CRIMINAL JUSTICE COMMITTEE MEETING

Wednesday, March 22, 2006
10:15 a.m. - 12:00 noon
404 House Office Building

MEETING PACKET

Allan G. Bense
Speaker

Dick Kravitz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time:	Wednesday, March 22, 2006 10:15 am
End Date and Time:	Wednesday, March 22, 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 06-08 -- Sexual Offenders
PCB CRJU 06-09 -- Statute of Limitations in Criminal Cases

Consideration of the following bill(s):

HB 367 Accessories to a Crime by Carroll
HB 583 Correctional and Law Enforcement Officer Discipline by Traviesa
HB 613 Police Pursuits of Fleeing Vehicles by Antone
HB 681 Electronic Recording of Custodial Interrogations by Holloway
HB 919 Law Enforcement Investigations by Grant
HB 1193 Driving Under the Influence by Kottkamp
HB 1271 Division of Alcoholic Beverages and Tobacco by Cannon
HB 1291 Weapons by Poppell
HB 1325 Controlled Substances by Culp

NOTICE FINALIZED on 03/20/2006 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
Wednesday, March 22, 2006
404 House Office Building
10:15 a.m. – 12:00 p.m.

I. Opening remarks by Chair Kravitz

II. Roll call

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

- **PCB CRJU 06-07—Death Penalty/Mental Retardation**
- **PCB CRJU 06-08—Sexual Offenders**
- **PCB CRJU 06-09—Statute of Limitations in Criminal Cases**

IV. Consideration of the following bill(s):

- **HB 367—Accessories to a Crime by Carroll**
- **HB 583—Correctional and Law Enforcement Officer Discipline by Traviesa**
- **HB 613—Police Pursuits of Fleeing Vehicles by Antone**
- **HB 681—Electronic Recording of Custodial Interrogations by Holloway**
- **HB 919—Law Enforcement Investigations by Grant**
- **HB 1193—Driving Under the Influence by Kottkamp**
- **HB 1271—Division of Alcoholic Beverages and Tobacco by Cannon**
- **HB 1291—Weapons by Poppell**
- **HB 1325—Controlled Substances by Culp**

V. Closing comments / Meeting adjourned

PCB CRJU 06-07

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-07 Death Penalty/Mental Retardation
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

In 2001, the legislature created section 921.137, F.S. which prohibits the imposition of a death sentence upon a mentally retarded defendant. In May of 2004, the Florida Supreme Court adopted Rule of Criminal Procedure 3.203 which contains provisions which are in conflict with the statute passed by the legislature. The court's majority opinion did not indicate that the statute was constitutionally infirm or otherwise explain the reason that the provisions of the rule of procedure contradicted the statute. This proposed committee bill repeals the rule of criminal procedure.

A repeal of a rule of procedure requires a 2/3 vote of the members of both chambers of the legislature.

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 post-trial. The brief stated that "[t]here is neither

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[1]The 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)

authority 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:

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[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

A bill to be entitled

An act relating to the death penalty; repealing Rule 3.203, Florida Rules of Criminal Procedure, relating to imposition of the death penalty; providing an effective date.

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," NOW, THEREFORE,

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-08 Sexual Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Primarily, this bill corrects omissions in and clarifies provisions of the Jessica Lunsford Act (JLA), which the Legislature approved in 2005. Some of the amendments to the JLA are the result of findings and recommendations of the Jessica Lunsford Task Force, which was created by the JLA.

[Note: This bill does not relate to background screening requirements of contractual school personnel. That is the subject of HB 7117.] This bill:

- Ranks in the offense severity ranking chart of the Criminal Punishment Code several offenses involving non-compliance with sexual offender and sexual predator requirements, which were inadvertently not ranked in the JLA.
- Requires that the names or identifying information of certain applicants for governmental appointment or employment who work or volunteer in places where children regularly congregate be checked against the new National Sex Offender Public Registry.
- Clarifies that the Legislature intended a provision of the JLA requiring electronic monitoring of designated sexual offenders and sexual offenders who are on probation or community control following the revocation of probation or community control to only apply if the probation or community control for any *felony* offense is revoked.
- Clarifies that the Legislature intended a provision requiring electronic monitoring of certain sex offenders on probation and community control to only apply to those sex offenders on probation or community control whose *felony* offense was committed on or after September 1, 2005.

The JLA required the Parole Commission to order electronic monitoring on Conditional Releasees who were incarcerated for sexual battery, a lewd or lascivious offense, sexual performance by a child or buying or selling a minor. However, the conditional release statute does not currently give the Parole Commission authority over offenders who have committed the offense of sexual performance by a child or the selling or buying of minors. This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

The bill clarifies that certain provisions of the Jessica Lunsford Act apply only to felony offenses – not to misdemeanor offenses.

Promote personal responsibility: The bill increases the penalty for certain offenses relating to failing to comply with the requirements of sexual predator or sexual offender registration.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator/Offender Registration: There are more than 5,500 sexual predators and more than 30,000 sexual offenders in the state registry which is maintained by the Florida Department of Law Enforcement. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender is required to comply with a number of statutory requirements.[1] Failure to comply with these requirements is a third or second degree felony, depending of the offense.

The United States Department of Justice has recently developed the "National Sex Offender Public Registry" - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual's name.[2] According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

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

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12.

Offense ranking chart: The JLA ranked several offenses relating to compliance with sexual predator and sexual offender registration requirements in level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the

[1] See ss. 775.21, 943.0435 and 944.607, F.S.
[2] http://www.nsopr.gov/

statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

A Level 7 offense, absent other factors such as prior record or victim injury, results in a lowest permissible sentence of 21-months in state prison.

The following offenses were inadvertently not ranked by the Jessica Lunsford Act:

- Section 775.21(6)(g)3., F.S. Sexual predator vacating permanent residence; failure to comply with reporting requirements (second degree felony).
- Section 775.21(6)(i), F.S. Sexual predator intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).
- Section 775.21(6)(j), F.S. Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements (second degree felony).
- Section 943.0435(7), F.S. Sexual offender intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).

Because these offenses were not given a specific ranking in the offense severity ranking chart they were subject to s. 921.0023, F.S., a "default" provision which ranks offenses not ranked in the chart. Pursuant to s. 921.0023, F.S., the third degree felony offenses previously described defaulted to a Level 1 ranking and the second degree felony offenses previously described defaulted to a Level 4 ranking. The effect of these defaults is that, unlike the offenses ranked in the JLA, which score a lowest permissible sentence of imprisonment by virtue of their ranking, the defaulted offenses, which are comparable in seriousness to the offenses ranked by the JLA, will generally not score a lowest permissible sentence of imprisonment.

This bill ranks these offenses in Level 7 of the Offense Severity Ranking Chart.

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires certain inmates that are nearing the end of their sentence to be released under close supervision.[3] Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of offenses[4] including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.[5] The Department of Corrections supervises the offender while on conditional release.

Section 12 of the Jessica Lunsford Act created s. 947.1405(10), F.S. to provide that, effective for a conditional releasee whose crime was committed on or after September 1, 2005, in violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a conditional releasee who is designated as a sexual predator pursuant to s. 775.21, F.S., in addition to any other provision of this section, the Florida Parole Commission must order electronic monitoring for the duration of the conditional releasee's supervision.

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[3]. s. 947.1405(2), F.S

[4] The relevant offenses are listed in categories 1, 2, 3 and 4 of Rule 3.701 of the Florida Rules of Criminal Procedure. Included in these categories are the offenses of murder, DUI and BUI manslaughter, sexual battery, lewd or lascivious offenses, incest, sexual misconduct by a psychotherapist, robbery, carjacking, home invasion robbery, aggravated assault, aggravated battery, aggravated stalking and resisting an officer with violence

[5] The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

The Jessica Lunsford Task Force,[6] which was created by the JLA, and which was required by the JLA to examine the collection and dissemination of offender information within the criminal justice system and community, released its findings and recommendations on February 6, 2006.[7] The task force noted that while Section 12 of the JLA included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if "the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older," these are not offenses subject to conditional release supervision under the law. The task force recommended amending s. 947.1405(2), F.S. to list sexual performance, selling or buying of minors, and some other serious offenses in the eligibility criteria for conditional release.

This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

Electronic monitoring/supervision: Section 17 of the JLA created s. 948.063, F.S. which provided that if probation or community control is revoked by the court and the offender is designated as a sexual offender or sexual predator pursuant for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court is required to order electronic monitoring as a condition of the subsequent term of probation or community control.

Questions have been raised as to whether the Legislature intended to apply the amendment to s. 948.063, F.S., to misdemeanors. In its "Finding #5, the Jessica Lunsford Task Force found that "[c]onfusion exists as whether this [Section 17 of the JLA] includes persons who commit a misdemeanor offense and are placed on county probation or if it only applies to probation at the state level."

The bill amends s. 948.063, F.S., to clarify that this section applies specifically to revocations of probation or community control for any *felony* offense. It also clarifies what is meant by a "designated sexual offender" by adding the language "pursuant s. 943.0435, F.S. or s. 944.607, F.S.," which are the sections of the Florida Statutes relevant to registration requirements for sexual offenders.

Section 20 of the Jessica Lunsford Act created s. 948.30(3), F.S., to provide that, effective for a probationer or community controllee whose *crime* was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

- Is placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;

- Is designated a sexual predator pursuant to s. 775.21; or

- Has previously been convicted of a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

Similar to Section 17 of the JLA, questions have been raised as whether the Legislature intended this electronic monitoring requirement to apply to misdemeanors. This bill revises s. 948.30(3), F.S., by replacing the word "crime" with the words "felony offense" to clarify this section applies to probationers or community controllees who have committed certain *felony* offenses.

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[6] The task force was composed of the members of the Criminal and Juvenile Justice Information Systems Council.

[7] All discussion in this analysis of the task force and its findings and recommendations is from *Jessica Lunsford Task Force*, Criminal and Juvenile Justice Information Systems Council (February 6, 2005).

Registry check prior to appointment or employment by governmental entity: Section 943.04351, F.S. requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, to search that person's name against FDLE's sexual offender registry. This bill requires the state agency or governmental subdivision to also check the person's name against the registration information regarding sex offenders maintained by the FBI in the National Sex Offender Public Registry.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S. to rank in the offense severity ranking chart of the Criminal Punishment Code, several offenses relating to failure by a sexual predator or sexual offender to comply with certain reporting requirements.

Section 2. Amends s. 943.04351, F.S. to require a search of the National Sex Offender Public Registry in certain circumstances.

Section 3. Amends s. 948.063, F.S. to require that court order electronic monitoring upon revocation of probation or community control for a felony offense in certain circumstances.

Section 4. Amends s. 948.30, F.S. to require that the court order electronic monitoring as a condition of supervision in certain felony cases.

Section 5. Amends s. 947.1405, F.S. to expand the eligibility criteria for the conditional release program.

Section 6. 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 yet met to provide an official estimate of the prison bed impact of this bill. However, a preliminary estimate of the prison bed impact provided by the Legislature's Office of Economic and Demographic Research is that the bill is not likely to have a significant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill clarifies that the requirement of electronic monitoring does not apply to a person on misdemeanor probation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to criminal justice; amending s. 921.0022, F.S.; ranking in the offense severity ranking chart of the Criminal Punishment Code several offenses relating to failure by a sexual predator or sexual offender to comply with certain reporting requirements; amending s. 943.04351, F.S.; requiring a search of the National Sex Offender Public Registry before a person may work or volunteer at a place where children regularly congregate; amending s. 948.063, F.S.; requiring that the court order electronic monitoring as a condition of probation or community control following a violation of probation or community control by certain offenders who are designated as sexual offenders or sexual predators; amending s. 948.30, F.S.; requiring that the court order mandatory electronic monitoring as a condition of probation or community control supervision for certain sex offenders whose crimes involved young children; amending s. 947.1405, F.S.; expanding the eligibility criteria for the conditional release program; providing an effective date.

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

Section 1. Paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

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

(3) OFFENSE SEVERITY RANKING CHART

Florida Felony

Statute	Degree	Description
	(g) LEVEL 7	
316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.

316.1935(3)(b)	1st		Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd		Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd		Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

409.920(2)	3rd	Medicaid provider fraud.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.

461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.

483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.

560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.
560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(6)(g)3.	2nd	Sexual predator vacating permanent residence; failure to comply with reporting requirements.

61	775.21(6)(i)	3rd	Sexual predator intending to establish residence in another state; failure to comply with reporting requirements.
62	775.21(6)(j)	2nd	Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements.
63	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
64	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.

775.21(10)(g)	3rd		Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd		Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.

784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.

784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.

790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
796.03	2nd	Procuring any person under 16 years for prostitution.

800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.

810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.

812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.

817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341(2)(b)& (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.

838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.

893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

121	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
122	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
123	893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
124	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
125	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.

896.104(4)(a)1.	3rd		Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd		Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(7)	3rd		Sexual offender intending to establish residence in another state; failure to comply with reporting requirements.

