CRIMINAL JUSTICE COMMITTEE MEETING

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

Consideration of the following proposed committee bill(s):

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

Consideration of the following bill(s):

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

NOTICE FINALIZED on 03/24/2006 15:52 by THOMPSON.SONJA

FLORIDA HOUSE OF REPRESENTATIVES

Allan G. Bense, Speaker

Justice Council
Criminal Justice Committee

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Meeting Agenda
Tuesday, March 28, 2006
10:15 a.m. – 12:00 p.m.
404 House Office Building

I. Opening remarks by Chair Kravitz

II. Roll call

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

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

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

IV. Consideration of the following bill(s):

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

IV. Closing comments / Meeting adjourned

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	Kramer
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 pre-trial. The brief stated that "[t]here is neither authority

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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)

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

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

SUMMARY ANALYSIS

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Current Law

Voyeurism

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

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

Video Voyeurism

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

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

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

- A person can commit the offense by intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy.

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

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

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

Similarities and Differences between Voyeurism and Video Voyeurism

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

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

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

Effect of this bill

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

C. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

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

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

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

810.14 Voyeurism prohibited; penalties.--

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

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

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

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775.084.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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

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

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

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

[1] Section 948.001(5), F.S.
[2] Section 948.001(2), F.S.

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

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

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

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

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

Effect of Bill

This bill creates the "Anti-Murder Act".

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

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

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

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

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

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

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

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

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

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

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

C. SECTION DIRECTORY:

Section 1. Names the act.

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill could have a significant fiscal impact on counties but would appear to be exempt from the provisions of Article VII, Section 18 (a) of the state constitution because it amends a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to violent felony offenders; providing a short title; creating s. 903.0351, F.S.; prohibiting bail or other pretrial release for specified violent felony offenders of special concern without a hearing; amending s. 948.06, F.S.; providing definitions; providing that certain alleged violations of probation or community control by violent felony offenders of special concern require hearings and require the alleged offenders to remain in custody pending hearing; providing requirements for such hearings; amending s. 921.0024, F.S.; revising Criminal Punishment Code worksheet computations to provide additional community sanction violation points for certain community sanction violations committed by violent felony offenders of special concern; reenacting ss. 948.012(2)(b), 948.10(9), and 958.14, F.S., relating to split sentence of probation or community control and imprisonment, community control programs, and violation of probation or community control, respectively, to incorporate the amendment to s. 948.06, F.S., in references thereto; providing an effective date.

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

Section 1. <u>This act may be cited as the "Anti-Murder Act."</u>

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

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

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

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

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

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

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

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

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

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

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

convicted of or had adjudication withheld for a qualifying offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Poisoning food or water under s. 859.01.

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

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

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

14. Aggravated assault under s. 784.021.

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

16. Aircraft piracy under s. 860.16.

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

18. Treason under s. 876.32.

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

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

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

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

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

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

b. The offender's past and present conduct, including convictions of crimes.

c. The offender's family ties, length of residence in the community, employment history, and mental condition.

d. The offender's amenability to nonincarcerative sanctions based on his or her history and conduct during the probation or community control supervision from which the violation hearing arises and any other previous supervisions, including disciplinary records of previous incarcerations.

e. The likelihood that the offender will engage again in a criminal course of conduct.

f. The weight of the evidence against the offender.

g. Any other facts the court considers relevant.

3. The court must enter a written order in support of its finding.

Section 4. Paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.--

(1)

(b) WORKSHEET KEY:

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

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

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

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

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

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

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

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

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

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

Sentencing multipliers:

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

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

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

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

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

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

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

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

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

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

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

948.10 Community control programs.--

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Safety Belt Law Enforcement
SPONSOR(S): Slosberg
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	12 Y, 3 N	Thompson	Miller
2) Criminal Justice Committee		Kramer	Kramer
3) Transportation & Economic Development Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

Current law requires a motor vehicle operator, front seat passengers, and all passengers and operators less than 18 years of age to wear safety belts. The "Florida Safety Belt Law" is enforced as a secondary offense for operators and passengers 18 and older; that is, law enforcement officers cannot stop motorists 18 and older solely for not using safety belts. Instead, an officer must first stop a motorist who is 18 or older for a suspected violation of state traffic, motor vehicle, or driver license laws before issuing a uniform traffic citation for failure to wear a safety belt. It is a primary offense to operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 are restrained by a safety belt or by a child restraint device.

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

Primary enforcement of safety belt violations could result in an increase in the number of citations issued. However, the potential fiscal impacts to state and local governments resulting from penalty revenues are unknown because it is impossible to forecast how many additional citations may be issued. Crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs. If Florida enacts a primary safety belt law it will also be eligible to receive a one-time grant of $35.5 million from a federal safety belt incentive program (See Fiscal Comments section for additional details.)

This bill will take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

Those not subject to the safety belt law include:

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

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

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

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

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

Effect of Proposed Changes

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

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

C. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[2] 23 U.S.C. 406.

See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section.

D. FISCAL COMMENTS:

Enforcement Impacts

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

Safety Impacts

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

Federal Funds Issues

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

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

The SAFETEA-LU is the current federal transportation act and includes a federal grant program[3] that encourages states to raise safety belt usage. In order to qualify for this program, a state must enact a primary safety belt law, or achieve 85 percent safety belt usage for 2 consecutive years. As of January 23, 2006 Florida's safety belt usage rate was 73.9 percent. This is a decline from 76.3 percent in 2004. According to the National Highway Traffic Safety Administration of the U.S. Department of

[3] 23 U.S.C. 406.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

A bill to be entitled

An act relating to safety belt law enforcement; creating the Dori Slosberg Safety Belt Law; amending s. 316.614, F.S.; deleting requirement for enforcement of the Florida Safety Belt Law as a secondary action; providing an effective date.

