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**CRIMINAL JUSTICE  
COMMITTEE MEETING**

**Tuesday, April 4, 2006  
10:15 a.m. - 11:00 a.m.  
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, April 04, 2006 10:15 am

**End Date and Time:** Tuesday, April 04, 2006 11:00 am

**Location:** 404 HOB

**Duration:** 0.75 hrs

#### Consideration of the following bill(s):

HB 471 CS Fish and Wildlife by Troutman

HB 1147 Crimes Against Homeless Persons by Justice

HB 1225 Reckless Driving by Glorioso

HR 1627 Unanimity of Jury Recommendations in Death Penalty Cases by Kyle

HB 7065 Clandestine Laboratory Contamination by Health Care Regulation Committee

HB 7199 Forensic Treatment and Training by Future of Florida's Families Committee

**NOTICE FINALIZED on 03/31/2006 15:26 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, April 4, 2006**  
**10:15 a.m. – 11:00 p.m.**  
**404 House Office Building**

- I. Opening remarks by Chair Kravitz**
- II. Roll call**
- III. Consideration of the following bill(s):**
  - HB 471 CS Fish and Wildlife by Troutman**
  - HB 1147 Crimes Against Homeless Persons by Justice**
  - HB 1225 Reckless Driving by Glorioso**

- **HB 1627 Unanimity of Jury Recommendations in Death Penalty Cases by Kyle**
- **HB 7065 Clandestine Laboratory Contamination by Health Care Regulation Committee**
- **HB 7199 Forensic Treatment and Training by Future of Florida's Families Committee**

**IV. Closing comments / Meeting adjourned**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 471 CS  
**SPONSOR(S):** Troutman  
**TIED BILLS:**

Fish and Wildlife  
**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water &amp; Natural Resources Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Winker</u>	<u>Lotspeich</u>
2) <u>Criminal Justice Committee</u>	<u></u>	<u>Ferguson</u> <i>KF</i>	<u>Kramer</u> <i>JK</i>
3) <u>Agriculture &amp; Environment Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

**SUMMARY ANALYSIS**

The bill addresses several issues relating to penalties for violations of statutes and rules of the Fish and Wildlife Conservation Commission (FWCC) and several issues relating to hunting licenses. Specifically the bill:

- Amends s. 370.021, F.S., to provide that the penalties provided therein are limited to violations related to the *commercial* harvesting of marine fish.
- Creates a framework for penalties for violations of *recreational* fish and wildlife statutes and FWCC rules. The bill provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation. Within each violation level, enhanced penalties are provided for repeat violations.
- Creates penalties for violations of statutes and FWCC rules relating to poisonous and venomous reptiles and to the possession of captive wildlife for personal use and exhibition.
- Creates the Wildlife Violators Compact which allows Florida to join 21 other compact member states in recognizing fish and wildlife violations by persons from member states and sharing such information among each member state.
- Authorizes FWCC to establish a "hunter mentoring" program by allowing an individual to defer the hunter safety course requirement for a hunting license for 1 year when the person is hunting under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from the requirement of a hunter safety course.
- Removes the current requirement that the FWCC's hunter safety course consists of no less than 12 hours of instruction, while maintaining the current requirement that the course consists of no more than 16 hours of instruction.
- Acknowledges the creation of a crossbow season permit (during the archery and muzzleloading seasons) and imposes a \$5 annual fee for such permit.
- Increases the fee for an annual sportsman's license from \$66 to \$71 and for an annual gold sportsman's license from \$82 to \$87.

The bill has an unknown, but minimal, fiscal impact since no data exists on the expected number of persons who might take advantage of the hunter safety certification deferral provisions of the bill.

The bill takes effect on January 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill increases the fee for an annual sportsman's license from \$66 to \$71 and an annual gold sportsman's license from \$82 to \$87 and imposes a \$5 fee for an annual crossbow season permit.

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

The Fish and Wildlife Conservation Commission (FWCC) is a constitutionally created agency.<sup>1</sup> As such, it has exclusive regulatory powers with respect to wildlife, freshwater aquatic life, and marine life. The Legislature is limited by the Constitution to enacting laws establishing license fees and penalties for violating FWCC regulations, and enacting laws in aid of the FWCC.

##### Penalties

Currently, penalties for violations of laws and regulations relating to fish and wildlife are found in Chapter 370, F.S., (marine resources) and Chapter 372, F.S., (freshwater fish and wildlife).

##### Marine Resources

Subsections 370.021(1) and (2), F.S., provide for penalties for violations of statutes and rules of the FWCC relating to the conservation of marine resources. Persons convicted of such violations may be punished for a first conviction by incarceration up to 60 days or by a fine of not less than \$100 nor more than \$500 or both incarceration and a fine. For a second or subsequent conviction within a 12 month period, incarceration may be up to 6 months and a fine of between \$250 and \$1,000 may be imposed. Additional penalties may be assessed for major violations of statutes and FWCC rules. Section 370.021, F.S., also provides penalties for violations relating to the use of illegal nets (s. 370.021(3), F.S.), illegal possession of certain finfish in excess of a commercial bag limit (s. 370.021(4), F.S.), and illegally harvesting products by unlicensed sellers and purchasers (ss. 370.021(5) and (6), F.S.).

##### Freshwater Fish and Wildlife

Currently, s. 372.83, F.S., provides for certain penalties for violations of statutes and FWCC rules relating to freshwater fish and wildlife. Subsection 372.83(1), F.S., provides for the imposition of non-criminal penalties pursuant to s. 372.711, F.S., which provides for civil penalties. Subsection 372.83(2), F.S., provides that certain regulations are punishable as a second degree misdemeanor pursuant to s. 775.082, F.S. Subsection 372.83(3), F.S., provides that the forgery of a hunting license or possession thereof is punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

##### Captive Wildlife

Sections 372.86 and 372.87, F.S., require that persons wanting to keep, possess, or exhibit any poisonous or venomous reptile must obtain a permit or license from the FWCC and pay an annual fee. Section 372.88, F.S., requires exhibitors of poisonous or venomous reptiles to post a bond conditioned that the exhibitor will indemnify and save harmless all persons from injury or damage, and that the exhibitor shall comply with all laws and rules for handling, housing, and exhibiting such animals. The

<sup>1</sup> Section 9, Article IV, Florida Constitution.

provisions of Sections 372.89-92, F.S., also relate to poisonous or venomous reptiles and provide requirements for housing, transportation, inspection, rewards, and organized hunts for poisonous or venomous reptiles.

Sections 372.921 and 372.922, F.S., regulate the exhibition, sale and personal possession of wildlife.

### Wildlife Violator Compact

The concept of a wildlife violator compact was first discussed in the early 1980s by several states in the Western Association of Fish and Wildlife Agencies. The compact was modeled after a Drivers License Compact which provided for reciprocity between compact member states to recognize each state's driver's licenses and to share with each state driver's violations and information on suspended and revoked driving licenses. In 1989, three states (Colorado, Nevada, and Oregon) were the first states to become member states of the wildlife violator compact.

The wildlife violator compact is a multi-state approach to the enforcement of hunting and fishing violations. Any suspension of fish and game license privileges resulting from a person's failure to comply with a citation or summons and complaint in a compact member's state will also be enforced by all other states participating in the compact. If a resident of a state that is participating in the compact is convicted of a fish and game violation in one of the member states, each compact state is notified and is required to treat the conviction as if it had occurred in that state for purposes of determining any applicable license restrictions or suspensions.

Currently, there are 21 states participating in the compact: Arizona, California, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

The compact is overseen by a board of administrators, consisting of one representative from the fish and wildlife agency or department of each participating state.

### Hunting Licenses

Section 372.561, F.S., requires the FWCC to issue a license to take wild animal life when an applicant provides proof that he or she is eligible for the license. Hunting licenses may be sold by the FWCC or any tax collector in the state or by any subagent (for example, hunting supply stores) authorized by s. 372.574, F.S.

FWCC reported that in FY 2000-2001, there were 178,069 hunting licenses purchased in Florida. The number of Florida hunting licenses purchased since then has declined to 157,299 in FY 2004-2005. The number of hunting licenses purchased in Florida does not represent the number of persons (residents and non-residents) who are actually hunting, since Florida law exempts a number of persons from the hunting licenses requirement. In 2001, the U.S. Fish and Wildlife Service conducted a national survey of hunting, fishing and wildlife-associated recreation activities and estimated that Florida had 226,000 hunters.

Section 372.57, F.S., provides that an annual sportsman's license costs \$66, except for persons age 64 and older the fee is \$12. This license allows a person to take game and freshwater fish. An annual gold sportsman's license costs \$82 and allows a person to take freshwater fish, saltwater fish, and game.

### Exemptions from Requiring Hunting Licenses

Section 372.562, F.S., provides certain residents of Florida an exemption from paying a fee for a hunting license. Any resident who is certified or determined to be totally or permanently disabled for purposes of workers' compensation under chapter 440, F.S., under the provisions of the Railroad Retirement Board, by the U.S. Department of Veterans Affairs, or under the provisions of the U.S.



Social Security Administration, is eligible for a hunting license at no cost. A hunting license obtained under this fee exemption after January 1, 1997, expires after 5 years and must be reissued, upon request, every 5 years. A person qualifying for this exemption under the Social Security Administration must renew the license every 2 years.

Section 372.562(2), F.S., provides that the following persons are exempt from having a hunting license:

- Any child under age 16;
- Any person hunting on his or her homestead property or the homestead property of the person's spouse or minor child;
- Any resident who is a member of the United State Armed Forces and not stationed in this state, when home on leave for 30 days or less; or
- Any resident age 65 or older.

Hunting licenses are non-transferable and must be in the personal possession of the person while taking or attempting to take wild animal life.

### Hunter Safety Course

Section 372.5717, F.S., addresses the requirement for a hunter safety course as a condition for obtaining a hunting license and provides that:

- Persons born after June 1, 1975, may not be issued a hunting license without first successfully completing a hunter safety course and having in their possession a hunter safety certification card.
- The FWCC institute and coordinate a statewide hunter safety course to be offered in every county. The course must consist of no less than 12 hours and no more than 16 hours of instruction, including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.
- The FWCC issue a permanent hunter safety certification card to each person who successfully completes the hunter safety course. FWCC must also maintain records of each person issued a certification card and provide procedures for persons to seek a replacement card.
- A hunter safety certification card issued by any other state or Canadian province which shows that the person has successfully completed a hunter safety course approved by the FWCC, shall be an acceptable substitute for the hunter safety certification card issued by the FWCC.
- Persons not exempt from having a hunting license, have in their personal possession while hunting or purchasing a hunting license, proof of compliance with the hunter safety course requirements, including possessing the hunter safety certification card.
- A non-criminal penalty may be imposed on persons who violate the provisions and requirements of the hunter safety course requirements.
- The FWCC develop a voluntary hunter safety course statewide for youth 5 to 15 years of age. This course is not a substitute for the required hunter safety course described above.

The FWCC offers the state's hunter safety course through two general methods. One method is an in-class 12-hour course with the successful completion of a test, and a 3-hour experience at a firing range. The second option is either a CD or internet course for persons who wish to take advantage of this option. Persons can register on-line to take the hunter safety course, take on-line quizzes, and then are required to take a 4-hour classroom test and a 3-hour firing range experience.

### International Hunter Education Association

The International Hunter Education Association (IHEA) is a national organization which is affiliated with the International Association of Fish and Wildlife Agencies and which represents the interests of 69

states, provincial, and federal hunter education coordinators, and 70, 000 hunter education instructors who teach hunter safety, ethics, and conservation courses to hunters.

The goals of the IHEA are to:

- Serve as the primary resource for information on hunter education;
- Promote hunter education by providing opportunities for the exchange of experiences;
- Promote hunter education by fostering cooperative efforts between government, organized groups, and industry;
- Uphold the image of hunting as a legitimate tool of wildlife management;
- Promote programs which prevent hunting accidents;
- Cultivate honesty, self-discipline, self-reliance, and responsible behavior among hunters; and
- Strive for constant improvement in hunter education programs.

According to the IHEA, state fish and game agencies began offering hunter safety programs in 1949.

All states, including Florida, are currently members of the IHEA. The IHEA does not regulate, nor does it have an accreditation program for any state's hunter safety course program.

The IHEA does have standards and a model hunter safety course program which states are free to adopt. Each state sets its own hunter safety education program regulations and regulates the program within its own jurisdiction. Each state (including the FWCC) has a coordinator/administrator responsible for the hunter safety program and ensures that the program adheres to IHEA standards which allow for reciprocity.

Reciprocity means that a hunter safety course taken in one state will be honored in all other states. Should a state's hunter safety program not meet IHEA standards, the certification for the hunter safety course may not be accepted by other states. Currently, according to IHEA staff, all states meet standards.

The IHEA model hunter safety program can be viewed and taken on-line at [http://homestudy.ihea.com/contents\\_checklist.htm](http://homestudy.ihea.com/contents_checklist.htm) . The website lists the content areas for the hunter safety course. Besides general content on hunting, the IHEA hunter safety course has content on: firearms; ammunition; firearm safety; shooting skills; hunting safety and skills; hunter responsibility and ethics; and wildlife.

### Hunter Mentoring Programs

Florida does not currently have a hunter mentoring program. However, there is current authorization for persons under the age of 16 to participate in hunting activities without needing a hunting license when they hunt in the presence of a parent or guardian (s. 372.562, F.S.)

Several other states have established hunter mentoring programs. For example, Wisconsin recently established a hunter mentoring program which allows persons above the age of eight who have not taken a hunter safety course to hunt with an adult mentor under highly controlled and safe circumstances.

The Wisconsin hunter mentoring program requires that the mentor must have the person within "arm's reach" at all times while hunting. No person may serve as a hunter mentor unless they are at least 18 years of age, and all mentors born after 1973 must have successfully completed the state's hunter safety program. The mentor must be the parent or guardian of the person for whom he or she is serving as a mentor, or be authorized by the parent or guardian to serve as a mentor. This requirement does not apply to a person serving as a mentor for a person who is 18 years of age or older. A person who is authorized to hunt with a mentor and the mentor with whom the person hunts may jointly have only one firearm or one bow in their possession or control while hunting. A mentor may take only one

person at a time for which he or she is serving as a mentor. Finally, the program requires the development of an information pamphlet containing hunter safety information to be given to persons hunting with a mentor.

The Department of Texas Parks and Wildlife has had a hunter mentoring program since 2004. The program allows a person 17 or older, who has not taken and successfully completed a hunter education course, to defer the completion of the course and purchase a special deferral hunting license for a \$10 fee in addition to the regular hunting license fee. The deferral hunting license can only be purchased on a one-time basis and is effective until August 31 of the same year the deferral hunting license was purchased.

Under the Texas hunter education deferral program, a hunter with a deferral hunting license must be accompanied (within range of normal voice communication) by another licensed hunter 17-years-of-age or older who has completed and passed the hunter education program or is otherwise exempt from the hunter education program. Proof of hunter safety certification or the deferral must be on the person while hunting. A person who has been convicted of or has received a deferred adjudication for a violation of the mandatory hunter education requirement is prohibited from purchasing a deferral.

Texas also has a hunter mentoring program for persons who have qualified as certified hunter safety instructors, but for whatever reasons have been reluctant to use their acquired knowledge and skills in hunting safety to teach courses for other hunters. The mentoring program is targeting new hunter education instructors and provides an opportunity for these instructors to team up with a seasoned more experienced hunting safety instructor who will help organize classes and provide support for the new hunter education instructor.

### Crossbow Hunting

The use of crossbows for hunting is not currently allowed in Florida. In September 2004, the FWCC reviewed the issue of allowing the use of crossbows during the muzzleloading hunting season. FWCC staff were directed to determine what Florida hunters' opinions were on this issue. FWCC contracted with the Florida State University Government Performance Survey Research Center to conduct the survey. Findings from a random sample of Florida hunters indicated that 7% owned a crossbow and 2% said they had used a crossbow to hunt deer in the previous 3 years. About 45% of those surveyed favored a change to allow the use of crossbows on *wildlife management areas and public lands* during the archery season and 44% favored a change to allow the use of crossbows during the muzzleloading season. Approximately 51% favored a change to allow the use of crossbows on *private lands* during the archery season and 52% favored use during the muzzleloading season.

According to FWCC staff, the use of crossbows during archery and/or muzzleloading gun seasons is allowed in several states including Georgia, Alabama, Arkansas, Wyoming, and Ohio.

Based upon the results of the survey, FWCC staff recommended that rule changes be made that permitted the use of crossbows during archery and muzzleloading hunting seasons.

In February 2006, the FWCC approved the adoption of proposed rules (68A-13.004, 68A-12.002, and 68A-1.004) that establish new crossbow seasons during archery and muzzleloading hunting seasons.

## **EFFECT OF PROPOSED CHANGES**

### **Penalties**

#### **Marine Resources**

The bill amends s. 370.021, F.S., to provide that the penalties provided therein are limited to violations related to the *commercial* harvesting of marine fish. The bill provides a definition of "commercial

harvest.” Penalties for violations of laws and regulations relating to the *recreational* taking of marine fish are provided in the newly created s. 372.83, F.S. The bill does not make any changes in the penalties.

### Freshwater Fish and Wildlife

The bill amends s. 372.83, F.S., which establishes a framework for penalties that are applied to violations of *recreational* fish (freshwater and saltwater) and wildlife statutes and rules of the FWCC. The bill provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

A Level 1 violation constitutes noncriminal infractions punishable by the imposition of a civil penalty of \$50 for the first conviction and \$250 for each subsequent conviction. Citations shall be issued for these violations and the citation shall include a requirement for appearance before the county court. A person who willfully refuses the citation or who willfully fails to pay the civil penalty commits a misdemeanor of the second degree. Included in the list of Level 1 violations are violations of:

- FWCC rules or orders relating to quota hunting permits, and daily use permits
- Statutory provisions relating to hunting, fishing and trapping licenses
- Statutory provisions relating to hunter safety certification
- Statutory provisions relating to required clothing for persons hunting deer

A Level 2 violation constitutes a first degree misdemeanor. A first conviction is punishable under s. 775.082, F.S. (relating to sentencing), or s. 775.083, F.S. (relating to fines). Persons convicted of subsequent Level 2 violations are subject to increasing amounts of fines and license suspensions. Included in the list of Level 2 violations are violations of:

- FWCC rules or orders relating to the season, bag limits and size limits for saltwater fish, freshwater game fish, and wildlife
- FWCC rules or orders relating to access to wildlife management areas
- FWCC rules or orders relating to landing requirements for saltwater fish and freshwater game fish
- FWCC rules or orders relating to the use of dogs for hunting
- Statutory provisions relating to bonefish and crawfish
- Statutory provisions relating to feeding of alligators and crocodiles

A Level 3 violation also constitutes a first degree misdemeanor punishable under s. 775.082 or s. 775.083, F.S. As with Level 2 violations, persons convicted of subsequent Level 3 violations are subject to increasing amounts of fines and license suspensions. Included in the list of Level 3 violations are violations of:

- FWCC rules or orders relating to the sale of saltwater fish
- Statutory provisions relating to “major violations”
- Statutory provisions relating to the taking of saltwater fish with nets
- Statutory provisions relating to hunting and fishing while a license is suspended or revoked
- Statutory provisions relating to the illegal sale or possession of alligators, and the illegal taking and possession of deer and wild turkey

A Level 4 violation constitutes a felony of the third degree punishable under s. 775.082 or s. 775.083, F.S. Level 4 violations include violations of:

- Statutory provisions relating to the molestation of stone crab, blue crab, and crawfish gear
- Statutory provisions relating to forgery of a license or possession of a forged license
- Statutory provisions relating to the sale of deer or turkey that is illegally taken

## Captive Wildlife

The bill creates penalties for violations of statutes and FWCC rules related to captive wildlife. A person who violates an FWCC rule or order for a non-fee permit for the possession of captive wildlife for personal use commits a noncriminal infraction and is subject to a civil penalty of \$50.

The violation of FWCC rules and orders relating to poisonous and venomous reptiles and to the possession of captive wildlife for personal use and exhibition or sale is punishable as a second degree misdemeanor under s. 775.082 or s. 775.083, F.S.

## Wildlife Violators Compact

The bill creates the Wildlife Violators Compact which allows Florida to join 21 other compact member states in recognizing fish and wildlife violations by persons from member states and sharing such information among each member state. The Compact specifically provides for:

- Findings relating to the management of wildlife resources
- Definitions
- Procedures for the state issuing a citation
- Procedures for the licensing authority of the home state of the violator
- Reciprocal recognition of a license suspension
- Procedures for the entry into and withdrawal from the Compact

## Hunting Licenses

### Hunter Mentoring Program

The bill amends s. 372.5717, F.S., to authorize the FWCC to defer the hunter safety course requirement for one year and issue a restricted hunting license to persons wanting to try out hunting. Such persons may receive only one deferment and a person with a restricted hunting license can only hunt under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from completing the required hunter safety course.

For those persons hunting under the deferral provisions of the bill, the bill provides an exemption from the current requirement that a hunter safety course certification must be in the person's possession while hunting or when purchasing a hunting license.

### Hunter Safety Course

The bill also amends s. 372.5717, F.S., to remove the current requirement that the FWCC's hunter safety course consist of no less than 12 hours of instruction, while maintaining the current requirement that the course consist of no more than 16 hours of instruction.

### Crossbow Hunting Seasons

The bill amends s. 372.57, F.S., to acknowledge the creation of a crossbow season permit (during the archery and muzzleloading seasons) and to impose of a \$5 annual fee for such permit.

### Hunting Licenses Fee Increases

The bill increases the fee for an annual sportsman's license from \$66 to \$71 and an annual gold sportsman's license from \$82 to \$87.

## C. SECTION DIRECTORY:

Section 1: Amends s. 370.01, F.S., to define "commercial harvest" to mean the taking or harvest of marine life while operating under a permit, license, or authorization issued pursuant to chapter 370, F.S.

Section 2: Amends s. 370.021, F.S., to clarify that this section applies exclusively to commercial harvesting.

Section 3: Amends s. 370.061, F.S., to conform a cross reference.

Section 4: Creates s. 372.825, F.S., to provide penalties relating to captive wildlife.

Section 5: Amends s. 372.5717, F.S., to authorize the FWCC to waive the hunter safety education course for 1 year and issue a one-time restricted hunting license to persons wanting to hunt.

Section 6: Amends s. 372.83, F.S., to create four levels of violations with commensurate penalties of higher severity.

Section 7: Amends s. 372.57, F.S., to provide for a crossbow season permit and increase certain license fees.

Section 8: Amends s. 372.573, F.S., to conform a cross reference.

Section 9: Amends s. 372.661, F.S., to conform a cross reference.

Section 10: Creates s. 372.831, F.S., to adopt in statute the Wildlife Violator Compact.

Section 11: Creates s. 372.832, F.S., to provide that FWCC is the licensing authority for the state to enforce the provisions of the Wildlife Violator Compact.

Section 12: Creates s.372.833, F.S., to provide that any action taken by FWCC in enforcing provisions of the Compact will be subject to review by the FWCC in accordance with chapter 120, F.S.

Section 13: Amends s. 370.028, F.S., to conform a cross reference.

Section 14: Amends s. 370.092, F.S., to conform cross references.

Section 15: Amends s. 370.093, F.S., to conform a cross reference.

Section 16: Amends s. 370.12, F.S., to conform a cross reference.

Section 17: Amends s. 370.1405, F.S., to conform a cross reference.

Section 18: Amends s. 370.142, F.S., to conform a cross reference.

Section 19: Provides and effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See Fiscal Comments below.

#### **2. Expenditures:**

See Fiscal Comments below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill would have a positive impact on the private sector depending on the number of persons participating in and using the hunter safety education deferral provisions of the bill, purchasing a hunting license at the increased rate (annual sportsman's license increased from \$66 to \$71 and an annual gold sportsman's license increased from \$82 to \$87), and in turn, purchasing hunting equipment and supplies.

**D. FISCAL COMMENTS:**

FWCC has determined that there will be minimal, if any, additional costs associated with the proposed penalties section of the bill. However, it is possible that there could be an increase in the amount of revenue received from the enhanced penalties for certain repeat offenders.

FWCC has determined that no additional funds will be needed to implement the Wildlife Violator Compact. Currently, the Wildlife Violator's Compact database is hosted by the Utah Department of Public Safety (Criminal Investigation Bureau). The database was developed to answer the needs of participating member states, to exchange basic identification information, and conviction information about revokees subject to reciprocal revocation.

FWCC has determined that the revenue impacts from the hunter safety education deferral provisions of the bill and the purchase of hunting licenses are unknown since FWCC has no estimates of the number of persons who may participate in this program. Unlike the Texas hunter mentoring program, the bill does not provide for a fee in addition to the normal hunting license fee. FWCC views the revenue impact of the bill as less important than using the mentoring and deferral provisions of the bill to "...remove obstacles and increase efforts to engage new hunters..." in order to reverse the trend of declining hunters in Florida.

FWCC estimates that there would be minimal costs associated with programming its Total Licensing System (TLS), which produces the state's hunting licenses, in issuing and identifying a one-year-option deferral hunting license. A person seeking the special deferral hunting license would purchase a regular hunting license at the regular cost and declare that they do not have the required hunter safety education certificate. The TLS and the actual hunting license would identify that the person is using the deferral option. Since the deferral option is only valid for one-year, the TLS would be programmed to deny the purchase of a subsequent hunting license if the person has not successfully completed the hunter safety course and produced the certification documentation at the time of the purchase.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take actions 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:

Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to "exercise the regulatory and executive powers of the state with respect to" fresh water aquatic life, marine life, and wild animal life. The Legislature may only "enact laws in aid of" the FWCC not inconsistent with the Constitutional provision. The bill appears to be "in aid of" the FWCC and does not appear to be inconsistent with the Constitution.

**B. RULE-MAKING AUTHORITY:**

The bill does not require the promulgation of rules nor alter the rulemaking authority of any state agency.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Although the effective date for the bill is January 1, 2007, this effective date may not provide for sufficient time for the FWCC law enforcement and court systems to make the necessary changes related to the new penalty structure. Also, sufficient notice of the new penalty structure needs to be given to the persons who are purchasing hunting and fishing licenses.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 22, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 471. The strike-all amendment makes the following changes to the bill:

- Limits the penalties in s. 370.021, F.S., to commercial harvesting of saltwater fish.
- Creates a framework for and enhances penalties for violations of recreational fish and wildlife statutes and FWCC rules.
- Creates penalties for violations of statutes and rules related to the possession and exhibition of captive wildlife.
- Creates the Wildlife Violators Compact in statute allowing Florida to join 21 other states in recognizing fish and wildlife violations.
- Amends s. 372.57, F.S., to acknowledge the creation of a crossbow season permit (during the archery and muzzleloading seasons) and to impose of a \$5 annual fee for such permit.
- Increases the fees for certain hunting and fishing licenses.

This analysis has been revised to reflect the strike-all amendment.



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CHAMBER ACTION

1 The Water & Natural Resources Committee recommends the  
2 following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to fish and wildlife; amending s. 370.01,  
8 F.S.; defining "commercial harvest"; amending s. 370.021,  
9 F.S.; revising penalties for violations related to  
10 commercial harvest; correcting cross-references; amending  
11 s. 370.061, F.S.; correcting a cross-reference; amending  
12 s. 372.57, F.S.; specifying seasonal recreational  
13 activities for which a license or permit is required;  
14 increasing fees for certain annual licenses; providing  
15 fees for certain permits; providing for crossbow season  
16 permits; providing penalties for the production,  
17 possession, and use of fraudulent fishing and hunting  
18 licenses; providing penalties for the taking of game and  
19 fish with a suspended or revoked license; amending s.  
20 372.571, F.S.; correcting a cross-reference; amending s.  
21 372.5717, F.S.; authorizing the Fish and Wildlife  
22 Conservation Commission to defer the hunter safety course  
23 requirement for a specified time period and issue a

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24 restricted hunting license; limiting the number of  
 25 deferrals an individual is allowed; permitting hunting  
 26 with a restricted license under certain circumstances;  
 27 deleting the mandatory minimum number of instructional  
 28 hours for the required hunter safety course; providing an  
 29 exemption for the display of hunter safety certification;  
 30 providing penalties for violations; creating s. 372.825,  
 31 F.S.; establishing penalties for violations related to the  
 32 possession of captive wildlife; revising the penalties for  
 33 violations related to hunter safety course requirements;  
 34 amending s. 372.83, F.S.; revising the penalties for  
 35 violations of law and Fish and Wildlife Conservation  
 36 Commission rules and orders relating to recreational  
 37 activities; providing circumstances requiring a court  
 38 appearance; authorizing suspension or revocation of  
 39 license or permit; defining "conviction"; amending ss.  
 40 372.573 and 372.661, F.S.; correcting cross-references;  
 41 creating s. 372.831, F.S.; creating the interstate  
 42 Wildlife Violators Compact; providing findings, policy,  
 43 and purpose; providing definitions; providing requirements  
 44 and procedures for issuing and participating states for  
 45 issuance of violation citations; providing for reciprocal  
 46 recognition of certain license suspension related to fish  
 47 and wildlife activities; providing for applicability of  
 48 laws; providing procedures for compact administration;  
 49 establishing a board of compact administrators; providing  
 50 requirements and procedures with respect thereto;  
 51 providing for compact entry, withdrawal, ratification, and

52 amendment; providing for compact construction and  
 53 severability; providing the compact title; creating s.  
 54 372.832, F.S.; providing for compact licensing authority;  
 55 creating s. 372.833, F.S.; providing for compact  
 56 enforcement and violation review; amending ss. 370.028,  
 57 370.092, 370.093, 370.12, 370.1405, and 370.142, F.S.;  
 58 correcting cross-references; providing an effective date.

59

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

61

62 Section 1. Subsections (5) through (28) of section 370.01,  
 63 Florida Statutes, are renumbered as subsections (6) through  
 64 (29), respectively, and a new subsection (5) is added to that  
 65 section to read:

66 370.01 Definitions.--In construing these statutes, where  
 67 the context does not clearly indicate otherwise, the word,  
 68 phrase, or term:

69 (5) "Commercial harvest" means the taking or harvest of  
 70 marine fish while operating under a permit, license, or  
 71 authorization issued pursuant to this chapter; while operating  
 72 in a manner consistent with such a permit, license, or  
 73 authorization while such permit, license, or authorization is  
 74 suspended or revoked; or in quantities sufficient to suggest  
 75 intent to sell.

76 Section 2. Present subsections (1) through (4) of section  
 77 370.021, Florida Statutes, are renumbered as subsections (2)  
 78 through (5), respectively, and amended, present subsections (5)  
 79 through (12) are renumbered as subsections (6) through (13),

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80 respectively, and a new subsection (1) is added to that section,  
81 to read:

82 370.021 Administration; rules, publications, records;  
83 penalties; injunctions.--

84 (1) APPLICATION OF PENALTIES.--The penalties in this  
85 section apply when the commission of a violation is related to  
86 commercial harvest; when the commission of a violation is  
87 related to commercial harvest, the penalties in s. 372.83 do not  
88 apply.

89 (2)~~(1)~~ PENALTIES.--Unless otherwise provided by law, any  
90 person, firm, or corporation who violates ~~is convicted for~~  
91 ~~violating any~~ provision of this chapter, or any rule of the Fish  
92 and Wildlife Conservation Commission relating to the  
93 conservation of marine resources, shall be punished:

94 (a) Upon a first conviction, by imprisonment for a period  
95 of not more than 60 days or by a fine of not less than \$100 nor  
96 more than \$500, or by both such fine and imprisonment.

97 (b) On a second or subsequent conviction within 12 months,  
98 by imprisonment for not more than 6 months or by a fine of not  
99 less than \$250 nor more than \$1,000, or by both such fine and  
100 imprisonment.

101  
102 Upon final disposition of any alleged offense for which a  
103 citation for any violation of this chapter or the rules of the  
104 commission has been issued, the court shall, within 10 days,  
105 certify the disposition to the commission.

106 (3)~~(2)~~ MAJOR VIOLATIONS.--In addition to the penalties  
107 provided in paragraphs (2)~~(1)~~(a) and (b), the court shall assess

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108 additional penalties against any person, firm, or corporation  
109 convicted of major violations as follows:

110 (a) For a violation involving more than 100 illegal blue  
111 crabs, crawfish, or stone crabs, an additional penalty of \$10  
112 for each illegal blue crab, crawfish, stone crab, or part  
113 thereof.

114 (b) For a violation involving the taking or harvesting of  
115 shrimp from a nursery or other prohibited area, or any two  
116 violations within a 12-month period involving shrimping gear,  
117 minimum size (count), or season, an additional penalty of \$10  
118 for each pound of illegal shrimp or part thereof.

119 (c) For a violation involving the taking or harvesting of  
120 oysters from nonapproved areas or the taking or possession of  
121 unculled oysters, an additional penalty of \$10 for each bushel  
122 of illegal oysters.

123 (d) For a violation involving the taking or harvesting of  
124 clams from nonapproved areas, an additional penalty of \$100 for  
125 each 500 count bag of illegal clams.

126 (e) For a violation involving the taking, harvesting, or  
127 possession of any of the following species, which are  
128 endangered, threatened, or of special concern:

- 129 1. Shortnose sturgeon (*Acipenser brevirostrum*);
- 130 2. Atlantic sturgeon (*Acipenser oxyrinchus*);
- 131 3. Common snook (*Centropomus undecimalis*);
- 132 4. Atlantic loggerhead turtle (*Caretta caretta caretta*);
- 133 5. Atlantic green turtle (*Chelonia mydas mydas*);
- 134 6. Leatherback turtle (*Dermochelys coriacea*);

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- 135           7. Atlantic hawksbill turtle (*Eretmochelys imbricata*  
136 imbracata);  
137           8. Atlantic ridley turtle (*Lepidochelys kempi*); or  
138           9. West Indian manatee (*Trichechus manatus latirostris*),  
139

140 an additional penalty of \$100 for each unit of marine life or  
141 part thereof.