943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 2. Section 943.04351, Florida Statutes, is amended to read:

943.04351 Search of registration information regarding

sexual predators and sexual offenders required prior to appointment or employment.--A state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043 and against the registration information regarding sex offenders maintained by the Federal Bureau of Investigation in the National Sex Offender Public Registry. The agency or governmental subdivision may conduct the search using the Internet site maintained by the Department of Law Enforcement. This section does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

Section 3. Section 948.063, Florida Statutes, is amended to read:

948.063 Violations of probation or community control by designated sexual offenders and sexual predators.--If probation or community control for any felony offense is revoked by the court pursuant to s. 948.06(2)(e) and the offender is designated as a sexual offender pursuant to s. 943.0435 or s. 944.607 or as sexual predator pursuant to s. 775.21 for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and if the court imposes a subsequent term of supervision following the revocation of

probation or community control, the court must order electronic monitoring as a condition of the subsequent term of probation or community control.

Section 4. Subsection (3) of section 948.30, Florida Statutes, is amended to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.--Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

(3) Effective for a probationer or community controllee whose felony offense ~~crime~~ was committed on or after September 1, 2005, and who:

(a) Is placed on probation or community control for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;

(b) Is designated as a sexual predator pursuant to s. 775.21; or

(c) Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older,

the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision.

Section 5. Subsection (2) of section 947.1405, Florida Statutes, is amended to read:

947.1405 Conditional release program.--

(2) Any inmate who:

(a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), or is convicted of any offense committed on or after July 1, 2006, under the following statutory provisions:

1. Sexual performance by a child, under s. 827.071;

2. Selling or buying of minors, under s. 847.0145,

and who has served at least one prior felony commitment at a state or federal correctional institution;

(b) Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084; or

(c) Is found to be a sexual predator under s. 775.21 or former s. 775.23,

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost of supervision pursuant to s. 948.09. Such supervision shall be applicable to all sentences within the overall term of sentences if an inmate's overall term of sentences includes one or more

sentences that are eligible for conditional release supervision as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of conditional release, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present and potential future financial needs and earning ability of the releasee, and dependents, and other appropriate factors. If any inmate placed on conditional release supervision is also subject to probation or community control, resulting from a probationary or community control split sentence within the overall term of sentences, the Department of Corrections shall supervise such person according to the conditions imposed by the court and the commission shall defer to such supervision. If the court revokes probation or community control and resentences the offender to a term of incarceration, such revocation also constitutes a sufficient basis for the revocation of the conditional release supervision on any nonprobationary or noncommunity control sentence without further hearing by the commission. If any such supervision on any nonprobationary or noncommunity control sentence is revoked, such revocation may result in a forfeiture of all gain-time, and the commission may revoke the resulting deferred conditional release supervision or take other action it considers

appropriate. If the term of conditional release supervision exceeds that of the probation or community control, then, upon expiration of the probation or community control, authority for the supervision shall revert to the commission and the supervision shall be subject to the conditions imposed by the commission. A panel of no fewer than two commissioners shall establish the terms and conditions of any such release. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of conditional release supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

Section 6. This act shall take effect July 1, 2006.

PCB CRJU 06-09

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-09 Statute of Limitations in Criminal Cases
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted – has resulted in defendants being identified with crimes that were unsolved for many years.

Section 775.15(15), F.S., seeks to address the situation in which the general time limitations for commencing prosecution have expired before the perpetrator is identified. The statute provides that a prosecution for certain offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence. Currently, the statute only applies to sexual battery and lewd and lascivious offenses.

This bill adds the following offenses to the list of offenses in s. 775.15(15), F.S.:

- Aggravated battery or any felony battery offense under chapter 784;
- Kidnapping under s. 787.01 or false imprisonment under s. 787.02;
- A burglary offense under s. 810.02;
- A robbery offense under s. 812.13, s. 812.131, or s. 812.135;
- Carjacking under s. 812.133; and
- Aggravated child abuse under s. 827.03.

This act takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill provides that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced within one year after the date on which the identity of the accused is established, or should have been established using due diligence, through the analysis of DNA evidence.

B. EFFECT OF PROPOSED CHANGES:

Statute of Limitations

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or "statute of limitations."

There was no statute of limitations at common law.[1] It is purely a statutory creation. In *State v. Hickman*, the court borrowed a section from 22 C.J.S., Criminal Law s. 223 and explained that:

> "Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity." *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

Section 775.15(3), F.S., provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.[2]

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed.[3] The legislature can extend the limitations period without violating the constitutional prohibition against ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective.[4] If the pre-existing statute of limitations had already expired prior to passage of the new statue of limitations,

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[1] *State v. McCloud*, 67 So.2d 242 (Fla. 1953).
[2] s. 775.15, F.S.
[3] *See Andrews v. State,* 392 So.2d 270,271 (Fla. 2d DCA 1980).
[4] *Id.*

the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the Unites States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10.).[5]

DNA – An Investigative Tool
Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted – has resulted in defendants being charged with crimes that were unsolved for many years.

One example of such a case occurred after DNA sample collections from people convicted of burglary offenses in Florida began in July 2000. In October 2000, a man in a Florida prison on a burglary conviction, who gave the required blood samples for inclusion in the FDLE database, became a suspect in a 1999 sexual assault on a 77-year old West Virginia woman. According to reports, when he was identified as a suspect, another man who had previously been charged with the West Virginia crime was likely to be exonerated.[6]

Most of the crimes where it would be more likely to have DNA left at the crime scene, due to the nature of the offense, currently have no time limitation for commencing prosecution of the perpetrator (e.g. murder; sexual battery, when reported within 72 hours after the commission of the crime). However, in some cases the time may have expired before the perpetrator is identified. For example, if a sexual battery offense goes unreported for more than 72 hours, the time limitation for commencing prosecution would be four years (first degree felony) or three years (any other felony).

Exception to the General Statute of Limitations – Section 775.15(15), F.S.
Section 775.15(15), F.S., seeks to address the situation in which the general time limitations for commencing prosecution have expired before the perpetrator is identified. Currently, the statute provides:

> In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:
>
> 1. An offense of sexual battery under chapter 794.
> 2. A lewd or lascivious offense under s. 800.04 or s. 825.1025.
>
> This subsection applies to any offense that is not otherwise barred from prosecution on or after July 1, 2004.

Effect of the Bill
This bill adds the following offenses to the list of offenses in s. 775.15(15), F.S.:

- Aggravated battery or any felony battery offense under chapter 784;
- Kidnapping under s. 787.01 or false imprisonment under s. 787.02;
- A burglary offense under s. 810.02;
- A robbery offense under s. 812.13, s. 812.131, or s. 812.135;
- Carjacking under s. 812.133; and
- Aggravated child abuse under s. 827.03.

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[5] *See United States v. Richardson,* 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State,* 352 So.2d 853 (Fla. 1977).
[6] *See* Senate Staff Analysis and Economic Impact Statement, CS/SB 300, February 15, 2002.

Thus, under the bill, a prosecution for any of the above offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.

The bill further specifies that the subsection (i.e. subsection (15) of s. 775.15, F.S.) applies to the newly listed offenses which are not otherwise barred from prosecution on or after July 1, 2006. This addresses the ex post facto concerns outlined above.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.15(15), F.S., providing that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced within one year after the date on which the identity of the accused is established, or should have been established using due diligence, through the analysis of DNA evidence.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to time limitations for criminal prosecutions; amending s. 775.15, F.S.; providing that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence; providing an effective date.

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

Section 1. Subsection (15) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.--

(15)(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:

1. An offense of sexual battery under chapter 794.

2. A lewd or lascivious offense under s. 800.04 or s. 825.1025.

3. Aggravated battery or any felony battery offense under chapter 784.

4. Kidnapping under s. 787.01 or false imprisonment under s. 787.02.

5. A burglary offense under s. 810.02.

6. A robbery offense under s. 812.13, s. 812.131, or s. 812.135.

7. Carjacking under s. 812.133.

8. Aggravated child abuse under s. 827.03.

(b) This subsection applies to any offense in subparagraph 1. or subparagraph 2. which ~~that~~ is not otherwise barred from prosecution on or after July 1, 2004, and applies to any offense in subparagraph (a)3. through subparagraph (a)8. which is not otherwise barred from prosecution on or after July 1, 2006.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 367 Accessories to a Crime
SPONSOR(S): Carroll
TIED BILLS: **IDEN./SIM. BILLS:** SB 730

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

SUMMARY ANALYSIS

HB 367 removes the prohibition that prevents family members from being charged as an accessory after the fact if they give aid to a known felony offender with the intent that the offender avoids or escapes detection, arrest, trial, or punishment if they know that the family member has committed a first or second degree felony. HB 367 maintains the exemption for family members if the offender's underlying crime is a third degree felony.

HB 367 appears to have an insignificant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- HB 367 imposes criminal penalties for a family member who acts as an accessory after the fact.

Empower families- HB 367 would allow prosecution of family members as an accessory after the fact if they know that the family members underlying crime is a first or second degree felony.

B. EFFECT OF PROPOSED CHANGES:

Current law:
Section 777.03 (1)(a), F.S., prohibits family members from being charged as an accessory after the fact if they assist a family member that they know has committed a felony,[1] in avoiding or escaping detection, arrest, trial or punishment. Family member includes any person standing in the relationship of husband or wife, parent or grandparent, child or grandchild, brother or sister, by *consanguinity* or *affinity* to the offender. Consanguinity and affinity are synonymous with blood and marriage.[2] The underlying legislative purpose is to safeguard the family unit.[3] "In other words, the phrase 'by consanguinity or affinity' is merely a substitute for a cumbersome list of 'in-laws' and 'step-relatives' who are entitled to . . . protection."[4] Thus, 777.03 (1)(a) provides an exhaustive list of protected family members.[5]

Background:
Jason Anthony Gucwa, 29, was found murdered in March of 2003 in Flagler County. Investigators from the Flagler Sheriff's Office, Daytona Beach Police Department, Florida Department of Law Enforcement, and the State Attorney's Office are continuing to look for Stephen and Wursula Workman as persons of interest in the case. Stephen Workman's mother's home was searched twice for possible evidence linking he and his wife to the crime. Workman was last seen getting off a Greyhound bus in Minnesota. His wife is known to be back in her native Brazil. Stephen Workman's mother is believed to have materially assisted both her son and his wife flee for prosecution.

Proposed changes:
HB 367 would remove the prohibition that prevents family members from being charged as an accessory after the fact if they assist a family member that they know has committed a felony. This would allow law enforcement to prosecute family members that participate as an accessory after the fact if they know that the family members underlying crime is a first or second degree felony. The exemption for family members would remain intact if the offender's underlying crime is a third degree felony.

C. SECTION DIRECTORY:

Section 1. Names HB 367 the "Jason A. Gucwa Act."

Section 2. Amends s. 777.03, F.S., relating to accessories after the fact.

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[1] This prohibition does not currently apply in cases involving child abuse. *See* 777.03 (1)(b) F.S.
[2] *See* State v. C.H., 421 So.2nd 62, 64 (Fla. 4th DCA 1982).
[3] Id.
[4] Id.
[5] *See* Brown v. State, 672 So.2nd 861, 863-64 (Fla. 3rd DCA 1996) (holding immunity does not extend to persons whose sole familial relationship to the offender is that of cousin).

Section 3. Provides an effective date upon becoming law.

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 Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. This bill will allow a family member to be convicted of accessory after the fact for aiding a known felony offender. In 2004, the conference determined that HB 125, which was substantially similar to this bill, would have an insignificant prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill is exempt from the mandates provision 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 accessories to a crime; providing a short title; amending s. 777.03, F.S.; limiting the provision that exempts certain members of an offender's family from being charged with the offense of acting as an accessory after the fact to circumstances involving third degree felony offenses; specifying additional actions that constitute being an accessory after the fact, for which penalties are provided; providing an effective date.

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

Section 1. This act may be cited as the "Jason A. Gucwa Act."

Section 2. Subsection (1) of section 777.03, Florida Statutes, is amended to read:

777.03 Accessory after the fact.--

(1)(a) Any person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a crime and such crime was a third degree felony, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial or punishment, is an accessory after the fact.

(b) Any person~~, regardless of the relation to the offender,~~ who maintains or assists the principal or accessory

before the fact, or gives the offender any other aid, knowing that the offender had committed the offense of child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact unless the court finds that the person is a victim of domestic violence.

(c) Any person who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a crime and such crime was a first or second degree felony, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 583 Correctional and Law Enforcement Officer Discipline
SPONSOR(S): Traviesa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1552

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

SUMMARY ANALYSIS

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. Although these procedures vary from agency to agency, most agencies generate some type of investigative report summarizing the complaint and the agency's findings. This bill requires investigators to verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief.