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

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

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

316.614 Safety belt usage.--

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: **HB 561 CS** **Offenses Involving Insurance**
SPONSOR(S): **Rivera**
TIED BILLS: IDEN./SIM. BILLS: **SB 1596**

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

SUMMARY ANALYSIS

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

General Background

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

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

Crash Report

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

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

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

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[1] s. 626.989(2), F.S. (2004).
[2] s. 626.989(7), F.S. (2004).
[3] Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005.

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

Revocation of Licenses

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

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

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

Health Care Clinics

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

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

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

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

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

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[4] s. 400.9905(4), F.S. (2004).
[5] See s. 400.9905(4), F.S. for a listing of entities that are not required to be licensed by AHCA.
[6] s. 400.9905(5), F.S. (2004).
[7] s. 626.9892, F.S. (2004).
[8] s. 400.9915, F.S. (2004).

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

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

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

Workers' Compensation

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

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

Regulation of Professions and Occupations:

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

Violations of Administrative Rules, Emergency Rules, or Emergency Orders

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

[9] Ch. 2003-412, L.O.F.; see s. 440.105(4)(b)8., F.S. (2004).
[10] s. 440.105(2)(a)4., F.S. (2004).
[11] s. 624.01, F.S. (2004).

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

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

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

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

Unauthorized Insurers

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

Independently Procured Coverage:

Independently procured coverage (IPC) is insurance coverage that an insured in Florida, typically a business, obtains by directly contacting an unauthorized foreign or alien[14] insurer, or self insurer.[15] The insured must file specific information about the policy with the Florida Surplus Lines Service Office (Office) and must pay 5 percent of the gross amount of the premium and a 0.3 percent service fee to the Office.

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

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

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

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

[15] s. 626.938, F.S. (2004).

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

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

Anti-fraud Investigative Unit

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

Forfeiture Account

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

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

False and Fraudulent Insurance Claims

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

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

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

[18] Id..

[19] Id.

[20] s. 817.234(7)(a), F.S.

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

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

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

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

Patient Brokering

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

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

Falsely Personating Officer

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

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[21] s. 817.234(9), F.S.
[22] Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005; Personal communication from DFS on file with the Insurance Committee.
[23] s. 817.2361, F.S.
[24] s. 817.50,(2), F.S. (2004).
[25] s. 817.505, F.S.

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

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

Severability Clause

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 20. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. **Revenues:**

   None.

2. **Expenditures:**

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. **Revenues:**

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

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

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

A bill to be entitled

An act relating to offenses involving insurance; amending s. 322.21, F.S.; providing an additional fee for certain offenses relating to insurance crimes; providing for deposit of the fee into the Highway Safety Operating Trust Fund; amending s. 322.26, F.S.; providing an additional circumstance relating to insurance crimes for mandatory revocation of a person's driver's license; amending s. 400.9935, F.S.; requiring health care clinics to display signs containing certain information relating to insurance fraud; authorizing compliance inspections by the Division of Insurance Fraud; requiring clinics to allow inspection access; amending s. 440.105, F.S.; deleting the provision that a violation of a stop-work order is a misdemeanor of the first degree; amending s. 456.054, F.S.; revising the definition of the term "kickback" for criminal prosecution purposes; amending s. 624.15, F.S.; specifying violations of rules of the Department of Financial Services, Office of Insurance Regulation, or Financial Services Commission as misdemeanors; specifying a violation of emergency rules or orders as a felony of the third degree; providing penalties; providing for nonapplication to certain persons; amending s. 626.112, F.S.; providing a criminal penalty for knowingly transacting insurance without a license; amending s. 626.938, F.S.; revising provisions requiring a report and taxation of independently procured coverages; specifying nonauthorization of independent procurement of workers' compensation, life, or health

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

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

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

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

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

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

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

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

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

If the revocation or suspension of the driver's license was for a violation of s. 316.193, or for refusal to submit to a lawful breath, blood, or urine test, an additional fee of $115 must be charged. However, only one $115 fee may be collected from one person convicted of violations arising out of the same incident. The department shall collect the $115 fee and deposit the fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver's license, but the fee may not be collected if the suspension or revocation is overturned. If the revocation or suspension of the driver's license was for a conviction for a violation of s. 817.234(8) or (9) or s. 817.505, an additional fee of $180 is imposed for each offense. The department shall collect and deposit the additional fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver's license.

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

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

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

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

400.9935 Clinic responsibilities.--

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

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

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

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

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

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

2. Discharge or refuse to hire an employee or job

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

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

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

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

456.054 Kickbacks prohibited.--

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

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

624.15 General penalty.--

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

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

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

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

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

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

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

626.938 Report and tax of independently procured coverages.--

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

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

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

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

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

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

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

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

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

(c) Impose the provisions of both paragraphs (a) and (b).

Section 10. Section 626.9893, Florida Statutes, is created

to read:

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

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

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

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

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

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

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

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

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

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

817.234 False and fraudulent insurance claims.--

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

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

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

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

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

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

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

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

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

817.505 Patient brokering prohibited; exceptions; penalties.--

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

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

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

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

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

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

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

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

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

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

932.7055 Disposition of liens and forfeited property.--

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

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

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

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

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

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

SUMMARY ANALYSIS

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

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

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

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

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

The bill authorizes employers to require documentation of the act of domestic violence, requires employers to keep all information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill. The bill specifies that the remedy for damages to an employee aggrieved under the bill is limited to a civil suit for damages or equitable relief in the circuit court.

