show the name and
 212 address of the insured or insureds, the name and address of the
 213 insurer, the subject of the insurance, a general description of
 214 the coverage, the amount of premium currently charged therefor,
 215 and such additional pertinent information as is reasonably
 216 requested by the Florida Surplus Lines Service Office.

217 (2) Any insurance on a risk located in this state in an
 218 unauthorized insurer legitimately licensed in another state or
 219 country procured through solicitations, negotiations, or an
 220 application, ~~in whole or in part~~ occurring or made outside
 221 ~~within or from within this state, or for which premiums in whole~~
 222 ~~or in part are remitted directly or indirectly from within this~~

223 ~~state,~~ shall be deemed to be insurance procured, continued, or
 224 renewed in this state within the intent of subsection (1).

225 (9) This section does not authorize independent
 226 procurement of workers' compensation insurance, ~~apply as to life~~
 227 insurance, or health insurance.

228 Section 9. Subsection (7) of section 626.9891, Florida
 229 Statutes, is amended to read:

230 626.9891 Insurer anti-fraud investigative units; reporting
 231 requirements; penalties for noncompliance.--

232 (7) If an insurer fails to timely submit a final
 233 acceptable anti-fraud plan or anti-fraud investigative unit
 234 description ~~otherwise fails to submit a plan,~~ fails to implement
 235 the provisions of a plan or an anti-fraud investigative unit
 236 description, or otherwise refuses to comply with the provisions
 237 of this section, the department, office, or commission may:

238 (a) Impose an administrative fine of not more than \$2,000
 239 per day for such failure by an insurer to submit an acceptable
 240 anti-fraud plan or anti-fraud investigative unit description,
 241 until the department, office, or commission deems the insurer to
 242 be in compliance;

243 (b) Impose an administrative fine for failure by an ~~upon~~
 244 the insurer to implement or follow the provisions of an anti-
 245 fraud plan or anti-fraud investigative unit description ~~a fraud~~
 246 ~~detection and prevention plan that is deemed to be appropriate~~
 247 ~~by the department and that must be implemented by the insurer;~~
 248 or

249 (c) Impose the provisions of both paragraphs (a) and (b).
 250 Section 10. Section 626.9893, Florida Statutes, is created

251 to read:

252 626.9893 Disposition of revenues; criminal or forfeiture
 253 proceedings.--

254 (1) The Division of Insurance Fraud of the Department of
 255 Financial Services may deposit revenues received as a result of
 256 criminal proceedings or forfeiture proceedings, other than
 257 revenues deposited into the Department of Financial Services'
 258 Federal Equitable Sharing Trust Fund under s. 17.43, into the
 259 Insurance Regulatory Trust Fund. Moneys deposited pursuant to
 260 this section shall be separately accounted for and shall be used
 261 solely for the division to carry out its duties and
 262 responsibilities.

263 (2) Moneys deposited into the Insurance Regulatory Trust
 264 Fund pursuant to this section shall be appropriated by the
 265 Legislature, pursuant to the provisions of chapter 216, for the
 266 sole purpose of enabling the division to carry out its duties
 267 and responsibilities.

268 (3) Notwithstanding the provisions of s. 216.301 and
 269 pursuant to s. 216.351, any balance of moneys deposited into the
 270 Insurance Regulatory Trust Fund pursuant to this section
 271 remaining at the end of any fiscal year shall remain in the
 272 trust fund at the end of that year and shall be available for
 273 carrying out the duties and responsibilities of the division.

274 Section 11. Subsection (14) is added to section 627.736,
 275 Florida Statutes, to read:

276 627.736 Required personal injury protection benefits;
 277 exclusions; priority; claims.--

278 (14) FRAUD ADVISORY NOTICE.--Upon receiving notice of a
 279 claim under this section, an insurer shall provide a notice to
 280 the insured or to a person for whom a claim for reimbursement
 281 for diagnosis or treatment of injuries has been filed, advising
 282 that:

283 (a) Pursuant to s. 626.9892, the Department of Financial
 284 Services may pay rewards of up to \$25,000 to persons providing
 285 information leading to the arrest and conviction of persons
 286 committing crimes investigated by the Division of Insurance
 287 Fraud arising from violations of s. 440.105, s. 624.15, s.
 288 626.9541, s. 626.989, or s. 817.234.

289 (b) Solicitation of a person injured in a motor vehicle
 290 crash for purposes of filing personal injury protection or tort
 291 claims could be a violation of s. 817.234, s. 817.505, or the
 292 rules regulating The Florida Bar and should be immediately
 293 reported to the Division of Insurance Fraud if such conduct has
 294 taken place.

295 Section 12. Paragraph (a) of subsection (7) and subsection
 296 (9) of section 817.234, Florida Statutes, are amended to read:

297 817.234 False and fraudulent insurance claims.--

298 (7)(a) It shall constitute a material omission and
 299 insurance fraud, punishable as provided in subsection (11), for
 300 any ~~service~~ ~~physician or other~~ provider, other than a hospital,
 301 to engage in a general business practice of billing amounts as
 302 its usual and customary charge, if such provider has agreed with
 303 the insured ~~patient~~ or intends to waive deductibles or
 304 copayments, or does not for any other reason intend to collect
 305 the total amount of such charge. With respect to a determination

HB 561

2006

306 as to whether a service physician ~~or other~~ provider has engaged
 307 in such general business practice, consideration shall be given
 308 to evidence of whether the physician or other provider made a
 309 good faith attempt to collect such deductible or copayment. This
 310 paragraph does not apply to physicians or other providers who
 311 waive deductibles or copayments or reduce their bills as part of
 312 a bodily injury settlement or verdict.

313 (9) A person may not organize, plan, or knowingly
 314 participate in an intentional motor vehicle crash or a scheme to
 315 create documentation of a motor vehicle crash that did not occur
 316 for the purpose of making motor vehicle tort claims or claims
 317 for personal injury protection benefits as required by s.
 318 627.736. Any person who violates this subsection commits a
 319 felony of the second degree, punishable as provided in s.
 320 775.082, s. 775.083, or s. 775.084. A person who is convicted of
 321 a violation of this subsection shall be sentenced to a minimum
 322 term of imprisonment of 2 years.

323 Section 13. Section 817.2361, Florida Statutes, is amended
 324 to read:

325 817.2361 False or fraudulent proof of motor vehicle
 326 insurance ~~card~~.--Any person who, with intent to deceive any
 327 other person, creates, markets, or presents a false or
 328 fraudulent proof of motor vehicle insurance ~~card~~ commits a
 329 felony of the third degree, punishable as provided in s.
 330 775.082, s. 775.083, or s. 775.084.

331 Section 14. Subsection (2) of section 817.50, Florida
 332 Statutes, is amended to read:

333 817.50 Fraudulently obtaining goods, services, etc., from
 334 a health care provider.--

335 (2) If any person gives to any health care provider in
 336 this state a false or fictitious name or a false or fictitious
 337 address or assigns to any health care provider the proceeds of
 338 any health maintenance contract or insurance contract, then
 339 knowing that such contract is no longer in force, is invalid, or
 340 is void for any reason, such action shall be prima facie
 341 evidence of the intent of such person to defraud the health care
 342 provider. However, this subsection does not apply to
 343 investigative actions taken by law enforcement officers for law
 344 enforcement purposes in the course of their official duties.

345 Section 15. Subsection (1) and paragraph (a) of subsection
 346 (2) of section 817.505, Florida Statutes, are amended to read:

347 817.505 Patient brokering prohibited; exceptions;
 348 penalties.--

349 (1) It is unlawful for any person, including any health
 350 care provider or health care facility, to:

351 (a) Offer or pay any commission, bonus, rebate, kickback,
 352 or bribe, directly or indirectly, in cash or in kind, or engage
 353 in any split-fee arrangement, in any form whatsoever, to induce
 354 the referral of patients or patronage to or from a health care
 355 provider or health care facility;

356 (b) Solicit or receive any commission, bonus, rebate,
 357 kickback, or bribe, directly or indirectly, in cash or in kind,
 358 or engage in any split-fee arrangement, in any form whatsoever,
 359 in return for referring patients or patronage to or from a
 360 health care provider or health care facility; ~~or~~

361 (c) Solicit or receive any commission, bonus, rebate,
 362 kickback, or bribe, directly or indirectly, in cash or in kind,
 363 or engage in any split-fee arrangement, in any form whatsoever,
 364 in return for the acceptance or acknowledgement of treatment
 365 from a health care provider or health care facility; or

366 ~~(d)-(e)~~ Aid, abet, advise, or otherwise participate in the
 367 conduct prohibited under paragraph (a), ~~or~~ paragraph (b), or
 368 paragraph (c).

369 (2) For the purposes of this section, the term:

370 (a) "Health care provider or health care facility" means
 371 any person or entity licensed, certified, or registered;
 372 required to be licensed, certified, or registered; or lawfully
 373 exempt from being required to be licensed, certified, or
 374 registered with the Agency for Health Care Administration or the
 375 Department of Health; any person or entity that has contracted
 376 with the Agency for Health Care Administration to provide goods
 377 or services to Medicaid recipients as provided under s. 409.907;
 378 a county health department established under part I of chapter
 379 154; any community service provider contracting with the
 380 Department of Children and Family Services to furnish alcohol,
 381 drug abuse, or mental health services under part IV of chapter
 382 394; any substance abuse service provider licensed under chapter
 383 397; or any federally supported primary care program such as a
 384 migrant or community health center authorized under ss. 329 and
 385 330 of the United States Public Health Services Act.

386 Section 16. Section 843.08, Florida Statutes, is amended
 387 to read:

388 843.08 Falsely personating officer, etc.--A person who
389 falsely assumes or pretends to be a sheriff, officer of the
390 Florida Highway Patrol, officer of the Fish and Wildlife
391 Conservation Commission, officer of the Department of
392 Environmental Protection, officer of the Department of
393 Transportation, officer of the Department of Financial Services,
394 officer of the Department of Corrections, correctional probation
395 officer, deputy sheriff, state attorney or assistant state
396 attorney, statewide prosecutor or assistant statewide
397 prosecutor, state attorney investigator, coroner, police
398 officer, lottery special agent or lottery investigator, beverage
399 enforcement agent, or watchman, or any member of the Parole
400 Commission and any administrative aide or supervisor employed by
401 the commission, or any personnel or representative of the
402 Department of Law Enforcement, and takes upon himself or herself
403 to act as such, or to require any other person to aid or assist
404 him or her in a matter pertaining to the duty of any such
405 officer, commits a felony of the third degree, punishable as
406 provided in s. 775.082, s. 775.083, or s. 775.084; however, a
407 person who falsely personates any such officer during the course
408 of the commission of a felony commits a felony of the second
409 degree, punishable as provided in s. 775.082, s. 775.083, or s.
410 775.084; except that if the commission of the felony results in
411 the death or personal injury of another human being, the person
412 commits a felony of the first degree, punishable as provided in
413 s. 775.082, s. 775.083, or s. 775.084.

414 Section 17. Paragraph (n) is added to subsection (6) of
415 section 932.7055, Florida Statutes, to read:

416 932.7055 Disposition of liens and forfeited property.--
 417 (6) If the seizing agency is a state agency, all remaining
 418 proceeds shall be deposited into the General Revenue Fund.
 419 However, if the seizing agency is:

420 (n) The Division of Insurance Fraud of the Department of
 421 Financial Services, the proceeds accrued pursuant to the
 422 provisions of the Florida Contraband Forfeiture Act shall be
 423 deposited into the Insurance Regulatory Trust Fund as provided
 424 in s. 626.9893 or into the Department of Financial Services'
 425 Federal Equitable Sharing Trust Fund as provided in s. 17.43, as
 426 applicable.

427 Section 18. If any provision of this act or the
 428 application thereof to any person or circumstance is held
 429 invalid, the invalidity does not affect other provisions or
 430 applications of the act which can be given effect without the
 431 invalid provision or application, and, to this end, the
 432 provisions of this act are declared severable.

433 Section 19. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 681
SPONSOR(S): Holloway
TIED BILLS:

Electronic Recording of Custodial Interrogations

IDEN./SIM. BILLS: SB 770

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson <i>KE</i>	Kramer <i>JK</i>
2) Judiciary Committee			
3) Judiciary Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

HB 681 provides that statements made during custodial interrogations are presumed to be inadmissible in evidence against the accused unless an electronic recording is made and several other requirements are met; if a court finds by a preponderance of the evidence that the defendant was subject to non-recorded custodial interrogation, any statements during or following are presumed to be inadmissible in any criminal proceeding except for the purpose of impeachment.

HB 681 provides that the state may rebut the presumption of inadmissibility through clear and convincing evidence that the statement was voluntary and reliable and law enforcement officers had good cause not to electronically record all or part of the interrogation.

This bill may be considered an unfunded mandate on local governments. See "Applicability of Municipality/County Mandates Provision" section of this analysis for details.

Providing an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- HB 681 will require law enforcement agencies to record custodial interrogations in order for them to be admissible into evidence.

B. EFFECT OF PROPOSED CHANGES:

In order for a statement made during a custodial interrogation to be admissible into evidence, the suspect must first be read Miranda¹ warnings and the suspect must waive the rights described in the warning. These warnings state that a suspect "has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires."²

HB 681 provides that a statement made by a person during a custodial interrogation³ shall be presumed inadmissible as evidence against that person in a criminal proceeding unless:

- An electronic recording⁴ is made of the custodial interrogation.
- The recording is substantially accurate and not intentionally altered.
- Prior to the statement, but during the electronic recording, the person is given all constitutionally required warnings and the person knowingly, intelligently, and voluntarily waives any rights set out in the warnings.
- The electronic recording device was capable of making a true, complete and accurate recording of the interrogation and the operator of such device was competent and the electronic recording has not been altered.
- Voices material to the custodial interrogation are identified on the electronic recording.
- During discovery as provided in the Florida Rules of Criminal Procedure, but no later than the 20th day before the date of the proceeding in which the prosecution intends to offer the statement, the defense is provided with a true, complete and accurate copy of all electronic recordings of the defendant made pursuant to this section

HB 681 provides that if a court finds by a preponderance of the evidence that the defendant was subject to non-recorded custodial interrogation, any statements during or following are presumed to be inadmissible in any criminal proceeding except for the purpose of impeachment.

HB 681 provides that if there is not a true, complete and accurate recording, the presumption of inadmissibility can be rebutted through clear and convincing evidence that:

- The statement was voluntary and reliable; and
- Law enforcement officers had good cause not to electronically record all or part of the interrogation.

HB 681 defines the term "good cause" as including but not limited to the following:

- The person refused to have the interrogation electronically recorded and such refusal was electronically recorded;

¹ See Miranda v. Arizona, 384 U.S. 436 (1966).

² Id at 479.

³ The bill defines the term "custodial interrogation" to mean any interrogation during which a reasonable person in the subject's position would consider himself or herself to be in custody, and a question is asked which is likely to elicit an incriminating response.

⁴ The bill defines the term "electronic recording" to mean a true, complete and accurate reproduction of the entire custodial interrogation of an accused person. An electronic recording may be created by motion picture, videotape, audiotape, or digital or other media.

- The failure to electronically record an entire interrogation was the result of equipment failure and obtaining replacement equipment was not feasible; or
- The statement was obtained in the course of electronic eavesdropping that was being conducted pursuant to a properly obtained and issued warrant or that required no warrant.

HB 681 provides that the section does not apply to a statement made by the person:

- At the person's trial or other hearing held in open court.
- Before a grand jury.
- Which is the res gestae of the arrest or the offense.
- Which is a spontaneous statement that was not made in response to a question.
- During questioning that is routinely asked during the processing of the arrest of the person.
- Which does not arise from a custodial interrogation.
- Which was obtained in another state by investigative personnel of such state, acting independently of law enforcement personnel of this state, in compliance with the laws of such state.
- Which was obtained by a federal office in this state or another state during a lawful federal investigation and was obtained in compliance with the laws of the United States.

HB 681 requires that every electronic recording of a custodial interrogation made pursuant to this section to be preserved until the defendant's conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

C. SECTION DIRECTORY:

Section 1. Provides definitions; provides that statements made during custodial interrogations are presumed to be inadmissible in court unless an electronic recording is made; provides for rebutting the presumption of inadmissibility.

Section 2. Provides legislative findings.

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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will require the expenditure of funds to purchase electronic recording equipment which will be used to record interrogations. The bill could apply to interrogations that occur at a number of different places including law enforcement facilities, correctional facilities and law enforcement

vehicles. As a result, it appears that agencies may have to purchase equipment that would be kept in an interrogation room and purchase equipment that would be portable for use in a vehicle or other secure environment. Law enforcement agencies will also be required to expend funds for tapes or other materials used in the recording devices. Further, law enforcement agencies will be required to expend funds for storage of the tapes on which interrogations are made until the case is final.

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:

To the extent that political subdivisions, including cities and counties (through the police department or the sheriff's department), are obligated to pay for recording equipment, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided to such political subdivisions.

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on the 2003 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.8 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to implement an electronic recording program, in expenditures to provide a suitable system, not including recurring/maintenance costs. Arguably, the agency or office does not have to implement such a policy, but due to the presumption created, and the narrowly carved rebuttal to that presumption, an officer's work in securing the statement is otherwise meaningless if statements are rendered inadmissible in court proceedings.

If it is determined that this bill does constitute a mandate, it does include constitutionally required language that provides that the Legislature has determined that this legislation fulfills an important state interest, in accordance with Section 18 of Article VII of the State Constitution. In order to bind the counties and municipalities under this provision, a 2/3 vote of the membership of each house would be required.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2001, Texas codified identical legislation⁵ to HB 681; while other states have judicially mandated a recording requirement for all custodial interrogations in the exercise of its supervisory powers.⁶

According to section two within HB 681, "the legislature finds that many innocent persons are imprisoned and later released due to false confessions; there are many reasons innocent people confess ranging from coercion to mental illness; electronic recording of interrogations protects the innocent and provides the best evidence against the guilty." Other state courts have held that many factual disputes about the denial of a defendant's constitutional rights would be avoided if all conversations between the police and a suspect were recorded. While HB 681 may eliminate disputes as to the words that the suspect used in the interrogation, it will potentially create other factual disputes regarding issues such as: whether the interrogation was recorded in its entirety; whether the recording equipment was capable of making a "true, complete, and accurate recording of the interrogation"; whether the operator of the device was competent and whether the electronic recording was altered. For example, if a recording is stopped in order to switch tapes or in order to allow the suspect to take a break, the suspect may later argue that the interrogation was not recorded in its entirety. Every unusual noise on the tape could be subject to scrutiny. Further, there could be factual disputes if the state attempts to admit an interrogation into evidence under one of the exceptions contained in the bill.

HB 681 requires a law enforcement agency to preserve an electronic recording of a custodial interrogation until all post conviction appeals are exhausted or the prosecution is barred by law. Courts have not consistently applied a time limit to post conviction proceedings. Therefore, a law enforcement agency may be forced to preserve the evidence for as long as the defendant is incarcerated. Also because there is no statute of limitations for a capital felony, law enforcement would be required to keep the electronic recording of an interrogation in cases that do not result in a conviction, for the duration of the suspect's life.

HB 681 does not specify that the presumption of inadmissibility applies only to interrogations which occur after the effective date of the bill. As a result, it is not clear whether the provisions of the bill would bar the admissibility of an interrogation that takes place before the bill takes effect. Further, the act takes effect on July 1, 2006. Law enforcement agencies will have a short amount of time to comply with the new requirements of HB 681.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁵ See Vernon's Ann. Texas C.C.P. Art. 38.22

⁶ See State v. Scales, 518 N.W.2d 587 (Minn. 1994); Stephan v. State, 711 P.2d 1156 (Alaska 1985).

1 A bill to be entitled
 2 An act relating to electronic recording of custodial
 3 interrogations; providing definitions; providing that
 4 statements made during custodial interrogations are
 5 presumed to be inadmissible in court unless an electronic
 6 recording is made; providing requirements for such
 7 recordings; providing for rebutting the presumption of
 8 inadmissibility for certain nonrecorded statements;
 9 providing exceptions for certain statements; providing for
 10 use of statements for impeachment purposes; providing for
 11 preservation of recordings; providing a finding of
 12 important state interest; providing an effective date.