142           (f) For a second or subsequent conviction within 24 months  
143 for any violation of the same law or rule involving the taking  
144 or harvesting of more than 100 pounds of any finfish, an  
145 additional penalty of \$5 for each pound of illegal finfish.

146           (g) For any violation involving the taking, harvesting, or  
147 possession of more than 1,000 pounds of any illegal finfish, an  
148 additional penalty equivalent to the wholesale value of the  
149 illegal finfish.

150           (h) Permits issued to any person, firm, or corporation by  
151 the commission to take or harvest saltwater products, or any  
152 license issued pursuant to s. 370.06 or s. 370.07 may be  
153 suspended or revoked by the commission, pursuant to the  
154 provisions and procedures of s. 120.60, for any major violation  
155 prescribed in this subsection:

- 156           1. Upon a first conviction, for up to 30 calendar days.  
157           2. Upon a second conviction which occurs within 12 months  
158 after a prior violation, for up to 90 calendar days.  
159           3. Upon a third conviction which occurs within 24 months  
160 after a prior conviction, for up to 180 calendar days.  
161           4. Upon a fourth conviction which occurs within 36 months  
162 after a prior conviction, for a period of 6 months to 3 years.

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163 (i) Upon the arrest and conviction for a major violation  
164 involving stone crabs, the licenseholder must show just cause  
165 why his or her license should not be suspended or revoked. For  
166 the purposes of this paragraph, a "major violation" means a  
167 major violation as prescribed for illegal stone crabs; any  
168 single violation involving possession of more than 25 stone  
169 crabs during the closed season or possession of 25 or more  
170 whole-bodied or egg-bearing stone crabs; any violation for trap  
171 molestation, trap robbing, or pulling traps at night; or any  
172 combination of violations in any 3-consecutive-year period  
173 wherein more than 75 illegal stone crabs in the aggregate are  
174 involved.

175 (j) Upon the arrest and conviction for a major violation  
176 involving crawfish, the licenseholder must show just cause why  
177 his or her license should not be suspended or revoked. For the  
178 purposes of this paragraph, a "major violation" means a major  
179 violation as prescribed for illegal crawfish; any single  
180 violation involving possession of more than 25 crawfish during  
181 the closed season or possession of more than 25 wrung crawfish  
182 tails or more than 25 egg-bearing or stripped crawfish; any  
183 violation for trap molestation, trap robbing, or pulling traps  
184 at night; or any combination of violations in any 3-consecutive-  
185 year period wherein more than 75 illegal crawfish in the  
186 aggregate are involved.

187 (k) Upon the arrest and conviction for a major violation  
188 involving blue crabs, the licenseholder shall show just cause  
189 why his or her saltwater products license should not be  
190 suspended or revoked. This paragraph shall not apply to an

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191 individual fishing with no more than five traps. For the  
 192 purposes of this paragraph, a "major violation" means a major  
 193 violation as prescribed for illegal blue crabs, any single  
 194 violation wherein 50 or more illegal blue crabs are involved;  
 195 any violation for trap molestation, trap robbing, or pulling  
 196 traps at night; or any combination of violations in any 3-  
 197 consecutive-year period wherein more than 100 illegal blue crabs  
 198 in the aggregate are involved.

199 (l) Upon the conviction for a major violation involving  
 200 finfish, the licenseholder must show just cause why his or her  
 201 saltwater products license should not be suspended or revoked.  
 202 For the purposes of this paragraph, a major violation is  
 203 prescribed for the taking and harvesting of illegal finfish, any  
 204 single violation involving the possession of more than 100  
 205 pounds of illegal finfish, or any combination of violations in  
 206 any 3-consecutive-year period wherein more than 200 pounds of  
 207 illegal finfish in the aggregate are involved.

208 (m) For a violation involving the taking or harvesting of  
 209 any marine life species, as those species are defined by rule of  
 210 the commission, the harvest of which is prohibited, or the  
 211 taking or harvesting of such a species out of season, or with an  
 212 illegal gear or chemical, or any violation involving the  
 213 possession of 25 or more individual specimens of marine life  
 214 species, or any combination of violations in any 3-year period  
 215 involving more than 70 such specimens in the aggregate, the  
 216 suspension or revocation of the licenseholder's marine life  
 217 endorsement as provided in paragraph (h).

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219 Notwithstanding the provisions of s. 948.01, no court may  
 220 suspend, defer, or withhold adjudication of guilt or imposition  
 221 of sentence for any major violation prescribed in this  
 222 subsection. The proceeds from the penalties assessed pursuant to  
 223 this subsection shall be deposited into the Marine Resources  
 224 Conservation Trust Fund to be used for marine fisheries research  
 225 or into the commission's Federal Law Enforcement Trust Fund as  
 226 provided in s. 372.107, as applicable.

227 (4)~~(3)~~ PENALTIES FOR USE OF ILLEGAL NETS.--

228 (a) It is a major violation pursuant to this section,  
 229 punishable as provided in paragraph (b) for any person, firm, or  
 230 corporation to be simultaneously in possession of any species of  
 231 mullet in excess of the recreational daily bag limit and any  
 232 gill or other entangling net as defined in s. 16(c), Art. X of  
 233 the State Constitution. Simultaneous possession under this  
 234 provision shall include possession of mullet and gill or other  
 235 entangling nets on separate vessels or vehicles where such  
 236 vessels or vehicles are operated in coordination with one  
 237 another including vessels towed behind a main vessel. This  
 238 subsection does not prohibit a resident of this state from  
 239 transporting on land, from Alabama to this state, a commercial  
 240 quantity of mullet together with a gill net if:

241 1. The person possesses a valid commercial fishing license  
 242 that is issued by the State of Alabama and that allows the  
 243 person to use a gill net to legally harvest mullet in commercial  
 244 quantities from Alabama waters.

245 2. The person possesses a trip ticket issued in Alabama  
 246 and filled out to match the quantity of mullet being

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

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247 transported, and the person is able to present such trip ticket  
248 immediately upon entering this state.

249 3. The mullet are to be sold to a wholesale saltwater  
250 products dealer located in Escambia County or Santa Rosa County,  
251 which dealer also possesses a valid seafood dealer's license  
252 issued by the State of Alabama. The dealer's name must be  
253 clearly indicated on the trip ticket.

254 4. The mullet being transported are totally removed from  
255 any net also being transported.

256 (b)1. A flagrant violation of any rule or statute which  
257 implements s. 16(b), Art. X of the State Constitution shall be  
258 considered a felony of the third degree, punishable as provided  
259 in s. 775.082 or s. 775.083. For purposes of this paragraph, a  
260 flagrant violation shall be the illegal possession or use of a  
261 monofilament net or a net with a mesh area larger than 2,000  
262 square feet. A violation means any judicial disposition other  
263 than acquittal or dismissal.

264 2. In addition to being subject to the other penalties  
265 provided in this chapter, any violation of s. 16(b), Art. X of  
266 the State Constitution, or any statute or rule of the commission  
267 which implements the gear prohibitions and restrictions  
268 specified therein shall be considered a major violation; and any  
269 person, firm, or corporation receiving any judicial disposition  
270 other than acquittal or dismissal of such violation shall be  
271 subject to the following additional penalties:

272 a. For a first major violation within a 7-year period, a  
273 civil penalty of \$2,500 and suspension of all saltwater products

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274 license privileges for 90 calendar days following final  
275 disposition shall be imposed.

276 b. For a second major violation under this subparagraph  
277 charged within 7 years of a previous judicial disposition, which  
278 results in a second judicial disposition other than acquittal or  
279 dismissal, a civil penalty of \$5,000 and suspension of all  
280 saltwater products license privileges for 12 months shall be  
281 imposed.

282 c. For a third or subsequent major violation under this  
283 subparagraph, charged within a 7-year period, resulting in a  
284 third or subsequent judicial disposition other than acquittal or  
285 dismissal, a civil penalty of \$5,000, lifetime revocation of the  
286 saltwater products license, and forfeiture of all gear and  
287 equipment used in the violation shall be imposed.

288 d. For a first flagrant violation under this subparagraph,  
289 a civil penalty of \$5,000 and a suspension of all saltwater  
290 license privileges for 12 months shall be imposed. For a second  
291 or subsequent flagrant violation under this subparagraph, a  
292 civil penalty of \$5,000, a lifetime revocation of the saltwater  
293 products license, and the forfeiture of all gear and equipment  
294 used in the violation shall be imposed.

295

296 A court may suspend, defer, or withhold adjudication of guilt or  
297 imposition of sentence only for any first violation of s. 16,  
298 Art. X of the State Constitution, or any rule or statute  
299 implementing its restrictions, determined by a court only after  
300 consideration of competent evidence of mitigating circumstances  
301 to be a nonflagrant or minor violation of those restrictions

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302 upon the use of nets. Any violation of s. 16, Art. X of the  
 303 State Constitution, or any rule or statute implementing its  
 304 restrictions, occurring within a 7-year period commencing upon  
 305 the conclusion of any judicial proceeding resulting in any  
 306 outcome other than acquittal shall be punished as a second,  
 307 third, or subsequent violation accordingly.

308 (c) During the period of suspension or revocation of  
 309 saltwater license privileges under this subsection, the licensee  
 310 shall not participate in the taking or harvesting, or attempt  
 311 the taking or harvesting, of saltwater products from any vessel  
 312 within the waters of the state; be aboard any vessel on which a  
 313 commercial quantity of saltwater products is possessed through  
 314 an activity requiring a license pursuant to this section; or  
 315 engage in any other activity requiring a license, permit, or  
 316 certificate issued pursuant to this chapter. Any person who is  
 317 convicted of violating this paragraph:

318 1. Upon a first or second conviction, is guilty of a  
 319 misdemeanor of the first degree, punishable as provided in s.  
 320 775.082 or s. 775.083.

321 2. Upon a third or subsequent conviction, is guilty of a  
 322 felony of the third degree, punishable as provided in s.  
 323 775.082, s. 775.083, or s. 775.084.

324 (d) Upon reinstatement of saltwater license privileges  
 325 suspended pursuant to a violation of this subsection, a licensee  
 326 owning or operating a vessel containing or otherwise  
 327 transporting in or on Florida waters any gill net or other  
 328 entangling net, or containing or otherwise transporting in  
 329 nearshore and inshore Florida waters any net containing more

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330 than 500 square feet of mesh area shall remain restricted for a  
331 period of 12 months following reinstatement, to operating under  
332 the following conditions:

333 1. Vessels subject to this reinstatement period shall be  
334 restricted to the corridors established by commission rule.

335 2. A violation of the reinstatement period provisions  
336 shall be punishable pursuant to paragraphs (2)~~(1)~~(a) and (b).

337 (5)~~(4)~~ ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING  
338 CERTAIN FINFISH.--It is a major violation pursuant to this  
339 section, punishable as provided in paragraph (4)~~(3)~~(b), for any  
340 person to be in possession of any species of trout, snook, or  
341 redfish which is three fish in excess of the recreational or  
342 commercial daily bag limit.

343 Section 3. Paragraph (d) of subsection (5) of section  
344 370.061, Florida Statutes, is amended to read:

345 370.061 Confiscation, seizure, and forfeiture of property  
346 and products.--

347 (5) CONFISCATION AND SALE OF PERISHABLE SALTWATER  
348 PRODUCTS; PROCEDURE.--

349 (d) For purposes of confiscation under this subsection,  
350 the term "saltwater products" has the meaning set out in s.  
351 370.01(27)~~(26)~~, except that the term does not include saltwater  
352 products harvested under the authority of a recreational license  
353 unless the amount of such harvested products exceeds three times  
354 the applicable recreational bag limit for trout, snook, or  
355 redfish.

356 Section 4. Paragraphs (h), (i), and (j) of subsection (4),  
357 paragraphs (e) through (i) of subsection (8), paragraph (b) of

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358 subsection (11), and paragraph (b) of subsection (12) of section  
359 372.57, Florida Statutes, are amended, and subsections (16) and  
360 (17) are added to that section, to read:

361 372.57 Recreational licenses, permits, and authorization  
362 numbers; fees established.--

363 (4) RESIDENT HUNTING AND FISHING LICENSES.--The licenses  
364 and fees for residents participating in hunting and fishing  
365 activities in this state are as follows:

366 (h) Annual sportsman's license, \$71 ~~\$66~~, except that an  
367 annual sportsman's license for a resident 64 years of age or  
368 older is \$12. A sportsman's license authorizes the person to  
369 whom it is issued to take game and freshwater fish, subject to  
370 the state and federal laws, rules, and regulations, including  
371 rules of the commission, in effect at the time of the taking.  
372 Other authorized activities include activities authorized by a  
373 management area permit, a muzzle-loading gun season permit, a  
374 turkey permit, a Florida waterfowl permit, ~~and~~ an archery season  
375 permit, and a crossbow season permit.

376 (i) Annual gold sportsman's license, \$87 ~~\$82~~. The gold  
377 sportsman's license authorizes the person to whom it is issued  
378 to take freshwater fish, saltwater fish, and game, subject to  
379 the state and federal laws, rules, and regulations, including  
380 rules of the commission, in effect at the time of taking. Other  
381 authorized activities include activities authorized by a  
382 management area permit, a muzzle-loading gun season permit, a  
383 turkey permit, a Florida waterfowl permit, an archery season  
384 permit, a crossbow season permit, a snook permit, and a crawfish  
385 permit.

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386 (j) Annual military gold sportsman's license, \$18.50. The  
 387 gold sportsman's license authorizes the person to whom it is  
 388 issued to take freshwater fish, saltwater fish, and game,  
 389 subject to the state and federal laws, rules, and regulations,  
 390 including rules of the commission, in effect at the time of  
 391 taking. Other authorized activities include activities  
 392 authorized by a management area permit, a muzzle-loading gun  
 393 season permit, a turkey permit, a Florida waterfowl permit, an  
 394 archery season permit, a crossbow season permit, a snook permit,  
 395 and a crawfish permit. Any resident who is an active or retired  
 396 member of the United States Armed Forces, the United States  
 397 Armed Forces Reserve, the National Guard, the United States  
 398 Coast Guard, or the United States Coast Guard Reserve is  
 399 eligible to purchase the military gold sportsman's license upon  
 400 submission of a current military identification card.

401 (8) SPECIFIED HUNTING, FISHING, AND RECREATIONAL ACTIVITY  
 402 PERMITS.--In addition to any license required under this  
 403 chapter, the following permits and fees for specified hunting,  
 404 fishing, and recreational uses and activities are required:

405 (e) A \$5 fee is imposed for the following permits:

406 1. An annual archery season permit for a resident or  
 407 nonresident to hunt within the state during any archery season  
 408 authorized by the commission.

409 2. An annual crossbow season permit for a resident or  
 410 nonresident to hunt within the state during any crossbow season  
 411 authorized by the commission.

412 3. An annual muzzle-loading gun season permit for a  
 413 resident or nonresident to hunt within the state during any with

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414 a muzzle-loading gun season is \$5. ~~Hunting with a muzzle-loading~~  
415 ~~gun is limited to game seasons in which hunting with a modern~~  
416 ~~firearm is not authorized by the commission.~~

417 ~~(f) An annual archery permit for a resident or nonresident~~  
418 ~~to hunt within the state with a bow and arrow is \$5. Hunting~~  
419 ~~with an archery permit is limited to those game seasons in which~~  
420 ~~hunting with a firearm is not authorized by the commission.~~

421 (f) ~~(g)~~ A special use permit for a resident or nonresident  
422 to participate in limited entry hunting or fishing activities as  
423 authorized by commission rule shall not exceed \$100 per day or  
424 \$250 per week. Notwithstanding any other provision of this  
425 chapter, there are no exclusions, exceptions, or exemptions from  
426 this permit fee. In addition to the permit fee, the commission  
427 may charge each special use permit applicant a nonrefundable  
428 application fee not to exceed \$10.

429 (g) ~~(h)~~ 1. A management area permit for a resident or  
430 nonresident to hunt on, fish on, or otherwise use for outdoor  
431 recreational purposes land owned, leased, or managed by the  
432 commission, or by the state for the use and benefit of the  
433 commission, shall not exceed \$25 per year.

434 2. Permit fees for short-term use of land that is owned,  
435 leased, or managed by the commission may be established by rule  
436 of the commission for activities on such lands. Such permits may  
437 be in lieu of, or in addition to, the annual management area  
438 permit authorized in subparagraph 1.

439 3. Other than for hunting or fishing, the provisions of  
440 this paragraph shall not apply on any lands not owned by the



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441 commission, unless the commission has obtained the written  
442 consent of the owner or primary custodian of such lands.

443 (h) ~~(i)~~1. A recreational user permit is required to hunt  
444 on, fish on, or otherwise use for outdoor recreational purposes  
445 land leased by the commission from private nongovernmental  
446 owners, except for those lands located directly north of the  
447 Apalachicola National Forest, east of the Ochlocknee River until  
448 the point the river meets the dam forming Lake Talquin, and  
449 south of the closest federal highway. The fee for a recreational  
450 user permit shall be based upon the economic compensation  
451 desired by the landowner, game population levels, desired hunter  
452 density, and administrative costs. The permit fee shall be set  
453 by commission rule on a per-acre basis. The recreational user  
454 permit fee, less administrative costs of up to \$25 per permit,  
455 shall be remitted to the landowner as provided in the lease  
456 agreement for each area.

457 2. One minor dependent, 16 years of age or younger, may  
458 hunt under the supervision of the permittee and is exempt from  
459 the recreational user permit requirements. The spouse and  
460 dependent children of a permittee are exempt from the  
461 recreational user permit requirements when engaged in outdoor  
462 recreational activities other than hunting and when accompanied  
463 by a permittee. Notwithstanding any other provision of this  
464 chapter, no other exclusions, exceptions, or exemptions from the  
465 recreational user permit fee are authorized.

466 (11) RESIDENT LIFETIME HUNTING LICENSES.--

467 (b) The following activities are authorized by the  
468 purchase of a lifetime hunting license:

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469 1. Taking, or attempting to take or possess, game  
470 consistent with the state and federal laws and regulations and  
471 rules of the commission in effect at the time of the taking.

472 2. All activities authorized by a muzzle-loading gun  
473 season permit, a turkey permit, an archery season permit, a  
474 crossbow season permit, a Florida waterfowl permit, and a  
475 management area permit, excluding fishing.

476 (12) RESIDENT LIFETIME SPORTSMAN'S LICENSES.--

477 (b) The following activities are authorized by the  
478 purchase of a lifetime sportsman's license:

479 1. Taking, or attempting to take or possess, freshwater  
480 and saltwater fish, and game, consistent with the state and  
481 federal laws and regulations and rules of the commission in  
482 effect at the time of taking.

483 2. All activities authorized by a management area permit,  
484 a muzzle-loading gun season permit, a turkey permit, an archery  
485 season permit, a crossbow season permit, a Florida waterfowl  
486 permit, a snook permit, and a crawfish permit.

487 (16) FORGING OF LICENSES.--It is unlawful for any person  
488 to make, forge, or counterfeit a freshwater fishing, hunting, or  
489 saltwater fishing license. Such a license may be reproduced only  
490 as authorized by the commission. It is unlawful for any person  
491 to knowingly have in his or her possession a forgery,  
492 counterfeit, or imitation of such a license unless possession by  
493 the person has been fully authorized by the commission. A person  
494 who violates this subsection commits a level 4 violation as  
495 classified and punishable under s. 372.83.

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496           (17) TAKING OF GAME AND FISH WHILE LICENSE SUSPENDED OR  
 497 REVOKED.--A person may not take game, freshwater game fish,  
 498 saltwater fish, or fur-bearing animals within this state while  
 499 the license required to do so is suspended or revoked. A person  
 500 who violates this subsection commits a level 3 violation as  
 501 classified and punishable under s. 372.83.

502           Section 5. Section 372.571, Florida Statutes, is amended  
 503 to read:

504           372.571 Expiration of licenses and permits.--Each license  
 505 or permit issued under this chapter must be dated when issued.  
 506 Each license or permit issued under this chapter remains valid  
 507 for 12 months after the date of issuance, except for a lifetime  
 508 license issued pursuant to s. 372.57 which is valid from the  
 509 date of issuance until the death of the individual to whom the  
 510 license is issued unless otherwise revoked in accordance with s.  
 511 372.99, or a 5-year license issued pursuant to s. 372.57 which  
 512 is valid for 5 consecutive years from the date of purchase  
 513 unless otherwise revoked in accordance with s. 372.99, or a  
 514 license issued pursuant to s. 372.57(5)(a), (b), (c), or (f) or  
 515 (8) ~~(f)~~ ~~(g)~~ or ~~(g)~~ ~~(h)~~2., which is valid for the period specified  
 516 on the license. A resident lifetime license or a resident 5-year  
 517 license that has been purchased by a resident of this state and  
 518 who subsequently resides in another state shall be honored for  
 519 activities authorized by that license.

520           Section 6. Subsections (2), (3), (6), and (8) of section  
 521 372.5717, Florida Statutes, are amended to read:

522           372.5717 Hunter safety course; requirements; penalty.--

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523 (2) (a) A person born on or after June 1, 1975, may not be  
 524 issued a license to take wild animal life with the use of a  
 525 firearm, gun, bow, or crossbow in this state without having  
 526 first successfully completed a hunter safety course as provided  
 527 in this section, and without having in his or her personal  
 528 possession a hunter safety certification card, as provided in  
 529 this section.

530 (b) The commission may defer the hunter safety course  
 531 requirement for 1 year and issue a restricted hunting license.  
 532 Individuals may receive only one deferment. Individuals issued a  
 533 restricted hunting license shall only be permitted to take wild  
 534 animal life with the use of a firearm, gun, bow, or crossbow  
 535 under the direct supervision and in the physical presence of an  
 536 adult who has successfully completed or is exempt from  
 537 completing the required hunter safety course as provided in this  
 538 section.

539 (3) The commission ~~Fish and Wildlife Conservation~~  
 540 ~~Commission~~ shall institute and coordinate a statewide hunter  
 541 safety course which must be offered in every county and consist  
 542 of ~~not less than 12 hours nor~~ more than 16 hours of instruction  
 543 including, but not limited to, instruction in the competent and  
 544 safe handling of firearms, conservation, and hunting ethics.

545 (6) All persons subject to the requirements of subsection  
 546 (2) must have in their personal possession, proof of compliance  
 547 with this section, while taking or attempting to take wildlife  
 548 with the use of a firearm, gun, bow, or crossbow and must  
 549 display a valid hunter safety certification card, unless the  
 550 hunter safety course requirement is deferred pursuant to this

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551 ~~section, to county tax collectors or their subagents~~ in order to  
552 purchase a Florida hunting license. After the issuance of a  
553 license, the license itself shall serve as proof of compliance  
554 with this section. A holder of a lifetime license whose license  
555 does not indicate on the face of the license that a hunter  
556 safety course has been completed must have in his or her  
557 personal possession a hunter safety certification card, as  
558 provided by this section, while attempting to take wild animal  
559 life with the use of a firearm, gun, bow, or crossbow.

560 (8) A person who violates this section shall be cited for  
561 a level 1 violation as classified and punishable under s. 372.83  
562 ~~noncriminal infraction, punishable as provided in s. 372.711.~~

563 Section 7. Section 372.825, Florida Statutes, is created  
564 to read:

565 372.825 Captive wildlife penalties.--

566 (1) A person who violates any commission rules or orders  
567 for the non-fee permit for the possession of captive wildlife  
568 for personal use and related reporting requirements commits a  
569 noncriminal infraction.

570 (2) Any person cited for committing a violation of this  
571 section shall be cited to appear before the county court. The  
572 civil penalty is \$50.

573 (3) A person commits a misdemeanor of the second degree,  
574 punishable as provided in s. 775.082 or s. 775.083, for any  
575 violation of the following:

576 (a) Commission rules or orders that require a person to  
577 pay a fee to obtain a permit to possess captive wildlife or that  
578 require the maintenance of records relating to captive wildlife.

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- 579           (b) Commission rules or orders relating to captive  
 580 wildlife not specified in paragraph (a).
- 581           (c) Section 372.86, relating to possessing or exhibiting  
 582 certain reptiles.
- 583           (d) Section 372.87, relating to licensing of certain  
 584 reptiles.
- 585           (e) Section 372.88, relating to bonding requirements.
- 586           (f) Section 372.89, relating to safe housing requirements.
- 587           (g) Section 372.90, relating to transportation.
- 588           (h) Section 372.901, relating to inspection.
- 589           (i) Section 372.91, relating to limitation of access to  
 590 certain reptiles.
- 591           (j) Section 372.912, relating to certain reptile hunts.
- 592           (k) Section 372.921, relating to exhibition or sale of  
 593 wildlife.
- 594           (l) Section 372.922, relating to personal possession of  
 595 wildlife.
- 596           Section 8. Section 372.83, Florida Statutes, is amended to  
 597 read:
- 598           372.83 ~~Recreational Noncriminal infractions; criminal~~  
 599 ~~penalties; suspension and revocation of licenses and permits.--~~
- 600           (1) LEVEL 1 VIOLATIONS.--
- 601           (a) Unless otherwise provided by law, a person convicted  
 602 of an offense classified as a level 1 violation is guilty of a  
 603 noncriminal infraction, which is punishable as provided in this  
 604 subsection and includes violation of the following:
- 605           1. Commission rules or orders relating to the filing of  
 606 required reports or other documents for licensees or

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607 permitholders, excluding those related to commercial harvest of  
608 saltwater fish or possession of captive wildlife.

609 2. Commission rules or orders relating to quota hunting  
610 permits, daily use permits, hunting zone assignments, check  
611 stations, possession of alcoholic beverages, campsite use, and  
612 the operation of vehicles within wildlife management areas or  
613 other areas managed by the commission.

614 3. Commission rules or orders relating to daily permits,  
615 possession of alcoholic beverages, possession of firearms,  
616 swimming activities, the operation of watercraft, and the  
617 operation of vehicles within fish management areas or other  
618 areas managed by the commission.

619 4. Commission rules or orders regulating vessel size or  
620 specifying motor restrictions on specified water bodies.

621 5. Section 370.063, relating to special recreational  
622 crawfish licenses.

623 6. Section 372.57, relating to hunting, fishing, and  
624 trapping licenses.

625 7. Section 372.5717, relating to hunter safety  
626 certification.

627 8. Section 372.988, relating to required clothing for  
628 persons hunting deer.

629 (b) Citations issued for any violation specified in  
630 paragraph (a) shall include a requirement for appearance before  
631 the county court.

632 (c)1. The civil penalty for any noncriminal level 1  
633 violation of the license and permit requirements of s. 372.57 is  
634 \$50 for the first conviction and \$250 for each subsequent

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635 conviction in addition to the cost of the required license and  
636 permit.

637 2. The civil penalty for any other noncriminal level 1  
638 violation is \$50 for the first conviction and \$250 for each  
639 subsequent conviction, except as otherwise provided in this  
640 subsection.

641 (d) Any person issued a citation for a violation specified  
642 in this subsection may:

643 1. Post a bond equal to the amount of the civil penalty  
644 and appear before the court; or

645 2. Pay the civil penalty by mail or in person within 30  
646 days after the date of receiving the citation, or if a bond has  
647 been posted, forfeit the bond for payment by failure to appear  
648 before the court.

649  
650 Payment of the civil penalty without appearing before the court  
651 is considered an admission of guilt and waives any further right  
652 to a hearing on the violation for which the citation was issued.  
653 Such admission shall not be used as evidence in any other  
654 proceedings except to determine the appropriate fine for any  
655 subsequent violations.

656 (e)1. Any person who willfully refuses the issuance of a  
657 citation for a violation specified in this subsection commits a  
658 misdemeanor of the second degree, punishable as provided in s.  
659 775.082 or s. 775.083.

660 2. Any person who willfully fails to pay the civil penalty  
661 within 30 days after the issuance of a citation for a violation



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662 specified in this subsection commits a misdemeanor of the second  
663 degree, punishable as provided in s. 775.082 or s. 775.083.

664 (f)1. Electing or being required to appear before the  
665 court shall waive the limitations on the civil penalty specified  
666 in this subsection. The court shall determine whether a  
667 violation has occurred and may impose a civil penalty not less  
668 than those specified in this subsection and not more than \$500.

669 2. Violations must be proved beyond a reasonable doubt  
670 before the court.

671 3. A person found guilty of a violation may file an appeal  
672 with the circuit court.

673 (g) A person charged with violating the requirement for  
674 personal possession of a license or permit under s. 372.57 may  
675 not be convicted if the person presents the required license or  
676 permit for verification by the hearing officer or clerk of the  
677 court prior to the scheduled court proceeding. The license or  
678 permit must have been issued to the person charged with  
679 committing the violation and valid at the time the violation  
680 occurred. The clerk of the court may assess a fee of \$5 to cover  
681 related court costs under this paragraph.

682 (2) LEVEL 2 VIOLATIONS.--

683 (a) Unless otherwise provided by law, a person convicted  
684 of an offense classified as a level 2 violation is guilty of a  
685 misdemeanor, which is punishable as provided in this subsection  
686 and includes violation of the following:

687 1. Commission rules or orders that specify season or time  
688 periods for the taking of saltwater fish, freshwater game fish,  
689 or wildlife.

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- 690           2. Commission rules or orders that establish bag,  
 691 possession, or size limits for, or restrict methods of the  
 692 taking of, saltwater fish, freshwater game fish, or wildlife.
- 693           3. Commission rules or orders that prohibit public access  
 694 for specified periods to wildlife management areas or other  
 695 areas managed by the commission.
- 696           4. Commission rules or orders that relate to the access to  
 697 wildlife management areas or other areas managed by the  
 698 commission.
- 699           5. Commission rules or orders relating to the feeding of  
 700 saltwater fish, freshwater game fish, or wildlife.
- 701           6. Commission rules or orders relating to restricted  
 702 hunting areas, bird sanctuaries, or critical wildlife areas.
- 703           7. Commission rules or orders relating to landing  
 704 requirements for saltwater fish or freshwater game fish.
- 705           8. Commission rules or orders relating to tagging  
 706 requirements for game and fur-bearing animals.
- 707           9. Commission rules or orders relating to the use of dogs  
 708 for the taking of game.
- 709           10. Any commission rules or orders not otherwise  
 710 classified.
- 711           11. Any prohibitions in chapter 370 not otherwise  
 712 classified in this section.
- 713           12. Section 370.08, relating to obstructing waterways with  
 714 net gear.
- 715           13. Section 370.1105, relating to finfish traps.
- 716           14. Section 370.1121, relating to bonefish.
- 717           15. Section 370.14, relating to crawfish.

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718       16. Section 370.25, relating to placement of artificial  
719 reefs.

720       17. Section 372.667, relating to feeding or enticement of  
721 alligators or crocodiles.

722       18. Section 372.705, relating to harassment of hunters,  
723 fishers, or trappers.

724       (b)1. A person convicted of any level 2 violation without  
725 any previous conviction for a level 2 violation is guilty of a  
726 misdemeanor of the first degree, punishable as provided in s.  
727 775.082 or s. 775.083.

728       2. A person convicted of any level 2 violation within 3  
729 years after any previous conviction for a level 2 violation is  
730 guilty of a misdemeanor of the first degree, punishable as  
731 provided in s. 775.082 or s. 775.083 and by a minimum mandatory  
732 fine of \$250 and suspension of all recreational licenses issued  
733 pursuant to this chapter for not less than 1 year.

734       3. A person convicted of any level 2 violation within 5  
735 years after any three previous convictions for level 2  
736 violations is guilty of a misdemeanor of the first degree,  
737 punishable as provided in s. 775.082 or s. 775.083 and by a  
738 minimum mandatory fine of \$500 and suspension of all  
739 recreational licenses issued pursuant to this chapter for not  
740 less than 3 years.

741       4. A person convicted of any level 2 violation within 10  
742 years after any three previous convictions for level 2  
743 violations is guilty of a misdemeanor of the first degree,  
744 punishable as provided in s. 775.082 or s. 775.083 and by a  
745 minimum mandatory fine of \$750 and suspension of all

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746 recreational licenses issued pursuant to this chapter for not  
747 less than 3 years.

748 (3) LEVEL 3 VIOLATIONS.--

749 (a) Unless otherwise provided by law, a person convicted  
750 of an offense classified as a level 3 violation is guilty of a  
751 misdemeanor, which is punishable as provided in this subsection  
752 and includes violation of the following:

753 1. Commission rules or orders related to the prohibited  
754 sale of saltwater fish.

755 2. Section 370.021(3), relating to major violations.

756 3. Section 370.021(5), relating to possession in excess of  
757 certain bag limits.

758 4. Section 370.081, relating to illegal importation or  
759 possession of exotic marine plants and animals.

760 5. Section 370.093, relating to the taking of saltwater  
761 fish with nets.

762 6. Section 372.26, relating to imported fish.

763 7. Section 372.57(17), relating to taking while license is  
764 suspended or revoked.

765 8. Section 372.662, relating to the illegal sale or  
766 possession of alligators.

767 9. Section 372.99, relating to the illegal taking and  
768 possession of deer and wild turkey.

769 10. Section 372.9903, relating to the illegal possession  
770 and transportation of commercial quantities of freshwater game  
771 fish.

772 (b)1. A person convicted of a level 3 violation without  
773 any previous conviction for a level 3 violation in the past 10

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774 years is guilty of a misdemeanor of the first degree, punishable  
775 as provided in s. 775.082 or s. 775.083.

776 2. A person convicted of a level 3 violation within 10  
777 years after any previous conviction of a level 3 violation is  
778 guilty of a misdemeanor of the first degree, punishable as  
779 provided in s. 775.082 or s. 775.083 and by a minimum mandatory  
780 fine of \$750 and the suspension of all recreational licenses  
781 issued pursuant to this chapter for not less than 3 years.