Florida statutes grant law enforcement and correctional officers certain rights when the officer is being investigated by his or her employing agency. Currently, Florida statutes do not specify the exact procedures that must be followed when an officer files a complaint alleging that his/her rights have been violated. This bill requires agencies to investigate and issue a report regarding such complaints. If the report sustains a violation, the agency must remove the investigating officer who is the subject of the complaint from internal investigative responsibilities and take other appropriate disciplinary actions. The agency must place the investigative report and supporting documents into the removed investigator's personnel file, invalidate the original investigation, and reinvestigate the original complaint. The bill further provides that agencies maintain a log documenting the receipt of complaints alleging a violation of an officer's rights.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill requires law enforcement and correctional agencies to verify that the contents of investigative reports relating to complaints against officer are true and accurate; the bill requires law enforcement and correctional agencies to investigate complaints alleging violations of officer rights, to remove investigators if a violation is found, to reinvestigate complaints, and to keep a log of all complaints received.

Safeguard Individual Liberty → The bill requires that an investigation of an officer be declared invalid if it is found that the officer's rights were violated during the investigation.

B. EFFECT OF PROPOSED CHANGES:

Verifying Investigative Reports

Section 112.533, F.S., currently requires law enforcement and correctional agencies to establish procedures for the receipt, investigation, and determination of complaints against law enforcement[1] and correctional officers[2]. These procedures vary from agency to agency. However, in most instances when a complaint against an officer is filed, agencies investigate the complaint and file some form of an investigative report that summarizes the investigation (i.e. the date the complaint was filed, the allegations made in the complaint, witness statements, whether the allegation(s) were sustained or not sustained, the final disposition of the investigation, etc...).

Currently, Florida law provides criminal penalties for making false investigative reports.[3] However, there is no law specifically requiring that the person preparing an investigative report verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the preparer's information and belief.[4]

This bill requires the officer who investigates a complaint and prepares the investigative report to, at the time the report is issued, verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief.

Procedures for Investigating Complaints Made Against Investigating Officers

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[1] The term "law enforcement officer" is defined as follows: "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07." s. 112.531(1), F.S.

[2] The term "correctional officer" is defined as follows: "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

[3] *See* s. 837.06, F.S., (whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his/her official duties is guilty of a second degree misdemeanor); s. 838.022, F.S., (It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to falsify, or cause another person to falsify, any official record or official document); s. 944.33, F.S., (If any prison inspector knowingly makes a false report of his/ her findings, he/she shall is guilty of a third degree felony).

[4] Section 92.525, F.S., provides two methods of document verification (by oath or affirmation or by the signing of a written declaration) and provides that it is a third degree felony to knowingly make a false declaration.

As noted above, law enforcement and correctional agencies are required by law to establish procedures for the receipt, investigation, and determination of complaints against law enforcement and correctional officers. Although each agency may have different procedures for investigating complaints against officers, *all* officers, regardless of which agency they work for, have certain statutory rights and privileges while under investigation.

Currently, Part VI of Chapter 112, commonly known as the "Law Enforcement Officers' Bill of Rights," grants law enforcement officers and correctional officers specific rights when the officer is under investigation and subject to interrogation by members or his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. Pertinent to the proposed legislation is s. 112.532(1), F.S., which places conditions on certain aspects of an interrogation of an accused officer relating to time, place, and method of interrogation. Also related to the proposed legislation is s. 112.533(2)(a), F.S., which provides that complaints filed against officers and all information obtained pursuant to an investigation of the complaint shall be confidential and exempt from the provisions of s. 119.07(1), F.S. until the investigation ceases to be active, or until the agency head provide written notification to the officer that the agency has either concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or concluded the investigation with a finding to proceed with disciplinary action or to file charges.

Currently, if an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.[5] Such officer may also file a civil suit for damages.[6]

Although Florida law currently provides remedies for officers whose rights have been violated, it does not specify the exact procedures that must be taken when an officer files a complaint alleging that his/her rights have been violated (i.e. current law does not specify the types of complaints that must be investigated, how such complaints should be investigated, whether reports must generated, the disciplinary actions to be taken if the complaint is sustained, etc...). As noted above, such procedures generally vary from agency to agency,

This bill provides that if a law enforcement or correctional agency receives a complaint alleging a violation of s. 112.532(1) or s. 112.533(1)(b)[7], F.S., the agency must investigate the complaint and issue a written report addressing and resolving the allegations of the complaint. If the report finds that there has been a violation, the agency must remove the investigating officer who is the subject of the complaint from internal investigative responsibilities and take other appropriate disciplinary actions. The agency must place the investigative report and supporting documents into the removed investigator's personnel file, invalidate the original investigation, and reinvestigate the original complaint. The bill further provides that agencies maintain a log documenting the receipt of complaints alleging a violation of an officer's rights. The log must include the date the compliant was received, the date the written report was completed, the disposition of the complaint, and the action taken against the investigating officer.

Finally, the bill provides that the provisions of s. 838.022, F.S., apply.[8]

C. SECTION DIRECTORY:

Section 1. Amends s. 112.533, F.S., requiring verification of he contents of certain investigative reports.

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[5] s. 112.534, F.S.
[6] s. 112.532(3), F.S.
[7] The bill mistakenly references s. 112.533(1)(b), F.S. The correct reference is to s. 112.533(2)(a), F.S.
[8] Section 838.011, F.S., provides penalties for falsifying, concealing, and destroying official documents and records.

Section 2. Amends s. 112.534, F.S., providing for investigations of complaints alleging specified procedural violations; requiring a log of specified complaints.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   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:

If an agency finds that an officer's rights have been violated, the bill requires the agency to remove the investigating officer from investigative responsibilities, declare the original investigation invalid, and reinvestigate the original complaint. This may have a fiscal impact on both state and local law enforcement and correctional agencies in the follow ways:

- investigative personnel shortages
- time/resources wasted by invalidating the original investigation of a complaint
- additional time/resources expended to reinvestigating a complaint

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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section one of the bill provides the following, "The officer assigned the responsibility of investigating the complaint and preparing the investigative report under this section shall, at the time the report is issued, verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the officer's information and belief." This language assumes that an *officer* will be assigned the responsibility of investigating a complaint and preparing a report. However, there may be times when someone other than an officer is assigned the responsibility of investigating a complaint (e.g. management personnel may be assigned). Additionally, the above language assumes that an investigative report will be completed. However, nothing in s. 112.533, F.S., *requires* that an agency complete an "investigative report," only that agencies establish procedures for investigating officer complaints. The above concerns could be addressed by stating the following:

> "If the person assigned the responsibility of investigating the complaint prepares an investigative report, the person shall, at the time the report is issued, verify pursuant to s. 92.525, F.S., that the contents of the report are true and accurate based upon the person's information and belief."

In 2005, the Weaver Act was enacted, which requires that an internal investigation of a law enforcement or correctional officer be completed within 180 days after an agency receives notice of the allegation (with specific exceptions).[9] The bill provides that if a violation is found, the original investigation is invalid and the complaint must be reinvestigated. If an original investigation is deemed invalid, an agency may not be able to complete the reinvestigation within 180 days.

The Department of Corrections' analysis expresses concerns which are summarized as follows:

- Section two of the bill states that if a complaint is filed alleging a violation of an officer's rights, the investigating officer who is the subject of the complaint must be "removed from internal investigative responsibilities." The bill does not specify whether the removal is temporary or permanent.
- The bill does not allow the employing agency to weigh the severity of the violation prior to removing the subject investigator from his/her duties. For example, an officer who failed to note his/her rank during an interrogation (a violation of s. 112.532(1), F.S.) would be subject to the same disciplinary action (removal from internal investigations) of an officer who intentionally falsified an investigative report.
- The bill usurps the employing agency's authority to administer discipline.
- The bill requires that an internal investigation be declared invalid if it is determined that a violation has occurred and that the original complaint be reinvestigated. This language does not consider the nature of the violation nor whether the violation prejudiced the outcome of the original investigation.
- If a violation is found, the bill requires that the investigative report and all supporting records be placed in the removed investigator's personnel file. It is unclear whether the *initial* investigative report/documents (that was declared invalid) are to be placed in the file or whether the investigative report concerning the violations are to be put in the file. Additionally, because some investigations have extensive exhibits (e.g. boxes, charts, etc...), it would be difficult to place these materials in an individual's personnel file.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[9] s. 112.532(6), F.S.

A bill to be entitled

An act relating to correctional and law enforcement officer discipline; amending s. 112.533, F.S.; requiring verification of the contents of certain investigative reports; amending s. 112.534, F.S.; providing for investigations of complaints alleging specified procedural violations; requiring a log of specified complaints; providing an effective date.

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

Section 1. Subsection (1) of section 112.533, Florida Statutes, is amended to read:

112.533 Receipt and processing of complaints.--

(1)(a) Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary. This subsection does not preclude the Criminal Justice Standards and Training Commission from exercising its authority under chapter 943.

(b) The officer assigned the responsibility of investigating the complaint and preparing the investigative report under this section shall, at the time the report is

issued, verify pursuant to s. 92.525 that the contents of the report are true and accurate based upon the officer's information and belief.

Section 2. Section 112.534, Florida Statutes, is amended to read:

112.534 Failure to comply; official misconduct.--

(1) If any law enforcement agency or correctional agency fails to comply with the requirements of this part, a law enforcement officer or correctional officer employed by or appointed to such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part.

(2) If a law enforcement or correctional agency receives a complaint that alleges a violation of s. 112.532(1) or s. 112.533(1)(b), it shall cause the complaint to be investigated and a written report shall be issued addressing and resolving the allegations of the complaint. If the report sustains a violation of s. 112.532(1) or s. 112.533(1)(b), the agency shall remove the investigating officer who is the subject of the complaint from internal investigative responsibilities and take other action against the officer as deemed appropriate. The agency shall declare any internal investigation in which a violation occurred to be invalid, and the investigative report and all supporting records shall be placed in the removed

investigator's personnel file. Additionally, the original complaint shall be reinvestigated.

(3) Every law enforcement or correctional agency receiving complaints alleging a violation of the requirements of this part shall maintain a log documenting the receipt of such complaints, which shall include the date the complaint was received, the date of the written report relating to the complaint was completed, the disposition of the complaint, and the action, if any, taken against the investigating officer who was the subject of the complaint.

(4) ~~(2)~~ All the provisions of s. 838.022 shall apply to this part.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 613 Police Pursuits of Fleeing Vehicles
SPONSOR(S): Antone
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement. The bill requires state and local law enforcement agencies to adopt policies for vehicle pursuits and to certify annually to the Commission that written policies have been adopted that comply with the model policy.

The Commission is mandated to develop by July 1, 2007, training objectives for a seven-hour course covering emergency vehicle operations and the conduct of vehicle pursuits that persons seeking law enforcement certification after that date must complete. State and local agencies are directed to provide in-service training that complies with Commission-approved learning objectives; the training must be at least 8 hours. The Commission is authorized to impose licensing sanctions and seek injunctive relief for the failure of any agency to comply with the requirements of HB 613.

HB 613 may be considered an unfunded mandate on local governments. See "Applicability of Municipality/County Mandates Provision" section of this analysis for details.

Provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government / Promote personal responsibility - HB 613 requires the Criminal Justice Standards and Training Commission to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers and allows the Commission to impose sanctions for failing to comply with the requirements of this act.

B. EFFECT OF PROPOSED CHANGES:

Currently, Florida Statutes do not establish a model policy regarding the conduct of law enforcement officers in the pursuit of fleeing vehicles. Rather, policies regarding the conduct of law enforcement officers in the pursuit of fleeing vehicles are governed by local policies.

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers. The Commission is statutorily created by section 943.11(1)(a), F.S., and the responsibility to establish uniform minimum training standards for the training of officers in the various criminal justice disciplines has been statutorily assigned to the Commission by section 943.12(5), F.S. The Commission is responsible for certifying, and revoking the certification of, officers, instructors, including agency in-service training instructors, and criminal justice training schools.[1]

HB 613 requires the Commission to establish a model policy regarding the specific philosophies, factors, procedures and circumstances governing the conduct of law enforcement officers who pursue a fleeing vehicle. The model policy shall, at a minimum, contain the following components:

- A statement describing that the philosophy of the model policy is that the safety of persons affected by a vehicle pursuit to the public and law enforcement officers with the consequences of the failure to pursue such vehicle.
- The factors to consider before initiating or terminating a vehicle pursuit and the standards for determining whether to initiate or terminate a vehicle pursuit.
- The procedures, tactics, and technologies used during vehicle pursuits.
- The responsibilities of the pursuing officers, the officers supervising the pursuit, the dispatcher, and air support personnel.
- The procedures governing interjurisdictional pursuits.
- The procedures governing the care of any person injured during the pursuit.
- The contents of pursuit reports.
- The procedures used to evaluate each pursuit.

This bill also requires state and local law enforcement agencies to adopt the Commission's model policies for vehicle pursuits and to certify annually to the Commission that written policies have been adopted that comply with the model policy.