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

15
 16 Section 1. Custodial interrogations; recording.--

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

18 (a) "Custodial interrogation" means any interrogation
 19 during which:

20 1. A reasonable person in the subject's position would
 21 consider himself or herself to be in custody.

22 2. A question is asked which is reasonably likely to
 23 elicit an incriminating response.

24 (b) "Electronic recording" means a reproduction of a
 25 custodial interrogation and may be created by motion picture,
 26 videotape, audiotape, or digital or other media.

27 (2) A statement made by a person during a custodial
 28 interrogation shall be presumed to be inadmissible as evidence

HB 681

2006

29 against that person in a criminal proceeding unless:

30 (a) An electronic recording is made of the custodial
31 interrogation.

32 (b) The recording is substantially accurate and not
33 intentionally altered.

34 (c) Prior to the statement, but during the electronic
35 recording, the person is given all constitutionally required
36 warnings and the person knowingly, intelligently, and
37 voluntarily waives any rights set out in the warnings which
38 would otherwise preclude the admission of the statement absent
39 the waiver of those rights.

40 (d) The electronic recording device was capable of making
41 a true, complete, and accurate recording of the interrogation,
42 the operator of such device was competent, and the electronic
43 recording has not been altered.

44 (e) All voices that are material to the custodial
45 interrogation are identified on the electronic recording.

46 (f) During discovery pursuant to Rule 3.220, Florida Rules
47 of Criminal Procedure, but in no circumstances later than the
48 20th day before the date of the proceeding in which the
49 prosecution intends to offer the statement, the defense is
50 provided with a true, complete, and accurate copy of all
51 electronic recordings of the defendant made pursuant to this
52 section.

53 (3) If the court finds, by a preponderance of the
54 evidence, that the defendant was subjected to a custodial
55 interrogation in violation of this section, any statements made
56 by the defendant during or following that nonrecorded custodial

57 interrogation, even if otherwise in compliance with this
58 section, are presumed to be inadmissible in any criminal
59 proceeding against the defendant except for the purposes of
60 impeachment.

61 (4) (a) In the absence of a true, complete, and accurate
62 electronic recording, the prosecution may rebut a presumption of
63 inadmissibility through clear and convincing evidence that:

64 1. The statement was both voluntary and reliable.

65 2. Law enforcement officers had good cause not to
66 electronically record all or part of the interrogation.

67 (b) As used in paragraph (a), "good cause" includes, but
68 is not limited to, the following circumstances:

69 1. The person refused to have the interrogation
70 electronically recorded and such refusal was electronically
71 recorded;

72 2. The failure to electronically record an entire
73 interrogation was the result of equipment failure and obtaining
74 replacement equipment was not feasible; or

75 3. The statement was obtained in the course of electronic
76 eavesdropping that was being conducted pursuant to a properly
77 obtained and issued warrant or that required no warrant.

78 (5) This section does not apply to a statement made by the
79 person:

80 (a) At the person's trial or other hearing held in open
81 court.

82 (b) Before a grand jury.

83 (c) Which is the res gestae of the arrest or the offense.

84 (d) Which is a spontaneous statement that was not made in

85 response to a question.

86 (e) During questioning that is routinely asked during the
 87 processing of the arrest of a person.

88 (f) Which does not arise from a custodial interrogation,
 89 as defined by this section.

90 (g) Which was obtained in another state by investigative
 91 personnel of such state, acting independently of law enforcement
 92 personnel of this state, in compliance with the laws of such
 93 state.

94 (h) Which was obtained by a federal officer in this state
 95 or another state during a lawful federal investigation and was
 96 obtained in compliance with the laws of the United States.

97 (6) This section does not preclude the admission of a
 98 statement, otherwise inadmissible under this section, which is
 99 used only for impeachment and not as substantive evidence.

100 (7) Each electronic recording of a custodial interrogation
 101 made pursuant to this section must be preserved until the
 102 person's conviction for any offense relating to the
 103 interrogation is final and all direct appeals and collateral
 104 challenges are exhausted, the prosecution of such offenses is
 105 barred by law, or the state irrevocably waives in writing any
 106 future prosecution of the person for any offense relating to the
 107 interrogation.

108 Section 2. The Legislature finds that many innocent
 109 persons are imprisoned and later released due to false
 110 confessions; there are many reasons innocent people confess
 111 ranging from coercion to mental illness; electronic recording of
 112 interrogations protects the innocent and provides the best

HB 681

2006

113 evidence against the guilty; a number of other states and local
114 jurisdictions now require recording of interrogations; and the
115 benefits of electronic recording of interrogations outweigh its
116 cost. Therefore, the Legislature determines and declares that
117 this act fulfills an important state interest.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1505 Domestic Violence
SPONSOR(S): Mealor
TIED BILLS: HB 1507 IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

This bill requires law enforcement agencies to include victim statements and other materials that are part of an active criminal investigation and are exempt from Florida's public records laws in the information sent to domestic violence centers.

This bill provides that in emergency situations immediately following incidents of domestic violence, a court may issue an emergency protection order if a law enforcement officer states under oath to the court the facts that show such an order is needed and the court finds reasonable grounds to believe that the victim or the victim's child is in immediate danger of domestic violence.

The bill requires employers with 50 or more employees to allow employees who have been employed for at least 12 months to request or take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- seek an injunction for protection against domestic violence;
- obtain medical care or mental health counseling;
- obtain services from a victim-services organization;
- make the employee's home secure or to seek new housing; or
- to seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

The bill requires employees to provide advance notice of the leave (except in cases of imminent danger) and use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this bill (unless this requirement is waived by the employer).

The bill authorizes employers to require documentation of the act of domestic violence, requires employers to keep all information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill.

The bill requires the judicial branch to collect statistics on noncriminal judicial actions concerning domestic violence.

This act takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government →

- This bill requires law enforcement agencies to provide victim statements and active criminal investigative information to domestic violence centers.
- This bill authorizes judges to issue emergency protection orders in certain domestic violence-related instances.
- This bill requires certain employers to grant leave to employees who are victims of domestic violence for certain reasons.

Maintain Public Security → This bill authorizes judges to issue emergency protection orders in certain domestic violence-related instances.

B. EFFECT OF PROPOSED CHANGES:

Nationally, more than 1.5 million adults are victims of domestic violence each year.¹ In Florida, 120,697 crimes of domestic violence were reported to the police in 2003.² In fiscal year 2003-2004, Florida's domestic violence centers responded to 132,629 crisis calls, provided counseling services to 197,787 individuals, and provided emergency shelter to 14,467 individuals, primarily women and children.³

Domestic Violence - Public Records

Police reports are public records except as otherwise made exempt or confidential.⁴ If a police report contains confidential information, it must be redacted prior to being made public.⁵ In contrast, the following information is exempt from Florida's public records laws:

- Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from Florida's public records laws.⁶
- Active criminal intelligence information and active criminal investigative information are exempt from Florida's public records laws.⁷

There is a difference between records the legislature has determined to be exempt and those which the legislature has determined to be confidential and exempt. If information is made confidential and exempt, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute. If records are not confidential but are only exempt, the exemption does not prohibit the showing of such information.⁸ Because the above-listed information is *exempt* rather than confidential and exempt, a law enforcement agency has discretion to release it.

¹ Legal Momentum, an advocacy and research organization based in New York City, as quoted in *When Home Comes to Work*, ABA Journal (Sept 2005), at 42.

² <http://www.fcadv.org/statistics.html>

³ *Id.*

⁴ s. 119.105, F.S.

⁵ Section 119.07, F.S., provides that a person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

⁶ s. 119.071(2)(c), F.S.

⁷ s. 119.071(2)(c), F.S.

⁸ *WFTV, Inc., v. School Bd. Of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

When a law enforcement officer investigates an allegation of alleged domestic violence, the officer must, regardless of whether an arrest was made, make a written report that clearly indicates the alleged offense was an incident of domestic violence.⁹ Additionally, whenever possible, the officer must obtain a written statement from the victim and witnesses concerning the alleged domestic violence.¹⁰ Currently, law enforcement agencies are required to send a copy of the report, *excluding any victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, F.S.*, to the nearest certified domestic violence center.¹¹

Victim statements could be considered "active criminal investigative information." However, because such information is only exempt from Florida's public records laws (rather than confidential and exempt), a law enforcement agency would have discretion to release it. Currently, most law enforcement agencies allow victims and defendants/respondents to obtain such information by going to the involved law enforcement agency and making a request.

Effect of the Bill

This bill would require that the entire report, *including victim and witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under Florida's public records laws* to be furnished to the domestic violence center. The bill specifies that the exempt statements and materials retain their exempt status when held by the certified domestic violence center and must not be accessed by any person other than the victim.

Domestic Violence – Injunctions / Protective Orders

Any person who is either the victim of domestic violence¹² or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence may file a sworn petition for an injunction for protection against domestic violence.¹³ Upon filing a petition for an injunction, an ex parte¹⁴ hearing will be held in which a judge, pending a full hearing, may either grant or deny a temporary injunction.¹⁵ A court may grant a temporary injunction when it appears that an immediate and present danger of domestic violence exists.¹⁶ Temporary injunctions may include the following relief:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding the petitioner temporary exclusive use of a dwelling; and
- Granting the petitioner temporary custody of a minor child.¹⁷

The respondent to a temporary injunction must be served with the injunction before the injunction can be enforced.¹⁸ Temporary injunctions are only effective for up to 15 days, during which time a full hearing is scheduled and held.¹⁹

In practice, when an incident of domestic violence occurs, the victim may go to the courthouse and complete a petition for an injunction against domestic violence. Because temporary injunction hearings are held ex parte, the victim is usually informed that same day whether the judge granted the petition.

⁹ s. 741.29, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² "Domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

¹³ s. 741.30, F.S.

¹⁴ An ex parte hearing involves only one party to a legal matter and is conducted in the absence of and usually without notice to the other party. <http://dictionary.reference.com/search?q=ex%20parte>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

As noted above, the respondent to the petition must be served with the injunction before the injunction can be enforced. Although it is possible that a victim might receive a temporary injunction the same day as the domestic violence incident, the process sometimes takes up to a day.

Effect of the Bill

This bill provides that in emergency situations immediately following incidents of domestic violence, a court may issue an emergency protection order if a law enforcement officer states under oath to the court (in person, by telephone, in writing, or by fax) the facts that show an emergency protection order is needed and the court finds reasonable grounds to believe that the victim or the victim's child is in immediate danger of domestic violence. The court may grant the same relief as provided for temporary injunctions (use of the dwelling, custody, etc...). The emergency protection order expires 72 hours after issuance or at the end of the next judicial day, whichever time is later, or at the request of the victim. The bill specifies that once the emergency protection order is issued, the law enforcement officer must:

- If the judge's order was verbal, put the order in writing on an approved form provided by the court, outline the grounds justifying the issuance of the order, and sign and date the order.
- If possible, serve a signed copy of the order on the offender and victim at the scene of the domestic violence incident.
- Complete the appropriate affidavit of service and file the affidavit with the issuing court by the close of business on the next judicial day.
- If the order was reduced to writing and signed by the officer, file the original, signed order with the issuing court by the close of business on the next judicial day.

Domestic Violence – Employment Issues

It is estimated that U.S. employers lose between \$3 billion and \$13 billion each year as a result of domestic violence due to lost productivity of victims and the cost of training replacement employees.²⁰ The federal Family and Medical Leave Act of 1993 (FMLA),²¹ while not specifically directed to domestic violence, requires employers to grant up to 12 weeks of unpaid leave during any 12-month period for specified family and medical needs. The U.S. Office of Personnel Management has suggested that the FMLA, which affects any employer with more than 50 employees which is engaged in commerce or any activity affecting commerce, is available to employees who suffer from the effects of physical or emotional abuse, either of themselves or their children, which require medical attention.²² To date, only six states (California, Colorado, Hawaii, Illinois, Maine, and North Carolina) have enacted legislation giving domestic violence victims specific job protections.²³

In 1996, the Governor and Cabinet of Florida developed a model policy on Domestic Violence in the Workplace. It was described as "a standard to which agencies may look for guidance and policy development," but left to each agency the flexibility to address individual agency needs.²⁴ The policy included a provision that directed that:

The agency shall grant leave with or without pay, adjust schedules or work assignments, as appropriate, for employees who are victims of domestic violence to include time off for medical and legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to provide for victim safety.²⁵

²⁰ *Id.* at 44.

²¹ Public Law 103-3.

²² *Responding to Domestic Violence: Where Federal Employees Can Find Help*, U.S. Office of Personnel Management, <http://www.opm.gov/ehs/workplac/html/domestic.html>, (accessed December 27, 2005).

²³ *When Home Comes to Work*, ABA Journal (Sept 2005), at 44.

²⁴ *State of Florida Model Policy on Domestic Violence in the Workplace*, The Third Report of the Governor's Task Force on Domestic and Sexual Violence (1997), p. 1.

²⁵ *Id.*, paragraph (5)(E), at 177.

The Florida Department of Management Services has provided by rule that executive agencies must approve parental or family medical leave to assist employees in meeting family needs, specifically allowing leave to be granted for up to six months for a family member's serious health condition²⁶ as defined in the FMLA.²⁷ Additionally, agencies are required to approve up to 30 days family leave for "non-medical family responsibilities," which would appear to be broad enough to include domestic violence-related issues.²⁸ If the employee is granted such leave, the employee may request to use accrued leave credits. If the employee does not so request, the agency may place the employee on leave without pay.²⁹

At least one executive agency, the Department of Children and Families (DCF), has in place an operating policy which addresses employees who are victims of domestic violence. In regard to the use of leave time, this policy provides:

The department shall grant the use of accrued leave time or adjust an employee's work schedule or work assignment, as appropriate, for an employee who is a victim of domestic violence. This may include approved time off for medical and legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to provide for the victim's safety and the safety of any of the victim's children, if necessary.³⁰

Policies have also been adopted at the county level to address these concerns. For example, the Miami-Dade County Code entitles domestic violence victims to up to 30 days of unpaid leave for medical or dental care, legal assistance, court appearances, counselor or supportive services, or any other arrangements needed because of domestic violence. The ordinance applies to leave to obtain orders of protection and for divorce, child custody, and child support hearings. The employee is required to exhaust all paid vacation and personal leave prior to taking leave under this provision. The employer may request certification from a health care provider, attorney of record, counselor, law enforcement agency, clergy, or domestic violence service provider that the employee is being subjected to domestic or repeat violence and is in need of time off for one of the permitted reasons.³¹ Miami-Dade County officials report that since the ordinance was enacted in 1999, only six employees have availed themselves of the ordinance's protection, for a total of 461.25 hours of unpaid leave.³²

Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena³³ but provides none of the other protections enumerated in the bill to victims of domestic violence.

Florida courts have considered at least three cases in which victims sought unemployment compensation after being dismissed from their jobs for excessive absenteeism related to domestic violence or after leaving their employment as a result of domestic violence concerns. In the earliest of the three cases, the court held that the claimant's concerns for her personal safety provided good cause for leaving her employment, particularly due to robberies which occurred at the workplace while she was there.³⁴ In another case, the court found that an employee whose excessive absenteeism was

²⁶ The FMLA defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves: (1) inpatient care in a hospital, hospice or residential medical care facility or (2) continuing treatment by a health care provider. See 29 CFR 825.114, http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/29CFR825.114.htm. (accessed February 22, 2006).

²⁷ 60L-34.0051, FAC.

²⁸ *Id.*

²⁹ *Id.*

³⁰ CFOP 60-11 (July 1, 2001), subparagraph 1-7(b)(3), at 1-6.

³¹ County Ordinance 99.5.

³² Two employees used 16 hours each; two used between 50-100 hours each, and two used 100-200 hours each. One employee used the leave in 2001, two in 2002, one in 2003, and two in 2004.

³³ s. 92.57, F.S.

³⁴ *Wall v. Unemployment Claims Commission*, 682 So.2d 1187 (2nd DCA 1996).

caused by domestic problems and by injuries received from her husband was not guilty of misconduct related to work and was thus eligible for unemployment compensation.³⁵ In the final case, the court decided that a claimant who resigned her job and moved to another state was not entitled to compensation since she had voluntarily left her employment without good cause attributable to her employer.³⁶ While these three cases are not precisely on point, since they deal with unemployment compensation rather than entitlement to leave, they are illustrative of the lack of clarity in the judicial decision making regarding employees who are victims of domestic violence.

The personnel records of public employees are currently public record, unless specifically excluded from the requirements of Florida's public records law, s. 119.01, F.S.

Effect of the Bill

The bill requires employers to allow employees to request or take up to three working days of leave with or without pay in any 90-day period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

Application of the bill is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 12 months. The employee is required to provide advance notice of the leave except in cases of imminent danger to the employee or the employee's family. The employer is authorized to require documentation of the act of domestic violence.

The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this bill, unless this requirement is waived by the employer.

The employer is required to keep all information relating to the employee's leave under this section confidential. The employer is prohibited from taking any disciplinary action against the employee for exercising rights under this bill; but the employee is not granted any rights under the bill to continued employment or other benefits not available outside the provisions of the bill.

The remedy for damages to an employee aggrieved under the bill is limited to a civil suit for damages or equitable relief in the circuit court. The employee may claim as damages all wages and benefits that would have been due the person, up to and including the date of judgment, had the act violating this bill not occurred, but the employee is not relieved from the obligation to mitigate damages.

Domestic Violence - Statistics

Currently, each agency that is involved with the enforcement, monitoring, or prosecution of crimes of domestic violence must collect and maintain records of each domestic violence incident for access by investigators preparing for bond hearings and prosecutions for acts of domestic violence.³⁷ The information must be provided to the court at first appearance hearings and all subsequent hearings.

³⁵ *Gilbert v. Department of Corrections*, 696 So2d 416 (1st DCA 1997).

³⁶ *Hall v. Florida Unemployment Appeals Commission*, 697 So.2d 541 (1st DCA 1997).

³⁷ s. 943.1702, F.S.

Effect of the Bill

This bill requires the judicial branch to collect the above-information in regards to noncriminal actions related to domestic violence, including petitions seeking injunctions for protection.

C. SECTION DIRECTORY:

Section 1. Amends s. 741.29, F.S., providing domestic violence centers access to certain materials that are part of an active domestic violence criminal investigation that are exempt from disclosure; providing continuing exemption of such material from disclosure.

Section 2. Amends s. 741.30, F.S., authorizing law enforcement officers to obtain emergency protection orders immediately following incidents of domestic violence in certain circumstances; requiring a law enforcement officer to reduce such orders to writing; providing for expiration of such orders; specifying procedures relating to such orders.

Section 3. Creates s. 741.313, F.S., defining the terms "domestic violence," "family or household member," and "victim"; requiring certain employers to permit certain employees to take leave from work to undertake activities resulting from an act of domestic violence; specifying the activities for which employees may take leave; requiring the employee to notify the employer of the leave; providing exceptions; requiring that employers keep an employee's leave information confidential; prohibiting employers from taking certain actions against employees for exercising rights specified in the bill.

Section 4. Amends s. 943.1702, F.S., requiring collection of statistics on noncriminal judicial actions concerning domestic violence.

Section 5. Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Qualifying state employers will be required to grant leave to employees who are victims of domestic violence regardless of whether the employee has accrued sufficient paid leave to cover the absence. However, since many state agencies may have already provided (in their personnel policies) for this leave as the result of the 1997 Model Policy, state agencies may be less affected than private employers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent the bill requires law enforcement agencies to include victim and witness statements and other active criminal investigative information to domestic violence centers, there may be an increased workload impact on law enforcement agencies. It is not anticipated that any impact would be significant in that law enforcement agencies are currently required to send police reports to domestic violence centers.

To the extent the bill authorizes a judge to grant an emergency protection order and requires law enforcement officers to take certain actions regarding such orders, there could be an increased workload on courts and law enforcement agencies.

Qualifying local government employers will be required to grant leave to employees who are victims of domestic violence regardless of whether the employee has accrued sufficient paid leave to cover the absence.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Employers will be required to grant leave (with or without pay) to employees who are victims of domestic violence regardless of whether the employee has accrued sufficient paid leave to cover the absence. Such employees will also be able to retain employment despite absences caused by domestic violence.