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

This act takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government →

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

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

B. EFFECT OF PROPOSED CHANGES:

Nationally, more than 1.5 million adults are victims of domestic violence each year.[1] In Florida, 120,697 crimes of domestic violence were reported to the police in 2003.[2] In fiscal year 2003-2004, Florida's domestic violence centers responded to 132,629 crisis calls, provided counseling services to 197,787 individuals, and provided emergency shelter to 14,467 individuals, primarily women and children.[3]

Domestic Violence - Public Records

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

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

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

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[1] Legal Momentum, an advocacy and research organization based in New York City, as quoted in *When Home Comes to Work,* ABA Journal (Sept 2005), at 42.
[2] http://www.fcadv.org/statistics.html
[3] *Id.*
[4] s. 119.105, F.S.
[5] Section 119.07, F.S., provides that a person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.
[6] s. 119.071(2)(c), F.S.
[7] s. 119.071(2)(c), F.S.
[8] *WFTV, Inc., v. School Bd. Of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

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

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

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

Domestic Violence – Injunctions / Protective Orders
Any person who is either the victim of domestic violence[12] or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence may file a sworn petition for an injunction for protection against domestic violence.[13] Upon filing a petition for an injunction, an ex parte[14] hearing will be held in which a judge, pending a full hearing, may either grant or deny a *temporary* injunction.[15] A court may grant a temporary injunction when it appears that an immediate and present danger of domestic violence exists.[16] Temporary injunctions may include the following relief:

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

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

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

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[9] s. 741.29, F.S.
[10] *Id.*
[11] *Id.*
[12] "Domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.
[13] s. 741.30, F.S.
[14] An ex parte hearing involves only one party to a legal matter and is conducted in the absence of and usually without notice to the other party. http://dictionary.reference.com/search?q=ex%20parte
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*

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

Effect of the Bill

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

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

Domestic Violence – Employment Issues

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

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

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

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[20] *Id.* at 44.
[21] Public Law 103-3.
[22] *Responding to Domestic Violence: Where Federal Employees Can Find Help,* U.S. Office of Personnel Management, http://www.opm.gov/ehs/workplac/html/domestic.html, (accessed December 27, 2005).
[23] *When Home Comes to Work,* ABA Journal (Sept 2005), at 44.
[24] *State of Florida Model Policy on Domestic Violence in the Workplace,* The Third Report of the Governor's Task Force on Domestic and Sexual Violence (1997), p. 1.
[25] *Id.*, paragraph (5)(E), at 177.

The Florida Department of Management Services has provided by rule that executive agencies must approve parental or family medical leave to assist employees in meeting family needs, specifically allowing leave to be granted for up to six months for a family member's serious health condition[26] as defined in the FMLA.[27] Additionally, agencies are required to approve up to 30 days family leave for "non-medical family responsibilities," which would appear to be broad enough to include domestic violence-related issues.[28] If the employee is granted such leave, the employee may request to use accrued leave credits. If the employee does not so request, the agency may place the employee on leave without pay.[29]

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

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

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

Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena[33] but provides none of the other protections enumerated in the bill to victims of domestic violence.

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

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

[27] 60L-34.0051, FAC.

[28] *Id.*

[29] *Id.*

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

[31] County Ordinance 99.5.

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

[33] s. 92.57, F.S.

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

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

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

Effect of the Bill

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

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

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

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

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

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

Domestic Violence - Statistics

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

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[35] *Gilbert v. Department of Corrections*, 696 So2d 416 (1st DCA 1997).
[36] *Hall v. Florida Unemployment Appeals Commission*, 697 So.2d 541 (1st DCA 1997).
[37] s. 943.1702, F.S.

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

C. SECTION DIRECTORY:

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

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

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

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

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

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

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

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

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to domestic violence; amending s. 741.29, F.S.; providing for access by the alleged victim to certain materials that are part of an active criminal investigation of an incident of domestic violence that are exempt from disclosure under specified provisions; provides for continuing exemption of material from disclosure; amending s. 741.30, F.S.; providing for law enforcement officers to obtain verbal emergency protection orders immediately following incidents of domestic violence; providing for officers to reduce such orders to writing; providing for expiration of such orders; specifying procedures relating to such orders; creating s. 741.313, F.S.; defining the terms "domestic violence," "family or household member," and "victim"; requiring that an employer permit an employee to take leave from work to undertake activities resulting from an act of domestic violence; specifying the activities for which the employee may take leave; requiring the employee to notify the employer of the leave; providing exceptions; requiring that an employer keep information relating to the employee's leave confidential; prohibiting an employer from taking certain actions against the employee for exercising rights specified in the act; providing a recourse for violation of the act; amending s. 943.1702, F.S.; requiring collection of statistics on noncriminal judicial actions concerning domestic violence; providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

741.313 Unlawful action against employees seeking protection.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

943.1702 Collection of statistics on domestic violence.--

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

House Bill 1505

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

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

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

Public Records

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

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

> (a) Every person[3] has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution...

Unless specifically exempted, all agency[4] records are available for public inspection. The term "public record" is broadly defined to mean:

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

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

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

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

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

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

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

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11] A bill creating an exemption must be passed by a two-thirds vote of both houses.[12]

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

The Open Government Sunset Review Act
The Open Government Sunset Review Act[16] provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

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

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

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

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[5] s. 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c) of the State Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical* Center v. News-Journal Corporation, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c) of the State Constitution.
[12] *Id.*
[13] *WFTV, Inc., v. The School Bd of Seminole,* 874 So.2d 48 (5th DCA), rev. denied 892 So.2d 1015 (Fla. 2004).
[14] *Id.* at 53; *see also*, Attorney General Opinion 85-62.
[15] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[16] s. 119.15, F.S.

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

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

C. SECTION DIRECTORY:

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

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

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

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

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

741.313 Unlawful action against employees seeking protection.--

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 817.568, F.S., provides that, "[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information[1] concerning an individual without first obtaining that individual's consent, commits" a third degree felony. This offense is commonly known as "identity theft". This section also provides for enhanced penalties as follows:

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

- If the value of the pecuniary benefit, services received or injury is $50,000 or more or if the person uses the personal identification information of 20 or more individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.