The Commission is mandated to develop by July 1, 2007, training objectives for a seven-hour course covering emergency vehicle operations and the conduct of vehicle pursuits that persons seeking law enforcement certification after that date must complete. State and local agencies are directed to provide in-service training that complies with Commission-approved learning objectives; the training shall consist of at least 8 hours of classroom and skills-based training every 3 years.

[1] Section 943.12(3), F.S.

This bill provides that the Commission may impose licensing sanctions and seek injunctive relief for failure of an agency to comply with the requirements of this bill.

C. SECTION DIRECTORY:

Section 1. Requires the Criminal Justice Standards and Training Commission to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers.

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:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to FDLE, there would be significant costs on the Criminal Justice Standards and Training Commission (Commission) for training schools. Currently, Commission-certified training schools that have driving ranges do not have adequate facilities and equipment to deliver a vehicle pursuit skills course for basic recruits and would need to be upgraded. This bill also requires in-service training (skills) in vehicle pursuits that the over 40,000 certified law enforcement officers in the state would be required to complete. Training schools do not currently have the manpower to provide this training.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to FDLE, developing a model policy will require public meetings/hearings to obtain citizen input. Not only will this process be lengthy, but could also be costly. Providing assistance to agencies that need help in developing a policy and procedures could also be time intensive.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions, including cities and counties, are obligated to establish a written policy governing the conduct of law enforcement officers who pursue a fleeing vehicle, provide in-service training in the conduct of vehicle pursuits, and certify annually to the commission

that it is in compliance, 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 written policy governing the conduct of the agency's law enforcement officers who pursue a fleeing vehicle, in expenditures to comply with CJSTC's model policy.

If it is determined that this bill does constitute a mandate, it does not 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.

3. Other:

Sovereign Immunity

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers; state and local law enforcement agencies will be required to adopt the Commission's model policies for vehicle pursuits and to certify annually to the Commission that written policies have been adopted that comply with the model policy. Requiring a model policy may subject state and local law enforcement agencies to tort liability.

Section13, Art. X of the Florida Constitution provides, "[p]rovision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating". The Florida Legislature exercised this authority when it enacted section 768.28, F.S., which waives sovereign immunity and imposes liability on the state or an agency or subdivision of the state for any tort claim in which a private individual would be liable under similar circumstances. An agency or subdivision of the state includes counties and municipalities.[2]

This first question is whether a duty is owed. "There can be no governmental [tort] liability unless a common law or statutory duty of care existed that would have been applicable to an individual under similar circumstances."[3] "Where a defendant's conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon [the] defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses[4]."

The next question is whether the state or an agency or subdivision of the state will be immune from liability notwithstanding the duty placed upon them. Sovereign immunity does not shield acts that are "operational" in nature but only those that are "discretionary[5]." An act is considered discretionary if it involves fundamental questions of policy or planning.[6] Conversely, an act is considered operational if it reflects a secondary decision as to how policies or plans will be implemented.[7]

Pending Legislation

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[2] *See* section 768.28(2), F.S.

[3] Kaisner v. Kolb, 543 So.2d 732, 734 (Fla. 1989); *see also* Trianon Park Condominium Ass'n Inc. v. City of Hialeah, 468 So.2d 912 (Fla. 1985).

[4] Kaisner, at 735.

[5] Id at 737.

[6] Pinellas Park v. Brown, 604 So.2d 1222 (Fla. 1992).

[7] Id.

HB 199, sponsored by Representative Patterson, is pending legislation that addresses the sovereign immunity issue discussed above. HB 199 provides that an employing law enforcement agency is not liable for certain damages caused by a person fleeing from a law enforcement officer in a motor vehicle (hot pursuit) if:

- the pursuit is not conducted in a reckless manner;
- the officer reasonably believes that the person fleeing has committed a forcible felony; and
- the pursuit is conducted pursuant to a specified written policy governing high-speed pursuit, and the officer received instructional training on such policy.

HB 199 includes a severability clause in the event that any provision of the act is held invalid. The act applies to causes of action that accrue on or after the effective date of the act; the act takes effect upon becoming a law.

Separation of Powers

HB 613 may be an unlawful delegation of legislative authority since it requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement.

Article II, section 3 of the Florida Constitution, provides, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The separation-of-power doctrine prevents the legislature from delegating its constitutional duties[8]. Legislative power involves the exercise of policy-related discretion over the content of law[9]. The Supreme Court in Askew adopted a formal interpretation of the delegation-of-powers doctrine, "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine[10]." However, the Court warned, "[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of law[11]."

It appears that HB 613 may violate the separation-of-power doctrine since this bill requires the Criminal Justice Standards and Training Commission (Commission), along with comments from the public, to establish a model policy rather than the Legislature. On the other hand, if the minimum components for the model policy stated in this bill are the Legislatures intended policy guidelines, it may be so lacking that neither the Commission nor the courts can determine whether the Commission is carrying out the intent of the Legislature.

B. RULE-MAKING AUTHORITY:

HB 613 requires the Criminal Justice Standards and Training Commission (Commission) to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers. Section 943.11(1)(a), F.S. provides, "[t]here is created a Criminal Justice Standards and Training Commission within the Department of Law Enforcement." Section 943.12(2), F.S., provides that the Commission shall be responsible for the execution, administration, implementation, and evaluation of its powers, duties, and functions including any rules promulgated or policies established. No other rule making authority is needed to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 943.125, F.S., specifically addresses law enforcement agency accreditation and specifically states, "It is the intent of the Legislature that law enforcement agencies in the state be upgraded and

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[8] *See* Board of Architecture v. Wasserman, 377 So.2d 653 (Fla. 1979).
[9] *See* State ex rel. Taylor v. City of Tallahassee, 177 So. 719 (Fla. 1937).
[10] Askew v. Cross Key Waterways, 372 So.2d 913, 921 (Fla. 1978).
[11] Id at 918-919.

strengthened through the adoption of meaningful standards of operation for those agencies." The statute outlines specific law enforcement issues that should be addressed through an accreditation program, the first of which is vehicle pursuits.

According to FDLE, requiring the Commission to craft a one-size-fits-all model policy on police pursuits may present a difficult task. Florida Highway Patrol's pursuit guidelines, applicable primarily to highways and interstates, will be different than what is needed by the City of Orlando, where pursuits would be on residential and highly congested streets. The needs of an agency with primarily marked units in handling pursuits will be different than those of an agency like FDLE that has mainly unmarked units. Agencies with chase option alternatives, such as a helicopter, will have different needs that a small agency with no such resource. When completed, it is possible that an agency will find that the policy does not address the unique needs of his/her agency. At best, a model policy would have to be stated in generalities, which may be less specific than many agencies' policies already in effect.

This bill prohibits anyone who has not taken the basic pursuit training from taking the state exam after July 1, 2007; however, the Commission rules allow for up to four years to take the state certification exam after completion of training. Also, the seven-hour training requirement, to be conducted every three years, in emergency vehicle operations and in the conduct of vehicle pursuits is not consistent with current four-year cycles outlined in section 943.135, F.S.

This bill provides that the Commission may impose licensing sanctions and seek injunctive relief for failure of an agency to comply with the requirements, but the Commission has no licensure jurisdiction over agencies. The only sanction that could be applied would be to discipline the agency head (i.e. sheriff).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to police pursuits of fleeing vehicles; requiring the Criminal Justice Standards and Training Commission to establish a model policy governing the pursuit of fleeing vehicles by law enforcement officers; establishing model policy guidelines; requiring state and local law enforcement agencies to adopt policies for vehicle pursuits; requiring officer training in vehicle-pursuit policies; providing a penalty; providing an effective date.

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

Section 1. (1) By July 1, 2007, the Criminal Justice Standards and Training Commission within the Department of Law Enforcement shall adopt a model policy governing the conduct of law enforcement officers who are pursuing a vehicle that is fleeing a law enforcement officer. The commission shall consider comments from the public when adopting the policy. The model policy shall, at a minimum, contain the following components:

(a) A statement describing that the philosophy of the model policy is that the safety of persons affected by a vehicle pursuit is of primary importance. It must also balance the risks of a vehicle pursuit to the public and law enforcement officers with the consequences of the failure to pursue such vehicle.

(b) The factors to consider before initiating or terminating a vehicle pursuit and the standards for determining whether to initiate or terminate a vehicle pursuit.

(c) The procedures, tactics, and technologies used during vehicle pursuits.

(d) The responsibilities of the pursuing officers, the officers supervising the pursuit, the dispatcher, and air support personnel.

(e) The procedures governing interjurisdictional pursuits.

(f) The procedures governing the care of any person injured during the pursuit.

(g) The contents of pursuit reports.

(h) The procedures used to evaluate each pursuit.

(2) Each state and local law enforcement agency must:

(a) Establish a written policy governing the conduct of the agency's law enforcement officers who pursue a fleeing vehicle. The policy must, at a minimum, comply with the requirements of the model pursuit policy adopted by the commission and must consider the public comments and any technology for pursuit vehicles which is available.

(b) Certify annually to the commission that it has adopted a written policy in compliance with the model pursuit policy.

(3) The board shall assist each state and local law enforcement agency in developing and implementing pursuit policies.

(4)(a) By July 1, 2007, the commission shall prepare learning objectives for instructing law enforcement officers in emergency vehicle operations and in the conduct of vehicle pursuits. The course shall consist of at least 7 hours of classroom and skills-based training.

(b) A person who has not received the training required by

this section may not take any examination for licensure as a law enforcement officer on or after July 1, 2007.

(5) Each state and local law enforcement agency shall provide in-service training in emergency vehicle operations and in the conduct of vehicle pursuits to all law enforcement officers employed by the agency who may be involved in a vehicle pursuit, based on the officers' responsibilities. The training must comply with learning objectives approved by the commission and shall consist of at least 8 hours of classroom and skills-based training every 3 years.

(6) The commission may impose licensing sanctions and seek injunctive relief for the failure of an agency to comply with the requirements of this act.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **0613**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Antone offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. (1) By July 1, 2007, each local law enforcement agency shall adopt a police pursuit policy governing the conduct of law enforcement officers who are pursuing a vehicle that is fleeing from a law enforcement officer. The local law enforcement agency is encouraged to consider comments from the public when adopting the policy. The police pursuit policy shall, at a minimum, contain the following components:

(a) A statement describing that the philosophy of the model policy is that the safety of persons affected by a vehicle pursuit is of primary importance. It must also balance the risks of a vehicle pursuit to the public and law enforcement officers with the consequences of the failure to pursue such vehicle.

(b) The factors to consider before initiating or terminating a vehicle pursuit and the standards for determining whether to initiate or terminate a vehicle pursuit.

(c) The procedures, tactics, and technologies used during vehicle pursuits.

(d) The responsibilities of the pursuing officers, the officers supervising the pursuit, the dispatcher, and air support personnel.

(e) The procedures governing interjurisdictional pursuits.

(f) The procedures governing the care of any person injured during the pursuit.

(g) The contents of pursuit reports.

(h) The procedures used to evaluate each pursuit.

(2) Each state and local law enforcement agency must:

(a) Establish a written policy governing the conduct of the agency's law enforcement officers who pursue a fleeing vehicle. The policy may include the use of any technology which is available for pursuit vehicles.

(b) Annually, certify to the Department of Highway Safety and Motor Vehicles that it has adopted a written policy.

(3) The Department of Highway Safety and Motor Vehicles shall assist, when assistance is required, each state and local law enforcement agency in developing and implementing pursuit policies.

(4)(a) By July 1, 2007, each local law enforcement agency shall prepare learning objectives for instructing law enforcement officers in emergency vehicle operations and in the conduct of vehicle pursuits.

(b) A person who has not received the training required by this section may not take any examination for licensure as a law enforcement officer on or after July 1, 2007.

(5) Each state and local law enforcement agency shall provide in-service training in emergency vehicle operations and in the conduct of vehicle pursuits to all law enforcement officers, who are employed by the agency and may be involved in a vehicle pursuit, based on the officer's responsibilities. The

training shall comply with learning objectives approved by the local law enforcement agency.

(6) Each local law enforcement agency shall develop a document management system that properly documents all police pursuits by that agency when the pursuit leads to death or bodily injury of any person or to severe property damage. The documentation shall include the date and time of the pursuit, the name of the city and county, the number of officers involved, the reason for the pursuit, and the charges against the person being pursued. Each local law enforcement agency shall develop a form for documenting pursuits which must be completed in its entirety.