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:

This bill would require that the entire report, including victim and witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure to be furnished to the domestic violence center, who may then only give the victim access. However, as noted above, victims and defendants/respondents may currently obtain such information by going to the involved law enforcement agency and requesting it. Although providing such information to the domestic violence center might give victims better access to the material, it should be noted that many victims never go to the domestic violence center and therefore would not receive this benefit. Additionally, the defendant/respondent will rarely be at the domestic violence center and therefore would not benefit from having the information provided to the centers. If the intent of the bill is to give victims and defendants/respondents better access to material that will assist them in the injunction process, the material could be sent to a neutral location (e.g. the clerk's office) and both victims and defendants/respondents should be allowed access.

As noted above law enforcement agencies currently have discretion as to whether to release exempt material to victims, etc... There may be times when a law enforcement agency refuses to give exempt criminal investigative information to victims, etc... because doing so could interfere with an active criminal investigation. Currently, law enforcement agencies have discretion as to whether to release such material to victims and defendants/respondents and could thus opt not to release the material.

Agencies would not have this discretion under the bill – they would be required to send the information to the domestic violence centers.

Under the bill, it is not clear whether law enforcement must decide whether to request an emergency protection order or whether requesting the order is the victim's decision. It is unlikely that law enforcement agencies would want the responsibility of deciding when to request such an order because of liability concerns. This issue could be resolved with the following language:

“ In an emergency situation immediately following an incident of domestic violence by a household member, an emergency protection order may be issued if a law enforcement officer, at the request of the victim, states under oath...”

To get a temporary injunction, the court must find that an “immediate and *present* danger of domestic violence exists.” Under the bill, a court may grant an emergency protection order if it find that there is an “immediate danger of domestic violence.” The standards for obtaining both types of orders should likely be identical.

The lack of a definition for the term “employer” as used in the bill may lead to confusion as to which employers—public or private—are affected by its provisions. The definition of employer as used in ch. 440.02(16)(a), F.S., related to Workers' Compensation, which alludes to both public and private employers, may be instructive. That definition states: “Employer means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.”

A companion bill, HB 1507, has been filed to provide the public records exemption needed to keep confidential the information covered by this bill in public employee personnel files.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to domestic violence; amending s. 741.29,
3 F.S.; providing for access by the alleged victim to
4 certain materials that are part of an active criminal
5 investigation of an incident of domestic violence that are
6 exempt from disclosure under specified provisions;
7 provides for continuing exemption of material from
8 disclosure; amending s. 741.30, F.S.; providing for law
9 enforcement officers to obtain verbal emergency protection
10 orders immediately following incidents of domestic
11 violence; providing for officers to reduce such orders to
12 writing; providing for expiration of such orders;
13 specifying procedures relating to such orders; creating s.
14 741.313, F.S.; defining the terms "domestic violence,"
15 "family or household member," and "victim"; requiring that
16 an employer permit an employee to take leave from work to
17 undertake activities resulting from an act of domestic
18 violence; specifying the activities for which the employee
19 may take leave; requiring the employee to notify the
20 employer of the leave; providing exceptions; requiring
21 that an employer keep information relating to the
22 employee's leave confidential; prohibiting an employer
23 from taking certain actions against the employee for
24 exercising rights specified in the act; providing a
25 recourse for violation of the act; amending s. 943.1702,
26 F.S.; requiring collection of statistics on noncriminal
27 judicial actions concerning domestic violence; providing
28 an effective date.

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

Section 1. Subsection (2) of section 741.29, Florida Statutes, is amended to read:

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.--

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in s. 901.15(7), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. Such report must include:

(a) A description of physical injuries observed, if any.

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the

57 alleged domestic violence. The officer shall submit the report
 58 to the supervisor or other person to whom the employer's rules
 59 or policies require reports of similar allegations of criminal
 60 activity to be made. The law enforcement agency shall, without
 61 charge, send a copy of the initial police report, as well as any
 62 subsequent, supplemental, or related report, ~~which excludes~~
 63 ~~victim/witness statements or other materials that are part of an~~
 64 ~~active criminal investigation and are exempt from disclosure~~
 65 ~~under chapter 119,~~ to the nearest locally certified domestic
 66 violence center within 24 hours after the agency's receipt of
 67 the report. The report furnished to the domestic violence center
 68 must include a narrative description of the domestic violence
 69 incident. The report furnished to the domestic violence center
 70 shall also include victim and witness statements or other
 71 materials that are part of an active criminal investigation and
 72 are exempt from disclosure under chapter 119; however, such
 73 statements and materials shall retain their exempt status when
 74 held by the locally certified domestic violence center and shall
 75 not be accessed by persons other than the victim.

76 Section 2. Subsection (5) of section 741.30, Florida
 77 Statutes, is amended to read:

78 741.30 Domestic violence ~~injunctions; injunction; powers~~
 79 ~~and duties of court and clerk; petition; notice and hearing;~~
 80 ~~temporary injunction; issuance of injunction; statewide~~
 81 ~~verification system; enforcement.--~~

82 (5) (a) 1.a. In an emergency situation immediately following
 83 an incident of domestic violence by a household member, an
 84 emergency protection order may be issued if a law enforcement

85 officer states under oath to the court in person, by telephone,
 86 in writing, or via facsimile the facts he or she believes show
 87 that an emergency protection order is needed and the court finds
 88 reasonable grounds to believe that the victim or the victim's
 89 child is in immediate danger of domestic violence. Such an
 90 emergency protection order expires 72 hours after issuance or at
 91 the end of the next judicial day, whichever time is later, or
 92 upon request of the victim. The time of expiration shall be
 93 clearly stated on the emergency protection order.

94 b. Following the judge's issuance of the emergency
 95 protection order, the law enforcement officer shall:

96 (I) If the order is verbal, reduce the emergency
 97 protection order to writing on an approved form provided by the
 98 court, outline the grounds justifying issuance, and sign and
 99 date the order.

100 (II) If possible, serve a signed copy of the order on the
 101 offender and victim at the scene of the domestic violence
 102 dispute.

103 (III) Complete the appropriate affidavit of service and
 104 file the affidavit with the issuing court by the close of
 105 business on the next judicial day.

106 (IV) If the order was reduced to writing and signed by the
 107 officer, file the original, signed emergency order with the
 108 issuing court by the close of business on the next judicial day.

109 2. In a nonemergency situation, but when it appears to the
 110 court that an immediate and present danger of domestic violence
 111 exists, the court may grant a temporary injunction ex parte,
 112 pending a full hearing.

113 (b) In either an emergency protection order or an ex parte
114 temporary injunction order, the court ~~and~~ may grant such
115 relief as it ~~the court~~ deems proper, including an injunction:

116 1. Restraining the respondent from committing any acts of
117 domestic violence.

118 2. Awarding to the petitioner the temporary exclusive use
119 and possession of the dwelling that the parties share or
120 excluding the respondent from the residence of the petitioner.

121 3. On the same basis as provided in s. 61.13, granting to
122 the petitioner temporary custody of a minor child. An order of
123 temporary custody remains in effect until the order expires or
124 an order is entered by a court of competent jurisdiction in a
125 pending or subsequent civil action or proceeding affecting the
126 placement of, access to, parental time with, adoption of, or
127 parental rights and responsibilities for the minor child.

128 (c) ~~(b)~~ In a hearing ex parte for the purpose of obtaining
129 an ~~such~~ ex parte temporary injunction, no evidence other than
130 verified pleadings or affidavits shall be used as evidence,
131 unless the respondent appears at the hearing or has received
132 reasonable notice of the hearing. A denial of a petition for an
133 ex parte injunction shall be by written order noting the legal
134 grounds for denial. When the only ground for denial is no
135 appearance of an immediate and present danger of domestic
136 violence, the court shall set a full hearing on the petition for
137 injunction with notice at the earliest possible time. Nothing
138 herein affects a petitioner's right to promptly amend any
139 petition, or otherwise be heard in person on any petition
140 consistent with the Florida Rules of Civil Procedure.

141 ~~(d)-(e)~~ Except for emergency protection orders issued under
 142 subparagraph (a)1., an Any such ex parte temporary injunction
 143 shall be effective for a fixed period not to exceed 15 days. A
 144 full hearing, as provided by this section, shall be set for a
 145 date no later than the date when the emergency protection order
 146 or ex parte temporary injunction ceases to be effective. The
 147 court may grant a continuance of the hearing before or during a
 148 hearing for good cause shown by any party, which shall include a
 149 continuance to obtain service of process. Any emergency
 150 protection order or ex parte temporary injunction shall be
 151 extended if necessary to remain in full force and effect during
 152 any period of continuance.

153 Section 3. Section 741.313, Florida Statutes, is created
 154 to read:

155 741.313 Unlawful action against employees seeking
 156 protection.--

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

158 (a) "Domestic violence" means domestic violence, as
 159 defined in s. 741.28(2), or any crime the underlying factual
 160 basis of which has been found by a court to include an act of
 161 domestic violence.

162 (b) "Family or household member" has the same meaning as
 163 in s. 741.28.

164 (c) "Victim" means an individual who has been subjected to
 165 domestic violence.

166 (2) (a) An employer shall permit an employee to request or
 167 to take up to 3 working days of leave from work in any 90-day
 168 period if the employee or a family or household member of the

169 employee is the victim of domestic violence. This leave may be
 170 with or without pay, at the discretion of the employer.

171 (b) This section applies if an employee uses the leave
 172 from work to:

173 1. Seek an injunction for protection against domestic
 174 violence or an injunction for protection in cases of repeat
 175 violence, dating violence, or sexual violence;

176 2. Obtain medical care or mental health counseling, or
 177 both, for the employee or a family or household member to
 178 address physical or psychological injuries resulting from the
 179 act of domestic violence;

180 3. Obtain services from a victim services organization,
 181 including, but not limited to, a domestic violence shelter or
 182 program or a rape crisis center as a result of the act of
 183 domestic violence;

184 4. Make the employee's home secure from the perpetrator of
 185 the domestic violence or to seek new housing to escape the
 186 perpetrator; or

187 5. Seek legal assistance to address issues arising from
 188 the act of domestic violence and to attend and prepare for
 189 court-related proceedings arising from the act of domestic
 190 violence.

191 (3) This section applies to an employer who employs 50 or
 192 more employees and to an employee who has been employed by the
 193 employer for 12 or more months.

194 (4) (a) Except in cases of imminent danger to the health or
 195 safety of the employee or to the health or safety of a family or
 196 household member, an employee seeking leave from work under this

197 section must provide his or her employer with appropriate
 198 advance notice of the leave as may be required by the employer's
 199 policy and with sufficient documentation of the act of domestic
 200 violence as may be required by the employer.

201 (b) An employee seeking leave under this section must,
 202 before receiving the leave, exhaust all annual or vacation
 203 leave, personal leave, and sick leave, if applicable, which is
 204 available to the employee, unless the employer waives this
 205 requirement.

206 (c) An employer must keep all information relating to the
 207 employee's leave under this section confidential.

208 (5) (a) An employer may not interfere with, restrain, or
 209 deny the exercise of or any attempt by an employee to exercise
 210 any right provided under this section.

211 (b) An employer may not discharge, demote, suspend,
 212 retaliate against, or in any other manner discriminate against
 213 an employee for exercising his or her rights under this section.

214 (c) An employee has no greater rights to continued
 215 employment or to other benefits and conditions of employment
 216 than if the employee was not entitled to leave under this
 217 section. This section does not limit the employer's right to
 218 discipline or terminate any employee for any reason, including,
 219 but not limited to, reductions in workforce or termination for
 220 cause or for no reason at all, other than exercising his or her
 221 rights under this section.

222 (6) Notwithstanding any other law to the contrary, the
 223 sole remedy for any person claiming to be aggrieved by a
 224 violation of this section is to bring a civil suit for damages

225 or equitable relief, or both, in circuit court. The person may
 226 claim as damages all wages and benefits that would have been due
 227 the person up to and including the date of the judgment had the
 228 act violating this section not occurred. However, this section
 229 does not relieve the person from the obligation to mitigate his
 230 or her damages.

231 Section 4. Subsection (2) of section 943.1702, Florida
 232 Statutes, is amended to read:

233 943.1702 Collection of statistics on domestic violence.--

234 (2) Each agency in the state that ~~which~~ is involved with
 235 the enforcement, monitoring, or prosecution of crimes of
 236 domestic violence or, as to noncriminal actions related to
 237 domestic violence, including petitions seeking injunctions for
 238 protection, the judicial branch, shall collect and maintain
 239 records of each domestic violence incident for access by
 240 investigators preparing for bond hearings and prosecutions for
 241 acts of domestic violence. This information shall be provided to
 242 the court at first appearance hearings and all subsequent
 243 hearings.

244 Section 5. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1507 Public Records
SPONSOR(S): Meador
TIED BILLS: HB 1379, HB 1505 IDEN./SIM. BILLS: SB 1800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	_____	Cunningham <i>SKC</i>	Kramer <i>SK</i>
2) Governmental Operations Committee	_____	_____	_____
3) Justice Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill is linked to HB 1505, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence. This bill creates a public records exemption for personal identifying information contained in records documenting an act of domestic violence and submitted to an agency by an agency employee in order to obtain leave. The bill also creates a public records exemption for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1505

HB 1505, requires employers with 50 or more employees to allow employees who have been employed for at least 12 months to request or take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- seek an injunction for protection against domestic violence;
- obtain medical care or mental health counseling;
- obtain services from a victim-services organization;
- make the employee's home secure or to seek new housing; or
- to seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

The bill authorizes employers to require documentation of the act of domestic violence, requires employers to keep all information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill.

Public Records

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892. The Florida Supreme Court has noted that ch. 119, F.S., the Public Records Act, was enacted "to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."¹

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

- (a) Every person³ has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution...

Unless specifically exempted, all agency⁴ records are available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the

¹ *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

² Article I, s. 24 of the State Constitution.

³ Section 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁴ The term "agency" is defined in s. 119.011(2), F.S., to mean "... any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹ A bill creating an exemption must be passed by a two-thirds vote of both houses.¹²

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt.¹³ If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁴ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁵

The Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Employment Records of Public Employees

The employment records of public employees, unless specifically exempted, are public records. These records include requests for leave and time sheets.

Effect of the Bill

This bill is linked to HB 1505, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency

⁵ s. 119.011(11), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c) of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c) of the State Constitution.

¹² *Id.*

¹³ *WFTV, Inc., v. The School Bd of Seminole*, 874 So.2d 48 (5th DCA), rev. denied 892 So.2d 1015 (Fla. 2004).

¹⁴ *Id.* at 53; see also, Attorney General Opinion 85-62.

¹⁵ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁶ s. 119.15, F.S.

employee as required by the provisions of HB 1505. The bill also creates a public records exemption for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests.

The bill provides a statement of public necessity for the exemptions and recognizes these exemptions as subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. (provides that these exemptions will stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature).

C. SECTION DIRECTORY:

Section 1. Amends s. 741.313, F.S., providing a public records exemption for personal identifying information contained in records documenting an act of domestic violence and submitted to an agency by an agency employee in order to obtain leave; providing a public records exemption for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests; providing for limited duration of the exemption; providing for review and repeal.

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt information prior to releasing a record.

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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

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 public records; amending s. 741.313, F.S.; providing an exemption from public records requirements for personal identifying information contained in records documenting an act of domestic violence and submitted to an agency by an agency employee in order to obtain leave; providing an exemption from public records requirements for a written request for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such a request; providing for limited duration of the exemption; providing for review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (7) is added to section 741.313, Florida Statutes, as created by HB 1505, 2006 Regular Session, to read:

741.313 Unlawful action against employees seeking protection.--

(7) (a) Personal identifying information contained in records documenting an act of domestic violence and submitted to an agency, as defined in chapter 119, by an agency employee pursuant to the requirements of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

29 (b) A written request for leave which is submitted by an
 30 agency employee pursuant to the requirements of this section and
 31 any agency time sheet that reflects such a request are
 32 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 33 of the State Constitution for a period of 1 year after the leave
 34 has been taken.

35 (c) This subsection is subject to the Open Government
 36 Sunset Review Act in accordance with s. 119.15 and shall stand
 37 repealed on October 2, 2011, unless reviewed and saved from
 38 repeal through reenactment by the Legislature.

39 Section 2. The Legislature finds that it is a public
 40 necessity to make confidential and exempt from s. 119.07(1),
 41 Florida Statutes, and s. 24(a), Art. I of the State Constitution
 42 personal identifying information contained in records submitted
 43 to a state agency by an agency employee which documents an act
 44 of domestic violence and which is submitted in order to obtain
 45 leave pursuant to s. 741.313, Florida Statutes. Such
 46 information, if publicly available, could expose the victim of
 47 domestic violence to public humiliation and shame and could
 48 inhibit the victim from availing himself or herself of the
 49 relief provided under s. 741.313, Florida Statutes. In addition,
 50 the Legislature finds that it is a public necessity to make
 51 confidential and exempt from s. 119.07(1), Florida Statutes, and
 52 s. 24(a), Art. I of the State Constitution an agency employee's
 53 request for leave until 1 year after the leave has been taken.
 54 If such information were publicly available, it could be used by
 55 the partner or former partner of the victim of domestic violence
 56 to determine the schedule and location of the employee who is

HB 1507

2006

57 the victim of domestic violence. The employee's request for
58 leave is exempt from disclosure only temporarily and such record
59 is available 1 year after the leave has been taken, thereby
60 providing continued public oversight of public funds.

61 Section 3. This act shall take effect on the same date
62 that House Bill 1505 or similar legislation takes effect, if
63 such legislation is adopted in the same legislative session, or
64 an extension thereof, and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1577 Personal Identification Information
SPONSOR(S): Brandenburg
TIED BILLS: IDEN./SIM. BILLS: SB 1964

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson <i>BF</i>	Kramer <i>TK</i>
2) Criminal Justice Appropriations Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

HB 1577 amends s. 817.568 F.S., related to criminal use of personal identification information (a.k.a. identity theft), by broadening the scope of the statute's reach. Specifically, it provides that it is a second degree felony for any person who willfully and fraudulently uses personal identification information of an individual who is 65 years of age or older without first obtaining consent. It further provides second degree felony penalties if the offense was committed using the personal identification information of a person who is 65 years of age or older, over which the offender has custodial authority.

This bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for fraudulent use of personal identification information of a person 65 years of age or older.

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 817.568, F.S., provides that, "[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information¹ concerning an individual without first obtaining that individual's consent, commits" a third degree felony. This offense is commonly known as "identity theft". This section also provides for enhanced penalties as follows:

- If the value of the pecuniary benefit, services received or injury is \$5,000 or more or if the person fraudulently uses the personal identification information of ten or more individuals without their consent, the offense is a second degree felony and the judge must impose a three year minimum mandatory term of imprisonment.
- If the value of the pecuniary benefit, services received or injury is \$50,000 or more or if the person uses the personal identification information of 20 or more individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.
- If the value of the pecuniary benefit, services received or injury is \$100,000 or more or if the person uses the personal identification information of 30 or more individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

This section provides penalties for the offense of harassment² by use of personal identification information as well as using a public record to commit identity theft.³ Further, this section also provides penalties if identity theft is committed using the personal identification information of an individual less than eighteen years of age⁴ or an individual that is deceased.⁵

HB 1577 amends s. 817.568, F.S., to provide that it is a second degree felony⁶ for any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is 65 years of age or older without first obtaining consent of that individual or of his or her

¹ S. 817.568(f), F.S., defines "personal identification information" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1) Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3) Unique electronic identification number, address, or routing code; 4) Medical records; 5) Telecommunication identifying information or access device; or 6) Other number or information that can be used to access a person's financial resources."

² The term "harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. S. 817.568(1)(c), F.S.

³ S. 817.568(4) and (5), F.S.

⁴ S. 817.568(6) and (7), F.S.

⁵ S. 817.568(8), F.S.

⁶ Punishable by a term of imprisonment not to exceeding 15 years and a fine of \$10,000. ss. 775.082(3)(c) and 775.083(1)(b).

legal guardian. It further provides for second degree felony penalties for a person who is in the relationship of adult child or legal guardian, or who otherwise exercises custodial authority over an individual who is 65 years of age or older, who willfully and fraudulently uses personal identification information of that individual.

HB 1577 also amends the Criminal Punishment Code⁷ to reflect these offenses. As such, identity theft of individual who is 65 years of age or older without first obtaining consent is ranked level 8 on the offense severity ranking chart⁸, and identity theft of an individual who is 65 years of age or older, over which the offender has custodial authority is ranked level 9 on the offense severity ranking chart⁹.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 2. Amends s. 921.0022, F.S., conforming cross-references.