- If the value of the pecuniary benefit, services received or injury is $100,000 or more or if the person uses the personal identification information of 30 or more individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

This section provides penalties for the offense of harassment[2] by use of personal identification information as well as using a public record to commit identity theft.[3] Further, this section also provides penalties if identity theft is committed using the personal identification information of an individual less than eighteen years of age[4]or an individual that is deceased.[5]

HB 1577 amends s. 817.568, F.S., to provide that it is a second degree felony[6] for any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is 65 years of age or older without first obtaining consent of that individual or of his or her

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

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

[3] S. 817.568(4) and (5), F.S.

[4] S. 817.568(6) and (7), F.S.

[5] S. 817.568(8), F.S.

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

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

HB 1577 also amends the Criminal Punishment Code[7] to reflect these offenses. As such, identity theft of individual who is 65 years of age or older without first obtaining consent is ranked level 8 on the offense severity ranking chart[8], and identity theft of an individual who is 65 years of age or older, over which the offender has custodial authority is ranked level 9 on the offense severity ranking chart[9].

C. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met March 21, 2006 and concluded this bill would have an indeterminate prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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[7] S. 921.0022, F.S.
[8] S. 921.0022(3)(h), F.S.
[9] S. 921.0021(3)(i), F.S.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

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

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

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

817.568 Criminal use of personal identification information.--

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

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

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

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

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

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

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

(3) OFFENSE SEVERITY RANKING CHART

Florida	Felony

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

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

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

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

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

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

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

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

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

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

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

	(1)(k)2.c.		grams or more.
148			
	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
149			
	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

150

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1593 Cybercrime
SPONSOR(S): Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SB 2322

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

SUMMARY ANALYSIS

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

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Attorney General's website[1]:

> In 2005, Attorney General Charlie Crist established a Cybercrime Unit to expand programs to further safeguard children from predatory criminals. The Unit includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children.
>
> The Cybercrime Unit is dedicated to investigating and prosecuting any crime perpetrated or substantially facilitated using a computer, the Internet, digital media, cellular phone, personal digital assistant (PDA), or any other electronic device. The investigators and the prosecutors in the Unit are specially trained in current technologies, tactics, and the law, and share their expertise through educational programs and community awareness efforts.
>
> Through the Cybercrime Unit, the Attorney General encourages extensive cooperative efforts with federal and state prosecutors, the Florida Department of Law Enforcement (FDLE), the NetSmartz Workshop, the National Center for Missing and Exploited Children (NCMEC), other Attorneys General, and all Florida law enforcement agencies.

The Cybercrime Unit is not currently referenced in Florida Statutes. For fiscal year 2005-2006 the Legislature funded 4 positions (3 investigators and one senior assistant attorney) for this cybercrime unit from the Legal Affairs Revolving Trust Fund[2].

Effect of Bill

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

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

This bill also provides that:

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[1] http://myfloridalegal.com/

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

- Investigators employed by the Cybercrime Unit who are certified in accordance with s. 943.1395, F.S., are law enforcement officers of the state who shall have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state.[3]

- In carrying out the duties and responsibilities of this section, the Attorney General, or any duly designated employee, is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S.[4]

- The Attorney General, or any duly designated employee, shall provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime Unit.

C. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

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

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

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

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

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

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

16.61 Cybercrime Unit.--

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Military Funeral Honors for Any Veteran

The United States created a program that provides special recognition for veterans upon their death. The "Honoring Those Who Served" Program directs the Secretary of Defense to provide special Military Funeral Honors[1] for any[2] deceased veteran[3] upon his or her family's request. The codification of special funeral honors for deceased veterans by the United States Government recognizes both the special nature of their service and sacrifices while defending the country and the opportunity for such recognition at the time of their death.

The minimum requirements[4] for Military Funeral Honors under the law are:

- A funeral honors detail with at least two persons from the armed forces in proper uniform, with at least one of those persons from the deceased veteran's armed force[5]; and
- A ceremony that includes the playing of Taps by a bugler or recorded version followed by the folding and presentation of a United States flag to the decedent's family.

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

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

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

Current Law

Section 871.01, F.S. provides, "[w]hoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree[6]."

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[1] Title 10 U.S.C. s. 1491(a).

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

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

[4] Title 10 U.S.C. s. 1491(b) and (c).

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

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

In, S.H.B. v. State[7], the Florida Supreme Court held,

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

Effect of this Bill

This bill expands s. 817.01, F.S., to make it a first degree misdemeanor[8] to willfully interrupt or disturb any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491.

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

C. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

HB 7127 may be challenged as violating the right to free speech. As noted above, the Florida Supreme Court in S.H.B v. State[9] set forth the elements that are inherent in s. 871.01, F.S. Although that case dealt with disruptive activities in school and HB 7127 expands s. 817.01, F.S., to address disruptive activities at a military funeral, both require the same conduct (whomever willfully interrupts or disturbs) just different places (school vs. Military funeral) where such conduct is prohibited.

In S.H.B. v. State, the Court held, "[b]ecause of the innumerable situations and types of conduct involved, the question of what conduct is forbidden must be determined largely on a case-by-case basis[10]." The appellant in S.H.B. v. State contended that mere words, when used as a tool of communication, are constitutionally protected[11]. The Court held, "the protection fails when, by the manner of their use, the words invade the right of others to pursue their lawful activities[12]." "It is the degree of loudness, and the circumstances in which they are uttered, which takes them out of the constitutionally protected area[13]." The Court further held,

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

In Weidner v. State, the appellant contended that s. 871.01, F.S., was unconstitutional as applied to him in that it is being used to punish him for engaging in constitutionally protected speech. The Court held, the state did not seek to punish speech, but rather to punish him for conduct that allegedly disturbed a public assembly[14].