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

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

Remove the entire title and insert:

A bill to be entitled

An act relating to law enforcement agencies; requiring local law enforcement agencies to adopt a police pursuit policy governing the pursuit of fleeing vehicles by law enforcement officers; providing for content of the policy; requiring state and local law enforcement agencies to establish a written policy governing the conduct of the agency's law enforcement officers who pursue a fleeing vehicle and to certify the policy to the Department of Highway Safety and Motor Vehicles; directing the department to assist in developing and implementing pursuit policies; requiring each local law enforcement agency to prepare learning objectives for instructing officers in emergency vehicle operations and vehicle

pursuits; requiring persons to complete specified training prior to examination for licensure as a law enforcement officer; requiring state and local law enforcement agencies to provide certain in-service training in emergency vehicle operations and vehicle pursuits; requiring each local law enforcement agency to develop a document management system to document pursuits under certain circumstances; providing for information to be documented in the system; requiring local law enforcement agencies to develop a form for documenting pursuits; requiring the form to be complete in its entirety; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 681 Electronic Recording of Custodial Interrogations
SPONSOR(S): Holloway
TIED BILLS: **IDEN./SIM. BILLS:** SB 770

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson KF	Kramer
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 Miranda[1] 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 interrogation[3] shall be presumed inadmissible as evidence against that person in a criminal proceeding unless:

- An electronic recording[4] 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;

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[1] *See* Miranda v. Airizona, 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 legislation[5] 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 681requires 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).

A bill to be entitled

An act relating to electronic recording of custodial interrogations; providing definitions; providing that statements made during custodial interrogations are presumed to be inadmissible in court unless an electronic recording is made; providing requirements for such recordings; providing for rebutting the presumption of inadmissibility for certain nonrecorded statements; providing exceptions for certain statements; providing for use of statements for impeachment purposes; providing for preservation of recordings; providing a finding of important state interest; providing an effective date.

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

Section 1. Custodial interrogations; recording.--

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

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

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

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

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

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

against that person in a criminal proceeding unless:

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

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

(c) 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 which would otherwise preclude the admission of the statement absent the waiver of those rights.

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

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

(f) During discovery pursuant to Rule 3.220, Florida Rules of Criminal Procedure, but in no circumstances 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.

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

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

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

1. The statement was both voluntary and reliable.

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

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

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

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

3. 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.

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

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

(b) Before a grand jury.

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

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

response to a question.

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

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

(g) 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.

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

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

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

Section 2. 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; a number of other states and local jurisdictions now require recording of interrogations; and the benefits of electronic recording of interrogations outweigh its cost. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 919 Law Enforcement Investigations
SPONSOR(S): Grant and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Currently, making false reports concerning the *commission* of a criminal act is a crime. Whether it's a crime to give law enforcement officers false information that simply *relates* to a criminal investigation is less clear.

This bill makes it a first degree misdemeanor for a person to knowingly and willfully give false information or a false report to a law enforcement officer who is in the course of conducting a felony investigation or a missing person investigation where such information or report may interfere with the investigation or may mislead an officer during the investigation.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

Safeguard Individual Liberty → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

Maintain Public Security → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Section 817.49 and 837.05, Florida Statutes
Florida Statutes contain two sections that specifically relate to giving false information to law enforcement officers. Sections 817.49 and 837.05, F.S., criminalize giving false information regarding the *commission* of a crime to a law enforcement officer (e.g. calling a law enforcement agency and falsely reporting that your neighbor stole your car). However, these statutes do not appear to criminalize giving false information to a law enforcement officer when the information does not relate to the *commission* of a crime (e.g. lying to a law enforcement officer when he or she asks if you know the whereabouts of a family member).

Section 843.02, Florida Statutes
Section 843.02, F.S., entitled "Resisting officer without violence to his or her person", makes it a crime to resist, obstruct, or oppose officers in the lawful execution of any legal duty without offering or doing violence to the officer. The statute has been held to, in some instances, prohibit persons from giving false information to a law enforcement officer. For example, in *Caines v. State*, 500 So.2d 728, Fla. 2nd DCA 1987), the court held that a defendant who gave a false name and address to an officer after being arrested violated s. 843.02, F.S. In contrast, the court in *Steele v. State*, 537 So.2d 711 (Fla. 5th DCA 1989), held that a defendant who was not under arrest and who gave an officer a false name did not violate s. 843.02, F.S., because there was no evidence that the officer was engaged in a criminal investigation, or that the officer was impeded in an investigation by the misinformation.

The majority of "resisting an officer by giving false information" cases have involved defendants who were being arrested or were the subject of a criminal investigation. There is little caselaw as to whether individuals who are not the subject of a criminal investigation can be charged with resisting and officer by making false statements. Thus, in instances where an officer is investigating a crime and, in the course of doing so, interviews potential witnesses, family members, etc, who give the officer false information, it is unclear whether s. 843.02, F.S., could be used as a basis for prosecution.

Effect of the Bill
This bill makes it a first degree misdemeanor[1] for a person to knowingly and willfully give false information or a false report to a law enforcement officer who is in the course of conducting a felony investigation or a missing person investigation where such information or report may interfere with the investigation or may mislead an officer during the investigation.

It is important to note that the bill does not require that the person giving the false information *intend* to interfere with or mislead an officer. If the false information *may* interfere or *may* mislead the

[1] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a $1,000 fine. *See* ss. 775.082 and 775.083.

investigation, it is irrelevant whether the person giving the information intended to do so in order for that person to violate the bill's provisions.

C. SECTION DIRECTORY:

Section 1. Creates s. 837.055, F.S.; prohibiting knowingly and willfully giving false information or reports to law enforcement officers in certain circumstances.

Section 2. This bill takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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:

   The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button,* 371 U.S. 415, 433 (1963). Put another way, statutes

cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

Overbreadth
When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad. This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court-- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid." *Brockett v. Spokane Arcades, Inc.,* 472 U.S. 491 (1985). The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

Vagueness
A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonably opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

HB 919
The bill makes it a crime to knowingly and willfully give false information or a false report to a law enforcement officer who is in the course of conducting a felony investigation or a missing person investigation where such information or report may interfere with the investigation or may mislead an officer during the investigation.

There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets.[2] However, absent special circumstances, the person approached may refuse to cooperate and go on his way.[3] The person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest.[4] A person can even run away from the officer and, so long as that person was not being legally detained, not be charged with a crime.[5] Thus, to the extent this bill would allow a person to be charged with a crime for intentionally lying to an officer, this bill arguably criminalizes speech that is protected by the First Amendment. As noted above, when a law attempts to restrict or burden a fundamental right, the law must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible.

The state clearly has some interest in preventing people from intentionally giving false information to law enforcement officers with the intent to interfere with the investigation. Most states with "false information" statutes require that a person willfully lie to an officer with the *intent* to interfere with an investigation. However, the bill does not require that the person giving the false information do so *with the intent* to mislead the officer or interfere with the investigation. Thus, the bill does not appear

[2] *R.L.L. v. State*, 466 So.2d 1230 (Fla. 2nd DCA 1985).
[3] *Id.*
[4] *Terry v. Ohio,* 392 U.S. 1, 34 (1968).
[5] *Slydell v. State*, 792 So.2d 667 (Fla. 4th DCA 2001).

to effectuate the state's interest. Consider the following: A law enforcement officer responds to a domestic violence call and arrives to find the wife badly beaten, a husband, and three children in the background. If the officer asks the wife what happened and the wife responds by telling the officer she fell down the stairs, when in fact her husband had beaten her, despite the fact that the woman may have given the answer out of fear rather than with an intent to interfere with the investigation, she has violated the provisions of the bill (i.e. intentionally giving false information to an officer who is investigating a felony).

It should also be noted that the bill makes it a crime to intentionally give false information to an officer who is conducting a *felony* or *missing person* investigation. However, it is unclear how someone being questioned by an officer is to determine whether the officer is conducting a criminal investigation, much less a *felony* or *missing person* investigation. This language could arguably cause a person who might normally refuse to respond to an officer's questions to respond. For example, law enforcement officers often canvass neighborhoods and question residents about criminal activity. In many instances, there may be no indication whether an officer is conducting a criminal investigation, much less a *felony* or *missing person* investigation. Thus, whereas a neighborhood resident might typically refuse to respond to the officer, the resident might choose to respond for fear that he or she could be charged with a crime.

The above concerns briefly outline the potential constitutional issues the bill's language raises. As noted above, laws that attempt to restrict or burden a fundamental right must be directed toward a legitimate public purpose and must be drawn as narrowly as possible. Thus, the following language might address some of the above constitutional concerns:

> Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to law enforcement investigations; creating s. 837.055, F.S.; prohibiting knowingly and willfully giving false information or reports to law enforcement officers in certain circumstances; providing penalties; providing an effective date.

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

Section 1. Section 837.055, Florida Statutes, is created to read:

837.055 False information to law enforcement during investigation.--Whoever knowingly and willfully gives false information or a false report to a law enforcement officer who is in the course of conducting a felony crime investigation or a missing person investigation where the false information or report may interfere with the investigation or may mislead a law enforcement officer during the course of the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 Driving Under the Influence
SPONSOR(S): Kottkamp
TIED BILLS: **IDEN./SIM. BILLS:** SB 2468

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

SUMMARY ANALYSIS

Currently, a person who operates a vehicle under the influence and who by reason of such operation, causes or contributes to causing:

- Damage to the property or the person of another commits a first degree misdemeanor.
- Serious bodily injury to another, commits a third degree felony
- The death of any human being or unborn quick child commits DUI manslaughter, a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S.

HB 1193 amends this provision to provide that any person who operates a vehicle under the influence creates a rebuttable presumption that he or she caused or contributed to causing damage to property, serious bodily injury, or death to another human being or unborn quick child.

Vehicular homicide is the killing of a human being caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to another. The bill provides that any person who drives under the influence creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or bodily injury to a human being.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/safeguard individual liberty: The bill amends the DUI and vehicular homicide statutes to create a rebuttable presumption that a person who operated a vehicle under the influence caused damage to property or death.

B. EFFECT OF PROPOSED CHANGES:

Driving Under the Influence: Section 316.193(1), F.S. provides that the offense of driving under the influence is committed if a person is driving or in the actual physical control of a vehicle within the state and:

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

A person who is in violation of the above provision, who operates a vehicle and *who by reason of such operation, causes or contributes to causing*:

1. Damage to the property or the person of another commits a first degree misdemeanor.
2. Serious bodily injury to another, commits a third degree felony
3. The death of any human being or unborn quick child commits DUI manslaughter, a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S.

HB 1193 amends this provision to provide that any person who drives under the influence as described in s. 316.193(1), F.S. creates a rebuttable presumption that he or she caused or contributed to causing damage to property, serious bodily injury, or death to another human being or unborn quick child.

Until 1986, the DUI manslaughter statute (previously referred to as "manslaughter by intoxication") was interpreted as not requiring proof of a "causal connection between the manner of operation of the defendant's motor vehicle and the death of the victim". *Magaw v. State*, 537 So.2d 564, 565 (Fla. 1989). The Supreme Court referred to the statute as having "strict liability consequences". *Baker v. State,* 377 So.2d 17 (Fla. 1979)(upholding constitutionality of statute). In 1986 the statute was amended to "introduce causation as an element" of the offense. *Magaw*, 537 So.2d at 567; *State v. Hubbard*, 751 So.2d 552 (Fla. 1999).

Vehicular Homicide*:* Vehicular homicide is the killing of a human being, or the killing of a "viable fetus" by any injury to the mother, caused by the operation of a motor vehicle by another *in a reckless manner likely to cause the death of, or great bodily harm to, another.*[1] The degree of culpability required to prove that a driver was reckless is less than culpable negligence, which is the standard for manslaughter, but more than a mere failure to use ordinary care.[2] The offense is a second degree

[1] § 782.071, F.S.

[2] McCreary v. State, 371 So.2d 1024 (Fla.1979); Michel v. State, 752 So.2d 6, 12 (Fla. 5th DCA 2000)(holding that evidence supported vehicular homicide conviction where defendants had been ordered off the interstate for failing to have the proper equipment on their truck then drove the truck on a dark stretch of highway at night, without any rear warning lights, at a speed of between 22 and 24 m.p.h. and with metals rails hanging out of the back of the truck, which had no bumper)

felony. If at the time of the accident, the person knew or should have known that the accident occurred and the person failed to give information or render aid, the offense is a first degree felony.

The bill provides that for purposes of this section, a person who violates s. 316.193(1), F.S., relating to driving under the influence , creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or bodily injury to a human being.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., relating to driving under the influence; creating rebuttable presumption.

Section 2. Amends s. 782.071, F.S., relating to vehicular homicide; creating rebuttable presumption.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill 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:

Currently, in order to prove a DUI manslaughter case, in addition to proving the impairment of the driver, the state must prove that by operating the vehicle, the driver caused or contributed to causing the death of a human being. HB 1193 provides that the fact that a person drove under the influence creates a rebuttable presumption that the person caused or contributed to causing the death of another human being. [The bill creates a similar presumption in the vehicular homicide statute.] An issue could be raised as to whether this provision violates the Due Process Clause by unconstitutionally shifting the burden of proof to the defendant.