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 Impact Conference met March 21, 2006 and concluded this bill would have an indeterminate 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:

⁷ S. 921.0022, F.S.

⁸ S. 921.0022(3)(h), F.S.

⁹ S. 921.0021(3)(i), F.S.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to personal identification information; amending s. 817.568, F.S.; providing that any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is 65 years of age or older without first obtaining the consent of the individual or of his or her legal guardian commits a felony of the second degree; providing criminal penalties; providing that a person who is in the relationship of adult child or legal guardian, or who otherwise exercises custodial authority over an individual who is 65 years of age or older, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second degree; providing criminal penalties; amending s. 921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (6) and (7) of section 817.568, Florida Statutes, are amended to read:

817.568 Criminal use of personal identification information.--

(6) (a) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian commits a felony of the second degree, punishable as

29 provided in s. 775.082, s. 775.083, or s. 775.084.

30 (b) Any person who willfully and without authorization
31 fraudulently uses personal identification information concerning
32 an individual who is 65 years of age or older without first
33 obtaining the consent of that individual or of his or her legal
34 guardian commits a felony of the second degree, punishable as
35 provided in s. 775.082, s. 775.083, or s. 775.084.

36 (7) (a) Any person who is in the relationship of parent or
37 legal guardian, or who otherwise exercises custodial authority
38 over an individual who is less than 18 years of age, who
39 willfully and fraudulently uses personal identification
40 information of that individual commits a felony of the second
41 degree, punishable as provided in s. 775.082, s. 775.083, or s.
42 775.084.

43 (b) Any person who is in the relationship of adult child
44 or legal guardian, or who otherwise exercises custodial
45 authority over an individual who is 65 years of age or older,
46 who willfully and fraudulently uses personal identification
47 information of that individual commits a felony of the second
48 degree, punishable as provided in s. 775.082, s. 775.083, or s.
49 775.084.

50 Section 2. Paragraphs (h) and (i) of subsection (3) of
51 section 921.0022, Florida Statutes, are amended to read:

52 921.0022 Criminal Punishment Code; offense severity
53 ranking chart.--

54 (3) OFFENSE SEVERITY RANKING CHART

Florida Felony

HB 1577

2006

	Statute	Degree	Description
55			(h) LEVEL 8
56	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
57	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
58	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
59	499.0051 (7)	1st	Forgery of prescription or legend drug labels.
60	499.0052	1st	Trafficking in contraband legend drugs.
61	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
62	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
63			

HB 1577

2006

64	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
65	777.03(2)(a)	1st	Accessory after the fact, capital felony.
66	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
67	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
68	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
69	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property

HB 1577

2006

			damage.
70	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
71	800.04(4)	2nd	Lewd or lascivious battery.
72	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
73	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
74	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
75	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
76	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
77	812.13(2)(b)	1st	Robbery with a weapon.
78	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
79	817.568(6)(a)	2nd	Fraudulent use of personal

HB 1577

2006

			identification information of an individual under the age of 18.
80	<u>817.568(6)(b)</u>	<u>2nd</u>	<u>Fraudulent use of personal identification information of an individual 65 years of age or older.</u>
81	825.102(2)	2nd	Aggravated abuse of an elderly person or disabled adult.
82	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
83	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
84	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
85	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
86	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
87	860.16	1st	Aircraft piracy.

HB 1577

2006

88	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
89	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
90	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
91	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
92	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
93	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
94	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
95	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
96	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
97			

HB 1577

2006

98	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
99	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
100	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
101	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
102	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
103	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
104	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
105	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

HB 1577

2006

106	896.104 (4) (a) 2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
			(i) LEVEL 9
107	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
108	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
109	499.00535	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
110	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
111	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
112	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
113			

HB 1577

2006

114	775.0844	1st	Aggravated white collar crime.
115	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
116	782.04 (3)	1st, PBL	robbery, burglary, and other specified felonies.
117	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3).
118	782.07 (2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
119	787.01 (1) (a) 1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
120	787.01 (1) (a) 2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
121	787.01 (1) (a) 4.	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
	787.02 (3) (a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious

			battery, molestation, conduct, or exhibition.
122	790.161	1st	Attempted capital destructive device offense.
123	790.166 (2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
124	794.011 (2)	1st	Attempted sexual battery; victim less than 12 years of age.
125	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
126	794.011 (4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
127	794.011 (8) (b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
128	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
129	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly

HB 1577

2006

			weapon.
130	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
131	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
132	817.568 (7) <u>(a)</u>	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
133	<u>817.568 (7) (b)</u>	<u>2nd</u>	<u>Fraudulent use of personal identification information of an individual 65 years of age or older by his or her adult child, legal guardian, or person exercising custodial authority.</u>
134	827.03 (2)	1st	Aggravated child abuse.
135	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
136	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
137	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or

HB 1577

2006

			chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
138	893.135	1st	Attempted capital trafficking offense.
139	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
140	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
141	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
142	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
143	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
144	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
145	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
146	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
147	893.135	1st	Trafficking in Phenethylamines, 400

HB 1577

2006

148	(1) (k) 2.c.		grams or more.
149	896.101(5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
150	896.104(4) (a) 3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
151	Section 3. This act shall take effect July 1, 2006.		

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1593
SPONSOR(S): Barreiro
TIED BILLS:

Cybercrime

IDEN./SIM. BILLS: SB 2322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	_____	Ferguson <i>KF</i>	Kramer <i>TK</i>
2) <u>Criminal Justice Appropriations Committee</u>	_____	_____	_____
3) <u>Justice Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1593 creates, s. 16.61, F.S., the Cybercrime Unit (Unit) in the Department of Legal Affairs (the Office of the Attorney General). This Unit is authorized to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Attorney General's website¹:

In 2005, Attorney General Charlie Crist established a Cybercrime Unit to expand programs to further safeguard children from predatory criminals. The Unit includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children.

The Cybercrime Unit is dedicated to investigating and prosecuting any crime perpetrated or substantially facilitated using a computer, the Internet, digital media, cellular phone, personal digital assistant (PDA), or any other electronic device. The investigators and the prosecutors in the Unit are specially trained in current technologies, tactics, and the law, and share their expertise through educational programs and community awareness efforts.

Through the Cybercrime Unit, the Attorney General encourages extensive cooperative efforts with federal and state prosecutors, the Florida Department of Law Enforcement (FDLE), the NetSmartz Workshop, the National Center for Missing and Exploited Children (NCMEC), other Attorneys General, and all Florida law enforcement agencies.

The Cybercrime Unit is not currently referenced in Florida Statutes. For fiscal year 2005-2006 the Legislature funded 4 positions (3 investigators and one senior assistant attorney) for this cybercrime unit from the Legal Affairs Revolving Trust Fund².

Effect of Bill

HB 1593 creates s. 16.61, F.S., to provide a Cybercrime Unit (Unit) in the Department of Legal Affairs within the Office of the Attorney General. Essentially, this bill will codify the Cybercrime Unit Attorney General Charlie Crist established in 2005. This is similar to the codification of the Attorney General's Medicaid Fraud Control Unit under s. 409.9205, F.S.

This bill will authorize the Unit to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data. Violators of this bill will be prosecuted by the Statewide Prosecutor if the offense occurs in more than one judicial circuit; otherwise, the State Attorney in their respective circuit in conjunction with the Statewide Prosecutor will prosecute the offender.

This bill also provides that:

¹ <http://myfloridalegal.com/>

² According to staff on the Senate Justice Appropriations Committee, the total appropriation was \$416,030 (\$72,683 of which was non-recurring).

- Investigators employed by the Cybercrime Unit who are certified in accordance with s. 943.1395, F.S., are law enforcement officers of the state who shall have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state.³
- In carrying out the duties and responsibilities of this section, the Attorney General, or any duly designated employee, is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S.⁴
- The Attorney General, or any duly designated employee, shall provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime Unit.

C. SECTION DIRECTORY:

Section 1. Creates s. 16.61, F.S., the Cybercrime Unit.

Section 2. Provides this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the fiscal analysis provided by the Department of Legal Affairs, this bill will not have a fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

³ According to staff in the Office of the Attorney General, investigators in the Cybercrime Unit are certified law enforcement officers. They are authorized to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state. The bill specifically codifies this authority.

⁴ According to staff in the Office of the Attorney General, the Attorney General and the referenced "duly designated employee" are authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S. The bill specifically codifies this authority.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

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 cybercrime; creating s. 16.61, F.S.; creating a Cybercrime Unit within the Department of Legal Affairs; providing for powers, duties, and personnel of the unit; requiring notice to sheriffs of arrests by the unit in their jurisdictions; providing an effective date.

WHEREAS, the use of computers or devices capable of storing electronic data for the criminal purposes of spreading child pornography and engaging in the sexual exploitation and predation of children has greatly increased in this state, and

WHEREAS, special training and expertise is needed for the effective investigation of these crimes, and

WHEREAS, the impact of these crimes stretches across all jurisdictions of this state creating unique burdens on local law enforcement and local prosecutors, NOW, THEREFORE,

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

Section 1. Section 16.61, Florida Statutes, is created to read:

16.61 Cybercrime Unit.--

(1) A Cybercrime Unit is created in the Department of Legal Affairs. This office may investigate alleged violations of state law pertaining to sexual exploitation and predation of children that is either facilitated by or connected to the use of any device capable of storing electronic data.

28 (2) Investigators employed by the Cybercrime Unit who are
29 certified in accordance with s. 943.1395 shall be law
30 enforcement officers of the state. These investigators shall
31 have the authority to conduct criminal investigations; bear
32 arms; make arrests; and apply for, serve, and execute search
33 warrants, arrest warrants, capias, and all necessary service of
34 process throughout the state.

35 (3) In carrying out the duties and responsibilities of
36 this section, the Attorney General, or any duly designated
37 employee of the Cybercrime Unit, may:

38 (a) Subpoena witnesses or materials, within or outside the
39 state, administer oaths and affirmations, and collect evidence
40 for possible use in either civil or criminal judicial
41 proceedings.

42 (b) Seek any civil remedy provided by law, including, but
43 not limited to, the Florida Contraband Forfeiture Act, ss.
44 932.701-932.707.

45 (4) The Attorney General, or a duly designated employee of
46 the Cybercrime Unit, shall provide notice to the local sheriff,
47 or his or her designee, of any arrest effected by the Cybercrime
48 Unit in the sheriff's jurisdiction.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7127 Disturbance of Assemblies
SPONSOR(S): Military & Veteran Affairs Committee, Jordan and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	_____	Ferguson <i>KF</i>	Kramer <i>TK</i>
2) State Administration Council	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 871.01, F.S., makes it a second degree misdemeanor to willfully interrupt or disturb any assembly of people met for any lawful purpose. HB 7127 amends this section to make it a first degree misdemeanor to willfully interrupt or disturb any assembly of people met for the purpose of acknowledging a military funeral. HB 7127 also reenacts s. 871.02, F.S., to provide for the enforcement of s. 871.01, F.S., via indictment or information.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for disturbing a military funeral.

B. EFFECT OF PROPOSED CHANGES:

Military Funeral Honors for Any Veteran

The United States created a program that provides special recognition for veterans upon their death. The "Honoring Those Who Served" Program directs the Secretary of Defense to provide special Military Funeral Honors¹ for any² deceased veteran³ upon his or her family's request. The codification of special funeral honors for deceased veterans by the United States Government recognizes both the special nature of their service and sacrifices while defending the country and the opportunity for such recognition at the time of their death.

The minimum requirements⁴ for Military Funeral Honors under the law are:

- A funeral honors detail with at least two persons from the armed forces in proper uniform, with at least one of those persons from the deceased veteran's armed force⁵; and
- A ceremony that includes the playing of Taps by a bugler or recorded version followed by the folding and presentation of a United States flag to the decedent's family.

The Department of Defense (DOD) has additional honors, such as, but not limited to, a firing party, which may augment the minimum requirements.

An eligible deceased veteran's family may request a funeral with military honors by contacting their funeral director or a local veterans organization. In addition, DOD maintains a website (www.militaryfuneralhonors.osd.mil) to assist the public with Military Funeral Honors.

Over the last few years, according to numerous news accounts, protestors have been targeting certain high-profile funerals with pickets and sloganeering. More recently, these protestors have been organizing their protests at funerals honoring the nation's fallen veterans. This has prompted many states, such as Oklahoma, Missouri, Indiana, Nebraska, South Dakota, Illinois, Kansas, Iowa, Mississippi, Virginia, Wisconsin, Tennessee, Kentucky, and West Virginia, to name a few, to enact or propose legislation to address protests at funerals.

Current Law

Section 871.01, F.S. provides, "[w]hoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree⁶."

¹ Title 10 U.S.C. s. 1491(a).

² Title 10 U.S.C. s. 985(a) provides certain exceptions to "any" veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

³ Title 10 U.S.C. s. 1491(h) defines veteran under this section as "a decedent who – (1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38."

⁴ Title 10 U.S.C. s. 1491(b) and (c).

⁵ The other members of the funeral detail may be retired military persons or members of veterans organizations.

⁶ Punishable by a definite term of imprisonment not exceeding 60 days and a fine of \$500. ss. 775.082(4)(b) and 775.083(1)(e), F.S.

In, S.H.B. v. State⁷, the Florida Supreme Court held,

To commit an offense under s. 871.01 a person must have deliberately acted to create a disturbance. That is, he must act with the intention that his behavior impede the successful functioning of the assembly in which he has intervened, or with reckless disregard of the effect of his behavior. The acts complained of must be such that a reasonable person would expect them to be disruptive. Finally, the acts must, in fact, significantly disturb the assembly. These elements are inherent in the statute as drafted.

Effect of this Bill

This bill expands s. 817.01, F.S., to make it a first degree misdemeanor⁸ to willfully interrupt or disturb any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491.

This bill also reenacts s. 871.02, F.S., to provide for the enforcement of s. 871.01, F.S., via indictment or information.

C. SECTION DIRECTORY:

Section 1. Amends s. 871.01, F.S., to provide penalties for disturbing a military funeral.

Section 2. Reenacts s. 871.02, F.S., relating to the enforcement of s. 871.01, F.S.

Section 3. Provides this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁷ 335 So.2d 1176, 1178 (Fla. 1978); Weidner v. State, 380 So.2d 1286, 1287 (Fla. 1980).

⁸ Punishable by a definite term of imprisonment not exceeding 1 year and a fine of \$1,000. ss. 775.082(4)(a) and 775.083(1)(d), F.S.

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:

HB 7127 may be challenged as violating the right to free speech. As noted above, the Florida Supreme Court in S.H.B v. State⁹ set forth the elements that are inherent in s. 871.01, F.S. Although that case dealt with disruptive activities in school and HB 7127 expands s. 817.01, F.S., to address disruptive activities at a military funeral, both require the same conduct (whomever willfully interrupts or disturbs) just different places (school vs. Military funeral) where such conduct is prohibited.

In S.H.B. v. State, the Court held, "[b]ecause of the innumerable situations and types of conduct involved, the question of what conduct is forbidden must be determined largely on a case-by-case basis¹⁰." The appellant in S.H.B. v. State contended that mere words, when used as a tool of communication, are constitutionally protected¹¹. The Court held, "the protection fails when, by the manner of their use, the words invade the right of others to pursue their lawful activities¹²." "It is the degree of loudness, and the circumstances in which they are uttered, which takes them out of the constitutionally protected area¹³." The Court further held,

It should be noted that purported offences under section 871.01 are to be judged by the circumstances in which they occur. It takes more to disturb a parade than a church service. However, in a public school, appellant's conduct coupled with strident profanity in defiance of school authorities, causing an interruption in the school's activities, is forbidden under the statute.

In Weidner v. State, the appellant contended that s. 871.01, F.S., was unconstitutional as applied to him in that it is being used to punish him for engaging in constitutionally protected speech. The Court held, the state did not seek to punish speech, but rather to punish him for conduct that allegedly disturbed a public assembly¹⁴.

In light of these principles, an argument could be made that HB 7127 offends constitutional guarantees of free speech when s. 817.01, F.S., is used to punish speech used as a tool of communication; not conduct alone or speech coupled with conduct.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁹ 335 So.2d 1176, 1178.

¹⁰ Id.

¹¹ Id at 1179.

¹² Id.

¹³ Id citing white v. State, 330 So.2d 3,7 (Fla. 1976)

¹⁴ 380 So.2d 1286, 1287 (Fla. 1980); see also State v. Sweet, 616 So.2d 114 (2nd DCA 1993)(Conceivably, use of s. 871.01, F.S., to punish words when used as a tool of communication could offend constitutional guarantees of religious liberty and free speech).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the disturbance of assemblies; amending s. 871.01, F.S.; providing a penalty for willfully interrupting or disturbing an assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail; reenacting s. 871.02, F.S., relating to indictments or informations for disturbing assembly, for the purpose of incorporating the amendment to s. 871.01, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 871.01, Florida Statutes, is amended to read:

871.01 Disturbing schools and religious and other assemblies.--

(1) Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever willfully interrupts or disturbs any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

HB 7127

2006

28 Section 2. For the purpose of incorporating the amendment
29 made by this act to section 871.01, Florida Statutes, in a
30 reference thereto, section 871.02, Florida Statutes, is
31 reenacted to read:

32 871.02 Indictments or informations for disturbing
33 assembly.--The several grand juries of this state in their
34 respective counties may return indictments or the several state
35 attorneys of the state in their respective circuits may file
36 information against all persons violating s. 871.01, and such
37 indictments or informations, when filed with the clerk of the
38 circuit court in the county where such offense is alleged to
39 have been committed, shall be forthwith certified by the clerk
40 to some court in the county having jurisdiction to try and
41 determine such charge, and said court to which such indictment
42 or information is certified shall proceed to try and determine
43 such charge upon such indictment or information, the same as if
44 affidavit had been made before such court charging the said
45 offense.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7145 Seaport Security
SPONSOR(S): Domestic Security Committee, Adams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	_____	Cunningham <i>SM</i>	Kramer <i>JK</i>
2) <u>Transportation Committee</u>	_____	_____	_____
3) <u>State Administration Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill establishes security area designations and access requirements for seaports. These designations allow seaport directors to utilize specific restrictive area and non-restrictive area designations in the seaport's security plan and credentialing program.

The bill establishes a five year recurring review of seaport security plans by the seaport director with the assistance of the Regional Domestic Security Task Force and the United States Coast Guard. Additionally, the bill provides for the use of a risk assessment by seaport directors in creating a security plan and determining the use of counter terrorism devices and initiatives. The bill amends the waiver process and establishes an alternative means of compliance to the statewide minimum standards for seaport security. The bill creates a prohibition on concealed weapons inside a seaport's restricted areas.

The bill establishes a Seaport Security Standards Advisory Council under the Office of Drug Control for the purposes of reviewing the statewide seaport security standards for applicability to current narcotics and terrorist threats.

The bill establishes a certification program for Seaport Security Officers and allows seaport authorities and governing boards to require security officers working on a seaport to receive additional training and designation as a certified Seaport Security Officer.

The bill provides authority to create a Seaport Law Enforcement Agency at the discretion of the seaport director. A seaport director is not required to create such a force if the seaport's security requirements are being met by other means. This provision allows the seaport director the choice of creating the seaports own internal law enforcement agency. The bill establishes a maritime domain awareness training program for security awareness training of all seaport workers.

The bill also authorizes certified Seaport Security Officers to detain, based on probable cause, persons believed to be trespassing in designated seaport restricted access areas pending the immediate arrival of a law enforcement officer, and provides to those officers limited protection from liability for false arrest, false imprisonment, and unlawful detention. The bill makes it a felony to willingly and knowingly attempt to or obtain a seaport security identification card using false information.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

- The bill authorizes governmental seaport authorities and local governments operating seaports to require that certain private security forces working at the port receive additional training and certification.
- The bill provides greater latitude to the seaport directors in the establishment of security plans and the creation and use of seaport security forces.

Safeguard Individual Liberty

- The bill grants the authority to certified Seaport Security Officers to take certain trespass suspects into custody and detain them under specified circumstances. Security guards currently enjoy no such authority to detain trespass suspects.