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[9] 335 So.2d 1176, 1178.
[10] Id.
[11] Id at 1179.
[12] Id.
[13] Id *citing* white v. State, 330 So.2d 3,7 (Fla. 1976)
[14] 380 So.2d 1286, 1287 (Fla. 1980); *see also* State v. Sweet, 616 So.2d 114 (2nd DCA 1993)(Conceivably, use of s. 871.01, F.S., to punish words when used as a tool of communication could offend constitutional guarantees of religious liberty and free speech).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

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

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

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

871.01 Disturbing schools and religious and other assemblies.--

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

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

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

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

Safeguard Individual Liberty

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

Maintain Public Security

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

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Security Area Designations

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

Seaport Security Standards and Waivers

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

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

Review of the Statewide Minimum Standards for Seaport Security

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

Seaport Security Officer Training and Certification

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

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

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

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

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

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

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

[1] s. 493.6303, F.S.
[2] s. 493.6115, F.S.

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

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

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

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

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

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

Effect of the Bill

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

[3] s. 812.015(3)(a), F.S.
[4] s. 810.097, F.S.

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

Seaport Security Standards and Waivers

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

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

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

Review of the Statewide Minimum Standards for Seaport Security

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

Seaport Security Officer Training and Certification

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

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

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

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

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

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

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

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

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

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

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

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

of a concealed weapon while on seaport property in a designated restricted area; requiring periodic review of the statewide minimum standards for seaport security to be conducted under the Office of Drug Control within the Executive Office of the Governor; requiring the Office of Drug Control to convene a Seaport Security Standards Advisory Council to review the statewide minimum standards for seaport security with respect to current narcotics and terrorism threats to Florida's seaports; providing membership, terms, organization, and meetings of the council; creating s. 311.121, F.S.; requiring the authority or governing board of each seaport that is subject to statewide minimum seaport security standards to impose specified requirements for certification as a seaport security officer; creating the Seaport Security Officer Qualification, Training, and Standards Coordinating Council under the Department of Law Enforcement; providing membership and organization of the council; providing terms of members; providing duties and authority of the council; requiring the Department of Education to develop curriculum recommendations and specifications of the council into initial and continuing education and training programs for seaport security officer certification; providing requirements and procedures with respect to such training programs; providing requirements and procedures with respect to certification as a seaport security officer; providing requirements for renewal of inactive or revoked

certification; creating s. 311.122, F.S.; authorizing each seaport in the state to create a seaport law enforcement agency for its facility; providing requirements of an agency; requiring certification of an agency; providing requirements with respect to the composition of agency personnel; providing powers of seaport law enforcement agency officers and seaport security officers; creating s. 311.123, F.S.; providing for the creation of a maritime domain security awareness training program; providing purpose of the program; providing program training curriculum requirements; creating s. 311.124, F.S.; providing authority of seaport security officers to detain persons suspected of trespassing in a designated restricted area of a seaport; providing immunity from specified criminal or civil liability; creating s. 817.021, F.S.; providing a criminal penalty for willfully and knowingly providing false information in obtaining or attempting to obtain a seaport security identification card; providing an effective date.

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

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

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

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

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

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

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

identification card is subject to the trespass provisions of ss. 810.08 and 810.09 and this chapter. All persons and objects in these areas are subject to search by an on-duty sworn state-certified law enforcement officer, a Class D seaport officer certified under Maritime Transportation Security Act guidelines, or an employee of the seaport security force certified under the Maritime Transportation Security Act guidelines.

(4) SECURED RESTRICTED ACCESS AREA.--A secured restricted access area of a seaport is open only to individuals working on the seaport, seaport employees, or guests who have business with the seaport and is secured at each point of access at all times by a Class D security guard certified under the Maritime Transportation Security Act, a sworn state-certified law enforcement officer, or an employee of the port's security force certified under the Maritime Transportation Security Act. Any person found in these areas without the proper level of identification card is subject to the trespass provisions of ss. 810.08 and 810.09 and this chapter. All persons and objects in these areas are subject to search by an on-duty Class D seaport security officer certified under Maritime Transportation Security Act guidelines, a sworn state-certified law enforcement officer, or an employee of the seaport security force certified under the Maritime Transportation Security Act guidelines.

During a period of high terrorist threat level designated by the United States Department of Homeland Security or the Florida Department of Law Enforcement or during an emergency declared by the seaport security director of a port due to events applicable

to that particular port, the management or controlling authority of the port may temporarily designate any part of the port property as a restricted access area or a secured restricted access area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or port emergency exists. Subsections (3) and (4) do not limit the power of the managing or controlling authority of a seaport to designate any port property as a restricted access area or a secured restricted access area as otherwise provided by law.

Section 2. Subsection (2) and paragraph (b) of subsection (4) of section 311.12, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

311.12 Seaport security standards; inspections; compliance; appeals.--

(2)(a) Each seaport identified in s. 311.09 shall maintain a security plan to provide for a secure seaport infrastructure specific to that seaport that shall promote the safety and security of the residents and visitors of the state and promote the flow of legitimate trade and travel. Commencing January 1, 2007, and every 5 years thereafter, the seaport director of each seaport, with the assistance of the Regional Domestic Security Task Force and in conjunction with the United States Coast Guard, shall revise the seaport security plan based on the results of continual, quarterly assessments by the seaport director of security risks and possible risks related to terrorist activities and ~~relating to the specific and identifiable needs of the seaport which assures that the seaport~~

~~is in substantial compliance with~~ the statewide minimum standards established pursuant to subsection (1).

(b) Each plan adopted or revised pursuant to this subsection shall be inspected ~~must be reviewed~~ and approved by the Office of Drug Control and the Department of Law Enforcement based solely upon the standards as set forth under the Maritime Transportation Security Act as revised July 2003, 33 C.F.R. s. 105.305, and the statewide minimum standards established pursuant to subsection (1). All such seaports shall allow unimpeded access by the Department of Law Enforcement to the affected facilities for purposes of plan or compliance inspections or other operations authorized by this section.