A recent 5th District Court of Appeal case contained a thorough discussion on the issue of presumptions:

> 'Inferences and presumptions are a staple of our adversary system of factfinding.' The ultimate test of the constitutional validity of any such evidentiary device is that it 'must not undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.' To satisfy the requirements of due process, all inferences and presumptions must pass the 'rational connection' test, which requires, at minimum, that it must "be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." In Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777, the Court had occasion to consider and refine what had been its somewhat confusing past treatment of inferences and presumptions. The Allen Court examined the value of these evidentiary devices and their validity under the due process clauses contained in the Fifth and Fourteenth Amendments to the United States Constitution in light of 'the strength of the connection between the particular basic and elemental facts involved and on the degree to which the device curtails the factfinder's freedom to assess the evidence independently.' The Court used the terms 'permissive inference' and 'mandatory presumption' to describe two types of evidentiary devices that will be subjected to constitutional scrutiny.
>
> A permissive inference allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. In this situation, the basic fact may constitute prima facie evidence of the elemental fact. On the other hand, a mandatory presumption tells a factfinder that he or they must find the elemental fact upon proof of the basic fact, unless the defendant offers evidence that rebuts the presumption created by the connection between the two facts. Because of the differences in the two types of presumptions, the threshold inquiry in analysis of the constitutionality of a statutory presumption is to determine the type of presumption that the statute creates.
>
> If the statute creates a permissive inference, a party challenging it is generally required to demonstrate its invalidity as applied to him. Because a permissive inference allows a trier of fact to reject the inference and does not shift the burden of proof, 'it affects the application of the 'beyond a reasonable doubt' standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference.' Accordingly, a permissive inference will be valid so long as, under the facts of the case, the presumed fact 'more likely than not' flows from the basic fact and the inference is not the sole basis for a finding of guilt. On the other hand, if, under the facts of the case, it is clear that the inference is the sole basis for a finding of guilt, the fact proved must be sufficient to support the inference of guilt beyond a reasonable doubt.
>
> *If the statute creates a mandatory presumption, the Court has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide. Because the jury must accept the mandatory presumption even if it is the sole evidence of an element of the offense and because the State bears the burden of establishing guilt, the presumed fact must flow from the basic fact beyond a reasonable doubt.*

State v. Rygwelski, 899 So.2d 498, 501 -502 (Fla.2nd DCA. 2005)(citations omitted)(holding that statute that provides that failure to redeliver property within five days after receipt of demand for

return "is prima facie evidence of fraudulent intent" creates a permissive inference, not a mandatory presumption).

In *State v. Brake*, 796 So.2d 522 (Fla. 2001), the Florida Supreme Court considered the constitutionality of a statutory presumption that a person who lured or enticed a child under the age of 12 into a dwelling without the consent of the child's parent was doing so for other than a lawful purpose. In striking the presumption, the court analyzed the provision as follows:

> In assessing the constitutionality of such presumptions, the United States Supreme Court "has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide." As the Supreme Court [has] explained ..... "a criminal statutory presumption must be regarded as 'irrational' or 'arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend."
>
> In the instant case, the statute permits the State to prove the mens rea element of the offense ("for other than a lawful purpose") by proving lack of parental consent for the child to enter the structure, dwelling, or conveyance with the defendant. We cannot say with substantial assurance that a defendant's unlawful intent can be so presumed. For example, a neighbor who invites a child into their house for a perfectly innocent reason is not likely to seek parental permission.

According to the language of HB 1193, any person who operates a vehicle under the influence *creates* a "rebuttable presumption " that he or she caused damage or death. This language appears to create a "mandatory presumption" – requiring the factfinder to find that the defendant caused the harm or death unless the presumption is rebutted by the defendant. As a result, it appears that the test to be applied to the presumption is whether the presumed fact (causation of harm or death) must flow from the basic fact (operating a vehicle under the influence) beyond a reasonable doubt.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends the vehicular homicide statute to provide that any person who drives under the influence creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or *bodily injury* to a human being. However, this statute requires proof that a person operated a motor vehicle in a reckless manner likely to cause the death of or *great bodily harm* to another.

The DUI statute provides enhanced penalties for when the operation of a vehicle by a person under the influence causes or contributes to causing:

- Damage to the property or *person* of another
- Serious bodily injury to another; or
- The death of any human being or unborn quick child

The bill provides that any person who drives under the influence creates a rebuttable presumption that he or she caused or contributed to causing damage to property, serious bodily injury or death to another human being or unborn quick child. This presumption does not reference damage to the "person of another".

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to driving under the influence; amending s. 316.193, F.S.; providing that, if a person drives under the influence of alcohol or a specified chemical or controlled substance and causes damage to property, serious bodily injury, or death to another human being or unborn quick child, a rebuttable presumption is created that the person caused or contributed to causing damage to property, serious bodily injury, or death to another human being or unborn quick child; amending s. 782.071, F.S.; providing that, if a person drives under the influence of alcohol or a specified chemical or controlled substance, a rebuttable presumption is created that the person operated a motor vehicle in a reckless manner likely to cause death or bodily injury to another human being; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 316.193, Florida Statutes, are amended to read:

316.193 Driving under the influence; penalties.--

(1) A person commits ~~is guilty of~~ the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or

any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 316.1933, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn quick child commits DUI manslaughter, and commits:

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

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the crash, the person knew, or should have known, that the crash occurred; and

(II) The person failed to give information and render aid as required by s. 316.062.

For purposes of this paragraph, any person who violates subsection (1) creates a rebuttable presumption that he or she caused or contributed to causing damage to property, serious bodily injury, or death to another human being or unborn quick child.

For purposes of this subsection, the definition of the term "unborn quick child" shall be determined in accordance with the definition of viable fetus as set forth in s. 782.071.

Section 2. Section 782.071, Florida Statutes, is amended to read:

782.071 Vehicular homicide.--"Vehicular homicide" is the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

(1) Vehicular homicide is:

(a) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

1. At the time of the accident, the person knew, or should have known, that the accident occurred; and

2. The person failed to give information and render aid as required by s. 316.062.

This paragraph does not require that the person knew that the accident resulted in injury or death.

(2) For purposes of this section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.

(3) For purposes of this section, any person who violates s. 316.193(1) creates a rebuttable presumption that he or she operated a motor vehicle in a reckless manner likely to cause death or bodily injury to a human being.

(4) ~~(3)~~ A right of action for civil damages shall exist under s. 768.19, under all circumstances, for all deaths described in this section.

(5) ~~(4)~~ In addition to any other punishment, the court may order the person to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 Division of Alcoholic Beverages and Tobacco
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 2412

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

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries.

Currently, employees of the Division may be certified as law enforcement officers. Such officers (ABT officers) have *felony* arrest powers statewide. ABT officers also have all of the powers of a deputy sheriff to:

- Enforce all criminal laws of the state within specified jurisdictions where the Division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department;
- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
  - Laws *relating to alcoholic beverages and tobacco products*; and
  - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.

This bill provides that ABT officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc...), and have statewide jurisdiction. The bill specifies that the primary responsibilities of an ABT officer include enforcing the laws relating to alcoholic beverages and tobacco products.

There does not appear to be a significant fiscal impact.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division of Alcoholic Beverages and Tobacco.

Maintain Public Security → This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division of Alcoholic Beverages and Tobacco.

B. EFFECT OF PROPOSED CHANGES:

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries[1], collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries, pursuant to chapters 210, 561-565, and 567-569, F.S.[2] The Division carries out these responsibilities through three bureaus: Licensing, Auditing and Enforcement.[3]

Currently, employees of the Division may be certified as law enforcement officers under chapter 943, F.S.[4] (for purposes of this analysis, such employees will be referred to as ABT officers). ABT officers currently have statewide *felony* arrest powers, described in s. 901.15, F.S., which authorize them to arrest a person without a warrant if:

- they reasonably believe that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing a felony;
- while engaged in the exercise of his or her state law enforcement duties, the ABT officer reasonably believes that a felony has been or is being committed; or
- a felony warrant for the arrest has been issued and is being held for execution by another peace officer.[5]

ABT officers also have all of the powers of a deputy sheriff to:

- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
  - Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
  - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.
- Enforce all criminal laws of the state within specified jurisdictions when the Division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police

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[1] Florida has approximately 71,000 active alcoholic beverage and tobacco license holders.
[2] http://www.myflorida.com/dbpr/abt/index.shtml
[3] *Id.*
[4] In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of law enforcement officers (LEO). Every prospective LEO must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification. http://www.fdle.state.fl.us/cjst/commission/index.html
[5] *See* ss. 20.165 and 901.15, F.S.

department, or when the Division participates in the Florida Mutual Aid Plan during a declared state of emergency.[6]

A careful read of the above authorities reveals that ABT officers do not currently have the authority to enforce certain laws or respond (e.g. pursue, detain, and arrest) to certain crimes. For example, an ABT officer may not enforce misdemeanor violations when not on the premises of a Division-licensed entity. In such instances, the ABT officer would be limited to simply notifying local law enforcement of the crime. This limited authority has also caused concern in that ABT officers must consider whether responding to a crime is within the scope of their authorized duties, whether the Division would support their actions, whether they will incur any liability for their actions, etc...

Effect of the Bill

The bill provides that Division employees serving as law enforcement officers must meet the qualifications for employment as a law enforcement officer set forth under s. 943.13, F.S.[7], and must be certified as a law enforcement officer by the Florida Department of Law Enforcement (FDLE). This portion of the bill appears to have little effect in that ABT officers who are currently certified as law enforcement officers are certified as such by FDLE officers and must meet the requirements of s. 943.13, F.S.

The bill also provides that ABT officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc...), and have statewide jurisdiction. The bill specifies that ABT officers also have the arrest authority provided for state law enforcement officers in s. 901.15, F.S. (discussed above). The bill further provides that an ABT officer has full law enforcement powers granted to other peace officers in the state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

Although the bill expands an ABT officer's powers and jurisdiction, the bill specifies that the primary responsibilities of an ABT officer include enforcing the laws relating to Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., requiring ABT officers serving as law enforcement officers to meet certain qualifications; requiring ABT officers to be certified as law enforcement officers; providing ABT officers with certain powers, authority, and jurisdiction; specifying primary responsibilities of ABT officers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR's analysis stated that that no fiscal impact is anticipated.

[6] s. 20.165, F.S.

[7] Section 943.13, F.S. provides minimum employment qualifications for officers.

2. Expenditures:

   DBPR's analysis stated that that no fiscal impact is anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the Division of Alcoholic Beverages and Tobacco; amending s. 20.165, F.S.; requiring each employee serving as a law enforcement officer for the division to meet the qualifications of a law enforcement officer set forth in ch. 943, F.S., for employment or appointment; requiring each such employee to be certified as a law enforcement officer by the Department of Law Enforcement; providing the law enforcement officer with certain powers, authority, and jurisdiction; specifying the primary responsibility for law enforcement officers of the division; providing an effective date.

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

Section 1. Subsection (9) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.--There is created a Department of Business and Professional Regulation.

(9)(a) All employees authorized by the Division of Alcoholic Beverages and Tobacco shall have access to, and may ~~shall have the right to~~ inspect, premises licensed by the division, to collect taxes and remit them to the officers entitled to them, and to examine the books and records of all licensees. The authorized employees shall require of each licensee strict compliance with the laws of this state relating to the transaction of such business.

(b) Each employee serving as a law enforcement officer for the division must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under of chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

(c) The primary responsibility of each officer appointed under this section includes enforcing the laws relating to ~~All employees certified under chapter 943 as law enforcement officers shall have felony arrest powers under s. 901.15(10) and shall have all the powers of deputy sheriffs to:~~

~~1. Investigate, enforce, and prosecute, throughout the state, violations and violators of:~~

~~a.~~ parts I and II of chapter 210; part VII of chapter 559; and chapters 561-569; and the rules adopted ~~promulgated~~ thereunder, as well as other state laws that ~~which~~ the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.

~~b. All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after~~

~~consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the division.~~

~~2. Enforce all criminal laws of the state within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1291 Weapons
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Cunningham	Kramer
2) PreK-12 Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Chapter 790 defines the term "weapon" as "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon *except* a firearm or a common pocketknife." Although not specifically listed, knives have commonly been included in the definition of "weapon."

Currently, Florida school districts are required to adopt a zero tolerance policy that requires the expulsion of students who bring firearms or weapons, as defined by chapter 790, F.S., to school, to any school function, or onto school-sponsored transportation. While chapter 790, F.S. currently excepts "common pocketknives" from its definition of "weapon," other types of knives, such as butter knives and plastic knives, are not currently excepted. As a result, there has been some confusion as to whether students who bring objects such as butter knives onto school grounds must be disciplined.

This bill amends the definition of "weapon" to include the term "knife," and to except from the definition "plastic knives" and "blunt-bladed knives." The result is that a "knife" would be considered a weapon, while "common pocketknives", "plastic knives", and "blunt-bladed knives" would not be. The bill also provides in s. 790.115, F.S. (relating to the possession and discharge of weapons at school-sponsored events or on school property), and in s. 810.095, F.S. (relating to trespassing on school property with a weapon), that the term "weapon" is to be defined by s. 790.001(13), F.S. This should help clarify what types of knives are permitted on school grounds.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill revises the definition of "weapon" to include the term "knife" and clarifies provisions relating to the prohibited exhibition and possession of specified weapons at school-sponsored events or on school property.