Maintain Public Security

- The bill provides for more comprehensive seaport security planning through the use of risk analysis, review and inspection. The bill allows seaport directors flexibility in security plan design and security force composition.
- Additionally, authorizes governmental seaports to require private and other security forces to have additional training that is specific to the seaport security environment. Authorizes certain private and other seaport security forces to take trespass suspects into custody proactively and detain them until a law enforcement officer arrives. Currently, security guards are only authorized to react in a limited way when confronted.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Security Area Designations

Currently, a seaport director may designate any or all of his or her seaport as a restricted area. This designation has a direct effect on the seaport access credentialing process. The law requires all persons working on a port and having access to a restricted area to submit to a detailed background check. These security checks are often costly and time consuming. Currently, there are no provisions in the law to allow seaport directors latitude in designating areas as unrestricted. Area designations have long been tools for enforcement of restricted or off limits zones on a seaport. The ambiguity that exists in area designation protocols lends itself to increased cost to ports in worker credentialing and places limitations on seaport directors in security planning.

Seaport Security Standards and Waivers

Seaports subject to this bill are required to review their security plan once every four years and are subject to inspection by the Department of Law Enforcement on a random and annual basis. Security plans developed by the seaports must conform to the standards set forth in the Office of Drug Control, Minimum Security Standards for Florida Seaports.

In general, the Office of Drug Control and the Department of Law Enforcement may modify or waive the standards as contained in the statewide minimum standards for seaport security.

Review of the Statewide Minimum Standards for Seaport Security

There are no provisions for review or modification of the statewide minimum standards for seaport security contained in s. 311.12, F.S.

Seaport Security Officer Training and Certification

Prior to 2000, seaport security in Florida was focused on supply chain theft prevention to protect the commercial interests of seaport tenants. Since 2001, considerable effort and resources have been devoted to improving physical security and security operations at Florida's commercial seaports to meet the ongoing concerns about drug trafficking and the emerging threat of terrorism. Florida pursued a successful strategy for seaport security improvements through grant funding now administered by the Transportation Security Administration of the Department of Homeland Security. However, these federal grants are restricted to pre-approved physical infrastructure improvements.

Improvements in security operations at Florida's seaports have been primarily funded through the Florida Seaport Transportation Economic Development Council (FSTED) and the commercial seaports individually. In order to accomplish these operational security improvements, the Council has voluntarily foregone needed economic development infrastructure projects. Concern for long-term funding of operational security costs prompted a review of operational structures at several public seaports by the Senate Domestic Security Committee.

The Florida Senate Interim Project Report 2005-144, Seaport Security, November 2004, describes and documents the above situation and identifies several possible methods to reduce or mitigate operational security costs including the training and certification of seaport security officers.

As a general rule, private security personnel working on Florida's public seaports are required to maintain at a minimum, a CLASS D private security officer license,¹ including at least 40 hours of professional education completed at a school or training facility licensed by the Florida Department of Agriculture and Consumer Services. At least one port employs CLASS G security officers as a part of its private security force. These officers are permitted to carry firearms and must undergo additional training requirements prior to obtaining a state CLASS G license.²

With the exception of Port Manatee, the state's county-operated ports appear to have operational security costs which are substantially higher than other public ports. The extensive use of government law enforcement employees, with the inherent costs of salary and benefits associated with those personnel may be a driving factor in those higher costs. In fact, ports using a blend of sworn law enforcement, non-sworn law enforcement, and private security forces had security operating costs of less than half that of the county operated facilities. One factor making it difficult to determine the cost of security at seaports is the widely differing operational and geographic scope of each port. The two county-operated ports are the largest operationally, and thus have more activity requiring security presence on a daily basis. However, the extreme differences in security costs between Port Everglades and Port of Miami as compared to Jaxport and Port of Tampa point to the method of service delivery being the reason for higher costs.

The use of some form of blended security force, either through additional port security officers holding appropriate state licenses, or through contracted services provided by licensed personnel from private security firms might provide some reduction in costs for ports now using county personnel. For example, Port Everglades, through its contract with the Broward County Sheriff's Office, pays overtime costs to non-sworn personnel (CSAs) to stand guard post assignments in cruise terminals when ships are in port. A private security officer, under the direction of sworn law enforcement, could perform this same duty under an hourly contract, thus saving the port the overhead costs of salary, benefits, administration and supervision. A focused review of the use of sworn and non-sworn law enforcement personnel by each public seaport could result in cost savings through a different proportion of sworn and non-sworn government and private personnel without the loss of appropriate levels of security.

Proper training of private security personnel employed to protect Florida's public seaports is an ongoing concern. Prevention, protection and response procedures on seaports are quite unique and require

¹ s. 493.6303, F.S.

² s. 493.6115, F.S.

specialized education and training. While CLASS D and CLASS G security officers must receive specialized patrol and firearms training, respectively, there is no required additional training, nor any additional specialized seaport security certification or separate class of security officers that have completed such training, recognized by the State of Florida.

Seaport Security Forces

Seaports in Florida utilize a combination of force structures to meet their human capital security needs. A contract between a seaport and local law enforcement agencies is a very popular approach to solving the Security needs of seaports. Another is to contract with a private firm for security services. Still other seaports use a variation of employed labor and contracts to fulfill this requirement. Although seaports have the authority to contract for security service they are not authorized by statute to establish and maintain a seaport law enforcement agency under the sole control of the seaport director.

The Power to Detain

Florida law authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody to, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time.³ The subsection further provides that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. The subsection is also applicable to transit fare evasion with respect to detention. This statute provides that the taking of a person into custody does not, by itself, render the person taking the suspect into custody criminally or civilly liable for false arrest, false imprisonment or unlawful detention.

Additionally, Florida law currently authorizes the chief administrative officer of a school, who has probable cause to believe that a person is trespassing upon school grounds, to take the person into custody and detain him or her in a reasonable manner for a reasonable amount of time pending the arrival of a law enforcement officer. The taking of the person into custody does not, by itself, render the chief administrative officer criminally or civilly liable for false arrest, false imprisonment or unlawful detention.⁴

No similar authorization to detain exists in Florida law in the case of a trespass offender found in a restricted area on a seaport. No private seaport security officer may currently detain such a person pending the arrival of a law enforcement officer.

Security Identification Card

State or federal law does not provide any penalty for the use of false information to obtain a seaport security identification card.

Effect of the Bill

Security Area Designation

The bill creates s. 311.111, F.S., detailing unrestricted and restricted access areas on seaports. Area designations are as follows: unrestricted, public access areas; restricted, public access areas; restricted access areas and secured, restricted access areas. By creating these categories of access areas, seaport directors must incorporate these defined areas into the seaport's security plan. When designating areas as unrestricted, seaport directors may not require the full security background checks currently mandated of persons working on seaport property. Persons working solely in unrestricted,

³ s. 812.015(3)(a), F.S.

⁴ s. 810.097, F.S.

public access areas will be required to have identification as required by the seaport director. This allows for the reduction in credentialing costs to the seaports.

Seaport Security Standards and Waivers

The bill aligns the requirements of the seaport to submit a security plan to the Department Law Enforcement for review with the federal requirement to submit a seaport security plan to the United States Coast Guard on a five year schedule. Seaport directors are required to perform risk assessments and incorporate the findings of the assessment into the seaports security plan. This will provide the seaport with current review of the security risks to the seaport on a continual basis. The Department of Law Enforcement is required to annually inspect and within thirty days of that inspection report its findings to the United States Coast Guard and others. The inspection of the seaports by the Department of Law Enforcement shall be based solely on the criteria established in Florida's statewide minimum seaport security standards and the standards as set forth in the federal Maritime Transportation Security Act. Other comments included in the annual inspection report are considered as recommendations and should be incorporated in the seaport's security plans.

Any findings disputed by the seaport related to the statewide minimum seaport security standards contained in the Department of Law Enforcement report will be submitted to the Florida Domestic Oversight Council for review and mediation. The decision of the Council is considered final. This appeals process provides the seaports with a redress procedure not previously granted.

A waiver process was previously in place for the modification of the statewide minimum seaport security standards. This process was underutilized and provides the seaports with no mediation should the Office of Drug Control and the Department of Law Enforcement not grant a waiver to the ports on the standards as written. The bill creates a procedure for seaports to request the Domestic Security Oversight Council review the waiver request should the prior agencies fail to approve the waiver request. The decision of the Council is considered final.

Review of the Statewide Minimum Standards for Seaport Security

The bill creates the Seaport Security Standards Advisory Council under the Office of Drug Control for the purpose of reviewing and recommending modifications to the statewide minimum seaport security standards. The Advisory Council shall meet at least once every five years and report its findings and recommendations to the Governor, the Speaker of the Florida House of Representatives and the President of the Florida Senate. The bill specifies the membership of the council.

Seaport Security Officer Training and Certification

The bill creates s. 311.121, F.S., allowing each seaport authority or governing board subject to statewide minimum seaport security standards to require security officers working on the seaport to undergo additional training and become certified as a Seaport Security Officer. The bill establishes eligibility criteria to undergo training or demonstrate equivalency qualifications for certification as a Seaport Security Officer. In addition, it grants authority to evaluate and determine equivalency to the Department of Agriculture and Consumer Services Division of Licensing. The bill also requires certified Seaport Security Officers to undergo at least eight hours of continuing education per Class D licensing cycle in order to maintain certification as a Seaport Security Officer. Failure to meet such requirements results in lapse of the certificate, and reexamination, at a minimum, is required to regain the certification.

The bill provides for a steering committee to establish and periodically review a training curriculum for Seaport Security Officers and for continuing education of those officers. The curriculum must conform to or exceed the requirements of the appropriate model courses for seaport personnel approved by the federal Maritime Administration. Additionally, the bill assigns the Department of Education the responsibility for implementing the steering committee curriculum recommendations and requires instructors conducting Seaport Security Officer training to hold a CLASS D license pursuant to s. 493.6301, F.S. The bill provides that an organization applying for authorization to teach the curriculum may apply to become a licensed school pursuant to s. 493.6304, F.S.

The bill also requires a candidate for certification to pass a proficiency examination and establishes criteria for maintaining valid certification. In addition, the bill provides for the administration of the certification process and notification to the Division of Licensing of the Department of Agriculture and Consumer Services that a certificate has been issued.

Seaport Security Forces

The bill creates s. 311.122, F.S., authorizing the creation of a Seaport Law Enforcement Agency by the seaport director to satisfy the seaport's security force requirements.

The Power to Detain

The bill authorizes a seaport security officer holding a CLASS D or CLASS G license and a Seaport Security Officer certificate, who is acting as an agent of the seaport's federally designated Facility Security Officer (FSO), to detain a person believed to be trespassing in a designated seaport restricted access area until a law enforcement officer arrives on scene. Such certified Seaport Security Officer is required to call immediately for the assistance of a law enforcement officer upon detaining a suspect, and he or she may only take the suspect into custody and detain such suspect in a reasonable manner for a reasonable length of time. In addition, the bill provides protection for the Seaport Security Officer from criminal or civil liability for false arrest, false imprisonment, and unlawful detention.

Under current Florida law, the Seaport Security Officer would be entitled to protection from liability only if the period of custodial detention lasts no longer than the period of time for which the officer has probable cause to take into custody and detain. Furthermore, if a judicial determination is made that the Seaport Security Officer detained a suspect in an unreasonable manner or for an unreasonable period of time, protection from liability may be lost.

Security Identification Card

The bill creates s. 817.021, F.S., causing the use of false information to attempt to or obtain a seaport security identification card to be a felony. This provides a penalty not included under previous statutes.

C. SECTION DIRECTORY:

Section 1. Creates s. 311.111, F.S., requiring certain seaports to designate and identify security area designations, access requirements, and security enforcement authorizations on seaport premises.

Section 2. Amends s. 311.12, F.S., revising the purpose of seaport security plans; requiring periodic plan revisions; requiring plans to be inspected by the Office of Drug Control and the Department of Law Enforcement; providing requirements with respect to protection standards in specified restricted areas; requiring delivery of the plan to specified entities; requiring the Department of Law Enforcement to inspect seaports to determine if all security measures are in compliance with the seaport security standards; requiring a report; providing procedures and requirements with respect to waiver of any physical facility requirement; providing a penalty for possession of a concealed weapon on seaport property; requiring periodic review of statewide minimum standards for seaport security; requiring the Office of Drug Control to convene a Seaport Security Standards Advisory Council to review the statewide minimum standards.

Section 3. Creates s. 311.121, F.S., requiring certain seaports to impose specified requirements for certification as a seaport security officer; creating the Seaport Security Officer Qualification, Training, and Standards Coordinating Council under the Department of Law Enforcement; requiring the Department of Education to develop initial and continuing education and training programs for seaport security officer certification; providing requirements and procedures with respect to such training programs; providing requirements for renewal of inactive or revoked certification.

Section 4. Creates s. 311.122, F.S., authorizing each seaport to create a seaport law enforcement agency; providing requirements of such an agency; providing requirements with respect to the

composition of agency personnel; providing powers of seaport law enforcement agency officers and seaport security officers.

Section 5. Creates s. 311.123, F.S., providing for the creation of a maritime domain security awareness training program; providing purpose of the program; providing program training curriculum requirements.

Section 6. Creates s. 311.124, F.S., providing authority of seaport security officers to detain persons suspected of trespassing; providing immunity from specified criminal and civil liability.

Section 7. Creates s. 817.021, F.S., providing a criminal penalty for willfully and knowingly providing false information in obtaining or attempting to obtain a seaport security identification card.

Section 8. 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:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The bill does not incur any additional costs to Florida's seaports. The seaport operators are given additional tools to reduce expenditures by designating unrestricted areas, lowering credentialing costs to tenants, and basing the seaport security inspection process solely on the standards as set forth in the statewide minimum seaport security standards and the Maritime Transportation Security Act. Any additional cost to seaports may come in the form of non-mandatory security recommendations by the Department of Law Enforcement that should be incorporated by the seaports.

The bill is permissive to seaport authorities and governing boards with regard to requiring certified Seaport Security Officers. However, there may be potential cost savings to governmental seaports given the ability to design an optimum security force mix of sworn and non-sworn law enforcement officers and certified Seaport Security Officers.

For governmental seaports electing to require Seaport Security Officer Certification, there will be an undetermined cost associated with providing additional training for certification. This cost will likely be borne by the individual applicant seeking upgraded skills and certification. The impact to private sector security agency employers seeking higher skill level security officers is also currently unknown.

The following provisions of the bill appear to have a fiscal impact on state government:

- The Department of Education is required to develop the curriculum recommendations and classroom-hour specifications of the Seaport Security Officer Qualifications, Training, and Standards Coordinating Council into initial and continuing education and training programs for seaport security officer certification (lines 384-389).
- The Department of Agriculture and Consumer Services must provide seaport security officer certificates.

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:

No additional grant of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled

2 An act relating to seaport security; creating s. 311.111,
3 F.S.; requiring each seaport authority or governing board
4 of a seaport that is subject to the statewide minimum
5 seaport security standards to designate and identify
6 security area designations, access requirements, and
7 security enforcement authorizations on seaport premises
8 and in seaport security plans; providing that any part of
9 a port's property may be designated as a restricted access
10 area under certain conditions; amending s. 311.12, F.S.;
11 revising purpose of security plans maintained by seaports;
12 requiring periodic plan revisions; requiring plans to be
13 inspected by the Office of Drug Control and the Department
14 of Law Enforcement based upon specified standards;
15 providing requirements with respect to protection
16 standards in specified restricted areas; requiring
17 delivery of the plan to specified entities; requiring the
18 Department of Law Enforcement to inspect every seaport
19 within the state to determine if all security measures
20 adopted by the seaport are in compliance with seaport
21 security standards; requiring a report; authorizing
22 seaports to appeal findings in a Department of Law
23 Enforcement inspection report; requiring the Domestic
24 Security Oversight Council to establish a review process;
25 providing procedures and requirements with respect to
26 waiver of any physical facility requirement or other
27 requirement contained in the statewide minimum standards
28 for seaport security; providing a penalty for possession

Page 1 of 19

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

hb7145-00

29 of a concealed weapon while on seaport property in a
30 designated restricted area; requiring periodic review of
31 the statewide minimum standards for seaport security to be
32 conducted under the Office of Drug Control within the
33 Executive Office of the Governor; requiring the Office of
34 Drug Control to convene a Seaport Security Standards
35 Advisory Council to review the statewide minimum standards
36 for seaport security with respect to current narcotics and
37 terrorism threats to Florida's seaports; providing
38 membership, terms, organization, and meetings of the
39 council; creating s. 311.121, F.S.; requiring the
40 authority or governing board of each seaport that is
41 subject to statewide minimum seaport security standards to
42 impose specified requirements for certification as a
43 seaport security officer; creating the Seaport Security
44 Officer Qualification, Training, and Standards
45 Coordinating Council under the Department of Law
46 Enforcement; providing membership and organization of the
47 council; providing terms of members; providing duties and
48 authority of the council; requiring the Department of
49 Education to develop curriculum recommendations and
50 specifications of the council into initial and continuing
51 education and training programs for seaport security
52 officer certification; providing requirements and
53 procedures with respect to such training programs;
54 providing requirements and procedures with respect to
55 certification as a seaport security officer; providing
56 requirements for renewal of inactive or revoked

57 certification; creating s. 311.122, F.S.; authorizing each
 58 seaport in the state to create a seaport law enforcement
 59 agency for its facility; providing requirements of an
 60 agency; requiring certification of an agency; providing
 61 requirements with respect to the composition of agency
 62 personnel; providing powers of seaport law enforcement
 63 agency officers and seaport security officers; creating s.
 64 311.123, F.S.; providing for the creation of a maritime
 65 domain security awareness training program; providing
 66 purpose of the program; providing program training
 67 curriculum requirements; creating s. 311.124, F.S.;
 68 providing authority of seaport security officers to detain
 69 persons suspected of trespassing in a designated
 70 restricted area of a seaport; providing immunity from
 71 specified criminal or civil liability; creating s.
 72 817.021, F.S.; providing a criminal penalty for willfully
 73 and knowingly providing false information in obtaining or
 74 attempting to obtain a seaport security identification
 75 card; providing an effective date.

76
 77 Be It Enacted by the Legislature of the State of Florida:

78
 79 Section 1. Section 311.111, Florida Statutes is created to
 80 read:

81 311.111 Security area designations; access requirements;
 82 authority.--Each seaport authority or governing board of a
 83 seaport identified in s. 311.09 that is subject to the statewide
 84 minimum seaport security standards in s. 311.12 shall clearly

85 designate in seaport security plans and clearly identify with
 86 appropriate signs and markers on the premises of a seaport the
 87 following security area designations, access requirements, and
 88 corresponding security enforcement authorizations, which may
 89 include, but not be limited to, clear notice of the prohibition
 90 on possession of concealed weapons and other contraband material
 91 on the premises of the seaport:

92 (1) UNRESTRICTED PUBLIC ACCESS AREA.--An unrestricted
 93 public access area of a seaport is open to the general public
 94 without a seaport identification card other than that required
 95 as a condition of employment by a seaport director.

96 (2) RESTRICTED PUBLIC ACCESS AREA.--A restricted public
 97 access area of a seaport is open to the public for a specific
 98 purpose via restricted access and open to individuals working on
 99 the seaport, seaport employees, or guests who have business with
 100 the seaport. Any person found in these areas without the proper
 101 level of identification card is subject to the trespass
 102 provisions of ss. 810.08 and 810.09 and this chapter. All
 103 persons and objects in these areas are subject to search by an
 104 on-duty sworn state-certified law enforcement officer, a Class D
 105 seaport officer certified under Maritime Transportation Security
 106 Act guidelines, or an employee of the seaport security force
 107 certified under the Maritime Transportation Security Act
 108 guidelines.

109 (3) RESTRICTED ACCESS AREA.--A restricted access area of a
 110 seaport is open only to individuals working on the seaport,
 111 seaport employees, or guests who have business with the seaport.
 112 Any person found in these areas without the proper level of

HB 7145

2006

113 identification card is subject to the trespass provisions of ss.
114 810.08 and 810.09 and this chapter. All persons and objects in
115 these areas are subject to search by an on-duty sworn state-
116 certified law enforcement officer, a Class D seaport officer
117 certified under Maritime Transportation Security Act guidelines,
118 or an employee of the seaport security force certified under the
119 Maritime Transportation Security Act guidelines.