782 3. The penalty for a violation of s. 372.57(17) shall  
783 include a mandatory fine of \$1,000 and a suspension of all  
784 recreational licenses issued pursuant to this chapter for 5  
785 years.

786 (4) LEVEL 4 VIOLATIONS.--Unless otherwise provided by law,  
787 a person convicted of an offense classified as a level 4  
788 violation is guilty of a felony of the third degree, which is  
789 punishable as provided in s. 775.082 or s. 775.083 and includes  
790 violation of the following:

791 (a) Section 370.13, relating to the molestation of stone  
792 crab gear.

793 (b) Section 370.135, relating to the molestation of blue  
794 crab gear.

795 (c) Section 370.14, relating to the molestation of  
796 crawfish gear.

797 (d) Section 372.57(16), relating to forgery of a license  
798 or possession of a forged license.

799 (e) Section 372.99(5), relating to the sale of deer or  
800 turkey that is taken illegally.

801            (f) Section 372.99022, relating to molestation or theft of  
802 freshwater gear.

803            ~~(1) A person is guilty of a noncriminal infraction,~~  
804 ~~punishable as provided in s. 372.711, if she or he violates any~~  
805 ~~of the following provisions:~~

806            ~~(a) Rules, regulations, or orders relating to the filing~~  
807 ~~of reports or other documents required of persons who are~~  
808 ~~licensed or who hold permits issued by the commission.~~

809            ~~(b) Rules, regulations, or orders relating to fish~~  
810 ~~management areas.~~

811            ~~(c) Rules, regulations, or orders relating to quota hunt~~  
812 ~~permits, daily use permits, hunting zone assignments, camping~~  
813 ~~restrictions, the use of alcoholic beverages, vehicle use, and~~  
814 ~~check station requirements within wildlife management areas or~~  
815 ~~other areas managed by the commission.~~

816            ~~(d) Rules, regulations, or orders requiring permits free~~  
817 ~~of charge to possess captive wildlife for personal use.~~

818            ~~(e) Rules, regulations, or orders establishing size or~~  
819 ~~slot limits for freshwater game fish.~~

820            ~~(f) Rules, regulations, or orders regulating vessel size~~  
821 ~~or specifying motor restrictions on specified water bodies.~~

822            ~~(g) Rules, regulations, or orders relating to the~~  
823 ~~registration of off road vehicles and airboats operated on state~~  
824 ~~lands.~~

825            ~~(h) Section 372.57, relating to hunting, fishing, and~~  
826 ~~trapping licenses.~~

827            ~~(i) Section 372.988, relating to required clothing for~~  
828 ~~persons hunting deer.~~

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829

830 ~~A person who fails to pay the civil penalty specified in s.~~  
831 ~~372.711 within 30 days after being cited for a noncriminal~~  
832 ~~infraction or to appear before the court pursuant to that~~  
833 ~~section is guilty of a misdemeanor of the second degree,~~  
834 ~~punishable as provided in s. 775.082 or s. 775.083.~~

835 ~~(2) A person is guilty of a misdemeanor of the second~~  
836 ~~degree, punishable as provided in s. 775.082 or s. 775.083, if~~  
837 ~~she or he violates any of the following rules, regulations, or~~  
838 ~~orders of the commission:~~

839 ~~(a) Rules, regulations, or orders that specify season or~~  
840 ~~time periods for the taking of freshwater fish or wildlife.~~

841 ~~(b) Rules, regulations, or orders that specify bag limits~~  
842 ~~or restrict methods of taking freshwater fish or wildlife.~~

843 ~~(c) Rules, regulations, or orders that relate to the sale,~~  
844 ~~possession for sale, purchase, transfer, transportation, or~~  
845 ~~importation of freshwater fish or wildlife.~~

846 ~~(d) Rules, regulations, or orders that prohibit public~~  
847 ~~access for specified periods to wildlife management areas or~~  
848 ~~other areas managed by the commission.~~

849 ~~(e) Rules, regulations, or orders that require a person to~~  
850 ~~pay a fee to obtain a permit to possess captive wildlife or that~~  
851 ~~require the maintenance of records relating to captive wildlife.~~

852 ~~(f) All other rules, regulations, and orders of the~~  
853 ~~commission, except those specified in subsection (1).~~

854 ~~(3) It is unlawful for any person to make, forge,~~  
855 ~~counterfeit, or reproduce a freshwater fishing, hunting, or~~  
856 ~~saltwater fishing license unless authorized by the commission.~~

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

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857 ~~It is unlawful for any person to knowingly have in his or her~~  
 858 ~~possession a forgery, counterfeit, or imitation of such a~~  
 859 ~~license unless possession by the person has been fully~~  
 860 ~~authorized by the commission. A person who violates this~~  
 861 ~~subsection commits a felony of the third degree, punishable as~~  
 862 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~

863 (5) ~~(4)~~ Unless otherwise provided in this chapter, a person  
 864 who violates any provision of this chapter commits ~~is guilty,~~  
 865 for the first offense, ~~of~~ a misdemeanor of the second degree,  
 866 punishable as provided in s. 775.082 or s. 775.083, and ~~is~~  
 867 ~~guilty,~~ for the second offense or any subsequent offense, ~~of~~ a  
 868 misdemeanor of the first degree, punishable as provided in s.  
 869 775.082 or s. 775.083.

870 (6) ~~(5)~~ The court may order the suspension or revocation of  
 871 any license or permit issued to a person pursuant to this  
 872 chapter, if that person commits a criminal offense specified in  
 873 this chapter or a noncriminal infraction specified in this  
 874 section.

875 (7) For purposes of this section, "conviction" means any  
 876 judicial disposition other than acquittal or dismissal.

877 Section 9. Section 372.573, Florida Statutes, is amended  
 878 to read:

879 372.573 Management area permit revenues.--The commission  
 880 shall expend the revenue generated from the sale of the  
 881 management area permit as provided for in s. 372.57(8) (g) ~~(h)~~ or  
 882 that pro rata portion of any license that includes management  
 883 area privileges as provided for in s. 372.57(4) (h), (i), and (j)



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884 for the lease, management, and protection of lands for public  
885 hunting, fishing, and other outdoor recreation.

886 Section 10. Subsection (2) of section 372.661, Florida  
887 Statutes, is amended to read:

888 372.661 Private hunting preserve license fees;  
889 exception.--

890 (2) A commercial hunting preserve license, which shall  
891 exempt patrons of licensed preserves from the license and permit  
892 requirements of s. 372.57(4)(c), (d), (f), (h), (i), and (j);  
893 (5)(f) and (g); (8)(a), (b), and (e), ~~and (f)~~; (9)(a)2.; (11);  
894 and (12) while hunting on the licensed preserve property, shall  
895 be \$500. Such commercial hunting preserve license shall be  
896 available only to those private hunting preserves licensed  
897 pursuant to this section which are operated exclusively for  
898 commercial purposes, which are open to the public, and for which  
899 a uniform fee is charged to patrons for hunting privileges.

900 Section 11. Section 372.831, Florida Statutes, is created  
901 to read:

902 372.831 Wildlife Violators Compact.--The Wildlife  
903 Violators Compact is created and entered into with all other  
904 jurisdictions legally joining therein in the form substantially  
905 as follows:

906  
907 ARTICLE I

908 Findings

909  
910 (1) The participating states find that:

911 (a) Wildlife resources are managed in trust by the  
912 respective states for the benefit of all residents and visitors.

913 (b) The protection of the wildlife resources of a state is  
914 materially affected by the degree of compliance with state  
915 statutes, laws, regulations, ordinances, and administrative  
916 rules relating to the management of such resources.

917 (c) The preservation, protection, management, and  
918 restoration of wildlife contributes immeasurably to the  
919 aesthetic, recreational, and economic aspects of such natural  
920 resources.

921 (d) Wildlife resources are valuable without regard to  
922 political boundaries; therefore, every person should be required  
923 to comply with wildlife preservation, protection, management,  
924 and restoration laws, ordinances, and administrative rules and  
925 regulations of the participating states as a condition precedent  
926 to the continuance or issuance of any license to hunt, fish,  
927 trap, or possess wildlife.

928 (e) Violation of wildlife laws interferes with the  
929 management of wildlife resources and may endanger the safety of  
930 persons and property.

931 (f) The mobility of many wildlife law violators  
932 necessitates the maintenance of channels of communication among  
933 the various states.

934 (g) In most instances, a person who is cited for a  
935 wildlife violation in a state other than his or her home state:

936 1. Is required to post collateral or a bond to secure  
937 appearance for a trial at a later date;

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938           2. Is taken into custody until the collateral or bond is  
939 posted; or

940           3. Is taken directly to court for an immediate appearance.

941           (h) The purpose of the enforcement practices set forth in  
942 paragraph (g) is to ensure compliance with the terms of a  
943 wildlife citation by the cited person who, if permitted to  
944 continue on his or her way after receiving the citation, could  
945 return to his or her home state and disregard his or her duty  
946 under the terms of the citation.

947           (i) In most instances, a person receiving a wildlife  
948 citation in his or her home state is permitted to accept the  
949 citation from the officer at the scene of the violation and  
950 immediately continue on his or her way after agreeing or being  
951 instructed to comply with the terms of the citation.

952           (j) The practices described in paragraph (g) cause  
953 unnecessary inconvenience and, at times, a hardship for the  
954 person who is unable at the time to post collateral, furnish a  
955 bond, stand trial, or pay a fine and thus is compelled to remain  
956 in custody until some alternative arrangement is made.

957           (k) The enforcement practices described in paragraph (g)  
958 consume an undue amount of law enforcement time.

959           (2) It is the policy of the participating states to:

960           (a) Promote compliance with the statutes, laws,  
961 ordinances, regulations, and administrative rules relating to  
962 management of wildlife resources in their respective states.

963           (b) Recognize the suspension of wildlife license  
964 privileges of any person whose license privileges have been

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965 suspended by a participating state and treat such suspension as  
 966 if it had occurred in that person's home state.

967 (c) Allow a violator, except as provided in subsection (2)  
 968 of Article III, to accept a wildlife citation and, without  
 969 delay, proceed on his or her way, regardless of whether he or  
 970 she is a resident of the state in which the citation was issued,  
 971 provided that the violator's home state is party to this  
 972 compact.

973 (d) Report to the appropriate participating state, as  
 974 provided in the compact manual, any conviction recorded against  
 975 any person whose home state was not the issuing state.

976 (e) Allow the home state to recognize and treat  
 977 convictions recorded against its residents, which convictions  
 978 occurred in a participating state, as though they had occurred  
 979 in the home state.

980 (f) Extend cooperation to its fullest extent among the  
 981 participating states for enforcing compliance with the terms of  
 982 a wildlife citation issued in one participating state to a  
 983 resident of another participating state.

984 (g) Maximize effective use of law enforcement personnel  
 985 and information.

986 (h) Assist court systems in the efficient disposition of  
 987 wildlife violations.

988 (3) The purpose of this compact is to:

989 (a) Provide a means through which participating states may  
 990 join in a reciprocal program to effectuate the policies  
 991 enumerated in subsection (2) in a uniform and orderly manner.

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992 (b) Provide for the fair and impartial treatment of  
 993 wildlife violators operating within participating states in  
 994 recognition of the violator's right to due process and the  
 995 sovereign status of a participating state.

997 ARTICLE II  
 998 Definitions

1000 As used in this compact, unless the context requires otherwise:

1001 (1) "Citation" means any summons, complaint, summons and  
 1002 complaint, ticket, penalty assessment, or other official  
 1003 document issued to a person by a wildlife officer or other peace  
 1004 officer for a wildlife violation which contains an order  
 1005 requiring the person to respond.

1006 (2) "Collateral" means any cash or other security  
 1007 deposited to secure an appearance for trial in connection with  
 1008 the issuance by a wildlife officer or other peace officer of a  
 1009 citation for a wildlife violation.

1010 (3) "Compliance," with respect to a citation, means the  
 1011 act of answering a citation through an appearance in a court or  
 1012 tribunal or through the payment of fines, costs, and surcharges,  
 1013 if any.

1014 (4) "Conviction" means a conviction, including any court  
 1015 conviction, for any offense related to the preservation,  
 1016 protection, management, or restoration of wildlife which is  
 1017 prohibited by state statute, law, regulation, ordinance, or  
 1018 administrative rule, and such conviction shall also include the  
 1019 forfeiture of any bail, bond, or other security deposited to

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1020 secure appearance by a person charged with having committed any  
 1021 such offense, the payment of a penalty assessment, a plea of  
 1022 nolo contendere, and the imposition of a deferred or suspended  
 1023 sentence by the court.

1024 (5) "Court" means a court of law, including magistrate's  
 1025 court and the justice of the peace court.

1026 (6) "Home state" means the state of primary residence of a  
 1027 person.

1028 (7) "Issuing state" means the participating state that  
 1029 issues a wildlife citation to the violator.

1030 (8) "License" means any license, permit, or other public  
 1031 document that conveys to the person to whom it was issued the  
 1032 privilege of pursuing, possessing, or taking any wildlife  
 1033 regulated by statute, law, regulation, ordinance, or  
 1034 administrative rule of a participating state; however, when  
 1035 applied to licenses issued by the State of Florida, only those  
 1036 licenses issued pursuant to ss. 372.561, 372.562, and 372.57,  
 1037 Florida Statutes, shall be considered licenses.

1038 (9) "Licensing authority" means the department or division  
 1039 within each participating state that is authorized by law to  
 1040 issue or approve licenses or permits to hunt, fish, trap, or  
 1041 possess wildlife.

1042 (10) "Participating state" means any state that enacts  
 1043 legislation to become a member of this wildlife compact.

1044 (11) "Personal recognizance" means an agreement by a  
 1045 person made at the time of issuance of the wildlife citation  
 1046 that such person will comply with the terms of the citation.

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1047           (12) "State" means any state, territory, or possession of  
 1048 the United States, the District of Columbia, the Commonwealth of  
 1049 Puerto Rico, the Provinces of Canada, and other countries.

1050           (13) "Suspension" means any revocation, denial, or  
 1051 withdrawal of any or all license privileges, including the  
 1052 privilege to apply for, purchase, or exercise the benefits  
 1053 conferred by any license.

1054           (14) "Terms of the citation" means those conditions and  
 1055 options expressly stated upon the citation.

1056           (15) "Wildlife" means all species of animals, including,  
 1057 but not limited to, mammals, birds, fish, reptiles, amphibians,  
 1058 mollusks, and crustaceans, that are defined as "wildlife" and  
 1059 are protected or otherwise regulated by statute, law,  
 1060 regulation, ordinance, or administrative rule in a participating  
 1061 state. Species included in the definition of "wildlife" vary  
 1062 from state to state, and determination of whether a species is  
 1063 "wildlife" for the purposes of this compact shall be based on  
 1064 local law.

1065           (16) "Wildlife law" means any statute, law, regulation,  
 1066 ordinance, or administrative rule developed and enacted for the  
 1067 management of wildlife resources and the uses thereof.

1068           (17) "Wildlife officer" means any individual authorized by  
 1069 a participating state to issue a citation for a wildlife  
 1070 violation.

1071           (18) "Wildlife violation" means any cited violation of a  
 1072 statute, law, regulation, ordinance, or administrative rule  
 1073 developed and enacted for the management of wildlife resources  
 1074 and the uses thereof.

1075  
1076 ARTICLE III

1077 Procedures for Issuing State

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1079 (1) When issuing a citation for a wildlife violation, a  
1080 wildlife officer shall issue a citation to any person whose  
1081 primary residence is in a participating state in the same manner  
1082 as though the person were a resident of the issuing state and  
1083 shall not require such person to post collateral to secure  
1084 appearance, subject to the exceptions noted in subsection (2),  
1085 if the officer receives the recognizance of such person that he  
1086 or she will comply with the terms of the citation.

1087 (2) Personal recognizance is acceptable if not prohibited  
1088 by local law, by any issuing agency policy, procedure, or  
1089 regulation, or by the compact manual and if the violator  
1090 provides adequate proof of identification to the wildlife  
1091 officer.

1092 (3) Upon conviction or failure of a person to comply with  
1093 the terms of a wildlife citation, the appropriate official shall  
1094 report the conviction or failure to comply to the licensing  
1095 authority of the participating state in which the wildlife  
1096 citation was issued. The report shall be made in accordance with  
1097 procedures specified by the issuing state and shall contain  
1098 information as specified in the compact manual as minimum  
1099 requirements for effective processing by the home state.

1100 (4) Upon receipt of the report of conviction or  
1101 noncompliance pursuant to subsection (3), the licensing  
1102 authority of the issuing state shall transmit to the licensing



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1103 authority of the home state of the violator the information in  
1104 form and content as prescribed in the compact manual.

1106 ARTICLE IV

1107 Procedure for Home State

1109 (1) Upon receipt of a report from the licensing authority  
1110 of the issuing state reporting the failure of a violator to  
1111 comply with the terms of a citation, the licensing authority of  
1112 the home state shall notify the violator and shall initiate a  
1113 suspension action in accordance with the home state's suspension  
1114 procedures and shall suspend the violator's license privileges  
1115 until satisfactory evidence of compliance with the terms of the  
1116 wildlife citation has been furnished by the issuing state to the  
1117 home state licensing authority. Due process safeguards will be  
1118 accorded.

1119 (2) Upon receipt of a report of conviction from the  
1120 licensing authority of the issuing state, the licensing  
1121 authority of the home state shall enter such conviction in its  
1122 records and shall treat such conviction as though it occurred in  
1123 the home state for the purposes of the suspension of license  
1124 privileges.

1125 (3) The licensing authority of the home state shall  
1126 maintain a record of actions taken and shall make reports to  
1127 issuing states as provided in the compact manual.

1129 ARTICLE V

1130 Reciprocal Recognition of Suspension

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(1) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(2) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII

Compact Administrator Procedures

(1) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall

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1159 be composed of one representative from each of the participating  
 1160 states to be known as the compact administrator. The compact  
 1161 administrator shall be appointed by the head of the licensing  
 1162 authority of each participating state and shall serve and be  
 1163 subject to removal in accordance with the laws of the state he  
 1164 or she represents. A compact administrator may provide for the  
 1165 discharge of his or her duties and the performance of his or her  
 1166 functions as a board member by an alternate. An alternate shall  
 1167 not be entitled to serve unless written notification of his or  
 1168 her identity has been given to the board.

1169 (2) Each member of the board of compact administrators  
 1170 shall be entitled to one vote. No action of the board shall be  
 1171 binding unless taken at a meeting at which a majority of the  
 1172 total number of the board's votes is cast in favor thereof.  
 1173 Action by the board shall be only at a meeting at which a  
 1174 majority of the participating states is represented.

1175 (3) The board shall elect annually from its membership a  
 1176 chair and vice chair.

1177 (4) The board shall adopt bylaws not inconsistent with the  
 1178 provisions of this compact or the laws of a participating state  
 1179 for the conduct of its business and shall have the power to  
 1180 amend and rescind its bylaws.

1181 (5) The board may accept for any of its purposes and  
 1182 functions under this compact any and all donations and grants of  
 1183 moneys, equipment, supplies, materials, and services,  
 1184 conditional or otherwise, from any state, the United States, or  
 1185 any governmental agency and may receive, utilize, and dispose of  
 1186 same.

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1187       (6) The board may contract with, or accept services or  
 1188 personnel from, any governmental or intergovernmental agency,  
 1189 individual, firm, or corporation or any private nonprofit  
 1190 organization or institution.

1191       (7) The board shall formulate all necessary procedures and  
 1192 develop uniform forms and documents for administering the  
 1193 provisions of this compact. All procedures and forms adopted  
 1194 pursuant to board action shall be contained in a compact manual.

1195

1196                                   ARTICLE VIII

1197                           Entry into and Withdrawal from Compact

1198

1199       (1) This compact shall become effective at such time as it  
 1200 is adopted in substantially similar form by two or more states.

1201       (2) (a) Entry into the compact shall be made by resolution  
 1202 of ratification executed by the authorized officials of the  
 1203 applying state and submitted to the chair of the board.

1204       (b) The resolution shall substantially be in the form and  
 1205 content as provided in the compact manual and shall include the  
 1206 following:

1207       1. A citation of the authority from which the state is  
 1208 empowered to become a party to this compact.

1209       2. An agreement of compliance with the terms and  
 1210 provisions of this compact.

1211       3. An agreement that compact entry is with all states  
 1212 participating in the compact and with all additional states  
 1213 legally becoming a party to the compact.

1214           (c) The effective date of entry shall be specified by the  
 1215 applying state but shall not be less than 60 days after notice  
 1216 has been given by the chair of the board of the compact  
 1217 administrators or by the secretary of the board to each  
 1218 participating state that the resolution from the applying state  
 1219 has been received.

1220           (3) A participating state may withdraw from participation  
 1221 in this compact by official written notice to each participating  
 1222 state, but withdrawal shall not become effective until 90 days  
 1223 after the notice of withdrawal is given. The notice shall be  
 1224 directed to the compact administrator of each member state. No  
 1225 withdrawal of any state shall affect the validity of this  
 1226 compact as to the remaining participating states.

1227  
 1228                                   ARTICLE IX

1229                                   Amendments to the Compact

1230  
 1231           (1) This compact may be amended. Amendments shall be  
 1232 presented in resolution form to the chair of the board of  
 1233 compact administrators and shall be initiated by one or more  
 1234 participating states.

1235           (2) Adoption of an amendment shall require endorsement by  
 1236 all participating states and shall become effective 30 days  
 1237 after the date of the last endorsement.

1238           (3) Failure of a participating state to respond to the  
 1239 chair of the board within 60 days after receipt of a proposed  
 1240 amendment shall constitute endorsement thereof.

1242 ARTICLE X

1243 Construction and Severability

1244

1245 This compact shall be liberally construed so as to effectuate  
 1246 the purposes stated herein. The provisions of this compact shall  
 1247 be severable, and if any phrase, clause, sentence, or provision  
 1248 of this compact is declared to be contrary to the constitution  
 1249 of any participating state or of the United States, or if the  
 1250 applicability thereof to any government, agency, individual, or  
 1251 circumstance is held invalid, the validity of the remainder of  
 1252 this compact shall not be affected thereby. If this compact is  
 1253 declared to be contrary to the constitution of any participating  
 1254 state, the compact shall remain in full force and effect as to  
 1255 the remaining states and in full force and effect as to the  
 1256 participating state affected as to all severable matters.

1257

1258 ARTICLE XI

1259 Title

1260

1261 This compact shall be known as the "Wildlife Violator Compact."

1262 Section 12. Section 372.832, Florida Statutes, is created  
 1263 to read:

1264 372.832 Compact licensing authority; ratification.--For  
 1265 purposes of this chapter and the interstate Wildlife Violator  
 1266 Compact, the Fish and Wildlife Conservation Commission is the  
 1267 licensing authority for the State of Florida and shall enforce  
 1268 the interstate Wildlife Violator Compact and do all things  
 1269 within its jurisdiction that are necessary to effectuate the

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1270 purposes and the intent of the compact. The commission is  
 1271 authorized to execute a resolution of ratification to formalize  
 1272 the state's entry into the compact.

1273 Section 13. Section 372.833, Florida Statutes, is created  
 1274 to read:

1275 372.833 Compact enforcement; violation review.--Any act  
 1276 done or omitted pursuant to, or in enforcing, the provisions of  
 1277 the interstate Wildlife Violator Compact shall be subject to  
 1278 review by the commission in accordance with chapter 120, but any  
 1279 review of a suspension for the failure of a violator to comply  
 1280 with the terms of a citation or a conviction pursuant to the  
 1281 compact shall be limited to establishing the identity of the  
 1282 person so convicted or failing to comply with a citation.

1283 Section 14. Section 370.028, Florida Statutes, is amended  
 1284 to read:

1285 370.028 Enforcement of commission rules; penalties for  
 1286 violation of rule.--Rules of the Fish and Wildlife Conservation  
 1287 Commission shall be enforced by any law enforcement officer  
 1288 certified pursuant to s. 943.13. Any person who violates or  
 1289 otherwise fails to comply with any rule adopted by the  
 1290 commission shall be punished pursuant to s. 370.021(2)~~(1)~~.

1291 Section 15. Subsections (3) and (4) of section 370.092,  
 1292 Florida Statutes, are amended to read:

1293 370.092 Carriage of proscribed nets across Florida  
 1294 waters.--

1295 (3) Notwithstanding subsections (1) and (2), unless  
 1296 authorized by rule of the Fish and Wildlife Conservation  
 1297 Commission, it is a major violation under this section,

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1298 punishable as provided in s. 370.021(4)~~(3)~~, for any person,  
 1299 firm, or corporation to possess any gill or entangling net, or  
 1300 any seine net larger than 500 square feet in mesh area, on any  
 1301 airboat or on any other vessel less than 22 feet in length and  
 1302 on any vessel less than 25 feet if primary power of the vessel  
 1303 is mounted forward of the vessel center point. Gill or  
 1304 entangling nets shall be as defined in s. 16, Art. X of the  
 1305 State Constitution, s. 370.093(2)(b), or in a rule of the Fish  
 1306 and Wildlife Conservation Commission implementing s. 16, Art. X  
 1307 of the State Constitution. Vessel length shall be determined in  
 1308 accordance with current United States Coast Guard regulations  
 1309 specified in the Code of Federal Regulations or as titled by the  
 1310 State of Florida. The Marine Fisheries Commission is directed to  
 1311 initiate by July 1, 1998, rulemaking to adjust by rule the use  
 1312 of gear on vessels longer than 22 feet where the primary power  
 1313 of the vessel is mounted forward of the vessel center point in  
 1314 order to prevent the illegal use of gill and entangling nets in  
 1315 state waters and to provide reasonable opportunities for the use  
 1316 of legal net gear in adjacent federal waters.

1317 (4) The Fish and Wildlife Conservation Commission shall  
 1318 adopt rules to prohibit the possession and sale of mullet taken  
 1319 in illegal gill or entangling nets. Violations of such rules  
 1320 shall be punishable as provided in s. 370.021(4)~~(3)~~.

1321 Section 16. Subsection (5) of section 370.093, Florida  
 1322 Statutes, is amended to read:

1323 370.093 Illegal use of nets.--

1324 (5) Any person who violates this section shall be punished  
 1325 as provided in s. 370.021(4)~~(3)~~.



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1326 Section 17. Paragraph (s) of subsection (2) of section  
1327 370.12, Florida Statutes, is amended to read:

1328 370.12 Marine animals; regulation.--

1329 (2) PROTECTION OF MANATEES OR SEA COWS.--

1330 (s) Except as otherwise provided in this paragraph, any  
1331 person violating the provisions of this subsection or any rule  
1332 or ordinance adopted pursuant to this subsection commits a  
1333 misdemeanor, punishable as provided in s. 370.021(2)~~(1)~~(a) or  
1334 (b).

1335 1. Any person operating a vessel in excess of a posted  
1336 speed limit shall be guilty of a civil infraction, punishable as  
1337 provided in s. 327.73, except as provided in subparagraph 2.

1338 2. This paragraph does not apply to persons violating  
1339 restrictions governing "No Entry" zones or "Motorboat  
1340 Prohibited" zones, who, if convicted, shall be guilty of a  
1341 misdemeanor, punishable as provided in s. 370.021(2)~~(1)~~(a) or  
1342 (b), or, if such violation demonstrates blatant or willful  
1343 action, may be found guilty of harassment as described in  
1344 paragraph (d).

1345 3. A person may engage in any activity otherwise  
1346 prohibited by this subsection or any rule or ordinance adopted  
1347 pursuant to this subsection if the activity is reasonably  
1348 necessary in order to prevent the loss of human life or a vessel  
1349 in distress due to weather conditions or other reasonably  
1350 unforeseen circumstances, or in order to render emergency  
1351 assistance to persons or a vessel in distress.

1352 Section 18. Subsection (2) of section 370.1405, Florida  
1353 Statutes, is amended to read:

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1354 370.1405 Crawfish reports by dealers during closed season  
1355 required.--

1356 (2) Failure to submit a report as described in subsection  
1357 (1) or reporting a greater or lesser amount of whole crawfish,  
1358 crawfish tails, or crawfish meat than is actually in the  
1359 dealer's possession or name is a major violation of this  
1360 chapter, punishable as provided in s. 370.021~~(2)~~(1), s.  
1361 370.07(6)(b), or both. The commission shall seize the entire  
1362 supply of unreported or falsely reported whole crawfish,  
1363 crawfish tails, or crawfish meat, and shall carry the same  
1364 before the court for disposal. The dealer shall post a cash bond  
1365 in the amount of the fair value of the entire quantity of  
1366 unreported or falsely reported crawfish as determined by the  
1367 judge. After posting the cash bond, the dealer shall have 24  
1368 hours to transport said products outside the limits of Florida  
1369 for sale as provided by s. 370.061. Otherwise, the product shall  
1370 be declared a nuisance and disposed of by the commission  
1371 according to law.

1372 Section 19. Paragraph (c) of subsection (2) of section  
1373 370.142, Florida Statutes, is amended to read:

1374 370.142 Spiny lobster trap certificate program.--

1375 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;  
1376 PENALTIES.--The Fish and Wildlife Conservation Commission shall  
1377 establish a trap certificate program for the spiny lobster  
1378 fishery of this state and shall be responsible for its  
1379 administration and enforcement as follows:

1380 (c) Prohibitions; penalties.--

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1381           1. It is unlawful for a person to possess or use a spiny  
1382 lobster trap in or on state waters or adjacent federal waters  
1383 without having affixed thereto the trap tag required by this  
1384 section. It is unlawful for a person to possess or use any other  
1385 gear or device designed to attract and enclose or otherwise aid  
1386 in the taking of spiny lobster by trapping that is not a trap as  
1387 defined in rule 68B-24.006(2), Florida Administrative Code.

1388           2. It is unlawful for a person to possess or use spiny  
1389 lobster trap tags without having the necessary number of  
1390 certificates on record as required by this section.

1391           3. It is unlawful for any person to willfully molest, take  
1392 possession of, or remove the contents of another harvester's  
1393 trap without the express written consent of the trap owner  
1394 available for immediate inspection. Unauthorized possession of  
1395 another's trap gear or removal of trap contents constitutes  
1396 theft. Any person receiving a judicial disposition other than  
1397 dismissal or acquittal on a charge of theft of or from a trap  
1398 pursuant to this subparagraph or s. 370.1107 shall, in addition  
1399 to the penalties specified in ss. 370.021 and 370.14 and the  
1400 provisions of this section, permanently lose all his or her  
1401 saltwater fishing privileges, including his or her saltwater  
1402 products license, crawfish endorsement, and all trap  
1403 certificates allotted to him or her through this program. In  
1404 such cases, trap certificates and endorsements are  
1405 nontransferable. Any person receiving a judicial disposition  
1406 other than dismissal or acquittal on a charge of willful  
1407 molestation of a trap, in addition to the penalties specified in  
1408 ss. 370.021 and 370.14, shall lose all saltwater fishing

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1409 privileges for a period of 24 calendar months. In addition, any  
 1410 person, firm, or corporation charged with violating this  
 1411 paragraph and receiving a judicial disposition other than  
 1412 dismissal or acquittal for violating this subparagraph or s.  
 1413 370.1107 shall also be assessed an administrative penalty of up  
 1414 to \$5,000. Immediately upon receiving a citation for a violation  
 1415 involving theft of or from a trap, or molestation of a trap, and  
 1416 until adjudicated for such a violation or, upon receipt of a  
 1417 judicial disposition other than dismissal or acquittal of such a  
 1418 violation, the person, firm, or corporation committing the  
 1419 violation is prohibited from transferring any crawfish trap  
 1420 certificates and endorsements.

1421 4. In addition to any other penalties provided in s.  
 1422 370.021, a commercial harvester, as defined by rule 68B-  
 1423 24.002(1), Florida Administrative Code, who violates the  
 1424 provisions of this section, or the provisions relating to traps  
 1425 of chapter 68B-24, Florida Administrative Code, shall be  
 1426 punished as follows:

1427 a. If the first violation is for violation of subparagraph  
 1428 1. or subparagraph 2., the commission shall assess an additional  
 1429 civil penalty of up to \$1,000 and the crawfish trap number  
 1430 issued pursuant to s. 370.14(2) or (6) may be suspended for the  
 1431 remainder of the current license year. For all other first  
 1432 violations, the commission shall assess an additional civil  
 1433 penalty of up to \$500.

1434 b. For a second violation of subparagraph 1. or  
 1435 subparagraph 2. which occurs within 24 months of any previous  
 1436 such violation, the commission shall assess an additional civil

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1437 penalty of up to \$2,000 and the crawfish trap number issued  
1438 pursuant to s. 370.14(2) or (6) may be suspended for the  
1439 remainder of the current license year.

1440 c. For a third or subsequent violation of subparagraph 1.,  
1441 subparagraph 2., or subparagraph 3. which occurs within 36  
1442 months of any previous two such violations, the commission shall  
1443 assess an additional civil penalty of up to \$5,000 and may  
1444 suspend the crawfish trap number issued pursuant to s. 370.14(2)  
1445 or (6) for a period of up to 24 months or may revoke the  
1446 crawfish trap number and, if revoking the crawfish trap number,  
1447 may also proceed against the licenseholder's saltwater products  
1448 license in accordance with the provisions of s.  
1449 370.021(3)~~(2)~~(h).

1450 d. Any person assessed an additional civil penalty  
1451 pursuant to this section shall within 30 calendar days after  
1452 notification:

1453 (I) Pay the civil penalty to the commission; or

1454 (II) Request an administrative hearing pursuant to the  
1455 provisions of s. 120.60.

1456 e. The commission shall suspend the crawfish trap number  
1457 issued pursuant to s. 370.14(2) or (6) for any person failing to  
1458 comply with the provisions of sub-subparagraph d.