B. EFFECT OF PROPOSED CHANGES:

Chapter 790 defines the term "weapon" as "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon *except* a firearm or a common pocketknife."[1] Although the term "knife" is not included in the above definition, courts have interpreted the statute as including certain knives.[2]

Currently, Florida school districts are required to adopt a zero tolerance policy that requires the expulsion of students who bring firearms or weapons, as defined by chapter 790, F.S., to school, to any school function, or onto school-sponsored transportation.[3] Schools also must refer such students to either the criminal or juvenile justice systems.[4] While chapter 790, F.S., currently excepts the "common pocketknife" from its definition of "weapon," other types of knives, such as butter knives and plastic knives, are not currently excepted. As a result, there has been some confusion as to whether students who bring objects such as butter knives onto school grounds must be disciplined.[5]

This bill amends the definition of the term "weapon" to include the term "knife," and except from the definition "plastic knives" and "blunt-bladed knives." The result it that a "knife" would be considered a weapon, while "common pocketknives", "plastic knives", and "blunt-bladed knives" would not be. The bill also amends the definition of "weapon" by removing the exception for firearms. As noted above, firearms have been excepted from the definition of "weapon" and instead, are defined by s. 790.001(6), F.S. Because the bill removes the exception for firearms, it could be argued that a "firearm" would now be considered a "weapon" under s. 790.001(13), F.S.

The bill clarifies in s. 790.115, F.S. (relating to the possession and discharge of weapons at school-sponsored events or on school property), and in s. 810.095, F.S. (relating to trespassing on school property with a weapon), that the term "weapon" is to be defined by s. 790.001(13), F.S. This should help clarify what types of knives are permitted on school grounds. The bill also specifies in s. 790.115, F.S., that "common pocketknives, dirks, metallic knuckles, slungshots, billies, tear gas guns, chemical weapons or devices, or other deadly weapons" are included in the list of items that may not be exhibited in a rude, careless, angry, or threatening manner at a school-sponsored event or on school property.

C. SECTION DIRECTORY:

Section 1. Amends s. 790.001, F.S., revising the definition of "weapon."

Section 2. Amends s. 790.115, F.S., revising and clarifying provisions related to the prohibited exhibition and possession of specified weapons at school-sponsored events or on school property.

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[1] s. 790.001(13), F.S.

[2] *See, e.g., State v. Walthour*, 876 So.2d 594 (Fla. 5th DCA 2004); *Garcia v. State*, 789 So.2d 1059 (Fla. 4th DCA 2001), *Evans v. State*, 703 So.2d 1201 (Fla. 1st DCA 1997). *Miller v. State*, 421 So.2d 746 (Fla. 4th DCA 1982);

[3] s. 1006.13, F.S.

[4] *Id.*

[5] *See, e.g.,* http://www.sptimes.com/2005/10/25/Hernando/Girl_arrested_for_but.shtml (An 11-year old girl was arrested and charged with a felony for bringing a butter knife to school)

Section 3. Amends s. 810.095, F.S., clarifying provisions related to the prohibited trespass on school property with a weapon.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 790.001, F.S., contains definitions for both "firearms" and "weapons." As noted above, removing the exception for firearms may cause some to believe that a "firearm" is now a "weapon" under s. 790.001(13), F.S. This many have many unintended, consequences. For example, a statute may specifically reference the term "weapon" and not intend to include the term "firearm." The bill would likely prevent this.

It is unclear what a "blunt-bladed knife" is. It is suggested that the term "blunt-bladed table knife" be used" instead. In holding that the term "common pocketknife" was not unconstitutionally vague, the Florida Supreme Court has turned to Webster's to define the term.[6] A "table knife" is defined by Webster's as "a knife used for eating at dining table."[7]

Section 2 of the bill adds the terms "dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon" as prohibited items. However, the current language of the statute states that "weapons" are prohibited. Including terms that are already contained in the definition of "weapon" is duplicitous.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[6] *L.B. v. State*, 700 So.2d 370, 372 (Fla. 1997)
[7] http://dictionary.reference.com/search?q=table%20knife

A bill to be entitled

An act relating to weapons; amending s. 790.001, F.S.; revising the definition of "weapon"; amending s. 790.115, F.S.; revising and clarifying provisions related to the prohibited exhibition and possession of specified weapons and firearms at a school-sponsored event or on school property; providing penalties; amending s. 810.095, F.S.; clarifying provisions with respect to prohibited trespass on school property with a firearm or other weapon; providing a penalty; providing an effective date.

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

Section 1. Subsection (13) of section 790.001, Florida Statutes, is amended to read:

790.001 Definitions.--As used in this chapter, except where the context otherwise requires:

(13) "Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except ~~a firearm or~~ a common pocketknife, plastic knife, or blunt-bladed knife.

Section 2. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 790.115, Florida Statutes, are amended to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.--

(1) A person who exhibits any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon, including a razor blade, box cutter, ~~or~~ knife, including a common pocketknife, dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon, except as authorized in support of school-sanctioned activities, in the presence of one or more persons in a rude, careless, angry, or threatening manner and not in lawful self-defense, at a school-sponsored event or on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, during school hours or during the time of a sanctioned school activity, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This subsection does not apply to the exhibition of a firearm or weapon on private real property within 1,000 feet of a school by the owner of such property or by a person whose presence on such property has been authorized, licensed, or invited by the owner.

(2)(a) A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or~~,~~ box cutter, ~~or knife,~~ except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop; however, a person may carry a firearm:

1. In a case to a firearms program, class or function which has been approved in advance by the principal or chief

administrative officer of the school as a program or class to which firearms could be carried;

2. In a case to a career center having a firearms training range; or

3. In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.

For the purposes of this section, "school" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

(b) A person who willfully and knowingly possesses any electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or~~,~~ box cutter, ~~or knife,~~ except as authorized in support of school-sanctioned activities, in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Subsection (1) of section 810.095, Florida Statutes, is amended to read:

810.095 Trespass on school property with firearm or other weapon prohibited.--

(1) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person who is trespassing upon school property to bring onto, or to

possess on, such school property~~,~~ any weapon as defined in s. 790.001(13) or any firearm.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Controlled Substances
SPONSOR(S): Culp
TIED BILLS: **IDEN./SIM. BILLS:** SB 2356

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

SUMMARY ANALYSIS

Methamphetamine is a highly addictive nerve stimulant that is often manufactured in clandestine laboratories. The manufacture of methamphetamine has a severe impact on the environment and creates a large amount of toxic waste that can be harmful to those who come into contact with the laboratory while it is being used or after it is abandoned. Chapter 893 sets forth criminal penalties for the illegal sale or manufacture of methamphetamine and other controlled substances.

Section 39.301, F.S. provides that if it is determined that a child is in need of protection and supervision of the court, the Department of Children and Families must file a petition for dependency. A petition for dependency must be filed in all cases classified by the department as high-risk. The section sets forth factors that the department may consider in determining whether a case is high-risk. The bill adds the arrest of the parents or legal custodians on charges of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893 to the list of factors which the department may consider.

During the 2005 session, section 893.13, F.S. was amended to provide that if a person violates any provision of chapter 893, F.S., and such violation results in a serious injury to a state, local, or federal law enforcement officer, the person commits a third degree felony. If the injury sustained by the law enforcement officer results in death or great bodily harm, the person commits a second degree felony. HB 1325 expands this provision to apply when injury results to a firefighter, emergency medical technician, paramedics or other specified person.

The bill also provides that the Legislature finds that a person who manufactures or cooks any substance in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. Further, if the court finds that there is a substantial probability that a defendant charged with manufacturing or cooking any substances in violation of chapter 893 committed such a crime, there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons and therefore the court must order pretrial detention.

The bill provides that no life or health insurer may cancel or nonrenew a life or health insurance policy or certificate of insurance providing coverage to, or refuse to insure a law enforcement officer, firefighter, paramedic, emergency medical technician or other specified official solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury or disease as a result of the individual's lawful duties arising out of the commission of a violation of chapter 893 by another person.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill prohibits life or health insurers from canceling, nonrenewing or refusing to insure certain individuals solely based on the fact that the individual has been exposed to toxic chemicals as a result of the individual's lawful duties arising out of a violation of chapter 893 by another person.

The bill also authorizes the Department of Children and Families to consider additional factors in determining whether a child is in need of protection and supervision of the court.

Safeguard individual liberty: The bill requires a judge to order the pretrial detention of a defendant in certain circumstances.

Promote personal responsibility: The bill creates criminal penalties for injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

Background information

Drug offenses: Chapter 893 is known as the "Florida Comprehensive Drug Abuse Prevention and Control Act". Section 893.03, F.S. divides controlled substances into five categories ranging from Schedule I to Schedule V. The scheduling of a controlled substance is relevant to how it can be prescribed and to the severity of the criminal offense for its illicit possession, sale or purchase.[1]

Section 893.13, F.S., provides penalties for various drug offenses depending on the type and quantity of the controlled substance and whether the controlled substance is sold, manufactured[2] or delivered or is purchased as well as the location of the sale, manufacture or delivery. If the amount of controlled substance sold, manufactured, purchased or delivered is of a sufficient quantity, the offense is considered drug trafficking and the penalties in section 893.135, F.S. apply. The type and quantity of controlled substance sold, purchased, manufactured or delivered - in other words, trafficked - dictates the penalties that apply.

Methamphetamine: Methamphetamine is a Schedule II controlled substance.[3] Methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called "speed," "crank," "crystal," or "zip," methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial "high,"

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[1] A drug in Schedule I has a "high potential for abuse and has no currently accepted medical use in treatment in the United States." A drug in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV."

[2] Section 893.02(13), F.S. defines the term "manufacture" as follows:

> "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:
>
> 1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.
>
> 2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

[3] s. 893.03(2)(c), F.S.

lasting between 15 and 30 minutes, that is difficult, if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go on longer binges. Methamphetamine's psychological side-effects include paranoia, hallucinations and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health. According to the Office of National Drug Control Policy[4]:

> Methamphetamine can be easily manufactured in clandestine laboratories (meth labs) using ingredients purchased in local stores. Over-the-counter cold medicines containing ephedrine or pseudoephedrine and other materials are "cooked" in meth labs to make methamphetamine.
>
> The manufacture of methamphetamine has a severe impact on the environment. The production of one pound of methamphetamine releases poisonous gas into the atmosphere and creates 5 to 7 pounds of toxic waste. Many laboratory operators dump the toxic waste down household drains, in fields and yards, or on rural roads.
>
> Due to the creation of toxic waste at methamphetamine production sites, many first response personnel incur injury when dealing with the hazardous substances. The most common symptoms suffered by first responders when they raid meth labs are respiratory and eye irritations, headaches, dizziness, nausea, and shortness of breath.
>
> Meth labs can be portable and so are easily dismantled, stored, or moved. This portability helps methamphetamine manufacturers avoid law enforcement authorities. Meth labs have been found in many different types of locations, including apartments, hotel rooms, rented storage spaces, and trucks. Methamphetamine labs have been known to be boobytrapped and lab operators are often well armed.

2005 Legislation: During the 2005 session, HB 1347[5] was passed by the Legislature and signed by the Governor. The bill made a number of changes to chapter 893 relating to methamphetamine and other controlled substances including the following:

- The bill limited over the counter sales of any drug containing a sole active ingredient of ephedrine, pseudoephedrine or phenylpropanolamine (commonly contained in cold medication) and required that such drugs be kept behind a checkout counter.
- The bill provided for enhanced penalties for the manufacture of methamphetamine or phenycyclidine if the crime occurs where a children under 16 years of age is present.
- The bill provided for enhanced penalties for trafficking in pseudoephedrine.
- The bill made it unlawful to store anhydrous ammonia (a chemical which can be used in methamphetamine production) in a manner not in accordance with sound engineering, agricultural or commercial practices.

Effect of HB 1325

Protective investigations: Section 39.301, F.S. provides that if it is determined that a child is in need of protection and supervision of the court, the Department of Children and Families must file a petition for dependency. A petition for dependency must be filed in all cases classified by the department as high-risk. Factors that the department may consider in determining whether a case is high-risk include, but are not limited to the following:

- The young age of the parents or legal custodians;
- The use of illegal drugs;
- Domestic violence.

[4] http://www.whitehousedrugpolicy.gov/publications/factsht/methamph/
[5] Sponsored by Rep. Evers; chapter 2005-128, Laws of Fla.

The bill adds the arrest of the parents or legal custodians on charges of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893 to the list of factors which the department may consider.