120 (4) SECURED RESTRICTED ACCESS AREA.--A secured restricted
121 access area of a seaport is open only to individuals working on
122 the seaport, seaport employees, or guests who have business with
123 the seaport and is secured at each point of access at all times
124 by a Class D security guard certified under the Maritime
125 Transportation Security Act, a sworn state-certified law
126 enforcement officer, or an employee of the port's security force
127 certified under the Maritime Transportation Security Act. Any
128 person found in these areas without the proper level of
129 identification card is subject to the trespass provisions of ss.
130 810.08 and 810.09 and this chapter. All persons and objects in
131 these areas are subject to search by an on-duty Class D seaport
132 security officer certified under Maritime Transportation
133 Security Act guidelines, a sworn state-certified law enforcement
134 officer, or an employee of the seaport security force certified
135 under the Maritime Transportation Security Act guidelines.

136
137 During a period of high terrorist threat level designated by the
138 United States Department of Homeland Security or the Florida
139 Department of Law Enforcement or during an emergency declared by
140 the seaport security director of a port due to events applicable

141 to that particular port, the management or controlling authority
 142 of the port may temporarily designate any part of the port
 143 property as a restricted access area or a secured restricted
 144 access area. The duration of such designation is limited to the
 145 period in which the high terrorist threat level is in effect or
 146 port emergency exists. Subsections (3) and (4) do not limit the
 147 power of the managing or controlling authority of a seaport to
 148 designate any port property as a restricted access area or a
 149 secured restricted access area as otherwise provided by law.

150 Section 2. Subsection (2) and paragraph (b) of subsection
 151 (4) of section 311.12, Florida Statutes, are amended, and
 152 subsections (7) and (8) are added to that section, to read:

153 311.12 Seaport security standards; inspections;
 154 compliance; appeals.--

155 (2) (a) Each seaport identified in s. 311.09 shall maintain
 156 a security plan to provide for a secure seaport infrastructure
 157 specific to that seaport that shall promote the safety and
 158 security of the residents and visitors of the state and promote
 159 the flow of legitimate trade and travel. Commencing January 1,
 160 2007, and every 5 years thereafter, the seaport director of each
 161 seaport, with the assistance of the Regional Domestic Security
 162 Task Force and in conjunction with the United States Coast
 163 Guard, shall revise the seaport security plan based on the
 164 results of continual, quarterly assessments by the seaport
 165 director of security risks and possible risks related to
 166 terrorist activities and relating to the specific and
 167 identifiable needs of the seaport which assures that the seaport

168 ~~is in substantial compliance with~~ the statewide minimum
 169 standards established pursuant to subsection (1).

170 (b) Each plan adopted or revised pursuant to this
 171 subsection shall be inspected ~~must be reviewed~~ and approved by
 172 the Office of Drug Control and the Department of Law Enforcement
 173 based solely upon the standards as set forth under the Maritime
 174 Transportation Security Act as revised July 2003, 33 C.F.R. s.
 175 105.305, and the statewide minimum standards established
 176 pursuant to subsection (1). All such seaports shall allow
 177 unimpeded access by the Department of Law Enforcement to the
 178 affected facilities for purposes of plan or compliance
 179 inspections or other operations authorized by this section.

180 (c) Each seaport security plan shall ~~may~~ establish
 181 unrestricted and restricted access areas within the seaport
 182 consistent with the requirements of the statewide minimum
 183 standards and the provisions of s. 311.111. In such cases, a
 184 Uniform Port Access Credential Card, authorizing restricted-area
 185 access, shall be required for any individual working within or
 186 authorized to regularly enter a restricted access area and the
 187 requirements in subsection (3) relating to criminal history
 188 checks and employment restrictions shall be applicable only to
 189 employees or other persons working within or authorized to
 190 regularly enter a restricted access area. Every seaport security
 191 plan shall set forth the conditions and restrictions to be
 192 imposed upon others visiting the port or any restricted access
 193 area sufficient to provide substantial compliance with the
 194 statewide minimum standards. As determined by the seaport
 195 director's most current quarterly risk assessment report, any

196 restricted access area with a potential human occupancy of 50
 197 persons or more, any cruise terminal, or any business operation
 198 that is adjacent to an unrestricted public access area shall be
 199 protected from the most probable and creditable terrorist threat
 200 to human life by the use of like or similar standards as those
 201 set forth in the United States Department of Defense Minimum
 202 Antiterrorism Standard for Buildings, Unified Facilities
 203 Criteria 4-010-0.

204 (d) Within 30 days after the completion of the seaport's
 205 security plan inspection by the Department of Law Enforcement,
 206 it shall be delivered to the United States Coast Guard, Regional
 207 Domestic Security Task Force, and the Domestic Security
 208 Oversight Council.

209 (e) It is the intent of the Legislature that Florida's
 210 seaports adhere to security practices that are consistent with
 211 risks assigned to each seaport through the risk assessment
 212 process established in this section. Therefore, the Department
 213 of Law Enforcement shall inspect every seaport within the state
 214 to determine if all security measures adopted by the seaport are
 215 in compliance with the standards set forth in this chapter and
 216 shall submit the department's findings within 30 days after the
 217 inspection in a report to the Domestic Security Oversight
 218 Council and the United States Coast Guard for review, with
 219 requests to the Coast Guard for any necessary punitive action.

220 (f) Notwithstanding the provisions of chapter 120, a
 221 seaport may appeal to the Domestic Security Oversight Council
 222 for review and mediation the findings in any Department of Law
 223 Enforcement inspection report as they relate to the requirements

HB 7145

2006

224 of this section. The Domestic Security Oversight Council shall
225 establish a review process and may review only those findings
226 under this section that are in specific dispute by the seaport.
227 In reviewing the disputed findings, the council may concur in
228 the findings of the department or the seaport or may recommend
229 corrective action to the seaport. Findings of the council shall
230 be considered final.

231 (4)

232 (b) The Office of Drug Control and the executive director
233 of the Department of Law Enforcement may modify or waive any
234 physical facility requirement or other requirement contained in
235 the statewide minimum standards for seaport security upon a
236 finding or other determination that the purposes of the
237 standards have been reasonably met or exceeded by the seaport
238 requesting the modification or waiver. Alternate means of
239 compliance may not in any way diminish the safety or security of
240 the seaport and shall be verified through an extensive risk
241 analysis conducted by the port director. Waivers shall be
242 submitted in writing with supporting documentation to the Office
243 of Drug Control and the Department of Law Enforcement. The
244 Office of Drug Control and the Department of Law Enforcement
245 shall have 90 days to jointly grant the waiver or reject the
246 waiver in whole or in part. Waivers not granted within 90 days
247 or jointly rejected shall be submitted by the seaport to the
248 Domestic Security Oversight Council for consideration. The
249 Domestic Security Oversight Council shall grant the waiver or
250 reject the waiver in whole or in part. The decision of the
251 Domestic Security Oversight Council shall be considered final.

252 Waivers submitted for standards established under s. 311.122(3)
 253 may not be granted for percentages below 10 percent. Such
 254 modifications or waivers shall be noted in the annual report
 255 submitted by the Department of Law Enforcement pursuant to this
 256 subsection.

257 (7) Any person who has in his or her possession a
 258 concealed weapon, or who operates or has possession or control
 259 of a vehicle in or upon which a concealed weapon is placed or
 260 stored, while in a designated restricted area on seaport
 261 property commits a misdemeanor of the first degree, punishable
 262 as provided in s. 775.082 or s. 775.083. This subsection does
 263 not apply to active-duty certified federal or state law
 264 enforcement personnel.

265 (8) (a) Commencing on January 15, 2007, and every 5 years
 266 thereafter, a review of the statewide minimum standards for
 267 seaport security as contained in paragraph(1) (a) shall be
 268 conducted under the Office of Drug Control within the Executive
 269 Office of the Governor by the Seaport Security Standards
 270 Advisory Council as provided in paragraph (b).

271 (b) The Office of Drug Control shall convene a Seaport
 272 Security Standards Advisory Council as defined in s. 20.03(7) to
 273 review the statewide minimum standards for seaport security for
 274 applicability to and effectiveness in combating current
 275 narcotics and terrorism threats to Florida's seaports. All
 276 sources of information allowed by law shall be utilized in
 277 assessing the applicability and effectiveness of the standards.

278 (c) The members of the council shall consist of the
 279 following:

- 280 1. Two seaport directors appointed by the Governor.
 281 2. Two seaport security directors appointed by the
 282 Governor.
 283 3. One designee from the Department of Law Enforcement.
 284 4. The director of the Office of Motor Carrier Compliance
 285 of the Department of Transportation.
 286 5. One designee from the Attorney General's Office.
 287 6. One designee from the Department of Agriculture and
 288 Consumer Services.
 289 7. One designee from the Office of Tourism, Trade, and
 290 Economic Development.
 291 8. A representative of the United States Coast Guard who
 292 shall serve as an ex officio member of the council.
 293 (d) Members of the council shall serve for terms of 4
 294 years. A vacancy shall be filled by the original appointing
 295 authority for the balance of the unexpired term.
 296 (e) Seaport Security Standards Advisory Council members
 297 shall serve without pay; however, state per diem and travel
 298 allowances may be claimed for attendance of officially called
 299 meetings as provided by s. 112.061.
 300 (f) The Seaport Security Standards Advisory Council shall
 301 be chaired by a designee from the Office of Drug Control. The
 302 council shall meet upon the call of the chair and at least once
 303 every 5 years.
 304 (g) Recommendations and findings of the council shall be
 305 transmitted to the Governor, the Speaker of the House of
 306 Representatives, and the President of the Senate.

307 Section 3. Section 311.121, Florida Statutes, is created
 308 to read:

309 311.121 Qualifications, training, and certification of
 310 licensed security officers at Florida seaports.--

311 (1) It is the intent of the Legislature that seaports in
 312 the state be able to mitigate operational security costs without
 313 reducing security levels by employing a combination of certified
 314 law enforcement officers and certified private security service
 315 officers. The Department of Law Enforcement shall adhere to this
 316 intent in the approval and certification process for seaport
 317 security required under s. 311.12.

318 (2) The authority or governing board of each seaport
 319 identified under s. 311.09 that is subject to the statewide
 320 minimum seaport security standards established in s. 311.12
 321 shall require that a candidate for certification as a seaport
 322 security officer:

323 (a) Has received a Class D license as a security officer
 324 under chapter 493.

325 (b) Has successfully completed the certified training
 326 curriculum for a Class D license or has been determined by the
 327 Department of Agriculture and Consumer Services to have
 328 equivalent experience as established by rule of the department.

329 (c) Has completed the training or training equivalency and
 330 testing process established by this section for becoming a
 331 certified seaport security officer.

332 (3) (a) The Seaport Security Officer Qualification,
 333 Training, and Standards Coordinating Council is created under
 334 the Department of Law Enforcement.

335 (b) The executive director of the Department of Law
 336 Enforcement shall appoint 12 members to the council which shall
 337 include:

- 338 1. The seaport administrator of the Department of Law
 339 Enforcement.
- 340 2. The chancellor of the Community College System.
- 341 3. The director of the Division of Licensing of the
 342 Department of Agriculture and Consumer Services.
- 343 4. The administrator of the Florida Seaport Transportation
 344 and Economic Development Council.
- 345 5. Two seaport security directors from seaports designated
 346 under s. 311.09.
- 347 6. One director of a state law enforcement academy.
- 348 7. One representative of a local law enforcement agency.
- 349 8. Two representatives of contract security services.
- 350 9. One representative of the Division of Driver Licenses
 351 of the Department of Highway Safety and Motor Vehicles.
- 352 10. One representative of the United States Coast Guard.

353 (c) Council members designated in subparagraphs (b)1.-4.
 354 shall serve for the duration of their employment or appointment.
 355 Council members designated under subparagraphs (b)5.-10. shall
 356 serve 4-year terms, except that the initial appointment for the
 357 representative of a local law enforcement agency, one
 358 representative of a contract security agency, and one seaport
 359 security director from a seaport designated in s. 311.09 shall
 360 serve for terms of 2 years.

361 (d) The chancellor of the Community College System shall
 362 serve as chair of the council.

363 (e) The council shall meet upon the call of the chair, and
 364 at least once a year to update or modify curriculum
 365 recommendations.

366 (f) Council members shall serve without pay; however,
 367 state per diem and travel allowances may be claimed for
 368 attendance of officially called meetings as provided by s.
 369 112.061.

370 (g) The council shall identify the qualifications,
 371 training, and standards for seaport security officer
 372 certification and recommend a curriculum for the seaport
 373 security officer training program that shall include no less
 374 than 218 hours of initial certification training and that
 375 conforms to or exceeds model courses approved by the Federal
 376 Maritime Act under Section 109 of the Federal Maritime
 377 Transportation Security Act of 2002 for facility personnel with
 378 specific security duties.

379 (h) The council may recommend training equivalencies that
 380 may be substituted for portions of the required training.

381 (i) The council shall recommend a continuing education
 382 curriculum of no less than 8 hours of additional training for
 383 each annual licensing period.

384 (4) (a) The Department of Education shall develop the
 385 curriculum recommendations and classroom-hour specifications of
 386 the Seaport Security Officer Qualifications, Training, and
 387 Standards Coordinating Council into initial and continuing
 388 education and training programs for seaport security officer
 389 certification.

390 (b) Such training programs shall be used by schools
 391 licensed under s. 493.6304, and each instructor providing
 392 training must hold a Class D license pursuant to s. 493.6301.

393 (c) A seaport authority or other organization involved in
 394 seaport-related activities may apply to become a school licensed
 395 under s. 493.6304.

396 (d) The training programs shall include proficiency
 397 examinations that must be passed by each candidate for
 398 certification who successfully completes the required hours of
 399 training or provides proof of authorized training equivalencies.

400 (e) A candidate for certification must be provided with a
 401 list of authorized training equivalencies in advance of
 402 training; however, each candidate for certification must
 403 successfully complete 20 hours of study specific to Florida
 404 Maritime Security and pass the related portion of the
 405 proficiency examination.

406 (5) Seaport security officer certificates shall be
 407 provided by the Department of Agriculture and Consumer Services
 408 for issuance by a school licensed under s. 493.6304 and such
 409 school may issue the certificate to an applicant who has
 410 successfully completed the training program. A school shall
 411 notify the Division of Licensing within the department upon the
 412 issuance of each certificate. The notification must include the
 413 name and Class D license number of the certificateholder and a
 414 copy of the certificate. The department shall place the
 415 notification with the licensee's file. Notification may be
 416 provided by electronic or paper format pursuant to instruction
 417 of the Department of Agriculture and Consumer Services.

418 (6) (a) Upon completion of the certification process, a
 419 person holding a Class D license must apply for a revised
 420 license pursuant to s. 493.6107(2), which license shall state
 421 that the licensee is certified as a seaport security officer.

422 (b) A person who has been issued a seaport security
 423 officer certificate is authorized to perform duties specifically
 424 required of a seaport security officer.

425 (c) The certificate is valid for the duration of the
 426 seaport security officer's Class D license and shall be renewed
 427 upon renewal of the license.

428 (d) The certificate shall become void if the seaport
 429 security officer's Class D license is revoked or allowed to
 430 lapse for more than 1 year or if the licensee fails to complete
 431 the annual continuing education requirement prior to expiration
 432 of the Class D license.

433 (e) Renewal of certification following licensure
 434 revocation or a lapse of longer than 1 year requires, at a
 435 minimum, 20 hours of recertification training and reexamination
 436 of the applicant.

437 Section 4. Section 311.122, Florida Statutes, is created
 438 to read:

439 311.122 Seaport law enforcement agency; authorization;
 440 requirements; powers; training.--

441 (1) Each seaport in the state is authorized to create a
 442 seaport law enforcement agency for its facility, which authority
 443 in no way precludes the seaport from contracting with local
 444 governments or law enforcement agencies to comply with the
 445 security standards required by this chapter.

446 (2) Each seaport law enforcement agency shall meet all of
447 the standards set by the state under certified law enforcement
448 guidelines and requirements and shall be certified as provided
449 under chapter 943.

450 (3) If a seaport creates a seaport law enforcement agency
451 for its facility, a minimum of 30 percent of the aggregate
452 personnel of each seaport law enforcement agency shall be sworn
453 state-certified law enforcement officers with additional
454 Maritime Transportation Security Act seaport training; a minimum
455 of 30 percent of on-duty personnel of each seaport law
456 enforcement agency shall be sworn state-certified law
457 enforcement officers with additional Maritime Transportation
458 Security Act seaport training; and at least one on-duty
459 supervisor must be a sworn state-certified law enforcement
460 officer with additional Maritime Transportation Security Act
461 seaport training.

462 (4) For the purposes of this chapter, where applicable,
463 seaport law enforcement agency officers shall have the same
464 powers as university police officers as provided in s. 1012.97;
465 however, such powers do not extend beyond the property of the
466 seaport except in connection with an investigation initiated on
467 seaport property or in connection with an immediate, imminent
468 threat to the seaport.

469 (5) For the purposes of this chapter, sworn state-
470 certified seaport security officers shall have the same law
471 enforcement powers with respect to the enforcement of traffic
472 laws on seaport property as university police officers under s.
473 1012.97, community college police officers under s. 1012.88, and

HB 7145

2006

474 airport police officers under the provisions of s.
 475 316.640(1)(a)1.d.(I)-(II).

476 (6) Certified seaport security officers shall have the
 477 authority to immediately tow any vehicle parked illegally as
 478 indicated by an existing sign or during an emergency as deemed
 479 necessary to maintain seaport security.

480 Section 5. Section 311.123, Florida Statutes, is created
 481 to read:

482 311.123 Maritime domain security awareness training
 483 program.--

484 (1) The Florida Seaport Transportation and Economic
 485 Development Council, in conjunction with the Department of Law
 486 Enforcement and the Office of Drug Control within the Executive
 487 Office of the Governor, shall create a maritime domain security
 488 awareness training program to instruct all personnel employed
 489 within a seaport's boundaries about the security procedures
 490 required of them for implementation of the seaport security
 491 plan.

492 (2) The training program curriculum must include security
 493 training required pursuant to 33 C.F.R. part 105 and must be
 494 designed to enable the seaports in this state to meet the
 495 training, drill, and exercise requirements of 33 C.F.R. part 105
 496 and individual seaport security plans and to comply with the
 497 requirements of s. 311.12 relating to security awareness.

498 Section 6. Section 311.124, Florida Statutes, is created
 499 to read:

500 311.124 Trespassing; detention by a certified seaport
 501 security officer.--

502 (1) Any Class D or Class G seaport security officer
 503 certified under the Maritime Transportation Security Act
 504 guidelines or any employee of the seaport security force
 505 certified under the Maritime Transportation Security Act
 506 guidelines who has probable cause to believe that a person is
 507 trespassing pursuant to the provisions of s. 810.08 or s. 810.09
 508 or this chapter in a designated restricted area pursuant to s.
 509 311.111 is authorized to detain such person in a reasonable
 510 manner for a reasonable period of time pending the arrival of a
 511 law enforcement officer, and such action shall not render the
 512 security officer criminally or civilly liable for false arrest,
 513 false imprisonment, or unlawful detention.

514 (2) Upon detaining a person for trespass, the seaport
 515 security officer shall immediately call a certified law
 516 enforcement officer to the scene.

517 Section 7. Section 817.021, Florida Statutes, is created
 518 to read:

519 817.021 False information to obtain a seaport security
 520 identification card.--A person who willfully and knowingly
 521 provides false information in obtaining or attempting to obtain
 522 a seaport security identification card commits a felony of the
 523 third degree, punishable as provided in s. 775.082 or s.
 524 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7147 Seaport Security
SPONSOR(S): Domestic Security Committee, Adams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	_____	Cunningham <i>sa</i>	Kramer <i>sk</i>
2) <u>Transportation Committee</u>	_____	_____	_____
3) <u>State Administration Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, and with some exception, individuals who have been convicted of certain offenses within the past 7 years do not qualify for employment at seaports. This bill establishes a waiver review process for these individuals.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty → The bill provides for a mechanism to safeguard the rights of individuals to maintain or gain employment on seaports through a waiver process of currently disqualifying circumstances.

Maintain Public Security → The bill provides public protections through due process ensuring that security credentialing on seaports is not compromised or usurped.