(c) Each seaport security plan shall ~~may~~ establish unrestricted and restricted access areas within the seaport consistent with the requirements of the statewide minimum standards and the provisions of s. 311.111. In such cases, a Uniform Port Access Credential Card, authorizing restricted-area access, shall be required for any individual working within or authorized to regularly enter a restricted access area and the requirements in subsection (3) relating to criminal history checks and employment restrictions shall be applicable only to employees or other persons working within or authorized to regularly enter a restricted access area. Every seaport security plan shall set forth the conditions and restrictions to be imposed upon others visiting the port or any restricted access area sufficient to provide substantial compliance with the statewide minimum standards. As determined by the seaport director's most current quarterly risk assessment report, any

restricted access area with a potential human occupancy of 50 persons or more, any cruise terminal, or any business operation that is adjacent to an unrestricted public access area shall be protected from the most probable and creditable terrorist threat to human life by the use of like or similar standards as those set forth in the United States Department of Defense Minimum Antiterrorism Standard for Buildings, Unified Facilities Criteria 4-010-0.

(d) Within 30 days after the completion of the seaport's security plan inspection by the Department of Law Enforcement, it shall be delivered to the United States Coast Guard, Regional Domestic Security Task Force, and the Domestic Security Oversight Council.

(e) It is the intent of the Legislature that Florida's seaports adhere to security practices that are consistent with risks assigned to each seaport through the risk assessment process established in this section. Therefore, the Department of Law Enforcement shall inspect every seaport within the state to determine if all security measures adopted by the seaport are in compliance with the standards set forth in this chapter and shall submit the department's findings within 30 days after the inspection in a report to the Domestic Security Oversight Council and the United States Coast Guard for review, with requests to the Coast Guard for any necessary punitive action.

(f) Notwithstanding the provisions of chapter 120, a seaport may appeal to the Domestic Security Oversight Council for review and mediation the findings in any Department of Law Enforcement inspection report as they relate to the requirements

of this section. The Domestic Security Oversight Council shall establish a review process and may review only those findings under this section that are in specific dispute by the seaport. In reviewing the disputed findings, the council may concur in the findings of the department or the seaport or may recommend corrective action to the seaport. Findings of the council shall be considered final.

(4)

(b) The Office of Drug Control and the executive director of the Department of Law Enforcement may modify or waive any physical facility requirement or other requirement contained in the statewide minimum standards for seaport security upon a finding or other determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver. Alternate means of compliance may not in any way diminish the safety or security of the seaport and shall be verified through an extensive risk analysis conducted by the port director. Waivers shall be submitted in writing with supporting documentation to the Office of Drug Control and the Department of Law Enforcement. The Office of Drug Control and the Department of Law Enforcement shall have 90 days to jointly grant the waiver or reject the waiver in whole or in part. Waivers not granted within 90 days or jointly rejected shall be submitted by the seaport to the Domestic Security Oversight Council for consideration. The Domestic Security Oversight Council shall grant the waiver or reject the waiver in whole or in part. The decision of the Domestic Security Oversight Council shall be considered final.

Waivers submitted for standards established under s. 311.122(3) may not be granted for percentages below 10 percent. Such modifications or waivers shall be noted in the annual report submitted by the Department of Law Enforcement pursuant to this subsection.

(7) Any person who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, while in a designated restricted area on seaport property commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This subsection does not apply to active-duty certified federal or state law enforcement personnel.

(8)(a) Commencing on January 15, 2007, and every 5 years thereafter, a review of the statewide minimum standards for seaport security as contained in paragraph(1)(a) shall be conducted under the Office of Drug Control within the Executive Office of the Governor by the Seaport Security Standards Advisory Council as provided in paragraph (b).

(b) The Office of Drug Control shall convene a Seaport Security Standards Advisory Council as defined in s. 20.03(7) to review the statewide minimum standards for seaport security for applicability to and effectiveness in combating current narcotics and terrorism threats to Florida's seaports. All sources of information allowed by law shall be utilized in assessing the applicability and effectiveness of the standards.

(c) The members of the council shall consist of the following:

1. Two seaport directors appointed by the Governor.

2. Two seaport security directors appointed by the Governor.

3. One designee from the Department of Law Enforcement.

4. The director of the Office of Motor Carrier Compliance of the Department of Transportation.

5. One designee from the Attorney General's Office.

6. One designee from the Department of Agriculture and Consumer Services.

7. One designee from the Office of Tourism, Trade, and Economic Development.

8. A representative of the United States Coast Guard who shall serve as an ex officio member of the council.

(d) Members of the council shall serve for terms of 4 years. A vacancy shall be filled by the original appointing authority for the balance of the unexpired term.

(e) Seaport Security Standards Advisory Council members shall serve without pay; however, state per diem and travel allowances may be claimed for attendance of officially called meetings as provided by s. 112.061.

(f) The Seaport Security Standards Advisory Council shall be chaired by a designee from the Office of Drug Control. The council shall meet upon the call of the chair and at least once every 5 years.

(g) Recommendations and findings of the council shall be transmitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

Section 3. Section 311.121, Florida Statutes, is created to read:

311.121 Qualifications, training, and certification of licensed security officers at Florida seaports.--

(1) It is the intent of the Legislature that seaports in the state be able to mitigate operational security costs without reducing security levels by employing a combination of certified law enforcement officers and certified private security service officers. The Department of Law Enforcement shall adhere to this intent in the approval and certification process for seaport security required under s. 311.12.

(2) The authority or governing board of each seaport identified under s. 311.09 that is subject to the statewide minimum seaport security standards established in s. 311.12 shall require that a candidate for certification as a seaport security officer:

(a) Has received a Class D license as a security officer under chapter 493.

(b) Has successfully completed the certified training curriculum for a Class D license or has been determined by the Department of Agriculture and Consumer Services to have equivalent experience as established by rule of the department.

(c) Has completed the training or training equivalency and testing process established by this section for becoming a certified seaport security officer.

(3)(a) The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under the Department of Law Enforcement.