1459 5.a. It is unlawful for any person to make, alter, forge,  
1460 counterfeit, or reproduce a spiny lobster trap tag or  
1461 certificate.

1462 b. It is unlawful for any person to knowingly have in his  
1463 or her possession a forged, counterfeit, or imitation spiny  
1464 lobster trap tag or certificate.

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1465           c. It is unlawful for any person to barter, trade, sell,  
1466 supply, agree to supply, aid in supplying, or give away a spiny  
1467 lobster trap tag or certificate or to conspire to barter, trade,  
1468 sell, supply, aid in supplying, or give away a spiny lobster  
1469 trap tag or certificate unless such action is duly authorized by  
1470 the commission as provided in this chapter or in the rules of  
1471 the commission.

1472           6.a. Any person who violates the provisions of  
1473 subparagraph 5., or any person who engages in the commercial  
1474 harvest, trapping, or possession of spiny lobster without a  
1475 crawfish trap number as required by s. 370.14(2) or (6) or  
1476 during any period while such crawfish trap number is under  
1477 suspension or revocation, commits a felony of the third degree,  
1478 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1479           b. In addition to any penalty imposed pursuant to sub-  
1480 subparagraph a., the commission shall levy a fine of up to twice  
1481 the amount of the appropriate surcharge to be paid on the fair  
1482 market value of the transferred certificates, as provided in  
1483 subparagraph (a)1., on any person who violates the provisions of  
1484 sub-subparagraph 5.c.

1485           7. Any certificates for which the annual certificate fee  
1486 is not paid for a period of 3 years shall be considered  
1487 abandoned and shall revert to the commission. During any period  
1488 of trap reduction, any certificates reverting to the commission  
1489 shall become permanently unavailable and be considered in that  
1490 amount to be reduced during the next license-year period.  
1491 Otherwise, any certificates that revert to the commission are to  
1492 be reallocated in such manner as provided by the commission.

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1493           8. The proceeds of all civil penalties collected pursuant  
1494 to subparagraph 4. and all fines collected pursuant to sub-  
1495 subparagraph 6.b. shall be deposited into the Marine Resources  
1496 Conservation Trust Fund.

1497           9. All traps shall be removed from the water during any  
1498 period of suspension or revocation.

1499           Section 20. This act shall take effect January 1, 2007.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1147

Crimes Against Homeless Persons

**SPONSOR(S):** Justice

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2074

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

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### SUMMARY ANALYSIS

This bill requires the Office of the Attorney General (the office) to assess the extent of the problem of crimes against homeless persons and develop a plan in consultation with other agencies to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes. This bill requires the office to make an initial report to the Legislature by January 7, 2007 and a final report by December 1, 2007.

This bill also requires, by July 1, 2007, for the Department of Law Enforcement in consultation with other agencies to develop a 2-hour telecourse for all law enforcement agencies to address crimes against homeless persons and methods of dealing effectively and humanely with homeless persons.

This bill takes effect upon becoming law.

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

**STORAGE NAME:** h1147.CRJU.doc

**DATE:** 3/15/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- This bill requires the Office of the Attorney General to assess the extent of the problem of crimes against homeless persons and develop a plan in consultation with other agencies to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Effect of bill on the Office of the Attorney General (the office)**

This bill requires the office to assess the extent of the problem of crimes against homeless persons and develop a plan in consultation with homeless persons and their advocates, law enforcement agencies, the Department of Law Enforcement, the Florida Criminal Justice Executive Institute, and the regional domestic task forces under s. 943.0312, F.S., to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes.

This bill requires the office to make an initial report to the Legislature by January 7, 2007 and a final report by December 1, 2007. These reports must include legislative recommendations to carry out this plan and recommendations for additional legislation to curtail crimes targeted against the homeless.

##### **Effect of bill on the Florida Department of Law Enforcement (FDLE)**

This bill requires, by July 1, 2007, the FDLE in consultation with the Criminal Justice Standards and Training Commission (CJSTC) and the Florida Criminal Justice Executive Institute (FCJEI)<sup>1</sup> to develop a two-hour telecourse addressing crimes against homeless persons, methods of dealing with them effectively and humanely, and instruction concerning hate crimes directed towards the homeless. The telecourse must be made available to all law enforcement agencies in the State.

The type of training mandated by this bill would be new for FDLE and different than other training developed by the agency, the CJSTC, and the FCJEI. To date, the FDLE has developed primarily training geared toward classroom delivery and some online training classes, not telecourses (i.e. courses of televised lectures).

The law enforcement basic recruit training curriculum approved by the CJSTC does teach law enforcement recruits to be sensitive to the needs of "special populations" they may encounter in their day to day duties. Specifically, mental retardation, mental illness, substance abuse, physical disabilities, gangs and the elderly are among the classifications identified, many of which could, in fact, apply to some homeless persons.

#### C. SECTION DIRECTORY:

Section 1 requires the Office of the Attorney General to assess and develop a plan in conjunction with other agencies as to the extent of the problem of crimes against homeless persons, prevent these crimes, and apprehend and prosecute the perpetrators of these crimes. It also requires, FDLE in conjunction with other agencies to develop a 2-hour telecourse for all law enforcement agencies to

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<sup>1</sup> The FCJEI is statutorily created under s. 943.1755, F.S., for the purpose of providing such training as is deemed necessary to prepare the State's present and future criminal justice executives to deal with the complex issues facing the state. The FCJEI shall conduct research projects, utilizing the resources of community colleges and universities, for the purpose of improving law enforcement interaction and intervention in communities of diverse populations.

address crimes against homeless persons and methods of dealing effectively and humanely with homeless persons.

Section 2 provides that this bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This chart reflects the Office of the Attorney General's analysis of this bill:

FY 06-07	FY07-08
\$145,600 (OPS)	\$60,550 (OPS)
\$150,000 (Expense)	\$50,000 (Expense)
\$ 2,800 (OCO)	
<b>\$298,400 Total</b>	<b>\$110,550 Total</b>

The Florida Department of Law Enforcement's analysis of this bill indicates an approximate cost of \$10,000 to develop curriculum and two-hour telecourse for FY 06-07.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

FDLE determined there would be no impact on law enforcement training centers.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

As drafted, this bill requires the Office of the Attorney General to develop a plan to apprehend and prosecute the perpetrators of crimes against the homeless. However, the statutory authority to

prosecute these cases may not lie with the Office of the Attorney General, but rather, the State Attorney's Office.

Article IV, section 4 of the Florida Constitution, together with section 16.56, F.S., sets forth the jurisdiction and authority of the Office. The Office of Statewide Prosecution, established within the Office of the Attorney General, was created by constitutional amendment passed by the voters in 1986. In order for the Statewide Prosecutor to handle a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses enumerated in the law: bribery; burglary; usury; extortion; gambling; kidnapping; theft; murder; prostitution; perjury; robbery; home-invasion robbery; car-jacking; narcotics violations; antitrust violations; anti-fencing violations; crimes involving fraud and deceit; computer crimes; racketeering; and attempts, solicitations, or conspiracies to commit these offenses<sup>2</sup>.

Article V, section 17 of the Florida Constitution, together with chapter 27 part II, F.S., vests the State Attorney with the sole and sound discretion to conduct grand jury proceedings, perform criminal intake, and prosecute crimes committed against the people of the State of Florida in their respective circuit. Currently, there are twenty judicial circuits.

In light of the jurisdiction and authority of the Statewide Prosecutor and State Attorney's office, certain crimes are prosecuted by the State Attorney's office and not the Statewide Prosecutor. For example, if a crime occurred in only one judicial circuit with no conspiracy affecting more than one judicial circuit the State Attorney of that judicial circuit would be responsible for prosecuting the case. Furthermore, certain crimes, such as assault<sup>3</sup> or battery<sup>4</sup>, would not fall under the statutory authority of the Statewide Prosecutor because assault and battery are not among the enumerated offenses in which the Statewide Prosecutor would have jurisdiction over.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>2</sup> Section 16.56(1)(a) 1-12, F.S.

<sup>3</sup> Section 784.011, F.S.

<sup>4</sup> Section 784.03, F.S.

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1 A bill to be entitled  
2 An act relating to crimes against homeless persons;  
3 directing the Office of the Attorney General to develop  
4 and provide to the Legislature a report and  
5 recommendations regarding crimes against homeless persons;  
6 specifying certain contents of the report and  
7 recommendations; specifying entities to be consulted in  
8 the development of the report and recommendations;  
9 directing the Department of Law Enforcement, in  
10 consultation with the Criminal Justice Standards and  
11 Training Commission and the Florida Criminal Justice  
12 Executive Institute, to develop a telecourse to instruct  
13 state and local law enforcement agencies and operators  
14 concerning crimes against homeless persons and ways to  
15 deal with such crimes; specifying additional contents of  
16 the telecourse; specifying entities to be consulted in  
17 developing the telecourse; directing the department and  
18 local law enforcement agencies to provide the telecourse  
19 to officers; providing an effective date.  
20

21 Be It Enacted by the Legislature of the State of Florida:  
22

23 Section 1. (1) (a) The Office of the Attorney General  
24 shall assess the extent of the problem of crimes against  
25 homeless persons and develop a plan to prevent these crimes and  
26 to apprehend and prosecute the perpetrators of these crimes. In  
27 developing the assessment and plan, the office shall consult  
28 homeless persons and their advocates, law enforcement agencies

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2006

29 having experience in investigating crimes against the homeless,  
30 the Department of Law Enforcement, the Florida Criminal Justice  
31 Executive Institute, and the regional domestic task forces  
32 created under s. 943.0312, Florida Statutes.

33 (b) The office shall make an initial report to the  
34 Legislature by January 7, 2007, and a final report by December  
35 1, 2007. Each report must include recommendations for any  
36 legislation necessary to carry out the plan and a recommendation  
37 on whether to enact additional laws to address hate crimes that  
38 are committed in whole or in part because the victim is homeless  
39 or is perceived to be homeless.

40 (2) By July 1, 2007, the Department of Law Enforcement, in  
41 consultation with the Criminal Justice Standards and Training  
42 Commission and the Florida Criminal Justice Executive Institute  
43 shall develop a 2-hour telecourse, which shall be made available  
44 to all law enforcement agencies in this state and shall address  
45 crimes against homeless persons and methods of dealing  
46 effectively and humanely with homeless persons, including  
47 homeless persons with disabilities. The telecourse must include  
48 instruction concerning hate crimes and crimes committed in whole  
49 or in part because of the victims' actual or perceived  
50 homelessness. In developing the telecourse, the institute shall  
51 consult subject matter experts, including, but not limited to,  
52 homeless and formerly homeless persons in this state, service  
53 providers and advocates for such persons, experts on the  
54 disabilities that homeless persons commonly suffer, Florida  
55 Impact, and the National Coalition for the Homeless. The  
56 Department of Law Enforcement and local law enforcement agencies

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57 shall make the telecourse available to all law enforcement  
58 officers.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1225

Reckless Driving

**SPONSOR(S):** Glorioso

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1376

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson <i>KF</i>	Kramer <i>JK</i>
2) Transportation Committee			
3) Transportation & Economic Development Appropriations Committee			
4) Justice Council			
5) _____			

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### SUMMARY ANALYSIS

This bill amends section 316.192, F.S., to expand the acts that constitute reckless driving and to specify that certain acts constitute reckless driving per se.

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 expands the acts that constitute reckless driving and specifies that certain acts constitute reckless driving per se.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Florida Law

Section 316.192, F.S., provides that any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

To prove the crime of reckless driving, the State must prove the following two elements<sup>1</sup>:

1. Defendant drove a vehicle in Florida.
2. He or she did so with a willful<sup>2</sup> or wanton<sup>3</sup> disregard for the safety of persons or property.

A first conviction of reckless driving is punishable by imprisonment for a period of not more than 90 days or by fine of not less than \$25 nor more than \$500, or by both such fine and imprisonment.<sup>4</sup>

A second or subsequent conviction of reckless driving is punishable by imprisonment for not more than 6 months or by a fine of not less than \$50 nor more than \$1,000, or by both such fine and imprisonment.<sup>5</sup>

Penalties are increased to a first degree misdemeanor<sup>6</sup> for damage to the property or person of another.<sup>7</sup>

Penalties are increased to a third degree felony<sup>8</sup> for serious bodily injury which consist of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.<sup>9</sup>

##### Effective of Bill

This bill amends 316.192, F.S., to expand the acts that constitute reckless driving to include driving a vehicle at a speed or in a manner that is likely to endanger any person or property.

This bill also amends section 316.192, F.S., to provide that the following acts constitute reckless driving per se:

- Driving 20 miles per hour or more in excess of the posted speed limit that contributes to an accident that results in property damage, personal injury, or death.
- Driving 25 miles per hour or more in excess of the posted speed limit.

<sup>1</sup> 28.5 Florida Standard Jury Instructions in Criminal Cases.

<sup>2</sup> The Florida Standard Jury Instructions defines this term as: intentionally, knowingly and purposely.

<sup>3</sup> The Florida Standard Jury Instructions defines this term as: a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.

<sup>4</sup> Section 316.192(2)(a), F.S.

<sup>5</sup> Section 316.192(2)(b), F.S.

<sup>6</sup> Punishable by a term of imprisonment not to exceed 1 year and a fine of \$1,000. ss. 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>7</sup> Section 316.192(3)(c)1., F.S.

<sup>8</sup> Punishable by a term of imprisonment not to exceed 5 years and a fine of \$5,000. ss. 775.082(3)(d) and 775.083(1)(c), F.S.

<sup>9</sup> Section 316.192(3)(c)2., F.S.

- Driving 90 miles per hour or more regardless of the posted speed limit.
- Fleeing a law enforcement officer.

C. SECTION DIRECTORY:

Section 1 amends section 316.192, F.S. to expand the acts that constitute reckless driving and to specify that certain acts constitute reckless driving per se.

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 Estimating Conference met March 21, 2006 and determined that HB 1225 would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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:

It could be argued that section (1)(b) of HB 1225 (acts constituting reckless driving per se) creates an unconstitutional mandatory presumption because it relieves the state of its burden of proving willful or wanton disregard for the safety of persons or property, an essential element of the offense of reckless driving.

In, County Court v. Allen<sup>10</sup>, the Court used the terms “permissive inference” and “mandatory presumption” to describe two types of evidentiary devices that will be subject to constitutional scrutiny. The court describes these two types of evidentiary devices as follows:

A permissive inference allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. A mandatory presumption tells a factfinder that he or they must find the elemental fact upon proof of the basic fact, unless the defendant offers evidence that rebuts the presumption created by the connection between the two facts.<sup>11</sup>

In light of these differences, the threshold inquiry in analyzing the constitutionality of a statutory presumption is to determine the type of presumption that the statute creates.<sup>12</sup> If a statute creates a mandatory presumption, the Court has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide.<sup>13</sup> “A criminal statutory presumption must be regarded as ‘irrational’ or ‘arbitrary,’ and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.”<sup>14</sup>

Section (1)(b) of HB 1225 provides that certain acts constitute reckless driving per se. Per se is a term of art that appears no where in Florida’s criminal statutes. Black’s legal dictionary defines per se as not requiring extraneous evidence or support to establish its existence. The term per se appears to be a mandatory presumption since by definition it requires no other evidence or support; thus, telling a factfinder that he or they must find the elemental fact (willful or wanton disregard for the safety of persons or property) upon proof of the basic fact (traveling 25 miles per hour or more in excess of the posted speed); nor, does it appear with substantial assurance that willful or wanton disregard for the safety of persons or property is more likely than not to flow from the per se acts listed under (1)(b) of HB 1225. In other words, a person could have a justifiable reason (e.g. medical emergency) for driving 25 miles per hour or more in excess of the posted speed limit and do so in a manner that does not rise to the level of willful or wanton disregard for the safety of persons or property, an essential element of the offense of reckless driving.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Many of the per se offenses addressed in HB 1225 are currently in Florida Statute. For example, s. 316.192(3)(c)1., F.S., addresses reckless driving that causes damage to the property or person of another, s. 316.192(3)(c)2., F.S., addresses reckless driving that causes serious bodily injury to another, s. 782.071, F.S., addresses vehicular homicide, and s. 316.1935, F.S., addresses fleeing or attempting to elude a law enforcement officer. Furthermore, penalties under current statute are more severe than the penalties would be under this bill.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

<sup>10</sup> 442 U.S. 140, 157-60 (1979).

<sup>11</sup> Allen, at 157; State v. Brake, 796 So.2d 522, 529 (Fla. 2001); State v. Rygwelski, 899 So.2d 498, 501 (2<sup>nd</sup> DCA 2005).

<sup>12</sup> Rygwelski, at 501.

<sup>13</sup> Allen, at 158; Brake, at 529.

<sup>14</sup> Leary v. U.S., 395 U.S. 6, 36 (1969); Brake, at 529.

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A bill to be entitled  
An act relating to reckless driving; amending s. 316.192,  
F.S.; revising the acts that constitute reckless driving;  
specifying certain acts that constitute reckless driving  
per se; providing an effective date.

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

Section 1. Subsection (1) of section 316.192, Florida  
Statutes, is amended to read:

316.192 Reckless driving.--

(1)(a) Any person who drives any vehicle in willful or  
wanton disregard for the safety of persons or property, or at a  
speed or in a manner that is likely to endanger any person or  
property, is guilty of reckless driving.

(b) The following acts constitute reckless driving per se:

1. Driving 20 miles per hour or more in excess of the  
posted speed limit that contributes to an accident that results  
in property damage, personal injury, or death;

2. Driving 25 miles per hour or more in excess of the  
posted speed limit;

3. Driving 90 miles per hour or more regardless of the  
posted speed limit; or

4. Fleeing a law enforcement officer.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. 1225

COUNCIL/COMMITTEE ACTION

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

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

3  
4       **Amendment (with title amendment)**

5       Remove everything after the enacting clause and insert:

6  
7       Section 1. Subsection (1) of section 316.192, Florida  
8 Statutes, is amended to read:

9       316.192 Reckless driving.--

10       (1) Any person who drives any vehicle at a speed or in a  
11 manner which demonstrates a ~~in~~ willful or wanton disregard for  
12 the safety of persons or property is guilty of reckless driving.

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

14  
15  
16 ===== T I T L E   A M E N D M E N T =====

17       Remove the entire title and insert:

18                                   A bill to be entitled

19       An act relating to reckless driving; amending s. 316.192,  
20 F.S.; revising the acts that constitute reckless driving;  
21 providing an effective date.

22



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HR 1627

Unanimity of Jury Recommendations in Death Penalty Cases

**SPONSOR(S):** Kyle

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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

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**SUMMARY ANALYSIS**

Currently, in a case where a defendant has been convicted of a capital felony, after the penalty phase is conducted, the jury considers statutory aggravating and mitigating factors and recommends to the judge a sentence of death or life imprisonment. The jury's recommendation of death requires a majority vote of the twelve jurors.

In an opinion released in October 2005, the Florida Supreme Court recommended that the Legislature amend the death penalty statute to require unanimity in the jury's recommendations.

This House resolution contains a number of "whereas" clauses and provides that the "House of Representatives believes that the public policy of this state should be that unanimous jury recommendations not be required in death penalty cases."



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### ***The Furman Decision – Historical Perspective***

In *Furman v. Georgia* the U.S. Supreme Court found that then-existing death penalty statutes constituted cruel and unusual punishment under the Eighth Amendment. (*Furman v. Georgia*, 408 U.S. 238 (1972)). Since that landmark decision, the Florida Legislature enacted a new capital sentencing scheme in 1972, which provides for a separate sentencing hearing after conviction or adjudication of guilt of a capital offense. The jury acts in an advisory capacity to the judge, who is the ultimate sentencing authority. Evidence is introduced regarding the defendant's character and the nature of the crime. The jury considers statutory aggravating and mitigating factors and advises the judge whether the sentence should be the death penalty or life imprisonment. The judge independently weighs the aggravating and mitigating factors and, considering the jury's recommendation as well, determines the sentence. The judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of Florida. Section 921.141, F.S.

##### ***Proportionality Review***

In the *State v. Dixon* opinion, upholding the death penalty sentencing procedures enacted by the Legislature in response to *Furman*, the Florida Supreme Court indicated that automatic appellate review in death cases, and comparison with other cases in which the death penalty was handed down, could serve to control and channel the discretion in sentencing the *Furman* court struck down. *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

The Florida Supreme Court gleaned two points from the *Furman* decision: 1) the opinion did not abolish capital punishment; and 2) "the mere presence of discretion in the sentencing procedure cannot render the procedure violative of *Furman v. Georgia*; it was rather the quality of discretion and the manner in which it was applied that dictated the rule of law which constitutes *Furman*." (*Id.* at 6) "If the judicial discretion possible and necessary under Fla. Stat. s. 921.141, F.S.A., can be shown to be reasonable and controlled, rather than capricious and discriminatory, the test of *Furman v. Georgia* has been met." (*Id.* at 7)

Proportionality review is the comparison of one case in which the defendant was sentenced to death with other death cases. The Florida Supreme Court engages in proportionality review in all death penalty cases. The origin of proportionality review is found in the *Dixon* case.

The *Dixon* court found that the Florida Legislature had provided a death penalty sentencing system whereby aggravating and mitigating factors are defined, and the weighing process is left to the carefully scrutinized judgment of jurors and judges. (*Id.* at 7)

The court explained the five steps between conviction of a defendant in a capital case and imposition of the death penalty:

- The question of punishment is reserved for a post-conviction hearing – relevant evidence, which may not have been heard during the guilt phase, can be heard as to the issue of punishment.
- The jury must make a recommendation (unless waived by the defendant), as a separate and distinct issue from the question of guilt. The question before the jury in the penalty phase is "whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty." (*Id.* at 8)

- The trial judge decides the sentence – guided by, but not bound by, the jury’s recommendation. In the court’s view, this was intended as a safeguard against the inflamed emotions of jurors – the appropriate sentence is “viewed in the light of judicial experience.” The court must weigh the aggravating and mitigating factors, as the jury did, in handing down the sentence.
- The reasons for the sentence must be set forth in writing by the judge. Although the statute did not require it, in its opinion, the court required that life sentences be set out in writing as well as sentences of death, “to provide the opportunity for meaningful review.” (*Id.* at 8)
- Automatic review of the conviction and death sentence by the Florida Supreme Court was viewed by the *Dixon* court as “evidence of legislative intent to extract the penalty of death for only the most aggravated, the most indefensible of crimes.” (*Id.* at 8)

The court opined that the “most important safeguard” in the sentencing scheme is the aggravating and mitigating circumstances which “must be determinative of the sentence imposed.” (*Id.* at 8) When one or more of the aggravating factors is found (beyond a reasonable doubt), death is presumed to be the appropriate sentence, unless the aggravating factor is overcome by one or more mitigating factors.

The court stated: “It must be emphasized that the procedure to be followed by the trial judges and juries is not a mere counting process of X number of aggravating circumstances and Y number of mitigating circumstances, but rather a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of the circumstances present. Review by this court guarantees that the reasons present in one case will reach a similar result to that reached under similar circumstances in another case. No longer will one man die and another live on the basis of race, or a woman live and a man die on the basis of sex. If a defendant is sentenced to die, this Court can review that case in light of the other decisions and determine whether or not the punishment is too great. Thus, the discretion charged in *Furman v. Georgia, Supra*, can be controlled and channeled until the sentencing process becomes a matter of reasoned judgment rather than an exercise in discretion at all.” (*Id.* at 10)

In *Proffitt v. Florida*, 428 U.S. 242 (1976), the U.S. Supreme Court seemed to rely on the Florida Supreme Court’s promise to give each death case a meaningful review, including proportionality review, when the *Proffitt* court upheld Florida’s new death penalty sentencing structure. The court stated: “[T]he Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases....In fact, it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences (citations omitted).” (*Id.* at 258, 259)

In his article “The Most Aggravated and Least Mitigated Murders: Capital Proportionality Review in Florida,” 11 *St. Thomas L. Rev.* 207 (1999), Ken Driggs makes the following observations: “Jury death recommendations on close votes are more likely to see their death sentences reduced to life by the Florida Supreme Court. The court has often reduced death sentences to life where they were imposed on a 7-5 jury recommendation. Death sentences are more commonly imposed on an 8-4 jury recommendation. A 9-3 jury death recommendation still represents a significant sentiment for life and often comes to the Florida Supreme Court on proportionality review. Not surprisingly, when a jury recommends death by a 10-2, 11-1, or 12-0 vote the sentence is very likely to withstand proportionality review.” (*Id.* at 267-270.)

### ***The Jury’s Role in Capital Cases in Florida – A “Hybrid” System***

Florida has what is commonly called a “hybrid” system for sentencing in capital cases. That is, the jury acts in an advisory capacity to the sentencing judge and the judge has the ability to “override” the jury’s recommendation of life or death.

In Florida, the jury in a capital case makes a sentencing recommendation – death or life imprisonment – unless the jury is waived. This recommendation is by majority vote, and is based on the weighing of aggravating and mitigating factors, as well as argument presented during the penalty phase of the trial.

The judge must then decide the appropriate sentence, independently weighing the jury's recommendation along with the aggravating and mitigating factors. The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in a meaningful review. The judge may sentence a defendant in a different manner than the jury recommends – this is known as an "override."

The Florida Supreme Court must review all cases in which the death penalty has been imposed. *Article V, section (3),(b)(1), Florida Constitution*. The Court scrutinizes overrides very carefully. The recommendation of the jury must be given great weight in the trial judge's decision-making process on the sentence handed down.

What is referred to as the Tedder "Great Weight" Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the Court determined that "[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." (*Id.* at 910). The same consideration by the sentencing judge is expected of a death recommendation as a life recommendation. *Grossman v. State*, 525 So.2d 833, 839, n.1 (Fla. 1988).

It has been reported that the Supreme Court of Florida has vacated "roughly three-fourths of death sentences imposed in the face of contrary jury recommendations." (Matters of Life or Death: The Sentencing Provisions in Capital Punishment Statutes, James R. Acker and Charles S. Lanier, *31 Crim Law Bull* 19, at 22 (1995)).

***Jury Votes in Florida Death Penalty Cases, 1990-1999***

The Clerk of the Supreme Court of Florida has compiled data from direct appeals in capital cases disposed of by the Court during the years 1990 through 1999 which reflects the breakdown of the jury votes in those cases. This data is reported as follows:

**Jury Recommendations for Death Sentence**

Jury Vote	Number of Sentences	Percentage
12-0	77	15.9%
11-1	59	12.2%
10-2	59	12.2%
9-3	69	14.3%
8-4	72	14.9%
7-5	64	13.2%
6-6	2	0.4%
5-7	1	0.2%
4-8	1	0.2%
vote unknown, life rec.	30	6.2%
jury rec. waived by defendant	19	3.9%
death sentence imposed by judge on remand	18	3.7%
vote not recorded or not available	13	2.7%
<b>TOTAL</b>	<b>484</b>	<b>100%</b>

*Clerk of the Supreme Court of Florida, correspondence dated November 9, 2000.*

The Clerk cautions that the votes could only be determined by doing a manual count from data that was not stored in a computer database. Although the Clerk indicates that there were some "judgment calls" made with regard to how to record the votes, they were minimal and, in the Clerk's opinion, not statistically significant. The total number of jury votes and corresponding sentences (484) exceeds the total number of initial, resentencing and retrial cases disposed of by the Court during that time period (467). This reflects multiple death sentences in several cases, with different jury votes on different counts.

### ***Ring v. Arizona***

On June 24, 2002, the United States Supreme Court handed down its decision in *Ring v. Arizona*, a death penalty case that has had a ripple effect all over the country. In a 7-2 decision, the Court ruled that juries rather than judges acting alone must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme wherein the judge, without any input from the jury beyond the verdict of guilty on the murder charge, made the sentencing decision. The Court found that the Arizona sentencing scheme violated the defendant's 6th Amendment right to a jury trial. *Ring v. Arizona*, 536 U.S. 584 (2002).

The Court was not clear about whether Florida's "hybrid" sentencing scheme was effected by the *Ring* decision. Florida, Alabama, Delaware, and Indiana provided for a recommendation of death or life from the jury, but the judge made the ultimate decision after considering the jury recommendation.

The Florida Supreme Court has not decided the overall applicability of *Ring* to our death penalty sentencing scheme, other than to clearly state that *Ring* does not apply retroactively in Florida.

### ***State v. Steele***

The Florida Supreme Court issued a ruling on October 12, 2005, in which the court stated: "Finally, we express our considered view, as the court of last resort charged with implementing Florida's capital sentencing scheme, that in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations." *State v. Steele*, No. SC04-802 (Fla. 2005) [Justice Cantero, writing for the majority; Wells, Lewis, Quince and Bell, JJ., concurring; C.J. Pariente wrote separately to concur in part and dissent in part, Anstead, J. concurring. Both Justices in the minority concurred with Justice Cantero's suggestions to the Legislature.]

The *Steele* case is a product of the post-*Ring* efforts by a trial court, in a death case, to comply with *Ring*. The trial judge imposed two requirements to address concerns with the sentencing scheme in death cases, which were unresolved by the Florida courts at the time of the trial.

The trial court required: 1) the State to provide advance notice of the aggravating factors upon which it would rely at the penalty phase, and 2) an interrogatory verdict form at the penalty phase. The trial court required the jurors to specify each aggravator found and the vote for that aggravator. A majority vote was required to find an aggravator proven.

As to those two issues, the Florida Supreme Court held that:

1. Notice of Aggravating Factors: Because of the expansion of the statutory aggravators (8 additional in the last several years), and because there is no express prohibition on requiring notice, the trial court did not violate an established principle of law. Further, notice does not constitute a miscarriage of justice, nor is the notice requirement inequitable.
2. Special Verdict on Aggravators: *Ring* does not require it; Florida's current sentencing statute only requires a majority of the jury to agree that an aggravator has been proven – not necessarily the same one; therefore the trial court's requirement constituted a departure from the essential requirements of law.

The Court then reached beyond the analysis and holding in the case before it, and included a section in the opinion entitled "The Need for Legislative Action." The court stated:

Florida is now the only state in the country that allows a jury to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote. Of the 38 states that retain the death penalty, 35 require, *at least*, a unanimous jury finding of aggravators. Of these, 24 states require by statute *both* that the jury unanimously agree on the existence of aggravators *and* that it unanimously recommend the death penalty. Three states require by statute unanimity only as to the jury's finding of aggravators. Seven more states have judicially imposed a requirement *at least* that the aggravators be determined unanimously. Of these seven states, five ... require that *both* the aggravators *and* the recommendation of death be unanimous. ... Although Missouri law is less clear, it appears that a jury at least must unanimously find the aggravators. ... That leaves Utah and Virginia. In those states, the jury need not find each aggravator unanimously, but the jury must unanimously recommend the death penalty. ... Finally, the federal government, when imposing the death penalty, also requires a unanimous jury." *Id.*

The court stated that "many courts and scholars have recognized the value of unanimous verdicts." The court concludes its discussion as follows:

The bottom line is that Florida is now the only state in the country that allows the death penalty to be imposed even though the penalty-phase jury may determine by a mere majority vote both whether aggravators exist and whether to recommend the death penalty. Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.

The opinion did not specifically indicate what constitutional deficiency may arise to cast Florida's death penalty statute into jeopardy.

### ***Attorney General's Letter***

In a letter written to the Speaker of the House of Representatives following the *Steele* decision, the Attorney General recommended that the Legislature not change its death penalty sentencing scheme. The Attorney General noted that the jury recommendations in several well-known murder cases were not unanimous including Theodore Bundy (10-2 recommendation), Aileen Wuornos (10-2 recommendation) and Joe Nixon (10-2 recommendation).

### ***House Resolution***

This House resolution contains the following wheras clauses:

WHEREAS, the Florida Supreme Court in its opinion in the case of *State of Florida v. Alfredie Steele*, SC04-802, issued October 12, 2005, suggested that "in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations" in death penalty cases, and

WHEREAS, the Florida Supreme Court quoted the view of the Supreme Court of Connecticut, which stated in part "[t]he requirement of a unanimous verdict can only assist the capital sentencing jury in reaching such a reasoned decision," and

WHEREAS, the House of Representatives notes that the State of Connecticut has executed only one person since 1976 and that person was a volunteer, and

WHEREAS, the House of Representatives finds that no majority opinion of the United States Supreme Court has suggested that unanimous agreement of a twelve-member jury was required, recommended, or advisable for the determination of whether a death sentence is an appropriate punishment for the commission of a capital crime, and

WHEREAS, the United States Supreme Court has upheld Florida's existing death penalty statute as constitutional in *Proffitt v. Florida*, 428 U.S. 242 (1976), and the statute has

been repeatedly upheld by state and federal appellate courts against constitutional attacks for the past 29 years, and

WHEREAS, the Florida Supreme Court acknowledges that the question of whether Florida's death penalty should require unanimous agreement of the jury before it can be imposed is a matter of public policy for the Legislature to determine, and

WHEREAS, the House of Representatives finds that a requirement of unanimity among twelve jurors is not the proper mechanism to determine whether a death sentence is an appropriate sentence in individual cases because a requirement of unanimity vests with a single juror the ability to override the reasoned judgment of all other jurors weighing and considering the same facts and circumstances, and

WHEREAS, the House of Representatives finds that some of Florida's most notorious and heinous murderers, including Theodore Bundy and Aileen Wuornos, were sentenced to death and executed when the jury recommendation of death was less than unanimous and that these death sentences were just and appropriate despite the lack of unanimity, NOW, THEREFORE

HR 1627 provides that the "House of Representatives believes that the public policy of this state should be that unanimous jury recommendations not be required in death penalty cases."<sup>1</sup>

C. SECTION DIRECTORY:

A House resolution is not divided into sections.