B. EFFECT OF PROPOSED CHANGES:

Currently, a seaport's security plan must provide that:

- Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses shall not be qualified for initial employment within or regular access to a seaport or restricted access area; and
- Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to a seaport or restricted access area unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.¹

This bill amends s. 311.12, F.S., in order to provide a review process for individuals who have been found unqualified for unescorted access and denied employment by a seaport for the above-described reasons. Under this provision, the Department of Law Enforcement (FDLE) will conduct a review based on a request for waiver from an individual who has been found unqualified according to the provisions of s. 311.12 (3) (e), F.S. The review will be based on the information submitted by the applicant and the findings from the Parole Commission administrative staff. Such a review is exempt from procedures required under the Administrative Procedures Act, Chapter 120, F.S.

In regards to seaport operators and third-party vendors who FDLE reasonably believes may pose a threat to the security interests of the state, the bill authorizes the state to refuse such entities access to seaports. The bill also authorizes FDLE to request from any seaport contractor all information that FDLE deems necessary to make a determination of that contractor's potential or creditable threat to seaport security. Failure to provide such information is grounds to disqualify the contractor from eligibility to be granted access to seaports.

¹ s. 311.12, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 311.12, F.S., requiring the Department of Law Enforcement to establish a waiver process to grant certain individuals unescorted access to seaports or restricted areas under certain circumstances; providing waiver process requirements; requiring the administrative staff of the Parole Commission to review the waiver application and transmit the findings to the Department of Law Enforcement; requiring the Department of Law Enforcement to make a final disposition of the application and notify the applicant and the seaport; exempting the waiver process from administrative procedures requirements.

Section 2. Creates s. 311.1244, F.S., authorizing the state to refuse seaport access to certain operators and vendors; authorizing the Department of Law Enforcement to request information for certain purposes; authorizing the Department of Law Enforcement to disqualify certain operators or vendors from eligibility for access to seaports.

Section 3. Provides severability.

Section 4. 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:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The possible number of waivers to be processed is currently unknown and therefore associated costs can not be determined.

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:

No additional grant of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 7147

2006

1 A bill to be entitled
 2 An act relating to seaport security; amending s. 311.12,
 3 F.S.; requiring the Department of Law Enforcement to
 4 establish a waiver process to grant certain individuals
 5 unescorted access to seaports or restricted access areas
 6 under certain circumstances; providing waiver process
 7 requirements; requiring the administrative staff of the
 8 Parole Commission to review the waiver application and
 9 transmit the findings to the department; requiring the
 10 department to make a final disposition of the application
 11 and notify the applicant and the seaport; exempting the
 12 waiver process from administrative procedures
 13 requirements; creating s. 311.1244, F.S.; authorizing the
 14 state to refuse seaport access to certain operators and
 15 vendors; authorizing the department to request information
 16 for certain purposes; authorizing the department to
 17 disqualify certain operators or vendors from eligibility
 18 for access to seaports; providing severability; providing
 19 an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraph (e) is added to subsection (3) of
 24 section 311.12, Florida Statutes, to read:

25 311.12 Seaport security standards.--

26 (3)

27 (e) The Department of Law Enforcement shall establish a
 28 waiver process to allow unescorted access to seaports in this

HB 7147

2006

29 state to an individual who is found to be unqualified under
30 paragraph (c) and denied employment by a seaport. A waiver shall
31 be based upon the circumstances of any disqualifying act or
32 offense, any restitution made by the individual, or other
33 factors from which it may be determined that the individual does
34 not pose a risk of harming any person or engaging in theft, drug
35 trafficking, or terrorism within the public seaports regulated
36 under this chapter. The waiver process shall begin when an
37 individual who has been denied initial employment within or
38 regular unescorted access to restricted areas of a public
39 seaport as described in paragraph (c) submits to the department
40 an application for a waiver and a notarized letter or affidavit
41 from the individual's employer or union representative which
42 states the mitigating reasons for initiating the waiver process.
43 Upon receiving the application, the department shall immediately
44 transmit the application to the Parole Commission for review. No
45 later than 90 days after receiving the application from the
46 department, the administrative staff of the commission shall
47 conduct a factual review of the waiver application. Findings of
48 fact shall be transmitted to the department for review. The
49 department shall provide a copy of those findings to the
50 applicant before a final disposition of the waiver application.
51 The department shall make a final disposition of the waiver
52 application based on the factual findings of the investigation
53 by the commission. The seaport that originally denied employment
54 and the waiver applicant shall be notified of the final
55 disposition of the waiver application by the department. The
56 waiver process established under this paragraph is exempt from

HB 7147

2006

57 chapter 120.

58 Section 2. Section 311.1244, Florida Statutes, is created
59 to read:

60 311.1244 Refusal of access to seaports.--The state may
61 reserve the right to refuse access to seaport operators and
62 third-party vendors the Department of Law Enforcement reasonably
63 believes may pose a threat to the security interests of the
64 citizens of the state. The department may request from any
65 potential seaport contractor all information the department
66 deems necessary to make a determination of that contractor's
67 potential or creditable threat to seaport security. The failure
68 of any potential seaport contractor to timely provide any
69 requested information may be used by the department to
70 disqualify the contractor from eligibility to be granted access
71 to any seaport in this state.

72 Section 3. If any provision of this act or its application
73 to any person or circumstance is held invalid, the invalidity
74 does not affect other provisions or applications of the act
75 which can be given effect without the invalid provision or
76 application, and to this end the provisions of this act are
77 severable.

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



**CRIMINAL JUSTICE
COMMITTEE MEETING**

**Tuesday, March 28, 2006
10:15 a.m. - 12:00 noon
404 House Office Building**

**AMENDMENT
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: Tuesday, March 28, 2006 10:15 am
End Date and Time: Tuesday, March 28, 2006 12:00 pm
Location: 404 HOB
Duration: 1.75 hrs

Consideration of the following proposed committee bill(s):

PCB CRJU 06-07 -- Death Penalty/Mental Retardation
PCB CRJU 06-10 -- Voyeurism

Consideration of the following bill(s):

HB 25 Violent Felony Offenders by Negrón
HB 97 Safety Belt Law Enforcement by Slosberg
HB 561 CS Offenses Involving Insurance by Rivera
HB 681 Electronic Recording of Custodial Interrogations by Holloway
HB 1505 Domestic Violence by Meador
HB 1507 Public Records by Meador
HB 1577 Personal Identification Information by Brandenburg
HB 1593 Cybercrime by Barreiro
HB 7127 Disturbance of Assemblies by Military & Veteran Affairs Committee
HB 7145 Seaport Security by Domestic Security Committee
HB 7147 Seaport Security by Domestic Security Committee

NOTICE FINALIZED on 03/24/2006 15:52 by THOMPSON.SONJA

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 7145

COUNCIL/COMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 311.111, Florida Statutes is created to read:

311.111 Security area designations; access requirements; authority.--Each seaport authority or governing board of a seaport identified in s. 311.09 that is subject to the statewide minimum seaport security standards in s. 311.12 shall clearly designate in seaport security plans and clearly identify with appropriate signs and markers on the premises of a seaport the following security area designations, access requirements, and corresponding security enforcement authorizations, which may include, but not be limited to, clear notice of the prohibition on possession of concealed weapons and other contraband material on the premises of the seaport:

(1) Unrestricted public access area.--An unrestricted public access area of a seaport is open to the general public without a seaport identification card other than that required as a condition of employment by a seaport director.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

23 (2) Restricted public access area.--A restricted public
24 access area of a seaport is open to the public for a specific
25 purpose via restricted access and open to individuals working on
26 the seaport, seaport employees, or guests who have business with
27 the seaport. Any person found in these areas without the proper
28 level of identification card is subject to the trespass
29 provisions of ss. 810.08 and 810.09 and this chapter. All
30 persons and objects in these areas are subject to search by an
31 on-duty sworn state-certified law enforcement officer, a Class D
32 seaport officer certified under Maritime Transportation Security
33 Act guidelines and s. 311.121, or an employee of the seaport
34 security force certified under the Maritime Transportation
35 Security Act guidelines and s. 311.121.

36 (3) Restricted access area.--A restricted access area of a
37 seaport is open only to individuals working on the seaport,
38 seaport employees, or guests who have business with the seaport.
39 Any person found in these areas without the proper level of
40 identification card is subject to the trespass provisions of ss.
41 810.08 and 810.09 and this chapter. All persons and objects in
42 these areas are subject to search by an on-duty sworn state-
43 certified law enforcement officer, a Class D seaport officer
44 certified under Maritime Transportation Security Act guidelines
45 and s. 311.121, or an employee of the seaport security force
46 certified under the Maritime Transportation Security Act
47 guidelines and s. 311.121.

48 (4) Secured restricted access area.--A secured restricted
49 access area of a seaport is open only to individuals working on
50 the seaport, seaport employees, or guests who have business with
51 the seaport and is secured at each point of access at all times
52 by a Class D security guard certified under the Maritime
53 Transportation Security Act, a sworn state-certified law

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

54 enforcement officer, or an employee of the port's security force
55 certified under the Maritime Transportation Security Act. Any
56 person found in these areas without the proper level of
57 identification card is subject to the trespass provisions of ss.
58 810.08 and 810.09 and this chapter. All persons and objects in
59 these areas are subject to search by an on-duty Class D seaport
60 security officer certified under Maritime Transportation
61 Security Act guidelines and s. 311.121, an on-duty sworn state-
62 certified law enforcement officer, or an employee of the seaport
63 security force certified under the Maritime Transportation
64 Security Act guidelines and s. 311.121.

65
66 During a period of high terrorist threat level designated by the
67 United States Department of Homeland Security or the Florida
68 Department of Law Enforcement or during an emergency declared by
69 the seaport security director of a port due to events applicable
70 to that particular port, the management or controlling authority
71 of the port may temporarily designate any part of the port
72 property as a restricted access area or a secured restricted
73 access area. The duration of such designation is limited to the
74 period in which the high terrorist threat level is in effect or
75 port emergency exists. Subsections (3) and (4) do not limit the
76 power of the managing or controlling authority of a seaport to
77 designate any port property as a restricted access area or a
78 secured restricted access area as otherwise provided by law.

79 Section 2. Subsection (2) and paragraph (b) of subsection
80 (4) of section 311.12, Florida Statutes, are amended, and
81 subsections (7) and (8) are added to that section, to read:

82 311.12 Seaport security standards; inspections;
83 compliance; appeals.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

84 (2)(a) Each seaport identified in s. 311.09 shall maintain
85 a security plan to provide for a secure seaport infrastructure
86 specific to that seaport that shall promote the safety and
87 security of the residents and visitors of the state and promote
88 the flow of legitimate trade and travel. Commencing January 1,
89 2007, and every 5 years thereafter, the seaport director of each
90 seaport, with the assistance of the Regional Domestic Security
91 Task Force and in conjunction with the United States Coast
92 Guard, shall revise the seaport security plan based on the
93 results of continual, quarterly assessments by the seaport
94 director of security risks and possible risks related to
95 terrorist activities and relating to the specific and
96 identifiable needs of the seaport which assures that the seaport
97 is in substantial compliance with the statewide minimum
98 standards established pursuant to subsection (1).

99 (b) Each plan adopted or revised pursuant to this
100 subsection shall be inspected must be reviewed and approved by
101 the Office of Drug Control and the Department of Law Enforcement
102 based solely upon the standards as set forth under the Maritime
103 Transportation Security Act as revised July 2003, 33 C.F.R. s.
104 105.305, and the statewide minimum standards established
105 pursuant to subsection (1). All such seaports shall allow
106 unimpeded access by the Department of Law Enforcement to the
107 affected facilities for purposes of plan or compliance
108 inspections or other operations authorized by this section.

109 (c) Each seaport security plan shall may establish
110 unrestricted and restricted access areas within the seaport
111 consistent with the requirements of the statewide minimum
112 standards and the provisions of s. 311.111. In such cases, a
113 Uniform Port Access Credential Card, authorizing restricted-area
114 access, shall be required for any individual working within or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

115 authorized to regularly enter a restricted access area and the
116 requirements in subsection (3) relating to criminal history
117 checks and employment restrictions shall be applicable only to
118 employees or other persons working within or authorized to
119 regularly enter a restricted access area. Every seaport security
120 plan shall set forth the conditions and restrictions to be
121 imposed upon others visiting the port or any restricted access
122 area sufficient to provide substantial compliance with the
123 statewide minimum standards. As determined by the seaport
124 director's most current quarterly risk assessment report, any
125 restricted access area with a potential human occupancy of 50
126 persons or more, any cruise terminal, or any business operation
127 that is adjacent to an unrestricted public access area shall be
128 protected from the most probable and creditable terrorist threat
129 to human life by the use of like or similar standards as those
130 set forth in the United States Department of Defense Minimum
131 Antiterrorism Standard for Buildings, Unified Facilities
132 Criteria 4-010-0.

133 (d) Within 30 days after the completion of the seaport's
134 security plan inspection by the Department of Law Enforcement,
135 it shall be delivered to the United States Coast Guard, Regional
136 Domestic Security Task Force, and the Domestic Security
137 Oversight Council.

138 (e) It is the intent of the Legislature that Florida's
139 seaports adhere to security practices that are consistent with
140 risks assigned to each seaport through the risk assessment
141 process established in this section. Therefore, the Department
142 of Law Enforcement shall inspect every seaport within the state
143 to determine if all security measures adopted by the seaport are
144 in compliance with the standards set forth in this chapter and
145 shall submit the department's findings within 30 days after the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

146 inspection in a report to the Domestic Security Oversight
147 Council and the United States Coast Guard for review, with
148 requests to the Coast Guard for any necessary punitive action.

149 (f) Notwithstanding the provisions of chapter 120, a
150 seaport may appeal to the Domestic Security Oversight Council
151 for review and mediation the findings in any Department of Law
152 Enforcement inspection report as they relate to the requirements
153 of this section. The Domestic Security Oversight Council shall
154 establish a review process and may review only those findings
155 under this section that are in specific dispute by the seaport.
156 In reviewing the disputed findings, the council may concur in
157 the findings of the department or the seaport or may recommend
158 corrective action to the seaport. Findings of the council shall
159 be considered final.

160 (4)

161 (b) The Office of Drug Control and the executive director
162 of the Department of Law Enforcement may modify or waive any
163 physical facility requirement or other requirement contained in
164 the statewide minimum standards for seaport security upon a
165 finding or other determination that the purposes of the
166 standards have been reasonably met or exceeded by the seaport
167 requesting the modification or waiver. Alternate means of
168 compliance may not in any way diminish the safety or security of
169 the seaport and shall be verified through an extensive risk
170 analysis conducted by the port director. Waivers shall be
171 submitted in writing with supporting documentation to the Office
172 of Drug Control and the Department of Law Enforcement. The
173 Office of Drug Control and the Department of Law Enforcement
174 shall have 90 days to jointly grant the waiver or reject the
175 waiver in whole or in part. Waivers not granted within 90 days
176 or jointly rejected shall be submitted by the seaport to the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

177 Domestic Security Oversight Council for consideration. The
178 Domestic Security Oversight Council shall grant the waiver or
179 reject the waiver in whole or in part. The decision of the
180 Domestic Security Oversight Council shall be considered final.
181 Waivers submitted for standards established under s. 311.122(3)
182 may not be granted for percentages below 10 percent. Such
183 modifications or waivers shall be noted in the annual report
184 submitted by the Department of Law Enforcement pursuant to this
185 subsection.

186 (7) Any person who has in his or her possession a
187 concealed weapon, or who operates or has possession or control
188 of a vehicle in or upon which a concealed weapon is placed or
189 stored, while in a designated restricted area on seaport
190 property commits a misdemeanor of the first degree, punishable
191 as provided in s. 775.082 or s. 775.083. This subsection does
192 not apply to active-duty certified federal or state law
193 enforcement personnel.

194 (8) (a) Commencing on January 15, 2007, and at least every
195 5 years thereafter, a review of the statewide minimum standards
196 for seaport security as contained in paragraph(1) (a) shall be
197 conducted under the Office of Drug Control within the Executive
198 Office of the Governor by the Seaport Security Standards
199 Advisory Council as provided in paragraph (b).

200 (b) The Office of Drug Control shall convene a Seaport
201 Security Standards Advisory Council as defined in s. 20.03(7) to
202 review the statewide minimum standards for seaport security for
203 applicability to and effectiveness in combating current
204 narcotics and terrorism threats to Florida's seaports. All
205 sources of information allowed by law shall be utilized in
206 assessing the applicability and effectiveness of the standards.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

207 (c) The members of the council shall consist of the
208 following:

209 1. Two seaport directors appointed by the Governor.

210 2. Two seaport security directors appointed by the
211 Governor.

212 3. One designee from the Department of Law Enforcement.

213 4. The director of the Office of Motor Carrier Compliance
214 of the Department of Transportation.

215 5. One designee from the Attorney General's Office.

216 6. One designee from the Department of Agriculture and
217 Consumer Services.

218 7. One designee from the Office of Tourism, Trade, and
219 Economic Development.

220 8. A representative of the United States Coast Guard who
221 shall serve as an ex officio member of the council.

222 (d) Members of the council shall serve for terms of 4
223 years. A vacancy shall be filled by the original appointing
224 authority for the balance of the unexpired term.

225 (e) Seaport Security Standards Advisory Council members
226 shall serve without pay; however, state per diem and travel
227 allowances may be claimed for attendance of officially called
228 meetings as provided by s. 112.061.

229 (f) The Seaport Security Standards Advisory Council shall
230 be chaired by a designee from the Office of Drug Control. The
231 council shall meet upon the call of the chair and at least once
232 every 5 years.

233 (g) Recommendations and findings of the council shall be
234 transmitted to the Governor, the Speaker of the House of
235 Representatives, and the President of the Senate.

236 Section 3. Section 311.121, Florida Statutes, is created
237 to read:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

238 311.121 Qualifications, training, and certification of
239 licensed security officers at Florida seaports.--

240 (1) It is the intent of the Legislature that seaports in
241 the state be able to mitigate operational security costs without
242 reducing security levels by employing a combination of certified
243 law enforcement officers and certified private security service
244 officers. In order to accomplish this intent, seaports shall
245 have the option to recruit and employ seaport security officers
246 who are trained and certified pursuant to the provisions of this
247 section. The Department of Law Enforcement shall adhere to this
248 intent in the approval and certification process for seaport
249 security required under s. 311.12.

250 (2) The authority or governing board of each seaport
251 identified under s. 311.09 that is subject to the statewide
252 minimum seaport security standards established in s. 311.12
253 shall require that a candidate for certification as a seaport
254 security officer:

255 (a) Has received a Class D license as a security officer
256 under chapter 493.

257 (b) Has successfully completed the certified training
258 curriculum for a Class D license or has been determined by the
259 Department of Agriculture and Consumer Services to have
260 equivalent experience as established by rule of the department.

261 (c) Has completed the training or training equivalency and
262 testing process established by this section for becoming a
263 certified seaport security officer.

264 (3)(a) The Seaport Security Officer Qualification,
265 Training, and Standards Coordinating Council is created under
266 the Department of Law Enforcement.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

267 (b) The executive director of the Department of Law
268 Enforcement shall appoint 12 members to the council which shall
269 include:

270 1. The seaport administrator of the Department of Law
271 Enforcement.

272 2. The chancellor of the Community College System.

273 3. The director of the Division of Licensing of the
274 Department of Agriculture and Consumer Services.

275 4. The administrator of the Florida Seaport Transportation
276 and Economic Development Council.

277 5. Two seaport security directors from seaports designated
278 under s. 311.09.

279 6. One director of a state law enforcement academy.

280 7. One representative of a local law enforcement agency.

281 8. Two representatives of contract security services.

282 9. One representative of the Division of Driver Licenses
283 of the Department of Highway Safety and Motor Vehicles.

284 10. One representative of the United States Coast Guard
285 who shall serve as an ex-officio member of the council.

286 (c) Council members designated in subparagraphs (b)1.-4.
287 shall serve for the duration of their employment or appointment.

288 Council members designated under subparagraphs (b)5.-10. shall
289 serve 4-year terms, except that the initial appointment for the

290 representative of a local law enforcement agency, one

291 representative of a contract security agency, and one seaport

292 security director from a seaport designated in s. 311.09 shall
293 serve for terms of 2 years.