(b) The executive director of the Department of Law Enforcement shall appoint 12 members to the council which shall include:

1. The seaport administrator of the Department of Law Enforcement.

2. The chancellor of the Community College System.

3. The director of the Division of Licensing of the Department of Agriculture and Consumer Services.

4. The administrator of the Florida Seaport Transportation and Economic Development Council.

5. Two seaport security directors from seaports designated under s. 311.09.

6. One director of a state law enforcement academy.

7. One representative of a local law enforcement agency.

8. Two representatives of contract security services.

9. One representative of the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles.

10. One representative of the United States Coast Guard.

(c) Council members designated in subparagraphs (b)1.-4. shall serve for the duration of their employment or appointment. Council members designated under subparagraphs (b)5.-10. shall serve 4-year terms, except that the initial appointment for the representative of a local law enforcement agency, one representative of a contract security agency, and one seaport security director from a seaport designated in s. 311.09 shall serve for terms of 2 years.

(d) The chancellor of the Community College System shall serve as chair of the council.

(e) The council shall meet upon the call of the chair, and at least once a year to update or modify curriculum recommendations.

(f) Council members shall serve without pay; however, state per diem and travel allowances may be claimed for attendance of officially called meetings as provided by s. 112.061.

(g) The council shall identify the qualifications, training, and standards for seaport security officer certification and recommend a curriculum for the seaport security officer training program that shall include no less than 218 hours of initial certification training and that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

(h) The council may recommend training equivalencies that may be substituted for portions of the required training.

(i) The council shall recommend a continuing education curriculum of no less than 8 hours of additional training for each annual licensing period.

(4)(a) The Department of Education shall develop the curriculum recommendations and classroom-hour specifications of the Seaport Security Officer Qualifications, Training, and Standards Coordinating Council into initial and continuing education and training programs for seaport security officer certification.

(b) Such training programs shall be used by schools licensed under s. 493.6304, and each instructor providing training must hold a Class D license pursuant to s. 493.6301.

(c) A seaport authority or other organization involved in seaport-related activities may apply to become a school licensed under s. 493.6304.

(d) The training programs shall include proficiency examinations that must be passed by each candidate for certification who successfully completes the required hours of training or provides proof of authorized training equivalencies.

(e) A candidate for certification must be provided with a list of authorized training equivalencies in advance of training; however, each candidate for certification must successfully complete 20 hours of study specific to Florida Maritime Security and pass the related portion of the proficiency examination.

(5) Seaport security officer certificates shall be provided by the Department of Agriculture and Consumer Services for issuance by a school licensed under s. 493.6304 and such school may issue the certificate to an applicant who has successfully completed the training program. A school shall notify the Division of Licensing within the department upon the issuance of each certificate. The notification must include the name and Class D license number of the certificateholder and a copy of the certificate. The department shall place the notification with the licensee's file. Notification may be provided by electronic or paper format pursuant to instruction of the Department of Agriculture and Consumer Services.

(6)(a) Upon completion of the certification process, a person holding a Class D license must apply for a revised license pursuant to s. 493.6107(2), which license shall state that the licensee is certified as a seaport security officer.

(b) A person who has been issued a seaport security officer certificate is authorized to perform duties specifically required of a seaport security officer.

(c) The certificate is valid for the duration of the seaport security officer's Class D license and shall be renewed upon renewal of the license.

(d) The certificate shall become void if the seaport security officer's Class D license is revoked or allowed to lapse for more than 1 year or if the licensee fails to complete the annual continuing education requirement prior to expiration of the Class D license.

(e) Renewal of certification following licensure revocation or a lapse of longer than 1 year requires, at a minimum, 20 hours of recertification training and reexamination of the applicant.

Section 4. Section 311.122, Florida Statutes, is created to read:

311.122 Seaport law enforcement agency; authorization; requirements; powers; training.--

(1) Each seaport in the state is authorized to create a seaport law enforcement agency for its facility, which authority in no way precludes the seaport from contracting with local governments or law enforcement agencies to comply with the security standards required by this chapter.

(2) Each seaport law enforcement agency shall meet all of the standards set by the state under certified law enforcement guidelines and requirements and shall be certified as provided under chapter 943.

(3) If a seaport creates a seaport law enforcement agency for its facility, a minimum of 30 percent of the aggregate personnel of each seaport law enforcement agency shall be sworn state-certified law enforcement officers with additional Maritime Transportation Security Act seaport training; a minimum of 30 percent of on-duty personnel of each seaport law enforcement agency shall be sworn state-certified law enforcement officers with additional Maritime Transportation Security Act seaport training; and at least one on-duty supervisor must be a sworn state-certified law enforcement officer with additional Maritime Transportation Security Act seaport training.

(4) For the purposes of this chapter, where applicable, seaport law enforcement agency officers shall have the same powers as university police officers as provided in s. 1012.97; however, such powers do not extend beyond the property of the seaport except in connection with an investigation initiated on seaport property or in connection with an immediate, imminent threat to the seaport.

(5) For the purposes of this chapter, sworn state-certified seaport security officers shall have the same law enforcement powers with respect to the enforcement of traffic laws on seaport property as university police officers under s. 1012.97, community college police officers under s. 1012.88, and

airport police officers under the provisions of s. 316.640(1)(a)1.d.(I)-(II).

(6) Certified seaport security officers shall have the authority to immediately tow any vehicle parked illegally as indicated by an existing sign or during an emergency as deemed necessary to maintain seaport security.

Section 5. Section 311.123, Florida Statutes, is created to read:

311.123 Maritime domain security awareness training program.--

(1) The Florida Seaport Transportation and Economic Development Council, in conjunction with the Department of Law Enforcement and the Office of Drug Control within the Executive Office of the Governor, shall create a maritime domain security awareness training program to instruct all personnel employed within a seaport's boundaries about the security procedures required of them for implementation of the seaport security plan.

(2) The training program curriculum must include security training required pursuant to 33 C.F.R. part 105 and must be designed to enable the seaports in this state to meet the training, drill, and exercise requirements of 33 C.F.R. part 105 and individual seaport security plans and to comply with the requirements of s. 311.12 relating to security awareness.