**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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<sup>1</sup>

### **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:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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## 1 House Resolution

2 A resolution declaring the House of Representatives' view  
3 of what the public policy of this state regarding  
4 unanimity of jury recommendations in death penalty cases  
5 should be.  
6

7 WHEREAS, the Florida Supreme Court in its opinion in the  
8 case of State of Florida v. Alfredie Steele, SC04-802, issued  
9 October 12, 2005, suggested that "in light of developments in  
10 other states and at the federal level, the Legislature should  
11 revisit the statute to require some unanimity in the jury's  
12 recommendations" in death penalty cases, and

13 WHEREAS, the Florida Supreme Court quoted the view of the  
14 Supreme Court of Connecticut, which stated in part "[t]he  
15 requirement of a unanimous verdict can only assist the capital  
16 sentencing jury in reaching such a reasoned decision," and

17 WHEREAS, the House of Representatives notes that the State  
18 of Connecticut has executed only one person since 1976 and that  
19 person was a volunteer, and

20 WHEREAS, the House of Representatives finds that no  
21 majority opinion of the United States Supreme Court has  
22 suggested that unanimous agreement of a twelve-member jury was  
23 required, recommended, or advisable for the determination of  
24 whether a death sentence is an appropriate punishment for the  
25 commission of a capital crime, and

26 WHEREAS, the United States Supreme Court has upheld  
27 Florida's existing death penalty statute as constitutional in  
28 Proffitt v. Florida, 428 U.S. 242 (1976), and the statute has



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29 been repeatedly upheld by state and federal appellate courts  
 30 against constitutional attacks for the past 29 years, and

31 WHEREAS, the Florida Supreme Court acknowledges that the  
 32 question of whether Florida's death penalty should require  
 33 unanimous agreement of the jury before it can be imposed is a  
 34 matter of public policy for the Legislature to determine, and

35 WHEREAS, the House of Representatives finds that a  
 36 requirement of unanimity among twelve jurors is not the proper  
 37 mechanism to determine whether a death sentence is an  
 38 appropriate sentence in individual cases because a requirement  
 39 of unanimity vests with a single juror the ability to override  
 40 the reasoned judgment of all other jurors weighing and  
 41 considering the same facts and circumstances, and

42 WHEREAS, the House of Representatives finds that some of  
 43 Florida's most notorious and heinous murderers, including  
 44 Theodore Bundy and Aileen Wuornos, were sentenced to death and  
 45 executed when the jury recommendation of death was less than  
 46 unanimous and that these death sentences were just and  
 47 appropriate despite the lack of unanimity, NOW, THEREFORE,

48  
 49 Be It Resolved by the House of Representatives of the State of  
 50 Florida:

51  
 52 That House of Representatives believes that the public  
 53 policy of this state should be that unanimous jury  
 54 recommendations not be required in death penalty cases.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7065      PCB HCR 06-03      Clandestine Laboratory Contamination  
**SPONSOR(S):** Health Care Regulation Committee, Garcia  
**TIED BILLS:** \_\_\_\_\_      **IDEN./SIM. BILLS:** \_\_\_\_\_

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Health Care Regulation Committee	9 Y, 0 N	Hamrick	Mitchell
1) Criminal Justice Committee	_____	Kramer <i>JK</i>	Kramer <i>JK</i>
2) Health Care Appropriations Committee	_____	_____	_____
3) Health & Families Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine laboratory due to the absence of decontamination requirements. The bill addresses this issue by providing protections to the public from unsafe conditions that may be found in a house where methamphetamine was manufactured. The residual chemicals and waste products from such production pose a treat to the health, safety, and welfare of the public. Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency and/or the Florida Department of Law Enforcement and all hazardous ingredients and lab equipment are removed from the premises but nothing is done to decontaminate property. In Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks.

HB 7065 provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health (DOH) if the residential property was used as a clandestine laboratory. The bill requires an owner to use a "contamination assessment specialist", authorized by the department to determine if a home is contaminated and a "decontamination specialist" authorized by the department to perform cleanup, treatment, repair, and removal of contaminated materials. The property will remain quarantined until the department receives documentation that the property was decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. The bill prohibits a person from inhabiting the quarantined property or from offering the property to the public for habitation.

**Fiscal Impact:** The bill is expected to have a fiscal impact on the Department of Health of approximately \$27,000 annually. Property owners will be responsible to pay for the testing and cleanup of their own property. Costs will vary depending upon the size of the lab, duration, frequency, and types of chemicals used in the manufacturing process. It is estimated that decontamination costs average \$6,500 per 1,200 square feet.

The bill will take effect on July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government-**The bill provides a mechanism that will prevent a person from unknowingly living in a former clandestine laboratory that has not been decontaminated. The bill will prohibit a person from inhabiting a property that is quarantined because of contamination.

**Promote personal responsibility-**The bill may encourage landlords to thoroughly screen potential renters or applicants and encourage them to look for signs of illegal drug activity.

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency (DEA) and/or the Florida Department of Law Enforcement (FDLE) and all hazardous ingredients and equipment are removed from the premises but nothing is done with the property or remaining contaminated materials. Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine lab due to the absence of decontamination requirements.<sup>1</sup> In 2004, 61 children were found at seized methamphetamine labs in Florida.<sup>2</sup> Currently in Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks. Law enforcement and/or special contract vendors simply remove all hazardous chemicals and lab items from a clandestine laboratory.

##### FEDERAL INITIATIVES

###### COPS Program Provides Federal Funding to States and Local Governments

In 1998, the Office of Community Oriented Policing Services (COPS) began the Methamphetamine Initiative program that provided \$4.5 million to six US cities to implement anti-methamphetamine projects. In 2005, Florida received \$832,116 from the COPS program to remove hazardous materials from 388 seized clandestine labs.

Removal and cleanup of hazardous materials seized at clandestine labs must meet the requirements of the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency's Resource Conservation and Recovery Act regulations pertaining to the generation, storage, transport, and disposal of hazardous wastes in addition to any state or local requirements.<sup>3</sup> COPS funding does not extend to any level of cleanup relating to decontamination other than removal of remaining hazardous materials and manufacturing equipment.

According to the U.S. Department of Justice, the removal of hazardous materials from a seized clandestine lab is the responsibility of the state or local law enforcement agency that discovers the materials.<sup>4</sup> The state or local law enforcement agency may use the COPS funding to perform the removal themselves using qualified law enforcement or other qualified government personnel; use Drug

<sup>1</sup> Jerome, Richard. PEOPLE. "Home Toxic Home?" (August 8, 2005).

<sup>2</sup> Tseng, Nin-Hai. Orlando Sentinel. "Children fall by the wayside in meth-addicted homes." (September 11, 2005).

<sup>3</sup> See 29 CFR Part 1910.120, and Part 1200; 40 CRR Part 260.

<sup>4</sup> US Department of Justice, Office of Community Oriented Policing Services. Methamphetamine Initiative: Final Environmental Assessment. May 13, 2003.

Enforcement Administration hazardous waste management contractors; or use other qualified contractors. State and local law enforcement agencies may only use COPS grant funding to pay for hazardous waste removal, transportation, storage, and payment of hazardous waste disposal fees.<sup>5</sup>

### **COPS Program and El Paso Intelligence Center (EPIC)**

In order to receive COPS funding for handling hazardous lab materials a DEA Form 612 also called "EPIC form" must be completed and forwarded to the El Paso Intelligence Center, which is the national repository of data concerning clandestine laboratory seizures. The data collected includes the location of the lab, estimated lab capacity, manufacturing process used, lab equipment found on the scene, name of chemist and clean-up personnel, weapons and/or explosives seized, quantity of drugs seized, and precursor agents/catalysts/solvents/reagents seized.<sup>6</sup>

### **Environmental Protection Agency Funding to State and Local Governments**

The Environmental Protection Agency (EPA) makes funding available to state and local governments for the assessment and cleanup of meth lab sites through the Office of Brownfields Cleanup and Redevelopment via grants of up to \$200,000 per site.<sup>7</sup> State and local governments may receive grants up to \$1 million to be used for the capitalization of revolving loan funds; they may then make loans and sub-grants for the cleanup of methamphetamine lab sites.

### **FLORIDA INITIATIVES**

In 2003, the Office of Drug Control, the Florida Department of Law Enforcement, and the federal Drug Enforcement Administration signed a resolution to jointly implement a statewide strategy to deal with clandestine methamphetamine laboratories in Florida. The purpose of the strategy is to combine efforts to combat the manufacturing and distribution of methamphetamines in Florida and improve the overall effectiveness and efficiency of law enforcement's response and investigations.

In 2005, the Florida Department of Children and Families (DCF) established the Northwest Florida Drug Endangered Children Work Group. Subsequently, they published the Northwest Florida Drug Endangered Children Multidisciplinary Protocol to provide law enforcement, DCF, social services, fire and medical services, and prosecutors a basis for the development of community specific procedures handling children where there has been drug production, trafficking, and abuse. DCF is required to remove children from homes in which they have suffered from neglect, abuse, and exposure to toxic and volatile environments.

In 2005 the Legislature passed HB 1347 that placed quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. The bill also increased several penalty provisions and made it a first degree felony to manufacture methamphetamine while a child less than 16 years of age is present.

In 2005, the Florida Office of Drug Control brought together a multi-agency group of experts in handling methamphetamine issues. The workgroup is in the process of creating a single source document called the Florida Statewide Methamphetamine Protocol that will assist federal, state, and local agencies in handling the criminal, environmental, sociological and economic issues that are characteristic of clandestine methamphetamine laboratories.

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<sup>5</sup> Ibid.

<sup>6</sup> See DEA Form 612 Instructions (Rev. 04/03)

<sup>7</sup> U.S. Congress. House Committee on Energy and Commerce, Subcommittee on Energy and Hazardous Materials. 2005. "Testimony of Peter Murtha, Director Office of Criminal Enforcement, Forensics and Training Office of Enforcement and Compliance Assurance U.S. Environmental Protection Agency." 109<sup>th</sup> Congress.

The Attorney General's Office in partnership with the Department of Health, the Department of Children and Families, the Office of Drug Control, the Florida Department of Law Enforcement, and the Drug Enforcement Agency recently unveiled the Florida Alliance for Drug Endangered Children website ([www.floridadec.org](http://www.floridadec.org)).

## **AUTHORITY TO QUARANTINE**

### **Current Statutory Provisions for Quarantines**

According to s. 381.0011, F.S., it is the duty of the Department of Health to:

- Administer and enforce laws and rules relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and the general health of the people of the state.
- Cooperate with and accept assistance from federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health.
- Declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided in ss. 384.28 and 392.545-392.60, F.S.

### **Current Statutory Authority for the Enforcement of a Quarantine by Law Enforcement**

Section 381.0012(5), F.S., provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials upon request to assist the department or any of its agents in enforcing the state health laws and the rules adopted in chapter 381, F.S. The department may also commence and maintain all proper and necessary actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.

## **WHAT IS METHAMPHETAMINE?**

Methamphetamine is a central nervous system stimulant commonly referred to as "meth." Its street names are numerous and include such terms as crank, speed, ice or crystal.<sup>8</sup> Meth is a derivative of amphetamine that dates back to the early 1900s. The drug became more widely used during World War II and eventually became widely available in tablet form.<sup>9</sup> Meth can be found and used in numerous forms, i.e., injected, smoked, inhaled, or taken orally. The 1970 Controlled Substances Act, made the production of injectable meth illegal. According to the Oregon Department of Human Services, methamphetamine is currently the illicit "drug of choice" due to its ease of manufacture, comparatively low cost, 12-hour half-life, and the euphoria, energy, and feelings of power, and sexual arousal that it produces.<sup>10</sup> A key ingredient of methamphetamine production is pseudoephedrine/ephedrine, which is commonly found in cold medicine.

According to a report by the State of North Carolina, clandestine<sup>11</sup> methamphetamine laboratories account for more than 90% of all U.S. illegal drug seizures in recent years.<sup>12</sup> In 2000 the Drug Abuse

<sup>8</sup> US Department of Justice, Office of Community Policing Services. Methamphetamine Fact Sheet. <http://www.cops.usdoj.gov/mime/open.pdf?Item=1356> (February 3, 2006).

<sup>9</sup> US Department of Justice, Office of Community Policing Services. An Evaluation of the COPS Office Methamphetamine Initiative. <http://www.cops.usdoj.gov/mime/open.pdf?Item=608> (February 3, 2006).

<sup>10</sup> An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine 'Labs' in Oregon. Vol. 52, No. 16. August 12, 2003.

<sup>11</sup> Clandestine drug laboratories are used in the illicit production of illegal drugs.

Warning Network, indicated that among club drugs, meth accounted for the largest share of emergency department mentions, and was especially problematic in the metropolitan areas of the western US. The DEA has estimated that the manufacturing or "cooking" of methamphetamine leaves behind 5 to 7 pounds of chemical waste for each pound of meth that is made.<sup>13</sup>

## HEALTH RISKS ASSOCIATED WITH METHAMPHETAMINE MANUFACTURING

Toxic substances from the cooking process can permeate walls, floorboards, and carpeting. The resulting contaminations can last for years without extensive remediation. Homes may be filled with residue from acetone, red phosphorus, and other toxic agents. Waste may consist of corrosives and flammables that have been dumped down sinks, toilets, tubs, and in the environment.

### Threat to Children, Medical Concerns and Long-term Effects

According to a program coordinator with the National Jewish Medical and Research Center, a leading researcher on the impact of methamphetamine production, long-term health risks could include damage to the lungs, liver, kidneys, and cancer. Individuals with existing medical conditions and young children are at higher risk.<sup>14</sup>

In Oregon, one-third to one-half of the children found in meth labs have tested positive for methamphetamine, via urinalysis testing, due to accidental ingestion or passive inhalation of the drug.<sup>15</sup> Pediatric patients with methamphetamine poisoning may experience tachycardia, agitation, inconsolable crying, irritability, and vomiting.<sup>16</sup> The most common complication of meth poisoning is rhabdomyolysis, which is the breakdown of muscle fibers that are then released in to the blood and may result in kidney damage.<sup>17</sup>

### Reasons there is Limited Data on the Long-term Health Effects

There is limited data available on the long-term health effects caused by exposure to the chemicals utilized in methamphetamine manufacturing. Knowledge in this area is limited due to the following reasons:<sup>18</sup>

- Clandestine laboratories have only occurred in the last 10 years and their health effects have been studied for an even shorter period of time.
- Restrictions on tracking health records of minor children.
- It is difficult to determine the magnitude of the exposure to children in a home not only during, but after manufacturing has occurred. To date, contamination studies of controlled manufacturing have only occurred in buildings slated for demolition.<sup>19</sup>

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<sup>12</sup> State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. <http://www.epi.state.nc.us/epi/oii/methguidelines.pdf>

<sup>13</sup> Minnesota Department of Health. Lab Cleanup. <http://www.health.state.mn.us/divs/eh/meth/lab/labcleanup.html> (February 11, 2006).

<sup>14</sup> Highlights from the People article.

<sup>15</sup> An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine "Labs" in Oregon. Vol. 52, No. 16. August 12, 2003.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109<sup>th</sup> Congress. <http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf> (February 7, 2006).

<sup>19</sup> Researchers have requested federal dollars to conduct long-term research at a secure location such as Los Alamos, New Mexico.

## MANUFACTURING OF METHAMPHETAMINE

There are different levels of clandestine laboratories i.e. "superlabs" and "mom and pop" labs. Large-scale production by "superlabs" is predominantly done in Mexico, a major producer or transshipment point for much of the methamphetamine entering America.<sup>20</sup>

The production of methamphetamine is a relatively simple process and can be carried out by individuals without special knowledge or expertise in chemistry. Recipes number in the hundreds and are constantly evolving. There are well over 300 substances that can be used to produce meth. However, there are two primary methods for manufacturing methamphetamine.

### Red Phosphorus

The red phosphorous method of manufacturing methamphetamine involves the use of a number of readily obtained materials, including solvents, iodine, hydrogen chloride gas (which can be made by combining sulfuric acid and rock salt), sodium hydroxide, and red phosphorus.<sup>21</sup> Red Phosphorus, for example, can be obtained from match stick heads and flares.

Red Phosphorus labs have the following dangers: phosphine gas production, acid gas generation, acutely corrosive and toxic atmospheres, flammable and explosive atmospheres and oxygen deficient atmospheres. A study<sup>22</sup> on controlled cooks revealed significant exposure to solvents, phosphine,<sup>23</sup> iodine, hydrogen chloride, and methamphetamine aerosol.<sup>24</sup> Due to the spread of methamphetamine during this cooking process, virtually all items within the house as well as all people, pets, toys, etc. become contaminated with methamphetamine.<sup>25</sup> Levels of exposure are exceptionally high for children and infants, who due to their developing physiology and their inquisitive oral habits, are exposed to high levels of hazardous chemicals.<sup>26</sup>

### Birch Reduction

This method is also referred as the "Nazi" or "Ammonia" method. This method uses lithium metal from batteries and anhydrous ammonia from fertilizer and refrigeration "chillers" in the reduction of ephedrine/pseudoephedrine.

Birch Reduction labs have the following dangers: electroplating sodium metal from sodium hydroxide; sodium hydroxide which may cause skin or lung irritation; a flammability and irritant toxicity hazard from concentrated ammonia atmospheres; the violent reaction of water with sodium or lithium metals; a flammable, explosive atmosphere; an acutely corrosive atmosphere because of the acutely reactive metals used. Phosphine and aerosol iodine are not produced in this method. The levels of anhydrous ammonia produced during these cooks are significantly high. The National Institute of Occupational

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<sup>20</sup> U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109<sup>th</sup> Congress.

<sup>21</sup> U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109<sup>th</sup> Congress. <http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf> (February 7, 2006).

<sup>22</sup> The study was conducted by John Martyny, Ph.D., C.I.H., with the Department of Preventative Medicine at the University of Colorado and the National Jewish Medical Research Center in Denver, Colorado.

<sup>23</sup> Phosphine is a gas produced when the solution of iodine, water, ephedrine, and red phosphorous is heated. This is a gas that may cause severe pulmonary irritation resulting in pulmonary edema and death. At lower levels may cause nausea, vomiting, headache, and chest tightness, which are symptoms frequently reported by exposed law enforcement personnel at the time of seizure.

<sup>24</sup> U.S. Congress. House Committee on Science Committee Testimony. 2005. "Congressional Testimony by John Martyny." 109<sup>th</sup> Congress. <http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf> (February 7, 2006).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.



Safety and Health currently recommends that ammonia exposure not exceed 300 parts per million (ppm). However, a meth cook can easily reach 500 ppm of ammonia or more.<sup>27</sup>

Examples of Common Names/Uses for Chemicals in Methamphetamine Laboratories <sup>28</sup>	
Chemical	Common Name or Product Used
Acetone	Fingernail polish remover, solvents
Acetic Acid	Vinegar
Alcohol, isopropyl	Rubbing Alcohol
Ammonia (anhydrous)	Fertilizer, used in chillers
Ethyl ether	Computer dust-off
Freon	Refrigerant, propellants
Hydrochloric acid/muriatic acid	Iron ore processing, mining, concrete cleaner
Iodine (crystals)	Antiseptic, catalyst
Lithium metal	Batteries
Methylene chloride	Paint remover, solvent
Phosphoric acid	Fertilizer
Red phosphorus	Match striker plates, road flares
Sulfuric acid	Battery acid, drain cleaner
Toluene	Brake cleaner fluid

## LAW ENFORCEMENT RESPONSE

### How Does a Typical Clandestine Laboratory Seizure Occur?

Typically, law enforcement gets a call or report of a potential clandestine laboratory. Depending on the validity of the information a response team (which may be a combination of local, state or federal officers) is dispatched, or a first responder (city police department or county sheriff) goes to the location, to verify if there is a potential clandestine lab. Once confirmed, the location is evacuated and a clandestine laboratory response team responds to begin the investigation. Once all the appropriate photos, evidence sampling, and other investigative issues are taken care of, a contract vendor (as part of the federal COPS program) responds to the scene to remove all chemicals, glassware, equipment, etc.

All law enforcement personnel who investigate and dismantle labs must be clandestine laboratory certified, which requires attending specialized training that is sanctioned by the Drug Enforcement Administration (DEA) and the Occupational Safety and Health Administration (OSHA). Due to the hazards of entering a clandestine lab all personnel who investigate and dismantle labs are required to wear personal protective equipment. Below is the basic list of the equipment that must be used and the associate costs. The (\*) denotes equipment that has to be discarded after each laboratory investigation due to contamination.

No remediation is done to the structure or the property, simply the removal of all chemicals and lab items. If there are containers of chemicals outside the premises that pose a threat to the environment, or any other indicators, the Department of Environmental Protection is called to handle soil and/or water sampling and cleanup. If children are present, the Department of Children and Families is called to the scene. Nothing may be removed from the house and taken with the children or any arrestees due to contamination.

2006 Clandestine Laboratory Investigators Personal Protective Equipment (PPE) List	
Description	Total Cost
Self Contained Breathing Apparatus 30-Minute Cylinder	\$2,134.00
Clan Lab Monitor Field and Investigators Detector Kit	2,905.00
Ballistic Helmet and Vest	1,055.45

<sup>27</sup> Ibid.

<sup>28</sup> State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. <http://www.epi.state.nc.us/epi/oii/methguidelines.pdf>

SWAT Coverall, Hood, Gloves, Respirator w/filter, gloves and other equipment*	486.70
TOTAL	\$6,581.15

## REMIEDIATION STANDARDS

### National Guidelines for the Cleanup of Clandestine Laboratories and Determining Cleanliness

The Office of National Drug Control Policy is in the process of revising the Guidelines for the Cleanup of Clandestine Drug Laboratories. The so-called "Red Book" includes voluntary standards, lessons learned, and best practices for methamphetamine laboratory cleanup and the removal of hazardous materials found at seized clandestine laboratories for federal, state, and local law enforcement and environmental officials.<sup>29</sup>

A problem with remediation of a clandestine laboratory is determining an acceptable level of "cleanliness" to assure the public that there are not any potential health risks. Currently, there are no national standards for remediated labs, and a baseline definition of "clean" is not available.<sup>30</sup> Fundamental research describing standards for "clean" still need to occur.<sup>31</sup>

There is an ongoing debate about the effectiveness of using a feasibility-based standard rather than a long-term clinical standard. Because research into the long-term health effects associated with clandestine laboratories has just recently begun, health or risk based standards have not yet been determined.<sup>32</sup>

### Remediation Standards in Other States

According to the National Alliance for Model State Drug Laws,<sup>33</sup> several states currently regulate the cleanup and remediation of clandestine laboratories, but state statutes specifically relating to the cleanup and remediation of clandestine laboratories vary from state to state.<sup>34</sup>

Given the growing concern regarding cleanup and remediation issues, the variety of approaches among states, the increasing number of states dealing with former meth labs, and the changing nature of labs, the Alliance has convened a national working group to address these issues.<sup>35</sup> The Alliance is drafting a model act or model guidelines for the cleanup and remediation of methamphetamine laboratories that should be released next year.<sup>36</sup>

The two most commonly used feasibility-based decontamination standards for methamphetamine is 0.1 micrograms per 100 square centimeters and 0.5 micrograms per square foot.<sup>37</sup> A microgram is one millionth of gram and there are 28.3 grams in an ounce. One hundred square centimeters is equivalent to the area about the size of a 3X5 index card. Arizona, North Carolina, Tennessee, and Washington are among several states that require an indoor air quality standard of 0.1 micrograms per 100 square

<sup>29</sup> U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109<sup>th</sup> Congress.

<sup>30</sup> U.S. Congress. House Committee on Science. 2005. "Testimony of Robert Bell, Ph.D., President, Tennessee Technological University." 109<sup>th</sup> Congress.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> The National Alliance for Model State Drug Laws is a nonprofit bipartisan organization that resulted from the President's Commission on Model State Drug Laws. It was created to be a resource to assist states in assessing needs, strategizing, and implementing laws and policies to address alcohol and other drug problems.

<sup>34</sup> U.S. Congress. House Committee on Science. 2005. "Statement of Sherry Green, Esq., Executive Director of the National Alliance for Model State Drug Laws." 109<sup>th</sup> Congress.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

centimeters for methamphetamine. Several other states such as Tennessee, Washington, and California also regulate the level of lead, mercury and volatile organic compounds.

Several states have implemented policy standards to establish guidelines in rule. This allows for changes in indoor air quality standard values as research on levels of health risk improve. Oregon has set a policy standard of 0.5 micrograms per square foot; for methamphetamine; 10 micrograms per square foot for lead; and 0.05 micrograms per square foot for mercury. The bill allows the Department of Health the ability to adopt indoor air quality standards by rule.

## **DECONTAMINATION PROCESS AND DEMOLITION**

The cleanup of residual substances that may persist on surfaces and furnishings may involve: removal of surface material layers; use of encapsulants and fixative sealers; neutralization of corrosives; steam cleaning; use of industrial steam and pressure washers; use of detergent washers; use of chemical neutralizers/cover-ups and “bake-out” of a property.”<sup>38</sup> In rare cases of severe contamination, effective cleanup may only be accomplished by demolition of the contaminated structure.<sup>39</sup>

Based on the known physical properties of the chemicals associated with methamphetamine production, there is no current scientific evidence to suggest a continuing human health risk after a thorough decontamination.<sup>40</sup>

## **EFFECT OF HB 7065**

The bill provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health (DOH) if the residential property was used as a clandestine laboratory. A clandestine laboratory is defined as any location or area that is used or contaminated as a result of the manufacturing, processing, cooking, disposing, or storing of any illegal drug or substance. The residential property will remain quarantined until the Department of Health receives a certificate of fitness documenting that the property was properly decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. No person may inhabit a quarantined residential property or remove the notice of a quarantine. A person who violates the provisions of a quarantine commits a second degree misdemeanor.

The bill does not create a new penalty, but cross-references existing authority under the quarantine provision already granted to the Department of Health in s. 381, F.S. Under section 381.0011, F.S., DOH has the authority to declare, enforce, modify, or abolish a quarantine placed on persons and premises as the circumstances indicate in order to protect the public from unsafe conditions that pose a threat to public health. Section 381.0012(5), F.S. also provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials to assist the department in enforcing the state health laws.

The bill:

- Creates definitions in chapter 893, F.S., for “clandestine laboratory”, “contaminated”, “contamination assessment specialist”, “decontamination”, “decontamination specialist”, and “residential property.”

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<sup>38</sup> Chesley, Michelle R., M.D., Department of Emergency Medicine, Howard University Hospital. 1999. Methamphetamines: an epidemic of clandestine labs and health risk.

<http://www.health.state.mn.us/divs/eh/meth/lab/mchesley.pdf> (February 11, 2006).

<sup>39</sup> Colorado Department of Public Health and Environment. Cleanup of Clandestine Methamphetamine Labs Guidance Document. 2003. <http://www.cdphe.state.co.us/hm/methlab.pdf> (February 11, 2006.)

<sup>40</sup> Oregon Department of Human Services, Drug Lab Clean-up Program. “Chemicals used in Methamphetamine Manufacture, <http://www.oregon.gov/DHS/ph/druglab/chemicals.shtml> (February 11, 2006).

- Requires law enforcement personnel to enforce a quarantine on a clandestine laboratory if the lab is located in a residential property. Enforcement occurs at the time law enforcement secures and removes evidence from the property.
- Requires law enforcement to post a notice on the residential property at the time they are collecting and removing evidence.
  - The notice must state: The property is quarantined and a clandestine lab was found on the residential property; the date of quarantine; the name of agency posting the quarantine; a statement specifying the hazards that may remain and the exposure to the substances may be harmful and may pose a threat to public health and the environment; that it is unlawful for unauthorized persons to enter the contaminated property; a statement explaining how to have the quarantine lifted; and that it is a second degree misdemeanor to remove the notice.
- Requires local law enforcement to immediately notify the local health officer and the Department of Health's, Division of Environmental Health. Law enforcement must provide the department contacts with the name of the property owner or property manager and address of the property.
- DOH is responsible for contacting the property owner or manager, within 5 days by mailing them a letter of notification of the quarantine, a list of contamination assessment specialists, a list of decontamination specialists, and any other information the department deems appropriate.
- Allows property owners to petition a court to have a court order issued to lift the quarantine in the event they believe their property was wrongfully quarantined or has been decontaminated or demolished, but DOH refuses or fails to lift the quarantine.
- Provides residential property owners the option to demolish a home in lieu of decontamination, with certain requirements.
- Provides immunity from liability to property owners from health-based civil actions, with certain restrictions, if the residential property owner meets the decontamination standards or opts to demolish the residential property. The property owner or manager must have been issued a certificate of fitness by a contamination assessment specialist and a letter of reoccupancy issued by the Department of Health.
- Requires the department to compile and maintain a list on the internet of "contamination assessment specialists" and "decontamination specialists." The department must also denote on the list if a contactor is bonded and insured. The list will also be mailed to the residential property owner or property manager.
- Allows contamination assessment specialists or decontamination specialists the ability to request copies of any available law enforcement reports or information relating to the clandestine laboratory activities, to assist them in determining the levels of contamination in a quarantined residential property.
- Provides the Department of Health the authority to promulgate rules to:
  - Create a uniform notice and letter.
  - Establish standards for indoor air quality regarding contaminants produced by clandestine laboratory activities. The standards must include values for methamphetamine, lead, mercury, and volatile organic compounds and be consistent with values adopted by other states or they must comply with national standards.
  - Establish standards for the cleanup and testing of clandestine laboratories.
  - Establish the requirements for persons authorized to perform contamination assessments and decontamination.
  - Establish a "certificate of fitness" that will be issued by a contamination assessment specialist to function as documentation signifying that a home has been properly decontaminated.
  - Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 893.02, F.S., to provide definitions for clandestine laboratory, contaminated, contamination assessment specialist, decontamination, decontamination specialist, and residential property.

**Section 2.** Creates s. 893.121, F.S., to provide for a quarantine of any residential property where clandestine laboratory activities occur; the establishment of a uniform notice and letter of notification; provide that a notice is posted at the site of a quarantine; provide requirements that a letter be sent to a residential property owner or property manager; provide an alternative to residential property owners to have a quarantine lifted; and provide limitations and enforcement provisions for habitation of quarantined residential property.

**Section 3.** Creates s. 893.122, F.S., to provide the option of demolition of contaminated residential property under certain conditions; provide immunity from health-based civil actions for residential property owners who have met certain criteria; and provide an exception from the immunity clause for individuals convicted of operating the clandestine laboratory.

**Section 4.** Creates s. 893.123, F.S., to provide rulemaking to adopt clandestine laboratory decontamination standards; provide guidelines for issuance of a certificate of fitness to indicate that decontamination is complete; provide guidelines for issuance of a letter of reoccupancy; and provide requirements for lifting a quarantine of a demolished property.

**Section 5.** Creates s. 893.124, F.S., to require the department to compile and maintain a list of persons authorized to perform contamination assessments and decontamination; require the department to specify qualifications for persons authorized to perform contamination assessments and decontamination; provide responsibilities for decontamination specialists; provide authority for contamination assessment specialist or decontamination specialist to request certain documents from law enforcement; and provide for issuance of a certificate of fitness by a contamination assessment specialist.

**Sections 6 through 12** amend ss. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S., to correct cross-references.

**Section 13.** Provides that the bill will take effect on July 1, 2006

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

No dedicated source of revenue.

#### 2. Expenditures:

According to the Department of Health, the bill is expected to have an estimated fiscal impact of approximately \$27,000 annually.

DOH based their projection of the possible fiscal implications of the regulation of clandestine drug laboratories in residential properties, on DEA/FDLE clandestine laboratory seizure statistics. The annual seizures from 2000 through 2005 for illegal methamphetamine laboratories are:

2000 – 15  
2001 – 28  
2002 – 168  
2003 – 271  
2004 – 319  
2005 - 338

These statistics include seizures that may have occurred in automobiles, hotels, motels, and not specifically residential properties.

The bill requires the department to adopt rules on clandestine laboratories; set standards for clandestine laboratory cleanup; set qualifications for clandestine lab contamination assessors and decontamination specialists; maintain lists of qualified clandestine lab contamination assessors and decontamination specialists; and issue notices of quarantine and letters of reoccupancy. The adoption and development of rules, setting of cleanup standards, the setting of qualifications of contamination assessors and decontamination specialists may be simplified by the adoption of policies utilized by other states.

According to DOH once the rule is established, the department's only response to a clandestine drug laboratory incident is to maintain a web listing of clandestine drug laboratory contamination assessors and decontamination specialists, and to provide affected parties with mailed communications of three form letters. One form letter is required to be sent to the property owner at the beginning of the quarantine and two letters at the satisfaction of quarantine, one to law enforcement and one to the property owner. The function of providing these notices will have to be a highly responsible support staff function since there will be no programmatic or professional support for this function.

<u>Estimated Expenditures</u>	<u>1st Year</u>	<u>2nd Year (Annualized/ Recurr.)</u>	<u>3rd Year (Annualized/ Recurr.)</u>
<b>Salaries</b>			
.6 FTE Administrative Secretary (FTE computed w/ 10% above base, 28% fringe, 25% lapse the first year and 3% annual increase in salary)	\$ 13,948	\$ 19,155	\$ 19,729
<b>Expense</b>			
1 FTE @ Std DOH Support	\$ 7,986	\$ 5,195	\$ 5,195
Quarantine related postage	\$ 2,140	\$ 2,140	\$ 2,140
Printing of rule packets	\$ 750		
Publishing in Florida Administrative Weekly	\$ 500		
<b>Operating Capital Outlay</b>			
1FTE @ Std DOH supp. pkg	\$ 2,100		
	<u>\$27,424</u>	<u>\$26,490</u>	<u>\$27,064</u>
<b>Total Estimated Expenditures</b>			

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will prohibit an owner from inhabiting a quarantined residential property or offering the property to the public for habitation. The owner will be required to meet the decontamination standards established by the Department of Health and will be required to pay for the costs of assessment and cleanup. Costs for clandestine laboratory cleanup will vary depending upon the nature and extent of the cleanup needed. The size, duration, frequency, and types of chemicals used are all variables that impact the degree of contamination. According to the Washington State Department of Health, decontamination costs average \$6,500 per 1,200 square-feet.<sup>41</sup> According to an Arkansas news article, clean-up costs generally range from \$2,000 to \$10,000; depending on the size of the lab.<sup>42</sup>

#### D. FISCAL COMMENTS:

The analysis by DOH assumes that 338 clandestine drug laboratories will be seized per year – the number that was seized in 2005.