Injury to specified official: The 2005 legislation discussed above amended s. 893.13, F.S. to provide that if a person violates any provision of chapter 893, F.S., and such violation results in a serious injury to a state, local, or federal law enforcement officer, the person commits a third degree felony. If the injury sustained by the law enforcement officer results in death or great bodily harm, the person commits a second degree felony.

HB 1325 amends this provision to apply when injury results to any of the following people:

- A state or local law enforcement officer as defined in s. 943.10, F.S.
- A firefighter as defined in s. 633.30, F.S.
- An emergency medical technician as defined in s. 401.23, F.S.
- A paramedic as defined in s. 401.23, F.S.
- An employee of a public utility or an electric utility as defined in s. 366.02, F.S.
- An animal control officer as defined in s. 828.27, F.S.
- A volunteer firefighter engaged by state or local government;
- A law enforcement officer employed by the federal government
- Any other local, state or federal employee injured during the court and scope of his or her employment.

Clandestine laboratory: The bill defines the term "clandestine laboratory" to mean any location and proximate areas set aside or used that are likely to be contaminated as a result of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893, except as such activities are authorized in chapter 499.

Insurance: The bill creates s. 627.4107, F.S. which provides that no life or health insurer may cancel or nonrenew[6] a life or health insurance policy or certificate of insurance providing coverage to, or refuse to insure one of the following individuals solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury or disease as a result of the individual's lawful duties arising out of the commission of a violation of chapter 893 by another person:

- A state or local law enforcement officer as defined in s. 943.10, F.S.
- A firefighter as defined in s. 633.30, F.S.
- An emergency medical technician as defined in s. 401.23, F.S.
- A paramedic as defined in s. 401.23, F.S.
- A volunteer firefighter engaged by state or local government;
- A law enforcement officer employed by the Federal government
- Any other local, state or Federal employee injured during the court and scope of his or her employment.

This provision will not apply to any person who commits an offense under chapter 893.

Pretrial Release/Detention: Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is

[6] Several other statutes prohibit an insurance company from canceling or nonrenewing a life or health insurance policy for other specified reasons. See for example, s. 627.6265 which provides that no insurer may cancel or nonrenew the health insurance policy of an insured person because of diagnosis or treatment of human immunodeficiency virus infection or acquired immune deficiency syndrome; s. 627.4301(2)(a) provides that in the absence of a diagnosis of a condition related to genetic information, no health insurer may cancel coverage based on such information; s. 627.70161(4) provides that, with certain exceptions, an insurer may not deny, cancel, or refuse to renew a policy for residential property insurance solely on the basis that the policyholder or applicant operates a family day care home.

entitled to pretrial release on reasonable conditions.[7] There is a presumption in favor of release on *nonmonetary* conditions[8] for any person who is granted pretrial release unless such person is charged with a dangerous crime.

Section 907.041(4)(c), F.S. provides that a judge may order pretrial detention based on one of several different grounds. For example, a court may order pretrial detention if the judge finds that the defendant poses a threat of harm to the community. The judge may so conclude if it finds that the defendant is charged with a dangerous crime, that there is a substantial probability that the defendant committed the crime, that the factual circumstances of the crime indicate a disregard for the safety of the community and there are no conditions of release sufficient to protect the community from the risk of physical harm to others. A court can also order pretrial detention if the defendant was on probation or pretrial release for a dangerous crime at the time the current offense was committed.

The term "dangerous crime" includes the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime.[9]

HB 1325 adds "manufacturing or cooking any substances in violation of chapter 893" to the list of dangerous crimes contained in s. 907.041, F.S.

The bill also provides that the Legislature finds that a person who manufactures or cooks any substance in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. Further, the bill provides that if the court finds that there is a substantial probability that a defendant charged with manufacturing or cooking any substances in violation of chapter 893 committed such a crime, there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons and therefore the court must order pretrial detention.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.301, F.S., to add to list of factors that DCF may consider in determining whether case being investigated is high-risk relating to initiation of protective investigations

Section 2. Amends s. 893.02, F.S. to define term "clandestine laboratory".

Section 3. Amends s. 893.13, F.S.; relating to injury to an officer as a result of violation of chapter 893.

Section 4. Creates s. 627.4107, F.S. to prohibit refusing to insure or cancel insurance policies to certain employees due to exposure to toxic chemicals.

Section 5. Amends s. 907.041, F.S. relating to pretrial release of certain defendants.

Sections 6-12. Amends ss. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22 and 985.4046, F.S. to conform cross-references.

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[7] Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.
[8] Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.
[9] s. 907.041, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill requires a judge to order pretrial detention if it finds that there is a substantial probability that a defendant charged with manufacturing or cooking a substance in violation of chapter 893 committed such a crime. This may have a jail bed impact on the counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prohibit a life or health insurer from canceling or nonrenewing a policy to certain individuals solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury as a result of the individual's lawful duties arising out the commission of a violation of chapter 893.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions This section also provides that if no conditions of release can reasonably protect the community from risk of physical harm, an accused can be retained before trial.

   Section 907.041, F.S. authorizes a court to order pretrial detention of a defendant in certain circumstances. There is no statutory *requirement* that the court order pretrial detention. Although the fact that the defendant is charged with a specified crime can be relevant to a judge's decision to

order pretrial detention, the fact that the defendant is charged with a certain offense is not sufficient by itself to authorize the court to order pretrial detention. For example, in order to order pretrial detention of a defendant charged with trafficking in a controlled substance, the judge has to find that there is a substantial probability that the defendant committed the offense and also must find that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings.

HB 1325 creates legislative findings that a person who manufactures or cooks any substance in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. The bill requires the court to order pretrial detention if it finds that there is a substantial probability that a defendant charged with this offense committed the crime. This mandatory provision is unlike any other provided for in statute. This could be challenged as violating a defendant's right to pretrial release on reasonable conditions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 of the bill defines the term "clandestine laboratory". The term clandestine laboratory is not used elsewhere in the bill or in current law.

In several places the bill refers to manufacturing or "cooking" a substance in violation of chapter 893. Although the term "manufacture" is used, the term "cook" or "cooking" is not used in chapter 893.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to controlled substances; amending s. 39.301, F.S.; requiring the Department of Children and Family Services to file a petition for dependency for the children of parents involved in certain controlled substance crimes; amending s. 893.02, F.S.; defining the term "clandestine laboratory"; amending s. 893.13, F.S.; revising provisions relating to criminal penalties for controlled substance violations that result in serious injury to specified individuals; creating s. 627.4107, F.S.; prohibiting refusal to insure or cancellation of life or health insurance policies or certificates of specified local, state, or federal employees due to exposure to toxic chemicals or due to disease or injury incurred in their duties related to controlled substance law violations committed by others; providing penalties; amending s. 907.041, F.S.; revising a definition; revising provisions relating to pretrial release of certain defendants charged with certain controlled substance offenses; amending ss. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (b) of subsection (8) of section 39.301, Florida Statutes, is amended to read:

39.301 Initiation of protective investigations.--

(8) The person responsible for the investigation shall make a preliminary determination as to whether the report is complete, consulting with the attorney for the department when necessary. In any case in which the person responsible for the investigation finds that the report is incomplete, he or she shall return it without delay to the person or agency originating the report or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction, and request additional information in order to complete the report; however, the confidentiality of any report filed in accordance with this chapter shall not be violated.

(b) If it is determined that the child is in need of the protection and supervision of the court, the department shall file a petition for dependency. A petition for dependency shall be filed in all cases classified by the department as high-risk. Factors that the department may consider in determining whether a case is high-risk include, but are not limited to, the young age of the parents or legal custodians, the use of illegal drugs, the arrest of the parents or legal custodians on charges of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893, or domestic violence.

Section 2. Subsections (4) through (21) of section 893.02, Florida Statutes, are renumbered as subsections (5) through (22), respectively, and a new subsection (4) is added to that section to read:

893.02 Definitions.--The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(4) "Clandestine laboratory" means any location and proximate areas set aside or used that are likely to be contaminated as a result of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances in violation of this chapter, except as such activities are authorized in chapter 499.

Section 3. Subsection (12) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.--

(12) If a person violates any provision of this chapter and the violation results in a serious injury to a state or local law enforcement officer as defined in s. 943.10, firefighter as defined in s. 633.30, emergency medical technician as defined in s. 401.23, paramedic as defined in s. 401.23, employee of a public utility or an electric utility as defined in s. 366.02, animal control officer as defined in s. 828.27, volunteer firefighter engaged by state or local government, law enforcement officer employed by the Federal Government, or any other local, state, or Federal Government employee injured during the course and scope of his or her employment ~~state, local, or federal law enforcement officer~~, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the injury sustained results in death or great bodily harm, the person

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

Section 4. Section 627.4107, Florida Statutes, is created to read:

627.4107 Government employees exposed to toxic drug chemicals; refusal to insure and cancellation of life or health policy or certificate prohibited.--No life or health insurer may cancel or nonrenew a life or health insurance policy or certificate of insurance providing coverage to, or refuse to insure, a state or local law enforcement officer as defined in s. 943.10, firefighter as defined in s. 633.30, emergency medical technician as defined in s. 401.23, or paramedic as defined in s. 401.23, a volunteer firefighter engaged by state or local government, a law enforcement officer employed by the Federal Government, or any other local, state, or Federal Government employee solely based on the fact that the individual has been exposed to toxic chemicals or suffered injury or disease as a result of the individual's lawful duties arising out of the commission of a violation of chapter 893 by another person. This section does not apply to any person who commits an offense under chapter 893.

Section 5. Paragraph (a) of subsection (4) of section 907.041, Florida Statutes, is amended, and paragraph (l) is added to that subsection, to read:

907.041 Pretrial detention and release.--

(4) PRETRIAL DETENTION.--

(a) As used in this subsection, "dangerous crime" means any of the following:

1. Arson;

2. Aggravated assault;

3. Aggravated battery;

4. Illegal use of explosives;

5. Child abuse or aggravated child abuse;

6. Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;

7. Aircraft piracy;

8. Kidnapping;

9. Homicide;

10. Manslaughter;

11. Sexual battery;

12. Robbery;

13. Carjacking;

14. Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years;

15. Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority;

16. Burglary of a dwelling;

17. Stalking and aggravated stalking;

18. Act of domestic violence as defined in s. 741.28;

19. Home invasion robbery;

20. Act of terrorism as defined in s. 775.30; ~~and~~

21. Manufacturing or cooking any substances in violation of chapter 893; and

22.~~21.~~ Attempting or conspiring to commit any such crime.

(1) The Legislature finds that a person who manufactures or cooks any substances in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. If the court finds that there is a substantial probability that a defendant charged with manufacturing or cooking any substances in violation of chapter 893 committed such a crime, there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons and therefore the court shall order pretrial detention.

Section 6. Paragraph (s) of subsection (1) of section 465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.--

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(s) Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

Section 7. Paragraph (e) of subsection (1) of section 465.023, Florida Statutes, is amended to read:

465.023 Pharmacy permittee; disciplinary action.--

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee, and may fine, place on probation, or otherwise discipline any pharmacy permittee who has:

(e) Dispensed any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

Section 8. Paragraph (c) of subsection (1) of section 856.015, Florida Statutes, is amended to read:

856.015 Open house parties.--

(1) Definitions.--As used in this section:

(c) "Drug" means a controlled substance, as that term is defined in ss. 893.02~~(4)~~ and 893.03.

Section 9. Subsection (6) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.--

(6) A mixture, as defined in s. 893.02~~(14)~~, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the

controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

Section 10. Paragraph (a) of subsection (1) of section 944.47, Florida Statutes, is amended to read:

944.47 Introduction, removal, or possession of certain articles unlawful; penalty.--

(1)(a) Except through regular channels as authorized by the officer in charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any of the following articles which are hereby declared to be contraband for the purposes of this section, to wit:

1. Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

2. Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

3. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.

4. Any controlled substance as defined in s. 893.02~~(4)~~ or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.

5. Any firearm or weapon of any kind or any explosive substance.

Section 11. Subsection (1) of section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.--

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any written or recorded communication; any currency or coin; any article of food or clothing; any tobacco products as defined in s. 210.25(11); any cigarette as defined in s. 210.01(1); any cigar; any intoxicating beverage or beverage which causes or may cause an intoxicating effect; any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02~~(4)~~; any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon; and any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

Section 12. Paragraph (a) of subsection (1) of section 985.4046, Florida Statutes, is amended to read:

985.4046 Introduction, removal, or possession of certain articles unlawful; penalty.--

(1)(a) Except as authorized through program policy or operating procedure or as authorized by the facility superintendent, program director, or manager, a person may not introduce into or upon the grounds of a juvenile detention facility or commitment program, or take or send, or attempt to take or send, from a juvenile detention facility or commitment program, any of the following articles, which are declared to be contraband under this section:

1. Any unauthorized article of food or clothing.

2. Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.

3. Any controlled substance, as defined in s. 893.02~~(4)~~, or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.

4. Any firearm or weapon of any kind or any explosive substance.

Section 13. This act shall take effect July 1, 2006.