Section 6. Section 311.124, Florida Statutes, is created to read:

311.124 Trespassing; detention by a certified seaport security officer.--

(1) Any Class D or Class G seaport security officer certified under the Maritime Transportation Security Act guidelines or any employee of the seaport security force certified under the Maritime Transportation Security Act guidelines who has probable cause to believe that a person is trespassing pursuant to the provisions of s. 810.08 or s. 810.09 or this chapter in a designated restricted area pursuant to s. 311.111 is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer, and such action shall not render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(2) Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

Section 7. Section 817.021, Florida Statutes, is created to read:

817.021 False information to obtain a seaport security identification card.--A person who willfully and knowingly provides false information in obtaining or attempting to obtain a seaport security identification card commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7147 Seaport Security
SPONSOR(S): Domestic Security Committee, Adams
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Currently, and with some exception, individuals who have been convicted of certain offenses within the past 7 years do not qualify for employment at seaports. This bill establishes a waiver review process for these individuals.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty → The bill provides for a mechanism to safeguard the rights of individuals to maintain or gain employment on seaports though a waiver process of currently disqualifying circumstances.

Maintain Public Security → The bill provides public protections through due process ensuring that security credentialing on seaports is not compromised or usurped.

B. EFFECT OF PROPOSED CHANGES:

Currently, a seaport's security plan must provide that:

- Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses shall not be qualified for initial employment within or regular access to a seaport or restricted access area; and

- Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to a seaport or restricted access area unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration. [1]

This bill amends s. 311.12, F.S., in order to provide a review process for individuals who have been found unqualified for unescorted access and denied employment by a seaport for the above-described reasons. Under this provision, the Department of Law Enforcement (FDLE) will conduct a review based on a request for waiver from an individual who has been found unqualified according to the provisions of s. 311.12 (3) (e), F.S. The review will be based on the information submitted by the applicant and the findings from the Parole Commission administrative staff. Such a review is exempt from procedures required under the Administrative Procedures Act, Chapter 120, F.S.

In regards to seaport operators and third-party vendors who FDLE reasonably believes may pose a threat to the security interests of the state, the bill authorizes the state to refuse such entities access to seaports. The bill also authorizes FDLE to request from any seaport contractor all information that FDLE deems necessary to make a determination of that contractor's potential or creditable threat to seaport security. Failure to provide such information is grounds to disqualify the contractor from eligibility to be granted access to seaports.

[1] s. 311.12, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 311.12, F.S., requiring the Department of Law Enforcement to establish a waiver process to grant certain individuals unescorted access to seaports or restricted areas under certain circumstances; providing waiver process requirements; requiring the administrative staff of the Parole Commission to review the waiver application and transmit the findings to the Department of Law Enforcement; requiring the Department of Law Enforcement to make a final disposition of the application and notify the applicant and the seaport; exempting the waiver process from administrative procedures requirements.

Section 2. Creates s. 311.1244, F.S., authorizing the state to refuse seaport access to certain operators and vendors; authorizing the Department of Law Enforcement to request information for certain purposes; authorizing the Department of Law Enforcement to disqualify certain operators or vendors from eligibility for access to seaports.

Section 3. Provides severability.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The possible number of waivers to be processed is currently unknown and therefore associated costs can not be determined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to seaport security; amending s. 311.12, F.S.; requiring the Department of Law Enforcement to establish a waiver process to grant certain individuals unescorted access to seaports or restricted access areas under certain circumstances; providing waiver process requirements; requiring the administrative staff of the Parole Commission to review the waiver application and transmit the findings to the department; requiring the department to make a final disposition of the application and notify the applicant and the seaport; exempting the waiver process from administrative procedures requirements; creating s. 311.1244, F.S.; authorizing the state to refuse seaport access to certain operators and vendors; authorizing the department to request information for certain purposes; authorizing the department to disqualify certain operators or vendors from eligibility for access to seaports; providing severability; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (3) of section 311.12, Florida Statutes, to read:

311.12 Seaport security standards.--

(3)

(e) The Department of Law Enforcement shall establish a waiver process to allow unescorted access to seaports in this

state to an individual who is found to be unqualified under paragraph (c) and denied employment by a seaport. A waiver shall be based upon the circumstances of any disqualifying act or offense, any restitution made by the individual, or other factors from which it may be determined that the individual does not pose a risk of harming any person or engaging in theft, drug trafficking, or terrorism within the public seaports regulated under this chapter. The waiver process shall begin when an individual who has been denied initial employment within or regular unescorted access to restricted areas of a public seaport as described in paragraph (c) submits to the department an application for a waiver and a notarized letter or affidavit from the individual's employer or union representative which states the mitigating reasons for initiating the waiver process. Upon receiving the application, the department shall immediately transmit the application to the Parole Commission for review. No later than 90 days after receiving the application from the department, the administrative staff of the commission shall conduct a factual review of the waiver application. Findings of fact shall be transmitted to the department for review. The department shall provide a copy of those findings to the applicant before a final disposition of the waiver application. The department shall make a final disposition of the waiver application based on the factual findings of the investigation by the commission. The seaport that originally denied employment and the waiver applicant shall be notified of the final disposition of the waiver application by the department. The waiver process established under this paragraph is exempt from

chapter 120.

Section 2. Section 311.1244, Florida Statutes, is created to read:

311.1244 Refusal of access to seaports.--The state may reserve the right to refuse access to seaport operators and third-party vendors the Department of Law Enforcement reasonably believes may pose a threat to the security interests of the citizens of the state. The department may request from any potential seaport contractor all information the department deems necessary to make a determination of that contractor's potential or creditable threat to seaport security. The failure of any potential seaport contractor to timely provide any requested information may be used by the department to disqualify the contractor from eligibility to be granted access to any seaport in this state.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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