In 2005, the legislature passed a bill placing quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. States that have placed similar restrictions on the sale of ephedrine, pseudoephedrine or phenylpropanolamine have seen a dramatic decrease in the incidence of clandestine laboratories. If these restrictions reduce the number of illegal labs in Florida, the fiscal impact of the bill may be less than that anticipated by the Department of Health.

If clandestine laboratory seizures increase, the costs incurred by DOH will increase accordingly.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

Several constitutional issues have been mentioned as potential items of concern, i.e., the immunity from health-based civil action and the quarantine of personal property. As currently provided in the bill, the immunity from health-based civil action provision encourages property owners to decontaminate their property. Authority to quarantine a property that may pose a health hazard is well established for instances where a quarantine is meant to protect the public from harm. Each issue is discussed in detail below.

#### Access to Courts

This bill provides that a residential property owner who has met the decontamination standards, or has demolished the residential property "shall have immunity from health-based civil actions brought by any future owner, renter, or other person who occupies the residential property, or a neighbor of such residential property, in which the alleged cause of the injury or loss is the existence of the clandestine laboratory". This provision in the bill could possibly be an unconstitutional violation of Article I, s. 21, of the Florida Constitution.

<sup>41</sup> Washington State Department of Health, Division of Environmental Health, Office of Environmental Health and Safety. Information for Landlords and Property Owners. <http://www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm> (February 11, 2006).

<sup>42</sup> Bradford, Michelle. 2000. U.S. Denies funds for State Meth Cleanup; Officials Mull Options. [http://www.kci.org/meth\\_info/sites/ark\\_drug%20cleanup.htm](http://www.kci.org/meth_info/sites/ark_drug%20cleanup.htm) (February 12, 2006).

Article I, s. 21, provides the following:

SECTION 21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The right to go to court to resolve disputes is a fundamental right.<sup>43</sup> In order to make a claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida.<sup>44</sup> A person's guaranteed access to the courts should not be unduly or unreasonably burdened or restricted.<sup>45</sup> If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation. It may be possible that this bill could be found to be an unreasonable burden to an individual's right of access to courts. This bill is taking away a previously available cause of action to any person who is injured by the negligent use of a person's property simply because the property owner has followed the decontamination or demolition procedures of the bill. The Florida Supreme Court, in the case Kluger v. White, 281 So.2d 1 (Fla. 1973), held that, "where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of Florida, or where such right has become a part of the common law of the State, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown".<sup>46</sup>

### Taking of Property

Article X, s. 6, Fla. Stat. provides the following:

SECTION 6. Eminent domain.--

(a) No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

Takings issues could arise based on the fact that this bill allows a government entity to force a person from their property and restrict any devise of the property until the residential property is decontaminated or demolished. A state law quarantining property pursuant to this bill probably would not be considered a taking. However, although the state may validly exercise its police power in conformance with applicable statutes and rules when it destroys property, its exercise of the police powers can still result in a taking.<sup>47</sup> Full and just compensation is required when the state, pursuant to its police power, destroys healthy but suspect citrus trees to prevent the spread of citrus canker.<sup>48</sup> There is no settled formula for determining when the valid exercise of police power stops and an impermissible encroachment on private property rights begins, but some of the factors which have been considered are:<sup>49</sup>

<sup>43</sup> DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach, 819 So. 2d 971 (Fla. Dist. Ct. App. 4th Dist. 2002).

<sup>44</sup> Yachting Promotions, Inc. v. Broward Yachts, Inc., 792 So. 2d 660 (Fla. Dist. Ct. App. 4th Dist. 2001); Strohm v. Hertz Corporation/Hertz Claim Management, 685 So. 2d 37 (Fla. Dist. Ct. App. 1st Dist. 1996).

<sup>45</sup> Preferred Medical Plan, Inc. v. Ramos, 742 So. 2d 322 (Fla. Dist. Ct. App. 3d Dist. 1999); Swain v. Curry, 595 So. 2d 168 (Fla. Dist. Ct. App. 1st Dist. 1992).

<sup>46</sup> *Id.* at 4.

<sup>47</sup> Albrecht v. State, 444 So. 2d 8 (Fla. 1984); Conner v. Reed Bros., Inc., 567 So. 2d 515 (Fla. Dist. Ct. App. 2d Dist. 1990).

<sup>48</sup> Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc., 521 So. 2d 101 (Fla. 1988).

<sup>49</sup> Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981).



- Whether there is a physical invasion of the property;
- The degree to which there is a diminution in value of the property or whether the regulation precludes all economically reasonable use of the property;
- Whether the regulation confers a public benefit or prevents a public harm;
- Whether the regulation promotes the health, safety, welfare, or morals of the public;
- Whether the regulation is arbitrarily and capriciously applied; and
- The extent to which the regulation curtails investment-backed expectations.

Where a regulation creates a public benefit, it is more likely an exercise of eminent domain, and where a public harm is prevented it is more likely an exercise of the police power.<sup>50</sup> Reasonable regulations pursuant to the police power of the state, intended to promote public health, safety, or general public welfare, may be adopted and enforced without violating the constitutional rights of property owners.

#### B. RULE-MAKING AUTHORITY:

- The bill provides the Department of Health rule-making authority to promulgate rules to:
- Establish a 'certificate of fitness' that acts as documentation signifying that a home has been properly decontaminated;
  - Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.
  - Establish indoor air quality standards;
  - Establishing the standards for cleanup and testing of clandestine laboratories;
  - Establish the requirements for persons authorized to perform contamination assessments and decontamination;
  - Create a uniform notice and letter; and
  - Specify the requirements of persons authorized to perform clandestine laboratory cleanup.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by Chairman Garcia. The strike-all amendment significantly reduced the fiscal impact to the Department of Health by transferring the contamination assessment and decontamination to qualified independent contractors in the private sector; stream-lined several requirements and processes required in the bill to clarify the roles of law enforcement and the Department of Health; and addressed concerns brought to the attention of staff by the Florida Department of Law Enforcement, Florida Sheriff's Association, and the Department of Health.

The PCB, as amended, was reported favorably by the Health Care Regulation Committee.

<sup>50</sup> *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981); *State Plant Bd. v. Smith*, 110 So. 2d 401 (Fla. 1959).

1                                   A bill to be entitled  
2       An act relating to clandestine laboratory contamination;  
3       amending s. 893.02, F.S.; providing definitions; creating  
4       s. 893.121, F.S.; providing for quarantine of any  
5       residential property where illegal clandestine laboratory  
6       activities occurred; providing for establishment of a  
7       uniform notice and a uniform letter of notification;  
8       providing for posting of specified notice at the site of a  
9       quarantine; providing requirements for the sending of a  
10      specified letter of notification to a residential property  
11      owner or manager; providing for petitions by certain  
12      persons in circuit court to lift such quarantines under  
13      certain conditions; prohibiting specified violations  
14      relating to such quarantines; creating s. 893.122, F.S.;  
15      permitting demolition of quarantined residential property  
16      under certain conditions; providing immunity from health-  
17      based civil actions for residential property owners who  
18      have met specified clandestine laboratory decontamination  
19      standards as evidenced by specified documentation;  
20      providing an exception to such immunity for persons  
21      convicted of manufacturing controlled substances at the  
22      site; creating s. 893.123, F.S.; providing for rulemaking  
23      to adopt clandestine laboratory decontamination standards;  
24      providing for certificates of fitness to indicate that  
25      decontamination has been completed; providing requirements  
26      for the lifting of a quarantine upon demolition of the  
27      property; creating s. 893.124, F.S.; requiring the  
28      Department of Health to specify requirements for persons

29 authorized to perform decontamination and contamination  
 30 assessments; requiring the department to compile and  
 31 maintain lists of decontamination and contamination  
 32 assessment specialists; providing responsibilities for  
 33 decontamination specialists; permitting decontamination  
 34 and contamination assessment specialists to request  
 35 specified documents; providing for the issuance of  
 36 certificates of fitness by contamination assessment  
 37 specialists; amending ss. 465.016, 465.023, 856.015,  
 38 893.135, 944.47, 951.22, and 985.4046, F.S.; conforming  
 39 cross-references; providing an effective date.

40  
 41 WHEREAS, methamphetamine use and production is increasing  
 42 throughout the state, and

43 WHEREAS, in places where methamphetamine production has  
 44 occurred, significant levels of chemical contamination may be  
 45 found, especially in residential properties when the  
 46 contamination is not decontaminated, and

47 WHEREAS, children are susceptible to environmental  
 48 toxicants via the skin, and the ingestion of residual  
 49 methamphetamine is considered to be a result of hand-to-mouth  
 50 activities, and

51 WHEREAS, studies on methamphetamine use during pregnancy  
 52 showed an increased incidence of intrauterine growth  
 53 retardation, prematurity, and perinatal complications, and

54 WHEREAS, once clandestine laboratories have been seized,  
 55 the public may continue to be harmed by the illegal dumping of

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56 chemical byproducts and the chemical residues that remain on the  
 57 residential property, and

58 WHEREAS, there are no statewide standards for determining  
 59 when a site of a seized clandestine laboratory has been  
 60 successfully decontaminated, and

61 WHEREAS, the Legislature finds that this act is necessary  
 62 for the immediate preservation of the public health, safety, and  
 63 welfare and fulfills an important state interest, NOW,

64 THEREFORE,

65

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

67

68 Section 1. Section 893.02, Florida Statutes, is amended to  
 69 read:

70 893.02 Definitions.--The following words and phrases as  
 71 used in this chapter shall have the following meanings, unless  
 72 the context otherwise requires:

73 (1) "Administer" means the direct application of a  
 74 controlled substance, whether by injection, inhalation,  
 75 ingestion, or any other means, to the body of a person or  
 76 animal.

77 (2) "Analog" or "chemical analog" means a structural  
 78 derivative of a parent compound that is a controlled substance.

79 (3) "Cannabis" means all parts of any plant of the genus  
 80 Cannabis, whether growing or not; the seeds thereof; the resin  
 81 extracted from any part of the plant; and every compound,  
 82 manufacture, salt, derivative, mixture, or preparation of the  
 83 plant or its seeds or resin.

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

90        (5) "Contaminated" or "contamination" means containing  
 91 levels of chemicals at or above the levels defined by the  
 92 department pursuant to s. 893.123(1) as a result of clandestine  
 93 laboratory activity.

94        (6) "Contamination assessment specialist" or  
 95 "contamination assessor" means a person responsible for  
 96 assessing the extent of contamination and decontamination by  
 97 determining the indoor air quality in a residential property  
 98 based on the standards defined by the department. Upon the  
 99 conclusion of decontamination, a residential property must  
 100 successfully test less than or equal to the values defined by  
 101 the department. The person must have specialized training that  
 102 provides him or her with the knowledge, skills, and abilities to  
 103 use quantitative measurement techniques in collecting and  
 104 assessing specified contamination levels that have the ability  
 105 to impair human health and well-being.

106        (7) ~~(4)~~ "Controlled substance" means any substance named or  
 107 described in Schedules I-V of s. 893.03. Laws controlling the  
 108 manufacture, distribution, preparation, dispensing, or  
 109 administration of such substances are drug abuse laws.

110        (8) "Decontamination" means the process of reducing the  
 111 levels of contaminants to the levels defined by the department

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112 pursuant to s. 893.123(1) that allow human reoccupancy using  
 113 currently available methods and processes.

114 (9) "Decontamination specialist" means a person  
 115 responsible for the cleanup, treatment, repair, removal, and  
 116 decontamination of contaminated materials located in a  
 117 residential property where clandestine laboratory activities  
 118 occurred. The person must have the knowledge, skills, and  
 119 ability to prescribe methods to eliminate, control, or reduce  
 120 contamination; and must have been trained in the removal,  
 121 storage, transport, and disposal of hazardous chemicals or  
 122 chemical residues commonly associated with clandestine  
 123 laboratory activities.

124 (10)-(5) "Deliver" or "delivery" means the actual,  
 125 constructive, or attempted transfer from one person to another  
 126 of a controlled substance, whether or not there is an agency  
 127 relationship.

128 (11)-(9) "Department" means the Department of Health.

129 (12)-(6) "Dispense" means the transfer of possession of one  
 130 or more doses of a medicinal drug by a pharmacist or other  
 131 licensed practitioner to the ultimate consumer thereof or to one  
 132 who represents that it is his or her intention not to consume or  
 133 use the same but to transfer the same to the ultimate consumer  
 134 or user for consumption by the ultimate consumer or user.

135 (13)-(7) "Distribute" means to deliver, other than by  
 136 administering or dispensing, a controlled substance.

137 (14)-(8) "Distributor" means a person who distributes.

138 (15)-(10) "Hospital" means an institution for the care and  
 139 treatment of the sick and injured, licensed pursuant to the

140 provisions of chapter 395 or owned or operated by the state or  
 141 Federal Government.

142 (16)~~(11)~~ "Laboratory" means a laboratory approved by the  
 143 Drug Enforcement Administration as proper to be entrusted with  
 144 the custody of controlled substances for scientific, medical, or  
 145 instructional purposes or to aid law enforcement officers and  
 146 prosecuting attorneys in the enforcement of this chapter.

147 (17)~~(12)~~ "Listed chemical" means any precursor chemical or  
 148 essential chemical named or described in s. 893.033.

149 (18)~~(13)~~(a) "Manufacture" means the production,  
 150 preparation, propagation, compounding, cultivating, growing,  
 151 conversion, or processing of a controlled substance, either  
 152 directly or indirectly, by extraction from substances of natural  
 153 origin, or independently by means of chemical synthesis, or by a  
 154 combination of extraction and chemical synthesis, and includes  
 155 any packaging of the substance or labeling or relabeling of its  
 156 container, except that this term does not include the  
 157 preparation, compounding, packaging, or labeling of a controlled  
 158 substance by:

159 1. A practitioner or pharmacist as an incident to his or  
 160 her administering or delivering of a controlled substance in the  
 161 course of his or her professional practice.

162 2. A practitioner, or by his or her authorized agent under  
 163 the practitioner's supervision, for the purpose of, or as an  
 164 incident to, research, teaching, or chemical analysis, and not  
 165 for sale.

166 (b) "Manufacturer" means and includes every person who  
 167 prepares, derives, produces, compounds, or repackages any drug

168 as defined by the Florida Drug and Cosmetic Act. However, this  
 169 definition does not apply to manufacturers of patent or  
 170 proprietary preparations as defined in the Florida Pharmacy Act.  
 171 Pharmacies, and pharmacists employed thereby, are specifically  
 172 excluded from this definition.

173 (19)~~(14)~~ "Mixture" means any physical combination of two  
 174 or more substances.

175 (20)~~(15)~~ "Patient" means an individual to whom a  
 176 controlled substance is lawfully dispensed or administered  
 177 pursuant to the provisions of this chapter.

178 (21)~~(16)~~ "Pharmacist" means a person who is licensed  
 179 pursuant to chapter 465 to practice the profession of pharmacy  
 180 in this state.

181 (22)~~(17)~~ "Possession" includes temporary possession for  
 182 the purpose of verification or testing, irrespective of dominion  
 183 or control.

184 (23)~~(18)~~ "Potential for abuse" means that a substance has  
 185 properties of a central nervous system stimulant or depressant  
 186 or an hallucinogen that create a substantial likelihood of its  
 187 being:

- 188 (a) Used in amounts that create a hazard to the user's
- 189 health or the safety of the community;
- 190 (b) Diverted from legal channels and distributed through
- 191 illegal channels; or
- 192 (c) Taken on the user's own initiative rather than on the
- 193 basis of professional medical advice.

194



195 Proof of potential for abuse can be based upon a showing that  
 196 these activities are already taking place, or upon a showing  
 197 that the nature and properties of the substance make it  
 198 reasonable to assume that there is a substantial likelihood that  
 199 such activities will take place, in other than isolated or  
 200 occasional instances.

201 (24)~~(19)~~ "Practitioner" means a physician licensed  
 202 pursuant to chapter 458, a dentist licensed pursuant to chapter  
 203 466, a veterinarian licensed pursuant to chapter 474, an  
 204 osteopathic physician licensed pursuant to chapter 459, a  
 205 naturopath licensed pursuant to chapter 462, or a podiatric  
 206 physician licensed pursuant to chapter 461, provided such  
 207 practitioner holds a valid federal controlled substance registry  
 208 number.

209 (25)~~(20)~~ "Prescription" means and includes an order for  
 210 drugs or medicinal supplies written, signed, or transmitted by  
 211 word of mouth, telephone, telegram, or other means of  
 212 communication by a duly licensed practitioner licensed by the  
 213 laws of the state to prescribe such drugs or medicinal supplies,  
 214 issued in good faith and in the course of professional practice,  
 215 intended to be filled, compounded, or dispensed by another  
 216 person licensed by the laws of the state to do so, and meeting  
 217 the requirements of s. 893.04. The term also includes an order  
 218 for drugs or medicinal supplies so transmitted or written by a  
 219 physician, dentist, veterinarian, or other practitioner licensed  
 220 to practice in a state other than Florida, but only if the  
 221 pharmacist called upon to fill such an order determines, in the  
 222 exercise of his or her professional judgment, that the order was

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223 issued pursuant to a valid patient-physician relationship, that  
 224 it is authentic, and that the drugs or medicinal supplies so  
 225 ordered are considered necessary for the continuation of  
 226 treatment of a chronic or recurrent illness. However, if the  
 227 physician writing the prescription is not known to the  
 228 pharmacist, the pharmacist shall obtain proof to a reasonable  
 229 certainty of the validity of said prescription. A prescription  
 230 order for a controlled substance shall not be issued on the same  
 231 prescription blank with another prescription order for a  
 232 controlled substance which is named or described in a different  
 233 schedule, nor shall any prescription order for a controlled  
 234 substance be issued on the same prescription blank as a  
 235 prescription order for a medicinal drug, as defined in s.  
 236 465.031(5), which does not fall within the definition of a  
 237 controlled substance as defined in this act.

238 (26) "Residential property" means a dwelling unit used, or  
 239 intended for use, by an individual or individuals as a permanent  
 240 residence. The term includes improved real property of between  
 241 one and four dwellings; a condominium unit, as defined in s.  
 242 718.103(27); a cooperative unit, as defined in s. 719.103(24);  
 243 or a mobile home or manufactured home, as defined in s.  
 244 320.01(2). The term does not include a hotel, motel, campground,  
 245 marina, or timeshare unit.

246 (27) ~~(21)~~ "Wholesaler" means any person who acts as a  
 247 jobber, wholesale merchant, or broker, or an agent thereof, who  
 248 sells or distributes for resale any drug as defined by the  
 249 Florida Drug and Cosmetic Act. However, this definition does not  
 250 apply to persons who sell only patent or proprietary

251 preparations as defined in the Florida Pharmacy Act. Pharmacies,  
 252 and pharmacists employed thereby, are specifically excluded from  
 253 this definition.

254 Section 2. Section 893.121, Florida Statutes, is created  
 255 to read:

256 893.121 Quarantine of a clandestine laboratory.--

257 (1) The purpose of the quarantine provided for in this  
 258 section is to prevent exposure of any person to the hazards  
 259 associated with clandestine laboratory activities and provide  
 260 protection from unsafe conditions that pose a threat to the  
 261 public health, safety, and welfare. The department has the  
 262 authority to quarantine residential property under s. 381.0011.

263 (2) Whenever a sheriff, police officer, or other law  
 264 enforcement entity secures evidence from a residential property  
 265 in which illegal clandestine laboratory activities occurred, the  
 266 department must quarantine the property. The local law  
 267 enforcement entity securing evidence shall enforce a quarantine  
 268 on the residential property as part of its duty to assist the  
 269 department under s. 381.0012(5). Enforcement does not require  
 270 the 24-hour posting of law enforcement personnel. The  
 271 residential property shall remain quarantined until the  
 272 department receives a certificate of fitness documenting that  
 273 the property was decontaminated as defined by the department  
 274 pursuant to s. 893.123 or demolished in accordance with s.  
 275 893.122(1), or a court order is presented requiring the  
 276 quarantine to be lifted.

277 (3) The department shall adopt rules pursuant to ss.  
 278 120.536(1) and 120.54 to establish a uniform notice to post at

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279 the site of a quarantined clandestine laboratory and a uniform  
280 letter of notification of the quarantine to be sent to the  
281 residential property owner or manager. It is the responsibility  
282 of local law enforcement to post the notice of a quarantine on  
283 the residential property, and it is the responsibility of the  
284 department to mail the letter of notification. The material in  
285 the letter and notice shall include, but not be limited to:

286 (a) That the residential property has been quarantined and  
287 a clandestine laboratory was seized on or inside the residential  
288 property.

289 (b) The date of the quarantine.

290 (c) The name and contact telephone number of the law  
291 enforcement entity posting the quarantine.

292 (d) A statement specifying that hazardous substances,  
293 toxic chemicals, or other hazardous waste products may have been  
294 present and may remain on or inside the residential property and  
295 that exposure to the substances may be harmful and may pose a  
296 threat to public health and the environment.

297 (e) A statement that it is unlawful for an unauthorized  
298 person to enter the contaminated residential property and that  
299 the removal of any notice of the quarantine is a second degree  
300 misdemeanor under s. 381.0025(1).

301 (f) A statement, in the notification letter, explaining  
302 how to have the quarantine lifted.

303 (4) Upon securing evidence from a residential property in  
304 which illegal clandestine laboratory activities occurred, the  
305 local law enforcement entity shall immediately notify the local  
306 health officer and the department's Division of Environmental

307 Health that a residential property is quarantined and shall  
 308 provide the name and contact information of the law enforcement  
 309 entity, the name of the residential property owner or  
 310 residential property manager, and the address of the property.

311 (5) To the extent possible, the department shall mail the  
 312 letter of notification to the residential property owner or the  
 313 manager of the residential property within 5 working days from  
 314 the date of quarantine notifying the owner or manager that a  
 315 clandestine laboratory was found on the property and that the  
 316 property has been quarantined. The department shall also include  
 317 a list of contamination assessment specialists and  
 318 decontamination specialists and any other information deemed  
 319 appropriate by the department to the residential property owner  
 320 or manager.

321 (6) Any person who has an interest in a residential  
 322 property that is quarantined pursuant to this section may file a  
 323 petition in the circuit court in which the residential property  
 324 is located to request a court order that the quarantine of the  
 325 residential property be lifted for one of the following reasons:

326 (a) The residential property was wrongfully quarantined;  
 327 or

328 (b) The residential property has been properly  
 329 decontaminated as defined by the department pursuant to s.  
 330 893.123 or demolished pursuant to s. 893.122(1) and may be  
 331 reoccupied for habitation, but the department refuses or fails  
 332 to lift the quarantine.

333 (7) No person shall inhabit a quarantined residential  
 334 property, offer the residential property to the public for

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335 temporary or indefinite habitation, or remove any notice of the  
 336 quarantine. Any person who willfully violates a provision of  
 337 this subsection commits a second degree misdemeanor under s.  
 338 381.0025(1).

339 Section 3. Section 893.122, Florida Statutes, is created  
 340 to read:

341 893.122 Option of demolition; immunity from liability from  
 342 health-based civil actions.--

343 (1) A residential property owner shall, upon notification  
 344 from a law enforcement entity that clandestine laboratory  
 345 activities have occurred in a property owned by that owner and  
 346 that the property is quarantined, meet the decontamination  
 347 standards as defined by the department pursuant to s. 893.123  
 348 unless the property owner, at the owner's discretion, elects to  
 349 demolish the contaminated residential property. The demolition  
 350 and removal of materials must meet the requirements of the  
 351 Occupational Safety and Health Administration and the United  
 352 States Environmental Protection Agency regulations pertaining to  
 353 the generation, storage, transport, and disposal of hazardous  
 354 wastes and any state or local requirements.

355 (2) A residential property owner who has met the  
 356 decontamination standards, as evidenced by a certificate of  
 357 fitness and a letter of reoccupancy pursuant to s.893.123, or  
 358 has demolished the residential property in compliance with  
 359 subsection (1), shall have immunity from health-based civil  
 360 actions brought by any future owner, renter, or other person who  
 361 occupies such residential property, or a neighbor of such  
 362 residential property, in which the alleged cause of the injury

363 or loss is the existence of the clandestine laboratory. However,  
 364 a person with a conviction, as defined in s. 944.607, for the  
 365 manufacture of any substance regulated under this chapter on the  
 366 residential property where clandestine laboratory activities  
 367 occurred shall not have the immunity provided in this  
 368 subsection.

369 Section 4. Section 893.123, Florida Statutes, is created  
 370 to read:

371 893.123 Clandestine laboratory decontamination standards,  
 372 certificate of fitness, and letter of reoccupancy.--

373 (1) The department shall adopt rules pursuant to ss.  
 374 120.536(1) and 120.54 that establish:

375 (a) Standards for indoor air quality regarding levels of  
 376 contaminants produced by clandestine laboratory activities to  
 377 include methamphetamine, lead, mercury, and volatile organic  
 378 compounds. These standards must be consistent with values  
 379 commonly used by other states or comply with national standards.

380 (b) Standards for the cleanup and testing of clandestine  
 381 laboratories.

382 (c) A certificate of fitness that shall act as appropriate  
 383 documentation that a residential property has been  
 384 decontaminated in accordance with specified standards. The  
 385 certificate of fitness shall be submitted to the department by a  
 386 contamination assessment specialist. The certificate of fitness  
 387 shall include, but is not limited to:

388 1. The name of the residential property owner, the mailing  
 389 and street address of the residential property owner, and, if

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390 applicable, the parcel identification of the residential  
 391 property.

392 2. The dates the residential property was quarantined and  
 393 cleanup was completed.

394 3. A summary of the indoor air quality test results,  
 395 findings, and conclusions as determined by a contamination  
 396 assessment specialist.

397 4. The name and address of the contamination assessment  
 398 specialist.

399 5. The name and address of the decontamination specialist.

400 6. The method of repair, replacement, or decontamination  
 401 of the residential property.

402 (d) A letter of reoccupancy that will notify the  
 403 residential property owner that the property may be reoccupied  
 404 for habitation.

405 (2) Upon receipt of the certificate of fitness, the  
 406 department shall send a letter of reoccupancy to the residential  
 407 property owner or manager and to the local law enforcement  
 408 entity that enforced the quarantine and posted the notice. The  
 409 letter of reoccupancy must include the address of the  
 410 residential property, a statement that the quarantine is lifted,  
 411 and a statement that the residential property may be reoccupied  
 412 for habitation.

413 (3) In the case of demolition, the department shall lift  
 414 the quarantine on a residential property upon receipt of a  
 415 letter presented by a demolition company stating that the  
 416 quarantined property was demolished. The letter must include the  
 417 address of the residential property and a statement that the



418 demolition was performed in accordance to the requirements in s.  
419 893.122(1).

420 Section 5. Section 893.124, Florida Statutes, is created  
421 to read:

422 893.124 Decontamination and contamination assessment  
423 specialists.--

424 (1)(a) The department shall compile and maintain lists of  
425 decontamination and contamination assessment specialists. The  
426 lists shall be posted on the department's Internet website. The  
427 department shall indicate on the website whether the specialists  
428 are bonded and insured.

429 (b) Persons authorized to perform decontamination or  
430 contamination assessments must have knowledge and skill in the  
431 handling of toxic substances. The department shall adopt rules  
432 pursuant to ss. 120.536(1) and 120.54 specifying the  
433 requirements for persons authorized to perform decontamination  
434 and contamination assessments. Decontamination specialists shall  
435 be responsible for ensuring that all hazardous substances, toxic  
436 chemicals, or other hazardous waste products that may have been  
437 present are removed from the residential property and disposed  
438 of in accordance with federal, state, and local laws and  
439 regulations.

440 (2) In determining the level of contamination in a  
441 clandestine laboratory, the decontamination or contamination  
442 assessment specialist may request copies of any available law  
443 enforcement reports or information relating to the following:

444 (a) The length of time the residential property was used  
445 as a clandestine laboratory.

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446       (b) The extent to which the residential property was  
447 exposed to chemicals used in clandestine laboratory activities.

448       (c) The chemical processes that were involved in the  
449 clandestine laboratory activities.

450       (d) The chemicals that were removed from the residential  
451 property.

452       (e) The location of the clandestine laboratory activities  
453 in relation to the habitable areas of the residential property.

454       (3) If the contamination assessment specialist determines  
455 that the residential property is not contaminated, the  
456 contamination assessment specialist shall prepare a certificate  
457 of fitness and submit the certificate to the department.

458       Section 6. Paragraph (s) of subsection (1) of section  
459 465.016, Florida Statutes, is amended to read:

460       465.016 Disciplinary actions.--

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

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

468       Section 7. Paragraph (e) of subsection (1) of section  
469 465.023, Florida Statutes, is amended to read:

470       465.023 Pharmacy permittee; disciplinary action.--

471       (1) The department or the board may revoke or suspend the  
472 permit of any pharmacy permittee, and may fine, place on

473 probation, or otherwise discipline any pharmacy permittee who  
 474 has:

475 (e) Dispensed any medicinal drug based upon a  
 476 communication that purports to be a prescription as defined by  
 477 s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has  
 478 reason to believe that the purported prescription is not based  
 479 upon a valid practitioner-patient relationship that includes a  
 480 documented patient evaluation, including history and a physical  
 481 examination adequate to establish the diagnosis for which any  
 482 drug is prescribed and any other requirement established by  
 483 board rule under chapter 458, chapter 459, chapter 461, chapter  
 484 463, chapter 464, or chapter 466.

485 Section 8. Paragraph (c) of subsection (1) of section  
 486 856.015, Florida Statutes, is amended to read:

487 856.015 Open house parties.--

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

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

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

493 893.135 Trafficking; mandatory sentences; suspension or  
 494 reduction of sentences; conspiracy to engage in trafficking.--

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

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501 described in this section, the weight of the controlled  
 502 substance is the total weight of the mixture, including the  
 503 controlled substance and any other substance in the mixture. If  
 504 there is more than one mixture containing the same controlled  
 505 substance, the weight of the controlled substance is calculated  
 506 by aggregating the total weight of each mixture.

507       Section 10. Paragraph (a) of subsection (1) of section  
 508 944.47, Florida Statutes, is amended to read:

509       944.47 Introduction, removal, or possession of certain  
 510 articles unlawful; penalty.--

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

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

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

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

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

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

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

534 951.22 County detention facilities; contraband articles.--

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

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555 Section 12. Paragraph (a) of subsection (1) of section  
 556 985.4046, Florida Statutes, is amended to read:

557 985.4046 Introduction, removal, or possession of certain  
 558 articles unlawful; penalty.--

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

- 567 1. Any unauthorized article of food or clothing.
- 568 2. Any intoxicating beverage or any beverage that causes  
 569 or may cause an intoxicating effect.
- 570 3. Any controlled substance, as defined in s. 893.02~~(4)~~,  
 571 or any prescription or nonprescription drug that has a hypnotic,  
 572 stimulating, or depressing effect.
- 573 4. Any firearm or weapon of any kind or any explosive  
 574 substance.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. \_\_\_\_ (for drafter's use only)

Bill No. **HB 7065**

COUNCIL/COMMITTEE ACTION

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

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

3  
4 **Amendment (with directory and title amendments)**

5 Remove line(s) 344 and insert:  
6 from the department that clandestine laboratory





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7199 (PCB FFF 06-05) Forensic Treatment and Training  
**SPONSOR(S):** Future of Florida's Families Committee and Rep. Galvano  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2010, HB 1503

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	5 Y, 0 N	Davis	Collins
1) Criminal Justice Committee		Cunningham <i>SK</i>	Kramer <i>TK</i>
2) Health & Families Council			
3)			
4)			
5)			

**SUMMARY ANALYSIS**

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of persons who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for 'forensic client' to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities;
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedure as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and
- Clarifies distinction between ch. 916, F.S., forensic procedures for involuntary commitment and ch. 393, F.S., procedures for **non**-forensic involuntary commitment (the source of much court confusion).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 916.105, 916.106, 916.107, 916.1075, 916.1081, 916.1085, 916.1091, 916.1093, 916.111, 916.115, 916.12, 916.13, 916.145, 916.15, 916.16, 916.17, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 921.137, 985.223, 287.057, 408.036, 943.0585, 942.059.

According to the Agency for Persons with Disabilities, there is no fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provides Limited Government:** The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation:**

Chapter 916, F.S., the "Forensic Client Services Act," applies to persons charged with a felony and found to be incompetent to proceed due to mental illness, mental retardation, or autism or who have been acquitted of felonies by reason of insanity. Persons committed under ch. 916, F.S., remain under the jurisdiction of the committing court but are committed to the custody of the department. Chapter 916, F.S., is divided into three parts: Part I, General Provisions; Part II, Forensic Services for Persons Who are Mentally Ill; and, Part III, Forensic Services for Persons Who are Retarded or Autistic. The Florida Rules of Criminal Procedure (FRCP Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed, hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Part I provides legislative intent for DCF to "establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants" committed under the provisions of the chapter.<sup>1</sup> This part provides definitions for terminology used in the entire chapter, including definitions of "autism," "forensic client," "mental illness," and "retardation."<sup>2</sup> Part I also includes the rights of forensic clients, which include the right to:

- Individual dignity,
- Treatment,
- Express and informed consent,
- Quality treatment, communication,
- Abuse reporting, and visits,
- To have personal effects and clothing,
- To vote if otherwise eligible,
- Confidentiality of the clinical record, and
- Habeas corpus.<sup>3</sup>

This part also provides prohibitions and penalties for sexual misconduct by an employee with a forensic client, penalties for escape from a forensic program, and penalties for the introduction or removal of certain articles into a forensic facility. It provides general rulemaking authority for the department.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental illness or who have been adjudicated not guilty by reason of insanity.