294 (d) The chancellor of the Community College System shall
295 serve as chair of the council.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

296 (e) The council shall meet upon the call of the chair, and
297 at least once a year to update or modify curriculum
298 recommendations.

299 (f) Council members shall serve without pay; however,
300 state per diem and travel allowances may be claimed for
301 attendance of officially called meetings as provided by s.
302 112.061.

303 (g) By December 1, 2006, the council shall identify the
304 qualifications, training, and standards for seaport security
305 officer certification and recommend a curriculum for the seaport
306 security officer training program that shall include no less
307 than 218 hours of initial certification training and that
308 conforms to or exceeds model courses approved by the Federal
309 Maritime Act under Section 109 of the Federal Maritime
310 Transportation Security Act of 2002 for facility personnel with
311 specific security duties.

312 (h) The council may recommend training equivalencies that
313 may be substituted for portions of the required training.

314 (i) The council shall recommend a continuing education
315 curriculum of no less than 8 hours of additional training for
316 each annual licensing period.

317 (4) (a) The Department of Education shall develop the
318 curriculum recommendations and classroom-hour specifications of
319 the Seaport Security Officer Qualifications, Training, and
320 Standards Coordinating Council into initial and continuing
321 education and training programs for seaport security officer
322 certification.

323 (b) Such training programs shall be used by schools
324 licensed under s. 493.6304, and each instructor providing
325 training must hold a Class D license pursuant to s. 493.6301.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

326 (c) A seaport authority or other organization involved in
327 seaport-related activities may apply to become a school licensed
328 under s. 493.6304.

329 (d) The training programs shall include proficiency
330 examinations that must be passed by each candidate for
331 certification who successfully completes the required hours of
332 training or provides proof of authorized training equivalencies.

333 (e) A candidate for certification must be provided with a
334 list of authorized training equivalencies in advance of
335 training; however, each candidate for certification must
336 successfully complete 20 hours of study specific to Florida
337 Maritime Security and pass the related portion of the
338 proficiency examination.

339 (5) Seaport security officer certificates shall be
340 provided by the Department of Agriculture and Consumer Services
341 for issuance by a school licensed under s. 493.6304 and such
342 school may issue the certificate to an applicant who has
343 successfully completed the training program. A school shall
344 notify the Division of Licensing within the department upon the
345 issuance of each certificate. The notification must include the
346 name and Class D license number of the certificateholder and a
347 copy of the certificate. The department shall place the
348 notification with the licensee's file. Notification may be
349 provided by electronic or paper format pursuant to instruction
350 of the Department of Agriculture and Consumer Services.

351 (6) (a) Upon completion of the certification process, a
352 person holding a Class D license must apply for a revised
353 license pursuant to s. 493.6107(2), which license shall state
354 that the licensee is certified as a seaport security officer.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

355 (b) A person who has been issued a seaport security
356 officer certificate is authorized to perform duties specifically
357 required of a seaport security officer.

358 (c) The certificate is valid for the duration of the
359 seaport security officer's Class D license and shall be renewed
360 upon renewal of the license.

361 (d) The certificate shall become void if the seaport
362 security officer's Class D license is revoked or allowed to
363 lapse for more than 1 year or if the licensee fails to complete
364 the annual continuing education requirement prior to expiration
365 of the Class D license.

366 (e) Renewal of certification following licensure
367 revocation or a lapse of longer than 1 year requires, at a
368 minimum, 20 hours of recertification training and reexamination
369 of the applicant.

370 Section 4. Section 311.122, Florida Statutes, is created
371 to read:

372 311.122 Seaport law enforcement agency; authorization;
373 requirements; powers; training.--

374 (1) Each seaport in the state is authorized to create a
375 seaport law enforcement agency for its facility, which authority
376 in no way precludes the seaport from contracting with local
377 governments or law enforcement agencies to comply with the
378 security standards required by this chapter.

379 (2) Each seaport law enforcement agency shall meet all of
380 the standards set by the state under certified law enforcement
381 guidelines and requirements and shall be certified as provided
382 under chapter 943.

383 (3) If a seaport creates a seaport law enforcement agency
384 for its facility, a minimum of 30 percent of the aggregate
385 personnel of each seaport law enforcement agency shall be sworn

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

386 state-certified law enforcement officers with additional
387 Maritime Transportation Security Act seaport training; a minimum
388 of 30 percent of on-duty personnel of each seaport law
389 enforcement agency shall be sworn state-certified law
390 enforcement officers with additional Maritime Transportation
391 Security Act seaport training; and at least one on-duty
392 supervisor must be a sworn state-certified law enforcement
393 officer with additional Maritime Transportation Security Act
394 seaport training.

395 (4) For the purposes of this chapter, where applicable,
396 seaport law enforcement agency officers shall have the same
397 powers as university police officers as provided in s. 1012.97;
398 however, such powers do not extend beyond the property of the
399 seaport except in connection with an investigation initiated on
400 seaport property or in connection with an immediate, imminent
401 threat to the seaport.

402 (5) For the purposes of this chapter, sworn state-
403 certified seaport security officers shall have the same law
404 enforcement powers with respect to the enforcement of traffic
405 laws on seaport property as university police officers under s.
406 1012.97, community college police officers under s. 1012.88, and
407 airport police officers under the provisions of s.
408 316.640(1)(a)1.d.(I)-(II).

409 (6) Certified seaport security officers shall have the
410 authority to immediately tow any vehicle parked illegally as
411 indicated by an existing sign or during an emergency as deemed
412 necessary to maintain seaport security.

413 Section 5. Section 311.123, Florida Statutes, is created
414 to read:

415 311.123 Maritime domain security awareness training
416 program.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

417 (1) The Florida Seaport Transportation and Economic
418 Development Council, in conjunction with the Department of Law
419 Enforcement and the Office of Drug Control within the Executive
420 Office of the Governor, shall create a maritime domain security
421 awareness training program to instruct all personnel employed
422 within a seaport's boundaries about the security procedures
423 required of them for implementation of the seaport security
424 plan.

425 (2) The training program curriculum must include security
426 training required pursuant to 33 C.F.R. part 105 and must be
427 designed to enable the seaports in this state to meet the
428 training, drill, and exercise requirements of 33 C.F.R. part 105
429 and individual seaport security plans and to comply with the
430 requirements of s. 311.12 relating to security awareness.

431 Section 6. Section 311.124, Florida Statutes, is created
432 to read:

433 311.124 Trespassing; detention by a certified seaport
434 security officer.--

435 (1) Any Class D or Class G seaport security officer
436 certified under the Maritime Transportation Security Act
437 guidelines and s. 311.121 or any employee of the seaport
438 security force certified under the Maritime Transportation
439 Security Act guidelines and s. 311.121 who has probable cause to
440 believe that a person is trespassing pursuant to the provisions
441 of s. 810.08 or s. 810.09 or this chapter in a designated
442 restricted area pursuant to s. 311.111 is authorized to detain
443 such person in a reasonable manner for a reasonable period of
444 time pending the arrival of a law enforcement officer, and such
445 action shall not render the security officer criminally or
446 civilly liable for false arrest, false imprisonment, or unlawful
447 detention.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

448 (2) Upon detaining a person for trespass, the seaport
449 security officer shall immediately call a certified law
450 enforcement officer to the scene.

451 Section 7. Section 817.021, Florida Statutes, is created
452 to read:

453 817.021 False information to obtain a seaport security
454 identification card.--A person who willfully and knowingly
455 provides false information in obtaining or attempting to obtain
456 a seaport security identification card commits a felony of the
457 third degree, punishable as provided in s. 775.082 or s.
458 775.083.

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

460

461

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

463 Remove the entire title and insert:

464 An act relating to seaport security; creating s. 311.111, F.S.;

465 requiring each seaport authority or governing board of a seaport

466 that is subject to the statewide minimum seaport security

467 standards to designate and identify security area designations,

468 access requirements, and security enforcement authorizations on

469 seaport premises and in seaport security plans; providing that

470 any part of a port's property may be designated as a restricted

471 access area under certain conditions; amending s. 311.12, F.S.;

472 revising purpose of security plans maintained by seaports;

473 requiring periodic plan revisions; requiring plans to be

474 inspected by the Office of Drug Control and the Department of

475 Law Enforcement based upon specified standards; providing

476 requirements with respect to protection standards in specified

477 restricted areas; requiring delivery of the plan to specified

478 entities; requiring the Department of Law Enforcement to inspect

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

479 every seaport within the state to determine if all security
480 measures adopted by the seaport are in compliance with seaport
481 security standards; requiring a report; authorizing seaports to
482 appeal findings in a Department of Law Enforcement inspection
483 report; requiring the Domestic Security Oversight Council to
484 establish a review process; providing procedures and
485 requirements with respect to waiver of any physical facility
486 requirement or other requirement contained in the statewide
487 minimum standards for seaport security; providing a penalty for
488 possession of a concealed weapon while on seaport property in a
489 designated restricted area; requiring periodic review of the
490 statewide minimum standards for seaport security to be conducted
491 under the Office of Drug Control within the Executive Office of
492 the Governor; requiring the Office of Drug Control to convene a
493 Seaport Security Standards Advisory Council to review the
494 statewide minimum standards for seaport security with respect to
495 current narcotics and terrorism threats to Florida's seaports;
496 providing membership, terms, organization, and meetings of the
497 council; creating s. 311.121, F.S.; requiring the authority or
498 governing board of each seaport that is subject to statewide
499 minimum seaport security standards to impose specified
500 requirements for certification as a seaport security officer;
501 creating the Seaport Security Officer Qualification, Training,
502 and Standards Coordinating Council under the Department of Law
503 Enforcement; providing membership and organization of the
504 council; providing terms of members; providing duties and
505 authority of the council; requiring the Department of Education
506 to develop curriculum recommendations and specifications of the
507 council into initial and continuing education and training
508 programs for seaport security officer certification; providing
509 requirements and procedures with respect to such training

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

510 programs; providing requirements and procedures with respect to
511 certification as a seaport security officer; providing
512 requirements for renewal of inactive or revoked certification;
513 creating s. 311.122, F.S.; authorizing each seaport in the state
514 to create a seaport law enforcement agency for its facility;
515 providing requirements of an agency; requiring certification of
516 an agency; providing requirements with respect to the
517 composition of agency personnel; providing powers of seaport law
518 enforcement agency officers and seaport security officers;
519 creating s. 311.123, F.S.; providing for the creation of a
520 maritime domain security awareness training program; providing
521 purpose of the program; providing program training curriculum
522 requirements; creating s. 311.124, F.S.; providing authority of
523 seaport security officers to detain persons suspected of
524 trespassing in a designated restricted area of a seaport;
525 providing immunity from specified criminal or civil liability;
526 creating s. 817.021, F.S.; providing a criminal penalty for
527 willfully and knowingly providing false information in obtaining
528 or attempting to obtain a seaport security identification card;
529 providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1505

COUNCIL/COMMITTEE ACTION

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

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

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (5) of section 741.30, Florida
7 Statutes, is amended to read:

8 741.30 Domestic violence ~~injunctions; injunction; powers~~
9 ~~and duties of court and clerk; petition; notice and hearing;~~
10 ~~temporary injunction; issuance of injunction; statewide~~
11 ~~verification system; enforcement.--~~

12 (5)(a)1.a. In an emergency situation immediately following
13 an incident of domestic violence by a household member, an
14 emergency protection order may be issued, at the request of the
15 victim, if a law enforcement officer states under oath to the
16 court in person, by telephone, in writing, or via facsimile the
17 facts he or she believes show that an emergency protection order
18 is needed and the court finds reasonable grounds to believe that
19 the victim or the victim's child is in immediate and present
20 danger of domestic violence. Such an emergency protection order
21 expires 72 hours after issuance or at the end of the next
22 judicial day, whichever time is later, or upon request of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

23 victim. The time of expiration shall be clearly stated on the
24 emergency protection order.

25 b. Following the judge's issuance of the emergency
26 protection order, the law enforcement officer shall:

27 (I) If the order is verbal, reduce the emergency
28 protection order to writing on an approved form provided by the
29 court, outline the grounds justifying issuance, and sign and
30 date the order.

31 (II) If possible, serve a signed copy of the order on the
32 offender and victim at the scene of the domestic violence
33 dispute.

34 (III) Complete the appropriate affidavit of service and
35 file the affidavit with the issuing court by the close of
36 business on the next judicial day.

37 (IV) If the order was reduced to writing and signed by the
38 officer, file the original, signed emergency order with the
39 issuing court by the close of business on the next judicial day.

40 2. In a nonemergency situation, but when it appears to the
41 court that an immediate and present danger of domestic violence
42 exists, the court may grant a temporary injunction ex parte,
43 pending a full hearing.

44 (b) In either an emergency protection order or an ex parte
45 temporary injunction order, the court ~~and~~ may grant such
46 relief as it ~~the court~~ deems proper, including an injunction:

47 1. Restraining the respondent from committing any acts of
48 domestic violence.

49 2. Awarding to the petitioner the temporary exclusive use
50 and possession of the dwelling that the parties share or
51 excluding the respondent from the residence of the petitioner.

52 3. On the same basis as provided in s. 61.13, granting to
53 the petitioner temporary custody of a minor child. An order of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

54 temporary custody remains in effect until the order expires or
55 an order is entered by a court of competent jurisdiction in a
56 pending or subsequent civil action or proceeding affecting the
57 placement of, access to, parental time with, adoption of, or
58 parental rights and responsibilities for the minor child.

59 ~~(c)~~ ~~(b)~~ In a hearing ex parte for the purpose of obtaining
60 an ~~such~~ ex parte temporary injunction, no evidence other than
61 verified pleadings or affidavits shall be used as evidence,
62 unless the respondent appears at the hearing or has received
63 reasonable notice of the hearing. A denial of a petition for an
64 ex parte injunction shall be by written order noting the legal
65 grounds for denial. When the only ground for denial is no
66 appearance of an immediate and present danger of domestic
67 violence, the court shall set a full hearing on the petition for
68 injunction with notice at the earliest possible time. Nothing
69 herein affects a petitioner's right to promptly amend any
70 petition, or otherwise be heard in person on any petition
71 consistent with the Florida Rules of Civil Procedure.

72 ~~(d)~~ ~~(e)~~ Except for emergency protection orders issued under
73 subparagraph (a)1., an ~~Any such~~ ex parte temporary injunction
74 shall be effective for a fixed period not to exceed 15 days. A
75 full hearing, as provided by this section, shall be set for a
76 date no later than the date when the emergency protection order
77 or ex parte temporary injunction ceases to be effective. The
78 court may grant a continuance of the hearing before or during a
79 hearing for good cause shown by any party, which shall include a
80 continuance to obtain service of process. Any emergency
81 protection order or ex parte temporary injunction shall be
82 extended if necessary to remain in full force and effect during
83 any period of continuance.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

84 Section 2. Section 741.313, Florida Statutes, is created
85 to read:

86 741.313 Unlawful action against employees seeking
87 protection.--

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

89 (a) "Domestic violence" means domestic violence, as
90 defined in s. 741.28(2); stalking or aggravated stalking, as
91 defined in s. 784.048; sexual battery, as defined in s.
92 794.011(1); dating violence, as defined in s. 784.046(1); or any
93 crime the underlying factual basis of which has been found by a
94 court to include an act of domestic violence.

95 (b) "Employer" has the same meaning as in s.
96 440.02(16)(a).

97 (c) "Family or household member" has the same meaning as
98 in s. 741.28.

99 (d) "Victim" means an individual who has been subjected to
100 domestic violence.

101 (2)(a) An employer shall permit an employee to request or
102 to take up to 3 working days of leave from work in any 12-month
103 period, with or without pay, if the employee or a family or
104 household member of the employee is the victim of domestic
105 violence.

106 (b) This section applies if an employee uses the leave
107 from work to:

108 1. Seek an injunction for protection against domestic
109 violence or an injunction for protection in cases of repeat
110 violence, dating violence, or sexual violence;

111 2. Obtain medical care or mental health counseling, or
112 both, for the employee or a family or household member to
113 address physical or psychological injuries resulting from the
114 act of domestic violence;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

115 3. Obtain services from a victim services organization,
116 including, but not limited to, a domestic violence shelter or
117 program or a rape crisis center as a result of the act of
118 domestic violence;

119 4. Make the employee's home secure from the perpetrator of
120 the domestic violence or to seek new housing to escape the
121 perpetrator; or

122 5. Seek legal assistance to address issues arising from
123 the act of domestic violence and to attend and prepare for
124 court-related proceedings arising from the act of domestic
125 violence.

126 (3) This section applies to an employer who employs 50 or
127 more employees and to an employee who has been employed by the
128 employer for 12 or more months.

129 (4)(a) Except in cases of imminent danger to the health or
130 safety of the employee or to the health or safety of a family or
131 household member, an employee seeking leave from work under this
132 section must provide his or her employer with appropriate
133 advance notice of the leave as may be required by the employer's
134 policy and with sufficient documentation of the act of domestic
135 violence as may be required by the employer.

136 (b) An employee seeking leave under this section must,
137 before receiving the leave, exhaust all annual or vacation
138 leave, personal leave, and sick leave, if applicable, which is
139 available to the employee, unless the employer waives this
140 requirement.

141 (c)1. A private employer must keep all information
142 relating to the employee's leave under this section
143 confidential.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

144 2. An agency, as defined in s. 119.011, must keep all
145 information relating to the employee's leave under this section
146 confidential and exempt pursuant to this section.

147 (5)(a) An employer may not interfere with, restrain, or
148 deny the exercise of or any attempt by an employee to exercise
149 any right provided under this section.

150 (b) An employer may not discharge, demote, suspend,
151 retaliate against, or in any other manner discriminate against
152 an employee for exercising his or her rights under this section.

153 (c) An employee has no greater rights to continued
154 employment or to other benefits and conditions of employment
155 than if the employee was not entitled to leave under this
156 section. This section does not limit the employer's right to
157 discipline or terminate any employee for any reason, including,
158 but not limited to, reductions in workforce or termination for
159 cause or for no reason at all, other than exercising his or her
160 rights under this section.

161 (6) Notwithstanding any other law to the contrary, the
162 sole remedy for any person claiming to be aggrieved by a
163 violation of this section is to bring a civil suit for damages
164 or equitable relief, or both, in circuit court. The person may
165 claim as damages all wages and benefits that would have been due
166 the person up to and including the date of the judgment had the
167 act violating this section not occurred, but may not claim wages
168 or benefits for a period of leave granted without pay as
169 provided in paragraph (2)(a). However, this section does not
170 relieve the person from the obligation to mitigate his or her
171 damages.

172 Section 3. Subsection (2) of section 943.1702, Florida
173 Statutes, is amended to read:

174 943.1702 Collection of statistics on domestic violence.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

175 (2) Each agency in the state that ~~which~~ is involved with
176 the enforcement, monitoring, or prosecution of crimes of
177 domestic violence or, as to noncriminal actions related to
178 domestic violence, including petitions seeking injunctions for
179 protection, the judicial branch, shall collect and maintain
180 records of each domestic violence incident for access by
181 investigators preparing for bond hearings and prosecutions for
182 acts of domestic violence. This information shall be provided to
183 the court at first appearance hearings and all subsequent
184 hearings.

185 Section 4. This act shall take effect October 1, 2006.
186
187

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

189 Remove the entire title and insert:

190 An act relating to domestic violence; amending s. 741.30,
191 F.S.; providing for law enforcement officers to obtain
192 verbal emergency protection orders immediately following
193 incidents of domestic violence; providing for officers to
194 reduce such orders to writing; providing for expiration of
195 such orders; specifying procedures relating to such
196 orders; creating s. 741.313, F.S.; defining the terms
197 "domestic violence," "employer," "family or household
198 member," and "victim"; requiring that certain employers
199 permit an employee to take leave from work to undertake
200 activities resulting from an act of domestic violence;
201 specifying the activities for which the employee may take
202 leave; requiring the employee to notify the employer of
203 the leave; providing exceptions; requiring that an
204 employer keep information relating to the employee's leave
205 confidential; prohibiting an employer from taking certain

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

206 actions against the employee for exercising rights
207 specified in the act; providing a recourse for violation
208 of the act; amending s. 943.1702, F.S.; requiring
209 collection of statistics on noncriminal judicial actions
210 concerning domestic violence; providing an effective date.