This part also directs DCF to provide either directly or through a contract with accredited institutions standardized criteria and procedures to be used in evaluations and to develop clinical protocol and procedures consistent with the FRCP. In addition, DCF must develop a training plan for community

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<sup>1</sup> s. 916.105, F.S.

<sup>2</sup> s. 916.106, F.S.

<sup>3</sup> s. 916.107, F.S.

mental health professionals who perform forensic evaluations, provide training for professionals doing evaluations and providing reports to the court and develop a system to evaluate the program's success. Each year DCF is required to provide the court with a list of mental health professionals approved as experts.

Part II authorizes the court to appoint no more than three nor fewer than two experts to evaluate a criminal defendant's mental condition, including competency, insanity, and the need for involuntary hospitalization or placement. The court is required to authorize reasonable fees for expert evaluations and testimony.

Pursuant to this part, an individual is incompetent to proceed if he or she "does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him."<sup>4</sup>

In considering the issue of competence to proceed, the statute requires that the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him or her, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel regarding the facts pertinent to the case, behave appropriately in court, and testify relevantly. The examining expert must include in the report to the court any other information deemed relevant. If the expert finds the defendant incompetent to proceed, they must also report on recommended treatment that will allow the defendant to regain competence. The expert's report to the court must also address the defendant's mental illness, recommended treatments and alternatives and their availability in the community, the likelihood of the defendant's attaining competence under the recommended treatment, an assessment of the probable duration of the treatment, and the probability that the defendant will attain competence to proceed in the foreseeable future.<sup>5</sup>

A defendant may not automatically be deemed incompetent to proceed simply because his or her satisfactory mental functioning is dependent upon psychotropic medication. "Psychotropic medication" is defined for the purposes of ch. 916, F.S., as "any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs."<sup>6</sup>

Part II of ch. 916, F.S., also provides the criteria for defendants who are adjudicated incompetent to proceed to be involuntarily committed for treatment. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; and
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.<sup>7</sup>

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<sup>4</sup> s. 916.12, F.S.

<sup>5</sup> s. 916.12, F.S.

<sup>6</sup> s. 916.12(5), F.S.

<sup>7</sup> s. 916.13, F.S.

This part also provides that a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed if he or she is mentally ill and, because of the mental illness, is manifestly dangerous to himself or herself or others.<sup>8</sup> Persons committed under Part I of ch. 916, F.S., are committed to the custody of DCF and are usually treated at one of the three forensic state mental health treatment facilities at Florida State Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami.

The court may also order conditional release of a defendant who has been found incompetent to proceed or not guilty by reason of insanity. Conditional release must be based on an approved plan for providing appropriate outpatient care. The court may also order conditional release in lieu of an involuntary commitment to a facility. If outpatient treatment is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court.<sup>9</sup>

Part III of ch. 916, F.S., relates to forensic services for persons with retardation or autism and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental retardation or autism. Similar to the provisions of Part I, this section directs that the department must provide the courts annually with a list of professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic, but one of the experts appointed by the court must be the "developmental services program of the department," and the department is directed to "select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant."<sup>10</sup>

The court must find by clear and convincing evidence that:

- The defendant is retarded or autistic,
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm,
- There is no less restrictive treatment available, and
- There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and he or she will regain competency to proceed in the reasonably foreseeable future.<sup>11</sup>

A defendant who is found to be incompetent to proceed and meets the above criteria is committed to the department. No later than six months after admission, at the end of any period of extended commitment, or at any time the administrator determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator must file a report with the court.<sup>12</sup>

If a defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed two years, the charges against him or her are to be dropped. The only exception is if the court specifies in its order the reasons for expecting that the defendant will become competent to proceed within the foreseeable future and specifies the time within which that is expected to occur. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the

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<sup>8</sup> s. 916.15, F.S.

<sup>9</sup> s. 916.17, F.S.

<sup>10</sup> s. 916.301, F.S.

<sup>11</sup> s. 916.302, F.S.

<sup>12</sup> Ibid.

defendant be declared competent to proceed in the future.<sup>13</sup> The individual may then apply for services from the agency.

If the defendant requires involuntary residential services under s. 393.11, F.S., and there is a substantial likelihood that he or she will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings are inappropriate, then the defendant's placement in a secure facility or program may be continued. An individual involuntarily placed under this provision must have an annual review of his or her status by the court at a hearing. The annual review and hearing are to determine whether the individual continues to meet the criteria for involuntary residential services and, if so, if placement in a secure facility is still required because the court finds that the individual is likely to physically injure others. However, in no circumstance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.<sup>14</sup>

Forensic programs for persons with developmental disabilities are the Mentally Retarded Defendant Programs, which are located at Sunland in Marianna, Florida State Hospital in Chattahoochee, and Taccachale in Gainesville.

The Agency for Persons with Disabilities (APD) was created effective October 1, 2004. The agency is housed within the Department of Children and Families (DCF) for administrative purposes only. It is not subject to the control, supervision or direction of DCF, and the director of APD is appointed by the Governor. The agency's mission is to assist people who have developmental disabilities and their families. The agency also provides assistance to identify the needs of people with developmental disabilities and funding to purchase supports and services. Although the agency's Central Office is located in Tallahassee, supports and services for people with developmental disabilities are provided through district offices throughout the state.

Developmental disabilities include mental retardation, autism, spina bifida, cerebral palsy, and Prader Willi syndrome. The bill proposes to continue the conforming changes to statutes begun in 2004 to conform to the establishment of the new agency, plus make some needed updating and clarifications; as well as several substantive changes that will allow the agency to better serve the needs of service recipients and the public interest.

As part of those transitions, institutions housing clients with developmental disabilities were also transferred to APD. This included institutions housing forensic clients diagnosed with mental retardation or autism that had been charged with a felony offense but found incompetent to proceed to trial. Statutory provisions relating to forensic clients are found in chapter 916, F.S. However, the current chapter, which is divided into 3 parts, has not yet been modified to recognize the distinction between the DCF with respect to forensic clients with mental illness, and the APD, which is responsible for forensic clients with mental retardation or autism.

The DCF is no longer responsible for the treatment and training of defendants who have solely mental retardation or autism. The delay in modifying Chapter 916, F.S., to clearly distinguish the department's responsibility from the responsibilities of the new agency has caused confusion among the courts. Individuals with mental retardation or autism, at times, continue to be committed to the department and commitment packets are being sent to the Forensic Admissions Office within mental health. Because individuals can have both mental retardation and mental illness, it becomes very difficult at times to determine whether the court intended to commit the individual due to mental illness or mental retardation. This uncertainty requires staff time to obtain clarification from the court and may result in the court's issuing new orders and/or requiring new evaluations. The individual may have to move from the mental health waiting list to the mental retardation waiting list, which ultimately delays the individual's admission time.

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<sup>13</sup> s. 916.303, F.S.

<sup>14</sup> s. 916.303, F.S.

According to DCF, clearly distinguishing that the treatment and training of defendants with mental retardation or autism is the responsibility of the Agency for Persons with Disabilities will minimize the courts' confusion, lead to fewer inappropriate commitments to the department, and help to ensure that defendants with mental retardation or autism are placed on the appropriate waiting list so that admission can occur without unnecessary delays.

### **Use of Restraint and Seclusion**

According to the Advocacy Center for Persons with Disabilities (Advocacy Center), based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida had the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Of those deaths, 14 of the 16 suspicious deaths that came to the attention of the Advocacy Center involved the use of restraint and/or seclusion. The Advocacy Center learned of these deaths from a variety of sources, including the CMS, Agency for Healthcare Administration (AHCA), APD, DCF, and newspaper articles, as well as from families and friends of the deceased. However, the unreliability and uncertainty of the reporting procedures in Florida make it difficult to know with complete certainty the extent of use of restraint and seclusion.

Both the agency and DCF have some statutory provisions in place regarding the use of restraint and seclusion. Section 393.13(4)(i), F.S., states, "Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a rehabilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort."

Pursuant to federal law, CMS must report Florida restraint or seclusion related deaths to the Advocacy Center. Hospitals receiving federal funds must report to CMS any deaths that occur while an individual is restrained or in seclusion or where it is reasonable to assume that an individual's death is a result of restraint and seclusion. However, according to the Advocacy Center, Florida hospitals are often late sending reports to CMS, which then often fails to notify the Advocacy Center in a timely manner or sends incomplete information.

### **Mental Health Treatment Facilities**

The purpose of mental health treatment facilities is to stabilize adults with mental illnesses so they can return to the community. Florida's mental health institutions, also known as mental health treatment facilities, are part of the continuum of care for the most seriously mentally ill residents of the state. In Fiscal Year 2004-05, the program served 3,950 adults in two population categories.

The "civil population category" includes adults with a serious mental illness who meet voluntary or involuntary admission criteria (are a danger to themselves or others) and for whom less restrictive treatment settings are not available or appropriate.

The "forensic population category" includes adults with a serious mental illness who are either charged with a criminal offense and found not guilty of a crime by reason of insanity or found incompetent to proceed through any phase of the judicial process.

Institutional mental health services are provided at five state mental health treatment facilities, which include two civil facilities, two forensic facilities, and one facility with both civil and forensic units.

"Civil facilities" serve the general population and provide evaluation, mental health treatment, rehabilitation and support to facilitate clients' successful return to the community. Each hospital serves a designated geographic area.

"Forensic facilities" serve adults charged with a felony criminal offense (and juveniles adjudicated as adults) and provide mental health treatment and competency restoration services in a secure residential setting. The facilities serve individuals who are found incompetent to proceed to trial and individuals who are found not guilty of their crime due to reason of insanity. Forensic facilities serve individuals from all geographic areas of the state.

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness and are involved with the criminal justice system. The goal is to provide assessment, evaluation, and treatment to individuals adjudicated incompetent to proceed at any stage of a criminal proceeding or not guilty by reason of insanity.

In addition to the general psychiatric treatment approaches and milieu, specialized services include:

- Psychosocial rehabilitation
- Education
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention
- Sexually transmitted disease education and prevention
- Substance abuse awareness and prevention
- Vocational training
- Occupational therapies
- Full range of medical and dental services

Services include comprehensive assessment, evaluation, and treatment of psychiatric disorders for individuals involved with the criminal court system. Evaluations for competency to proceed, treatment following a finding of not guilty by reason of insanity, and services to individuals on conditional release in the community are provided. Additionally, in-jail services are provided by local county jails, often with assistance from community mental health providers.

Forensic services are provided to adults over the age of 18 and juveniles adjudicated as adults. Diagnostic categories include all major DSMIV disorder classifications (primarily schizophrenia and mood disorders). Secondary diagnoses, such as substance abuse and personality disorders, are also present for a significant number of people.

Individuals determined by the court to require treatment in a state mental health facility are typically served by one of three maximum security facilities. These facilities have a combined capacity to serve 890 people. Individuals who do not require a secure setting may be directly admitted or transferred into one of three civil mental health treatment facilities. The facilities admit over 1,000 individuals into the state treatment facilities on a yearly basis.

Community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities. There are two forensic halfway houses in Florida, with a capacity to serve 35 individuals from one of the state treatment facilities. Individuals are also accepted into other community programs. Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Services vary by county jail, ranging from visits by a mental health professional on an as needed basis to full service inpatient mental health units located in the jail complex.

Section 916.145, F.S., states, "The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed five years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the

foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.”

An acquittal of not guilty by reason of insanity (NGBRI) is an adjudication by the court. The individual remains NGBRI of the charge(s) indefinitely and cannot be retried on the same charge(s). However, the court may maintain jurisdiction and may commit the individual to the DCF for inpatient treatment or order treatment and supervision in the community under the terms of a conditional release.

If committed to the department for inpatient treatment, the treating facility must file a report with the court within six months of the individual's admission, prior to the end of any extended period of treatment or at any time the administrator or designee determines that the individual no longer meets the criteria for involuntary commitment. Individuals placed on conditional release may remain under court supervision until such time that the court determines they no longer require court supervision.

In Fiscal Year 2003-04, 69% of the individuals committed under the civil statute experienced symptom relief, and 53% of the forensic individuals who were Not Guilty by Reason of Insanity experienced symptom relief. In future years, the performance measurement system will shift from measuring symptom relief to measuring improvement in functioning. In Fiscal Year 2005-06, the DCF goal is to improve the level of functioning for 73% of the civil population and 63% of the forensic population.

### **Effect of the Bill**

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for “forensic client” to procedures in chapter rather than recreate procedures in definitions; and creates definition for “defendant” to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of “restraints” and “seclusion” including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities.
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD’s Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and



- Amends statute to clarify distinction between ch. 916 forensic procedures for involuntary commitment and ch. 393 procedures for **non**-forensic involuntary commitment (the source of much court confusion).

The bill updates, clarifies, and adds reference to APD; adds language relating to the use of restraints and seclusion; revises the definition of "Forensic Clients" and their right to treatment; revises a forensic client's right to express and informed consent during emergency situations to include a review of the need for treatment review every 48 hours; adds quality of treatment language pertaining to a client's right to be free from unnecessary use of restraint and seclusion (restraints and seclusion should only be used in situations in which the client or others are at risk); and specifies that the release of confidential information comply with state and federal law.

Provisions related to the appointment of experts are updated. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings at issue;
- Manifest appropriate courtroom behavior;
- Testify relevantly; and
- Any other factor deemed relevant by the experts.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 916.105, F.S., relating to legislative intent to reduce the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

**Section 2.** Amends s. 916.106, F.S., providing and revising definitions.

**Section 3.** Amends s. 916.107, F.S., relating to the rights of forensic clients.

**Section 4.** Amends s. 916.1075, F.S., relating to sexual misconduct to substitute the term "covered person" for "employee" and require APD to directly report misconduct rather than reporting through the agency's inspector general.

**Section 5.** Amends s. 916.1081, F.S., relating to penalties for escaping from a forensic facility to distinguish from forensic clients in the correctional system.

**Section 6.** Amends s. 916.1085, F.S., providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with Disabilities.

**Section 7.** Amends s. 916.1091, F.S., relating to security personnel to add APD.

**Section 8.** Amends s. 916.1093, F.S., relating to administration and rules to add APD, and to specify the content of rules relating to restraint and seclusion.

**Section 9.** Amends s. 916.111, F.S., updating provisions relating to training of mental health experts.

**Section 10.** Amends s. 916.115, F.S., updating provisions relating to appointment of experts. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

**Section 11.** Amends s. 916.12, F.S., adding provisions relating to competency to proceed.

**Section 12.** Amends s. 916.13, F.S., relating to involuntary commitment to alter the burden of commitment.

**Section 13.** Amends s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent.

**Section 14.** Amends s. 916.15, F.S., relating to insanity to clarify that incompetence is determined according to Rule 3.217 of the Florida Rules of Criminal Procedure.

**Section 15.** Amends s. 916.16, F.S., relating to jurisdiction of courts over defendants involuntarily committed due to a determination of incompetence.

**Section 16.** Amends s. 916.17, F.S., relating to conditional release.

**Section 17.** Amends s. 916.301, F.S., relating to the appointment of experts and to update and clarify the persons to be selected as experts.

**Section 18.** Amends s. 916.3012, F.S., clarifying provisions governing the determination of a defendant's mental competence to proceed.

**Section 19.** Amends s. 916.302, F.S., relating to involuntary commitment and to require the submission of an evaluation by DCF and APD for dually diagnosed defendants.

**Section 20.** Amends s. 916.3025, F.S., relating to jurisdiction of committing court and to permit the court to transfer jurisdiction to a court in the circuit where the defendant resides.

**Section 21.** Amends s. 916.303, F.S., relating to determination of incompetency to clarify the difference between the grounds for involuntary commitments under ch. 393, F.S., and the requirement for continued secure placement under ch. 916, F.S.

**Section 22.** Amends s. 916.304, F.S., relating to conditional release to update and clarify the difference between involuntary placements and forensic commitments.

**Section 23.** Amends s. 921.137, F.S., relating to the death sentence for retarded inmates and to update the reference from DCF to APD.

**Section 24.** Amends s. 985.223, updating the provisions relating to juvenile delinquency cases.

**Section 25.** Amends s. 287.057, F.S., to update cross-reference.

**Section 26.** Amends s. 408.036, F.S., to update cross-reference.

**Section 27.** Amends s. 943.0585, F.S., to update cross-reference.

**Section 28.** Amends s. 943.059, F.S., to update cross-reference.

**Section 29.** Provides an effective date of 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:

According to the Agency for Persons with Disabilities and the Department and Children and Family Services, there is no fiscal impact to this bill.

The Legislature appropriated \$289 million to the state mental health institutions for Fiscal Year 2005-06. Approximately 65% of the funding is used for personnel. For Fiscal Year 2005-06, the Legislature has authorized 4,270.5 staff positions for the institutions. The staff provides mental health, medical, security, administrative, housekeeping and maintenance services. The program's annual appropriation also includes funds for the department to contract with a private provider for the operation and management of South Florida Evaluation and Treatment Center.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill authorizes the Agency for Persons with Disabilities to adopt rules under s. 916.1093, F.S.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

1                                   A bill to be entitled  
2           An act relating to forensic treatment and training;  
3           amending s. 916.105, F.S.; revising legislative intent  
4           with respect to the treatment or training of defendants  
5           who have mental illness, mental retardation, or autism and  
6           are committed to the Agency for Persons with Disabilities;  
7           providing intent with respect to the use of restraint and  
8           seclusion; amending s. 916.106, F.S.; providing and  
9           revising definitions; amending s. 916.107, F.S., relating  
10          to the rights of forensic clients; conforming provisions  
11          to the transfer of duties from the Developmental  
12          Disabilities Program Office within the Department of  
13          Children and Family Services to the Agency for Persons  
14          with Disabilities; revising provisions governing the  
15          involuntary treatment of clients; requiring the  
16          coordination of services between the department, the  
17          agency, and the Department of Corrections; amending s.  
18          916.1075, F.S.; revising certain prohibitions on sexual  
19          misconduct involving covered persons of the Department of  
20          Children and Family Services or the Agency for Persons  
21          with Disabilities; defining the term "covered person";  
22          requiring that notice of sexual misconduct be provided to  
23          the inspector general of the agency or department;  
24          amending s. 916.1081, F.S.; providing that an escape or an  
25          attempt to escape from a civil or forensic facility  
26          constitutes a second-degree felony; amending s. 916.1085,  
27          F.S.; providing for certain prohibitions concerning  
28          contraband articles to apply to facilities under the

29 supervision or control of the Agency for Persons with  
 30 Disabilities; deleting a cross-reference; amending s.  
 31 916.1091, F.S.; authorizing the use of chemical weapons by  
 32 agency personnel; amending s. 916.1093, F.S.; authorizing  
 33 the agency to enter into contracts and adopt rules;  
 34 requiring department and agency rules to address the use  
 35 of restraint and seclusion; providing requirements for  
 36 such rules; amending s. 916.111, F.S.; revising provisions  
 37 governing the training of mental health experts; amending  
 38 s. 916.115, F.S.; requiring that the court appoint experts  
 39 to determine the mental condition of a criminal defendant;  
 40 requiring that the Department of Children and Family  
 41 Services annually provide the courts with a list of  
 42 certain mental health professionals; amending s. 916.12,  
 43 F.S.; revising provisions governing the evaluation of a  
 44 defendant's competence to proceed; amending s. 916.13,  
 45 F.S.; revising conditions under which a defendant may be  
 46 involuntarily committed for treatment; amending s.  
 47 916.145, F.S., relating to dismissal of charges against a  
 48 defendant adjudicated incompetent; conforming provisions  
 49 to changes made by the act; amending s. 916.15, F.S.;  
 50 clarifying that the determination of not guilty by reason  
 51 of insanity is made under a specified Florida Rule of  
 52 Criminal Procedure; amending s. 916.16, F.S.; providing  
 53 for the continuing jurisdiction of the court over a  
 54 defendant involuntarily committed due to mental illness;  
 55 amending s. 916.17, F.S.; clarifying circumstances under  
 56 which the court may order the conditional release of a

57 defendant; amending s. 916.301, F.S.; requiring that  
 58 certain evaluations be conducted by certain qualified  
 59 experts; requiring that the Agency for Persons with  
 60 Disabilities provide the court with a list of certain  
 61 available retardation and autism professionals; conforming  
 62 provisions to the transfer of duties from the  
 63 Developmental Disabilities Program Office within the  
 64 Department of Children and Family Services to the agency;  
 65 amending s. 916.3012, F.S.; clarifying provisions  
 66 governing the determination of a defendant's mental  
 67 competence to proceed; amending s. 916.302, F.S., relating  
 68 to the involuntary commitment of a defendant; conforming  
 69 provisions to the transfer of duties from the  
 70 Developmental Disabilities Program Office within the  
 71 Department of Children and Family Services to the agency;  
 72 requiring that the department and agency submit an  
 73 evaluation to the court before the transfer of a defendant  
 74 from one civil or forensic facility to another; amending  
 75 s. 916.3025, F.S.; clarifying that the committing court  
 76 retains jurisdiction over a defendant placed on  
 77 conditional release; providing for the transfer of  
 78 continuing jurisdiction to another court where the  
 79 defendant resides; amending s. 916.303, F.S.; clarifying  
 80 provisions governing the dismissal of charges against a  
 81 defendant found to be incompetent to proceed due to  
 82 retardation or autism; amending s. 916.304, F.S.;  
 83 providing for the conditional release of a defendant to a  
 84 civil facility; amending ss. 921.137 and 985.223, F.S.,

85 relating to provisions governing the imposition of the  
 86 death sentence upon a defendant with mental retardation  
 87 and the determination of incompetency in cases involving  
 88 juvenile delinquency; conforming provisions to the  
 89 transfer of duties from the Developmental Disabilities  
 90 Program Office within the Department of Children and  
 91 Family Services to the Agency for Persons with  
 92 Disabilities; amending ss. 287.057, 408.036, 943.0585, and  
 93 943.059, F.S.; conforming cross-references; providing an  
 94 effective date.

95  
 96 Be It Enacted by the Legislature of the State of Florida:

97  
 98 Section 1. Section 916.105, Florida Statutes, is amended  
 99 to read:

100 916.105 Legislative intent.--

101 (1) It is the intent of the Legislature that the  
 102 Department of Children and Family Services and the Agency for  
 103 Persons with Disabilities, as appropriate, establish, locate,  
 104 and maintain separate and secure forensic facilities and  
 105 programs for the treatment or training of defendants who have  
 106 been ~~are~~ charged with a felony and who have been found to be  
 107 incompetent to proceed due to their mental illness, mental  
 108 retardation, or autism, or who have been acquitted of a felony  
 109 ~~felonies~~ by reason of insanity, and who, while still under the  
 110 jurisdiction of the committing court, are committed to the  
 111 department or agency under the provisions of this chapter. Such  
 112 ~~The separate, secure~~ facilities shall be sufficient to



113 accommodate the number of defendants committed under the  
 114 conditions noted above. 7 Except for those defendants found by  
 115 the department or agency to be appropriate for treatment or  
 116 training in a civil ~~treatment~~ facility or program pursuant to  
 117 subsection (3), forensic. ~~Such secure~~ facilities shall be  
 118 designed and administered so that ingress and egress, together  
 119 with other requirements of this chapter, may be strictly  
 120 controlled by staff responsible for security in order to protect  
 121 the defendant, facility personnel, other clients, and citizens  
 122 in adjacent communities.

123 (2) It is ~~further~~ the intent of the Legislature that  
 124 treatment or training programs for defendants who are found to  
 125 have mental illness, mental retardation, or autism ~~are found to~~  
 126 ~~be mentally ill, retarded, or autistic~~ and are involuntarily  
 127 committed to the department or agency, and who are still under  
 128 the jurisdiction of the committing court, be provided in ~~such a~~  
 129 manner, subject to security requirements and other mandates of  
 130 this chapter, as to ensure the rights of the defendants as  
 131 provided in this chapter.

132 (3) It is the intent of the Legislature that evaluation  
 133 and services to defendants who have mental illness, mental  
 134 retardation, or autism ~~are mentally ill, retarded, or autistic~~  
 135 be provided in community settings, in community residential  
 136 facilities, or in civil, ~~nonforensic~~ facilities, whenever this  
 137 is a feasible alternative to treatment or training in a state  
 138 forensic facility.

139 (4) It is the intent of the Legislature to minimize and  
 140 achieve an ongoing reduction in the use of restraint and

141 seclusion in forensic facilities serving persons with  
 142 developmental disabilities.

143 Section 2. Section 916.106, Florida Statutes, is amended  
 144 to read:

145 916.106 Definitions.--For the purposes of this chapter,  
 146 the term:

147 (1) "Agency" means the Agency for Persons with  
 148 Disabilities. The agency is responsible for training forensic  
 149 clients who are developmentally disabled due to mental  
 150 retardation or autism and have been determined incompetent to  
 151 proceed.

152 (2) ~~(1)~~ "Autism" has the same meaning as in s. 393.063.  
 153 ~~means a pervasive, neurologically based developmental disability~~  
 154 ~~of extended duration which causes severe learning,~~  
 155 ~~communication, and behavior disorders, with the age of onset of~~  
 156 ~~autism occurring during infancy or childhood. Individuals with~~  
 157 ~~autism exhibit impairment in reciprocal social interaction,~~  
 158 ~~impairment in verbal and nonverbal communication and imaginative~~  
 159 ~~ability, and a markedly restricted repertoire of activities and~~  
 160 ~~interests.~~

161 (3) ~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,  
 162 gun, or other device capable of emitting chloroacetophenone  
 163 (CN), chlorobenzalmalonitrile (CS) or any derivatives thereof  
 164 in any form, or any other agent with lacrimatory properties, and  
 165 shall include products such as that commonly known as "mace."

166 (4) ~~(3)~~ "Civil facility" means:

167 (a) A mental health facility established within the  
 168 department or by contract with the department to serve

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169 individuals committed pursuant to chapter 394 and those  
 170 defendants committed pursuant to this chapter who do not require  
 171 the security provided in a forensic facility; ~~or-~~

172 (b) An intermediate care facility for the developmentally  
 173 disabled, a foster care facility, a group home facility, or a  
 174 supported living setting, as defined in s. 393.063, designated  
 175 by the agency to serve those defendants who do not require the  
 176 security provided in a forensic facility.

177 (5)(4) "Court" means the circuit court.

178 (6) "Defendant" means an adult, or a juvenile who is  
 179 prosecuted as an adult, who has been arraigned and charged with  
 180 a felony offense under the laws of this state.

181 (7)(5) "Department" means the Department of Children and  
 182 Family Services. The department is responsible for the treatment  
 183 of forensic clients who have been determined incompetent to  
 184 proceed due to mental illness or who have been acquitted of a  
 185 felony by reason of insanity.

186 (8)(6) "Express and informed consent" or "consent" means  
 187 consent given voluntarily in writing after a conscientious and  
 188 sufficient explanation and disclosure of the purpose of the  
 189 proposed treatment, the common side effects of the treatment, if  
 190 any, the expected duration of the treatment, and any alternative  
 191 treatment available.

192 (9)(7) "Forensic client" or "client" means any defendant  
 193 who ~~has been is~~ mentally ill, retarded, or autistic and who is  
 194 committed to the department or agency pursuant to s. 916.13, s.  
 195 916.15, or s. 916.302. ~~this chapter and-~~

196 ~~(a) Who has been determined to need treatment for a mental~~

197 ~~illness or training for retardation or autism;~~  
 198 ~~(b) Who has been found incompetent to proceed on a felony~~  
 199 ~~offense or has been acquitted of a felony offense by reason of~~  
 200 ~~insanity;~~  
 201 ~~(c) Who has been determined by the department to:~~  
 202 ~~1. Be dangerous to himself or herself or others; or~~  
 203 ~~2. Present a clear and present potential to escape; and~~  
 204 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~  
 205 (10)~~(8)~~ "Forensic facility" means a separate and secure  
 206 facility established within the department or agency to serve  
 207 forensic clients. A Such separate and secure facility means a  
 208 faecilities shall be security-grade building for the purpose of  
 209 separately housing persons who have mental illness from persons  
 210 with retardation or autism and separately housing persons who  
 211 have been involuntarily committed pursuant to this chapter from  
 212 nonforensic residents buildings located on grounds distinct in  
 213 location from other facilities for persons who are mentally ill.  
 214 ~~The Florida State Hospital shall not be required to maintain~~  
 215 ~~separate facilities for mentally ill, retarded, or autistic~~  
 216 ~~defendants who are found incompetent to proceed or who are~~  
 217 ~~acquitted of a criminal offense by reason of insanity.~~  
 218 (11)~~(9)~~ "Incompetent to proceed" means unable to proceed  
 219 at any material stage of a criminal proceeding, which shall  
 220 include trial of the case, pretrial hearings involving questions  
 221 of fact on which the defendant might be expected to testify,  
 222 entry of a plea, proceedings for violation of probation or  
 223 violation of community control, sentencing, and hearings on  
 224 issues regarding a defendant's failure to comply with court

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225 orders or conditions or other matters in which the mental  
 226 competence of the defendant is necessary for a just resolution  
 227 of the issues being considered.

228 (12)~~(10)~~ "Institutional security personnel" means the  
 229 staff of forensic facilities ~~members~~ who meet or exceed the  
 230 requirements of s. 943.13 and who are responsible for providing  
 231 security, protecting ~~for protection of~~ clients and personnel,  
 232 enforcing for the enforcement of rules, preventing and  
 233 investigating for prevention and investigation of unauthorized  
 234 activities, and ~~for~~ safeguarding the interests of citizens in  
 235 the surrounding communities.

236 (13)~~(11)~~ "Mental illness" means an impairment of the  
 237 emotional processes that exercise conscious control of one's  
 238 actions, or of the ability to perceive or understand reality,  
 239 which impairment substantially interferes with a defendant's  
 240 ability to meet the ordinary demands of living. For the purposes  
 241 of this chapter, the term does not apply to defendants with only  
 242 mental retardation or autism ~~who are solely retarded or~~  
 243 ~~autistic,~~ and does not include intoxication or conditions  
 244 manifested only by antisocial behavior or substance abuse  
 245 impairment.

246 (14) "Restraint" means a physical device, method, or drug  
 247 used to control dangerous behavior.

248 (a) A physical restraint is any manual method or physical  
 249 or mechanical device, material, or equipment attached or  
 250 adjacent to an individual's body so that he or she cannot easily  
 251 remove the restraint and that restricts freedom of movement or  
 252 normal access to his or her body.

253           (b) A drug used as a restraint is a medication used to  
 254 control a person's behavior or to restrict his or her freedom of  
 255 movement and is not a standard treatment for the person's  
 256 medical or psychiatric condition. Physically holding a person  
 257 during a procedure to forcibly administer psychotropic  
 258 medication is a physical restraint.

259           (c) Restraint does not include physical devices, such as  
 260 orthopedically prescribed appliances, surgical dressings and  
 261 bandages, supportive body bands, or other physical holding when  
 262 necessary for routine physical examinations and tests; for  
 263 purposes of orthopedic, surgical, or other similar medical  
 264 treatment; when used to provide support for the achievement of  
 265 functional body position or proper balance; or when used to  
 266 protect a person from falling out of bed.

267           (15) ~~(12)~~ "Retardation" has the same meaning as in s.  
 268 393.063. ~~means significantly subaverage general intellectual~~  
 269 ~~functioning existing concurrently with deficits in adaptive~~  
 270 ~~behavior and manifested during the period from conception to age~~  
 271 ~~18. "Significantly subaverage general intellectual functioning,"~~  
 272 ~~for the purpose of this definition, means performance which is~~  
 273 ~~two or more standard deviations from the mean score on a~~  
 274 ~~standardized intelligence test specified in the rules of the~~  
 275 ~~department. "Adaptive behavior," for the purpose of this~~  
 276 ~~definition, means the effectiveness or degree with which an~~  
 277 ~~individual meets the standards of personal independence and~~  
 278 ~~social responsibility expected of the individual's age, cultural~~  
 279 ~~group, and community.~~

280           (16) "Seclusion" means the physical segregation of a

281 person in any fashion or the involuntary isolation of a person  
 282 in a room or area from which the person is prevented from  
 283 leaving. The prevention may be by physical barrier or by a staff  
 284 member who is acting in a manner, or who is physically situated,  
 285 so as to prevent the person from leaving the room or area. For  
 286 purposes of this chapter, the term does not mean isolation due  
 287 to a person's medical condition or symptoms, the confinement in  
 288 state mental health treatment facilities to a bedroom or area  
 289 during normal hours of sleep when there is not an active order  
 290 for seclusion, or during an emergency such as a riot or hostage  
 291 situation when clients may be temporarily placed in their rooms  
 292 for their own safety.

293 (17)~~(13)~~ "Social service professional," ~~for the purposes~~  
 294 ~~of part III,~~ means a person whose minimum qualifications include  
 295 a bachelor's degree and at least 2 years of social work,  
 296 clinical practice, special education, habilitation, or  
 297 equivalent experience working directly with persons with  
 298 retardation, autism, or other developmental disabilities.

299 Section 3. Section 916.107, Florida Statutes, is amended  
 300 to read:

301 916.107 Rights of forensic clients.--

302 (1) RIGHT TO INDIVIDUAL DIGNITY.--

303 (a) The policy of the state is that the individual dignity  
 304 of the client shall be respected at all times and upon all  
 305 occasions, including any occasion when the forensic client is  
 306 detained, transported, or treated. Clients with mental illness,  
 307 retardation, or autism ~~Defendants who are mentally ill,~~  
 308 ~~retarded, or autistic~~ and who are charged with committing

309 felonies shall receive appropriate treatment or training. In a  
 310 criminal case involving a client defendant who has been  
 311 adjudicated incompetent to proceed or not guilty by reason of  
 312 insanity, a jail may be used as an emergency facility for up to  
 313 15 days following ~~from~~ the date the department or agency  
 314 receives a completed copy of the court commitment order  
 315 containing all ~~the~~ documentation required by the applicable  
 316 ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For  
 317 a forensic client defendant ~~who is mentally ill, retarded, or~~  
 318 ~~autistic,~~ who is held in a jail awaiting admission to a facility  
 319 of the department or agency, ~~and who has been adjudicated~~  
 320 ~~incompetent to proceed or not guilty by reason of insanity,~~  
 321 evaluation and treatment or training may ~~shall~~ be provided in  
 322 the jail by the local community mental health provider public  
 323 ~~receiving facility~~ for mental health services, or by the  
 324 developmental disabilities services program for persons with  
 325 retardation or autism, the client's physician or psychologist,  
 326 or any other appropriate program until the client is transferred  
 327 to a civil or forensic facility ~~the custody of the department.~~

328 (b) Forensic clients ~~Mentally ill, retarded, or autistic~~  
 329 ~~defendants who are committed to the department pursuant to this~~  
 330 ~~chapter and~~ who are initially placed in, or subsequently  
 331 transferred to, a civil facility as described in part I of  
 332 chapter 394 or to a residential facility as described in chapter  
 333 393 shall have the same rights as other persons committed to  
 334 these facilities for as long as they remain there.

335 (2) RIGHT TO TREATMENT.--

336 (a) The policy of the state is that neither the department



337 nor the agency shall not deny treatment or training to any  
 338 client and that no services shall be delayed at a facility  
 339 because the forensic client is indigent pursuant to s. 27.52 and  
 340 presently unable to pay. However, every reasonable effort to  
 341 collect appropriate reimbursement for the cost of providing  
 342 services to clients able to pay for the services, including  
 343 reimbursement from insurance or other third-party payments,  
 344 shall be made by facilities providing services pursuant to this  
 345 chapter and in accordance with the provisions of s. 402.33.

346 (b) Each forensic client shall be given, at the time of  
 347 admission and at regular intervals thereafter, a physical  
 348 examination, which shall include screening for communicable  
 349 disease by a health practitioner authorized by law to give such  
 350 screenings and examinations.

351 (c) Every forensic client ~~committed pursuant to this act~~  
 352 shall be afforded the opportunity to participate in activities  
 353 designed to enhance self-image and the beneficial effects of  
 354 other treatments or training, as determined by the facility.

355 (d) Not more than 30 days after admission, each client  
 356 shall have and receive, in writing, an individualized treatment  
 357 or training plan which the client has had an opportunity to  
 358 assist in preparing.

359 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

360 (a) A forensic client ~~committed to the department pursuant~~  
 361 ~~to this act~~ shall be asked to give express and informed written  
 362 consent for treatment. If a client ~~in a forensic facility~~  
 363 refuses such treatment as is deemed necessary and essential by  
 364 the client's multidisciplinary treatment team ~~at the forensic~~

365 faeility for the appropriate care of the client ~~and the safety~~  
 366 ~~of the client or others~~, such treatment may be provided under  
 367 the following circumstances:

368 1. In an emergency situation in which there is immediate  
 369 danger to the safety of the client or others, such treatment may  
 370 be provided upon the written order of a physician for a period  
 371 not to exceed 48 hours, excluding weekends and legal holidays.  
 372 If, after the 48-hour period, the client has not given express  
 373 and informed consent to the treatment initially refused, the  
 374 administrator or designee of the civil or forensic facility  
 375 shall, within 48 hours, excluding weekends and legal holidays,  
 376 petition the committing court or the circuit court serving the  
 377 county in which the facility is located, at the option of the  
 378 facility administrator or designee, for an order authorizing the  
 379 continued treatment of the client. In the interim, the need for  
 380 treatment shall be reviewed every 48 hours and may be continued  
 381 without the consent of the client upon the continued written  
 382 order of a physician who has determined that the emergency  
 383 situation continues to present a danger to the safety of the  
 384 client or others.

385 2. In a situation other than an emergency situation, the  
 386 administrator or designee of the ~~forensic~~ facility shall  
 387 petition the court for an order authorizing necessary and  
 388 essential ~~the~~ treatment for ~~to~~ the client. The order shall allow  
 389 such treatment for a period not to exceed 90 days following ~~from~~  
 390 the date of the entry of the order. Unless the court is notified  
 391 in writing that the client has provided express and informed  
 392 consent in writing or that the client has been discharged by the

393 committing court, the administrator or designee shall, prior to  
 394 the expiration of the initial 90-day order, petition the court  
 395 for an order authorizing the continuation of treatment for  
 396 another 90-day period. This procedure shall be repeated until  
 397 the client provides consent or is discharged by the committing  
 398 court.

399 3. At the hearing on the issue of whether the court should  
 400 enter an order authorizing treatment for which a client was  
 401 unable to or has refused to give express and informed consent,  
 402 the court shall determine by clear and convincing evidence that  
 403 the client has mental illness, retardation, or autism is  
 404 ~~mentally ill, retarded, or autistic as defined in this chapter,~~  
 405 that the treatment not consented to is essential to the care of  
 406 the client, and that the treatment not consented to is not  
 407 experimental and does not present an unreasonable risk of  
 408 serious, hazardous, or irreversible side effects. In arriving at  
 409 the substitute judgment decision, the court must consider at  
 410 least the following factors:

- 411 a. The client's expressed preference regarding treatment;
- 412 b. The probability of adverse side effects;
- 413 c. The prognosis without treatment; and
- 414 d. The prognosis with treatment.

415  
 416 The hearing shall be as convenient to the client as may be  
 417 consistent with orderly procedure and shall be conducted in  
 418 physical settings not likely to be injurious to the client's  
 419 condition. The court may appoint a general or special magistrate  
 420 to preside at the hearing. The client or the client's guardian,

421 and the representative, shall be provided with a copy of the  
 422 petition and the date, time, and location of the hearing. The  
 423 client has the right to have an attorney represent him or her at  
 424 the hearing, and, if the client is indigent, the court shall  
 425 appoint the office of the public defender to represent the  
 426 client at the hearing. The client may testify or not, as he or  
 427 she chooses, and has the right to cross-examine witnesses and  
 428 may present his or her own witnesses.

429 (b) In addition to the provisions of paragraph (a), in the  
 430 case of surgical procedures requiring the use of a general  
 431 anesthetic or electroconvulsive treatment or nonpsychiatric  
 432 medical procedures, and prior to performing the procedure,  
 433 written permission shall be obtained from the client, if the  
 434 client is legally competent, from the parent or guardian of a  
 435 minor client, or from the guardian of an incompetent client. The  
 436 administrator or designee of the forensic facility or a  
 437 designated representative may, with the concurrence of the  
 438 client's attending physician, authorize emergency surgical or  
 439 nonpsychiatric medical treatment if such treatment is deemed  
 440 lifesaving or for a situation threatening serious bodily harm to  
 441 the client and permission of the client or the client's guardian  
 442 could not cannot be obtained before provision of the needed  
 443 treatment.

444 (4) QUALITY OF TREATMENT.--Each forensic client ~~committed~~  
 445 ~~pursuant to this chapter~~ shall receive treatment or training  
 446 suited to the client's needs, which shall be administered  
 447 skillfully, safely, and humanely with full respect for the  
 448 client's dignity and personal integrity. Each client shall

449 receive such medical, vocational, social, educational, and  
 450 rehabilitative services as the client's condition requires to  
 451 bring about a return to court for disposition of charges or a  
 452 return to the community. In order to achieve this goal, the  
 453 department and the agency shall coordinate their services with  
 454 each other, the Department of Corrections, is directed to  
 455 coordinate the services of the Mental Health Program Office and  
 456 the Developmental Disabilities Program Office with all other  
 457 programs of the department and other appropriate state agencies.

458 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

459 (a) Each forensic client ~~committed pursuant to the~~  
 460 ~~provisions of this chapter~~ has the right to communicate freely  
 461 and privately with persons outside the facility unless it is  
 462 determined that such communication is likely to be harmful to  
 463 the client or others. Clients shall have the right to contact  
 464 and to receive communication from their attorneys at any  
 465 reasonable time.

466 (a)(b) Each forensic client ~~committed under the provisions~~  
 467 ~~of this chapter~~ shall be allowed to receive, send, and mail  
 468 sealed, unopened correspondence; and no client's incoming or  
 469 outgoing correspondence shall be opened, delayed, held, or  
 470 censored by the facility unless there is reason to believe that  
 471 it contains items or substances that ~~which~~ may be harmful to the  
 472 client or others, in which case the administrator or designee  
 473 may direct reasonable examination of such mail and may regulate  
 474 the disposition of such items or substances. For purposes of  
 475 this paragraph, the term "correspondence" does shall not include  
 476 parcels or packages. Forensic facilities may are authorized to

477 promulgate reasonable institutional policies to provide for the  
 478 inspection of parcels or packages and for the removal of  
 479 contraband items for health or security reasons prior to the  
 480 contents being given to a client.

481 (b) ~~(e)~~ If a client's right to communicate is restricted by  
 482 the administrator, written notice of such restriction and the  
 483 duration of the restriction shall be served on the client or his  
 484 or her legal guardian or representatives, and such restriction  
 485 shall be recorded on the client's clinical record with the  
 486 reasons therefor. The restriction of a client's right to  
 487 communicate shall be reviewed at least every 7 days.

488 (c) ~~(d)~~ Each forensic facility shall establish reasonable  
 489 institutional policies governing visitors, visiting hours, and  
 490 the use of telephones by clients in the least restrictive manner  
 491 possible.

492 (d) ~~(e)~~ Each forensic client ~~committed pursuant to this~~  
 493 ~~chapter~~ shall have ready access to a telephone in order to  
 494 report an alleged abuse. The facility or program staff shall  
 495 orally and in writing inform each client of the procedure for  
 496 reporting abuse and shall present the information in a language  
 497 the client understands. A written copy of that procedure,  
 498 including the telephone number of the central abuse hotline and  
 499 reporting forms, shall be posted in plain view.

500 (e) ~~(f)~~ The department's or agency's forensic facilities  
 501 shall develop policies providing a procedure for reporting  
 502 abuse. Facility staff shall be required, as a condition of  
 503 employment, to become familiar with the procedures for the  
 504 reporting of abuse.

505 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A  
 506 forensic client's right to possession of clothing and personal  
 507 effects shall be respected. The department or agency by rule, or  
 508 the administrator of any forensic facility by written  
 509 institutional policy, may declare certain items to be hazardous  
 510 to the health or welfare of clients or others or to the  
 511 operation of the facility. Such items may be restricted from  
 512 introduction into the facility or may be restricted from being  
 513 in a client's possession. The administrator or designee may take  
 514 temporary custody of such effects when required for medical and  
 515 safety reasons. Custody of such personal effects shall be  
 516 recorded in the client's clinical record.

517 (7) VOTING IN PUBLIC ELECTIONS.--A forensic client  
 518 ~~committed pursuant to this chapter~~ who is eligible to vote  
 519 according to the laws of the state has the right to vote in the  
 520 primary and general elections. The department and agency shall  
 521 establish rules to enable clients to obtain voter registration  
 522 forms, applications for absentee ballots, and absentee ballots.

523 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record  
 524 for each forensic client shall be maintained. The record shall  
 525 include data pertaining to admission and such other information  
 526 as may be required under rules of the department or the agency.  
 527 Unless waived by express and informed consent of the client or  
 528 the client's legal guardian or, if the client is deceased, by  
 529 the client's personal representative or by that family member  
 530 who stands next in line of intestate succession or except as  
 531 otherwise provided in this subsection, the clinical record is  
 532 confidential and exempt from the provisions of s. 119.07(1) and

533 s. 24(a), Art. I of the State Constitution.

534 (a) Such clinical record may be released:

535 1. To such persons and agencies as are designated by the

536 client or the client's legal guardian.

537 2. To persons authorized by order of court and to the

538 client's counsel when the records are needed by the counsel for

539 adequate representation.

540 3. To a qualified researcher, as defined by rule; a staff

541 member of the facility; or an employee of the department or

542 agency when the administrator of the facility, or secretary or

543 director of the department or agency, deems it necessary for

544 treatment of the client, maintenance of adequate records,

545 compilation of treatment data, or evaluation of programs.

546 4. For statistical and research purposes if the

547 information is abstracted in such a way as to protect the

548 identity of individuals.

549 5. If a client receiving services ~~pursuant to this chapter~~

550 ~~has declared an intention to harm other persons. When such a~~

551 ~~declaration has been made~~, the administrator shall authorize the

552 release of sufficient information to provide adequate warning to

553 the person threatened with harm by the client, and to the

554 committing court, the state attorney, and the attorney

555 representing the client.

556 6. To the parent or next of kin of a client ~~mentally ill,~~

557 ~~retarded, or autistic person~~ who is committed to, or is being

558 served by, a facility or program when such information is

559 limited to that person's service plan and current physical and

560 mental condition. Release of such information shall be in



561 accordance with the code of ethics of the profession involved  
 562 and must comply with all state and federal laws and regulations  
 563 pertaining to the release of personal health information.

564 (b) Notwithstanding other provisions of this subsection,  
 565 the department or agency may request or receive from or provide  
 566 to any of the following entities client information to  
 567 facilitate treatment, habilitation, rehabilitation, and  
 568 continuity of care of any forensic client:

569 1. The Social Security Administration and the United  
 570 States Department of Veterans Affairs;

571 2. Law enforcement agencies, state attorneys, defense  
 572 attorneys, and judges in regard to the client's status;

573 3. Jail personnel in the jail in ~~to~~ which a client may be  
 574 housed returned; and

575 4. Community agencies and others expected to provide  
 576 followup care to the client upon the client's return to the  
 577 community.

578 (c) The department or agency may provide notice to any  
 579 client's next of kin or first representative regarding any  
 580 serious medical illness or the death of the client.

581 (d)1. Any law enforcement agency, facility, or other  
 582 governmental agency that receives information pursuant to this  
 583 subsection shall maintain the confidentiality of such  
 584 information except as otherwise provided herein.

585 2. Any agency or private practitioner who acts in good  
 586 faith in releasing information pursuant to this subsection is  
 587 not subject to civil or criminal liability for such release.

588 (9) HABEAS CORPUS.--

589 (a) At any time, and without notice, a forensic client  
 590 detained by a facility, or a relative, friend, guardian,  
 591 representative, or attorney on behalf of such client, may  
 592 petition for a writ of habeas corpus to question the cause and  
 593 legality of such detention and request that the committing court  
 594 issue a writ for release. Each client ~~committed pursuant to this~~  
 595 ~~chapter~~ shall receive a written notice of the right to petition  
 596 for a writ of habeas corpus.

597 (b) A client or his or her legal guardian or  
 598 representatives or attorney may file a petition in the circuit  
 599 court in the county where the client is committed alleging that  
 600 the client is being unjustly denied a right or privilege granted  
 601 herein or that a procedure authorized herein is being abused.  
 602 Upon the filing of such a petition, the circuit court shall have  
 603 the authority to conduct a judicial inquiry and to issue any  
 604 appropriate order to correct an abuse of the provisions of this  
 605 chapter.

606 (10) TRANSPORTATION.--

607 (a) The sheriff shall consult with the governing board of  
 608 the county as to the most appropriate and cost-effective means  
 609 of transportation for forensic clients who have been committed  
 610 for treatment or training. Such consultation shall include, but  
 611 is not limited to, consideration of the cost to the county of  
 612 transportation performed by sheriff's ~~department~~ personnel as  
 613 opposed to transportation performed by other means and, if  
 614 sheriff's ~~department~~ personnel are to be used for  
 615 transportation, the effect such use will have, if any, on  
 616 service delivery levels of the sheriff's road patrol. After such

617 consultation with the governing board of the county, the sheriff  
 618 shall determine the most appropriate and cost-effective means of  
 619 transportation for forensic clients committed for treatment or  
 620 training.

621 (b) The governing board of each county is authorized to  
 622 contract with private transport companies for the transportation  
 623 of such clients to and from a facility.

624 (c) Any company that transports a client pursuant to this  
 625 section is considered an independent contractor and is solely  
 626 liable for the safe and dignified transportation of the client.  
 627 Any transport company that contracts with the governing board of  
 628 a county for the transport of clients as provided for in this  
 629 section shall be insured and provide no less than \$100,000 in  
 630 liability insurance with respect to the transportation of the  
 631 clients.

632 (d) Any company that contracts with a governing board of a  
 633 county to transport clients shall comply with the applicable  
 634 rules of the department or agency to ensure the safety and  
 635 dignity of the clients.

636 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or  
 637 abuses any rights or privileges of a forensic client in the  
 638 custody of the department or agency that are provided under this  
 639 chapter shall be by this act is liable for damages as determined  
 640 by law. Any person who acts in good faith in complying with the  
 641 provisions of this chapter ~~act~~ is immune from civil or criminal  
 642 liability for his or her actions in connection with the  
 643 admission, diagnosis, treatment, training, or discharge of a  
 644 client to or from a facility. However, this subsection does not

645 relieve any person from liability if he or she is negligent.

646 Section 4. Subsections (1), (2), (3), (4), and (5) of  
647 section 916.1075, Florida Statutes, are amended to read:

648 916.1075 Sexual misconduct prohibited; reporting required;  
649 penalties.--

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

651 (a) "Covered person" means an employee, ~~includes any paid~~  
652 ~~staff member~~, volunteer, or intern of the department or agency;  
653 any person under contract with the department or agency; and any  
654 person providing care or support to a forensic client on behalf  
655 of the department, the agency, or their ~~its~~ providers.

656 (b) "Sexual activity" means:

657 1. Fondling the genital area, groin, inner thighs,  
658 buttocks, or breasts of a person.

659 2. The oral, anal, or vaginal penetration by or union with  
660 the sexual organ of another or the anal or vaginal penetration  
661 of another by any other object.

662 3. Intentionally touching in a lewd or lascivious manner  
663 the breasts, genitals, the genital area, or buttocks, or the  
664 clothing covering them, of a person, or forcing or enticing a  
665 person to touch the perpetrator.

666 4. Intentionally masturbating in the presence of another  
667 person.

668 5. Intentionally exposing the genitals in a lewd or  
669 lascivious manner in the presence of another person.

670 6. Intentionally committing any other sexual act that does  
671 not involve actual physical or sexual contact with the victim,  
672 including, but not limited to, sadomasochistic abuse, sexual

673 bestiality, or the simulation of any act involving sexual  
 674 activity in the presence of a victim.

675 (c) "Sexual misconduct" means any sexual activity between  
 676 a covered person ~~an employee~~ and a forensic client in the  
 677 custody of the department or agency, regardless of the consent  
 678 of the client. The term does not include an act done for a bona  
 679 fide medical purpose or an internal search conducted in the  
 680 lawful performance of duty by a covered person ~~an employee~~.

681 (2) A covered person ~~An employee~~ who engages in sexual  
 682 misconduct with a forensic client who resides in a civil or  
 683 forensic facility commits a felony of the second degree,  
 684 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 685 Such person ~~An employee~~ may be found guilty of violating this  
 686 subsection without having committed the crime of sexual battery.

687 (3) The consent of a forensic ~~the~~ client to sexual  
 688 activity is not a defense to prosecution under this section.

689 (4) This section does not apply to a covered person ~~an~~  
 690 ~~employee~~ who:

691 (a) Is legally married to the client; or

692 (b) Has no reason to believe that the person with whom the  
 693 covered person ~~employee~~ engaged in sexual misconduct is a client  
 694 receiving services as described in subsection (2).

695 (5) A covered person ~~An employee~~ who witnesses sexual  
 696 misconduct, or who otherwise knows or has reasonable cause to  
 697 suspect that a person has engaged in sexual misconduct, shall  
 698 immediately report the incident to the department's central  
 699 abuse hotline and to the appropriate local law enforcement  
 700 agency. The covered person ~~Such employee~~ shall also prepare,

701 date, and sign an independent report that specifically describes  
 702 the nature of the sexual misconduct, the location and time of  
 703 the incident, and the persons involved. For an allegation  
 704 pertaining to a forensic client committed to the agency, the  
 705 covered person ~~employee~~ shall deliver the report to the  
 706 supervisor or program director, who shall provide copies to the  
 707 agency's ~~is responsible for providing copies to the department's~~  
 708 inspector general. For an allegation pertaining to a forensic  
 709 client committed to the department, the covered person shall  
 710 deliver the report to the supervisor or program director, who  
 711 shall provide copies to the department's inspector general. The  
 712 inspector general shall immediately conduct an appropriate  
 713 administrative investigation, and, if there is probable cause to  
 714 believe that sexual misconduct has occurred, the inspector  
 715 general shall notify the state attorney in the circuit in which  
 716 the incident occurred.

717 Section 5. Section 916.1081, Florida Statutes, is amended  
 718 to read:

719 916.1081 Escape from program; penalty.--

720 (1) A forensic client who is ~~A defendant~~ involuntarily  
 721 committed to the department or agency, who is in the custody of  
 722 the department or agency, and ~~under the provisions of this~~  
 723 ~~chapter~~ who escapes or attempts to escape from a civil or  
 724 forensic facility ~~or program~~ commits a felony of the second  
 725 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 726 775.084.

727 (2) A person who is involuntarily committed to the  
 728 department or the agency, who is in the custody of the

729 Department of Corrections, and who escapes or attempts to escape  
 730 from a facility or program commits a felony of the second  
 731 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 732 775.084. Any punishment of imprisonment imposed under this  
 733 subsection shall run consecutive to any former sentence imposed  
 734 upon the person.

735 Section 6. Subsection (1) and paragraph (b) of subsection  
 736 (2) of section 916.1085, Florida Statutes, are amended to read:

737 916.1085 Introduction or removal of certain articles  
 738 unlawful; penalty.--

739 (1) (a) Except as authorized by law or as specifically  
 740 authorized by the person in charge of a facility, it is unlawful  
 741 to introduce into or upon the grounds of any facility under the  
 742 supervision or control of the department or agency, or to take  
 743 or attempt to take or send therefrom, any of the following  
 744 articles, which are ~~hereby~~ declared to be contraband for the  
 745 purposes of this section:

- 746 1. Any intoxicating beverage or beverage which causes or  
 747 may cause an intoxicating effect;
- 748 2. Any controlled substance as defined in chapter 893;
- 749 3. Any firearm or deadly weapon; or
- 750 4. Any other item as determined by the department or the  
 751 agency, and as designated by ~~departmental~~ rule or ~~by the~~  
 752 ~~administrator of any facility~~, and designated by written  
 753 institutional policies, to be hazardous to the welfare of  
 754 clients ~~patients~~ or the operation of the facility.

755 (b) It is unlawful to transmit to, attempt to transmit to,  
 756 or cause or attempt to cause to be transmitted to or received by

757 any client of any facility under the supervision or control of  
 758 the department or agency any article or thing declared by this  
 759 section to be contraband, at any place that ~~which~~ is outside of  
 760 the grounds of such facility, except as authorized by law or as  
 761 specifically authorized by the person in charge of such  
 762 facility.

763 (2)

764 (b) These provisions shall be enforced by institutional  
 765 security personnel ~~as defined in s. 916.106(10)~~ or by a law  
 766 enforcement officer as defined in s. 943.10.

767 Section 7. Section 916.1091, Florida Statutes, is amended  
 768 to read:

769 916.1091 Duties, functions, and powers of institutional  
 770 security personnel.--In case of emergency, and when necessary to  
 771 provide protection and security to any client, to the personnel,  
 772 equipment, buildings, or grounds of a department or agency  
 773 facility, or to citizens in the surrounding community,  
 774 institutional security personnel may, when authorized by the  
 775 administrator of the facility or her or his designee when the  
 776 administrator is not present, use a chemical weapon against a  
 777 patient housed in a forensic facility. However, such weapon  
 778 shall be used only to the extent necessary to provide ~~such~~  
 779 protection and security. Under no circumstances shall any ~~such~~  
 780 officer carry a chemical weapon on her or his person except  
 781 during the period of the emergency for which its use was  
 782 authorized. All chemical weapons shall be placed in secure  
 783 storage when their use is not authorized as provided in this  
 784 section.



785 Section 8. Section 916.1093, Florida Statutes, is amended  
 786 to read:

787 916.1093 Operation and administration; rules.--

788 (1) The department or agency may ~~is authorized to~~ enter  
 789 into contracts and do such things as may be necessary and  
 790 incidental to assure compliance with and to carry out the  
 791 provisions of this chapter in accordance with the stated  
 792 legislative intent.

793 (2) The department or agency may ~~has authority to~~ adopt  
 794 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
 795 provisions of this chapter. Such rules must address the use of  
 796 restraint and seclusion in forensic facilities and must be  
 797 consistent with recognized best practices; prohibit inherently  
 798 dangerous restraint or seclusion procedures; establish  
 799 limitations on the use and duration of restraint and seclusion;  
 800 establish measures to ensure the safety of clients and staff  
 801 during an incident of restraint or seclusion; establish  
 802 procedures for staff to follow before, during, and after  
 803 incidents of restraint or seclusion; establish professional  
 804 qualifications of and training for staff who may order or be  
 805 engaged in the use of restraint or seclusion; and establish  
 806 mandatory reporting, data collection, and data-dissemination  
 807 procedures and requirements relating to the use of restraint and  
 808 seclusion, including a requirement that each instance of the use  
 809 of restraint or seclusion be documented in the facility's client  
 810 record.

811 Section 9. Subsection (1) of section 916.111, Florida  
 812 Statutes, is amended to read:

813 916.111 Training of mental health experts.--The evaluation  
 814 of defendants for competency to proceed or for sanity at the  
 815 time of the commission of the offense shall be conducted in such  
 816 a way as to ensure uniform application of the criteria  
 817 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal  
 818 Procedure. The department shall develop, and may contract with  
 819 accredited institutions:

820 (1) To provide:

821 (a) A plan for training ~~community~~ mental health  
 822 professionals to perform forensic evaluations and to standardize  
 823 the criteria and procedures to be used in these evaluations;

824 (b) Clinical protocols and procedures based upon the  
 825 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
 826 Procedure; and

827 (c) Training for ~~community~~ mental health professionals in  
 828 the application of these protocols and procedures in performing  
 829 forensic evaluations and providing reports to the courts; and

830 Section 10. Section 916.115, Florida Statutes, is amended  
 831 to read:

832 916.115 Appointment of experts.--

833 ~~(1) (a) Annually, the department shall provide the courts~~  
 834 ~~with a list of mental health professionals who have completed~~  
 835 ~~approved training as experts.~~

836 ~~(b)~~ The court shall ~~may~~ appoint no more than three experts  
 837 to determine ~~issues of~~ the mental condition of a defendant in a  
 838 criminal case, including ~~the issues of~~ competency to proceed,  
 839 insanity, ~~and involuntary hospitalization or placement,~~ and  
 840 treatment. The panel of experts ~~An expert~~ may evaluate the

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841 defendant in jail or in another appropriate local facility or in  
842 a facility of the Department of Corrections.

843 (a)-(e) To the extent possible, the an appointed experts  
844 ~~expert~~ shall have completed forensic evaluator training approved  
845 by the department and each shall be ~~either~~ a psychiatrist,  
846 licensed psychologist, or physician.

847 (b) The department shall maintain and annually provide the  
848 courts with a list of available mental health professionals who  
849 have completed the approved training as experts.

850 (2) ~~Expert witnesses appointed by the court to evaluate~~  
851 ~~the mental condition of a defendant in a criminal case shall be~~  
852 ~~allowed reasonable fees for services rendered as evaluators of~~  
853 ~~competence or sanity and as witnesses.~~

854 (a)1. The court shall pay for any expert that it appoints  
855 by court order, upon motion of counsel for the defendant or the  
856 state or upon its own motion. If the defense or the state  
857 retains an expert and waives the confidentiality of the expert's  
858 report, the court may pay for no more than two additional  
859 experts appointed by court order. If an expert appointed by the  
860 court upon motion of counsel for the defendant specifically to  
861 evaluate the competence of the defendant to proceed also  
862 ~~addresses in his or her evaluation~~ issues related to sanity as  
863 an affirmative defense, the court shall pay only for that  
864 portion of the expert's fees relating to the evaluation on  
865 competency to proceed, and the balance of the fees shall be  
866 chargeable to the defense.

867 (a)2- Pursuant to s. 29.006, the office of the public  
868 defender shall pay for any expert retained by the office.

869            (b)3- Pursuant to s. 29.005, the office of the state  
 870 attorney shall pay for any expert retained by the office and-  
 871 ~~Notwithstanding subparagraph 1., the office of the state~~  
 872 ~~attorney shall pay~~ for any expert whom the office retains and  
 873 whom the office moves the court to appoint in order to ensure  
 874 that the expert has access to the defendant.

875            (c)4- An expert retained by the defendant who is  
 876 represented by private counsel appointed under s. 27.5303 shall  
 877 be paid by the Justice Administrative Commission.

878            (d)5- An expert retained by a defendant who is indigent  
 879 for costs as determined by the court and who is represented by  
 880 private counsel, other than private counsel appointed under s.  
 881 27.5303, on a fee or pro bono basis, or who is representing  
 882 himself or herself, shall be paid by the Justice Administrative  
 883 Commission from funds specifically appropriated for these  
 884 expenses.

885            (e)(b) State employees shall be reimbursed for ~~paid~~  
 886 expenses pursuant to s. 112.061.

887            (f)(e) The fees shall be taxed as costs in the case.

888            (g)(d) In order for an expert to be paid for the services  
 889 rendered, the expert's report and testimony must explicitly  
 890 address each of the factors and follow the procedures set out in  
 891 this chapter and in the Florida Rules of Criminal Procedure.

892            Section 11. Subsections (1), (2), and (3) of section  
 893 916.12, Florida Statutes, are amended to read:

894            916.12 Mental competence to proceed.--

895            (1) A defendant is incompetent to proceed within the  
 896 meaning of this chapter if the defendant does not have

897 sufficient present ability to consult with her or his lawyer  
 898 with a reasonable degree of rational understanding or if the  
 899 defendant has no rational, as well as factual, understanding of  
 900 the proceedings against her or him.

901 (2) Mental health experts appointed pursuant to s. 916.115  
 902 ~~An expert~~ shall first determine whether the defendant has a  
 903 mental illness person is mentally ill and, if so, consider the  
 904 factors related to the issue of whether the defendant meets the  
 905 criteria for competence to proceed as described in subsection  
 906 (1), ~~that is, whether the defendant has sufficient present~~  
 907 ~~ability to consult with counsel with a reasonable degree of~~  
 908 ~~rational understanding and whether the defendant has a rational,~~  
 909 ~~as well as factual, understanding of the pending proceedings.~~ A  
 910 defendant must be evaluated by no fewer than two experts before  
 911 the court commits the defendant or takes other action authorized  
 912 by this chapter or the Florida Rules of Criminal Procedure,  
 913 except if one expert finds that the defendant is incompetent to  
 914 proceed and the parties stipulate to that finding, the court may  
 915 commit the defendant or take other action authorized by this  
 916 chapter or the rules without further evaluation or hearing, or  
 917 the court may appoint no more than two additional experts to  
 918 evaluate the defendant. Notwithstanding any stipulation by the  
 919 state and the defendant, the court may require a hearing with  
 920 testimony from the expert or experts before ordering the  
 921 commitment of a defendant.

922 (3) In considering the issue of competence to proceed, an  
 923 examining expert shall first consider and specifically include  
 924 in his or her report the defendant's capacity to:

- 925 (a) Appreciate the charges or allegations against the  
 926 defendant.~~†~~
- 927 (b) Appreciate the range and nature of possible penalties,  
 928 if applicable, that may be imposed in the proceedings against  
 929 the defendant.~~†~~
- 930 (c) Understand the adversarial nature of the legal  
 931 process.~~†~~
- 932 (d) Disclose to counsel facts pertinent to the proceedings  
 933 at issue.~~†~~
- 934 (e) Manifest appropriate courtroom behavior.~~†~~ and  
 935 (f) Testify relevantly.~~†~~
- 936 ~~(g) and include in his or her report~~ Any other factor  
 937 deemed relevant by the expert.

938 Section 12. Section 916.13, Florida Statutes, is amended  
 939 to read:

940 916.13 Involuntary commitment of defendant adjudicated  
 941 incompetent.--

942 (1) Every defendant who is charged with a felony and who  
 943 is adjudicated incompetent to proceed, ~~pursuant to the~~  
 944 ~~applicable Florida Rules of Criminal Procedure,~~ may be  
 945 involuntarily committed for treatment upon a finding by the  
 946 court of clear and convincing evidence that:

947 (a) The defendant has a mental illness ~~is mentally ill~~ and  
 948 because of the mental illness:

949 1. The defendant is manifestly incapable of surviving  
 950 alone or with the help of willing and responsible family or  
 951 friends, including available alternative services, and, without  
 952 treatment, the defendant is likely to suffer from neglect or

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953 refuse to care for herself or himself and such neglect or  
954 refusal poses a real and present threat of substantial harm to  
955 the defendant's well-being; or and

956 2. There is a substantial likelihood that in the near  
957 future the defendant will inflict serious bodily harm on herself  
958 or himself or another person, as evidenced by recent behavior  
959 causing, attempting, or threatening such harm;

960 (b) All available, less restrictive treatment  
961 alternatives, including treatment in community residential  
962 facilities or community inpatient or outpatient settings, which  
963 would offer an opportunity for improvement of the defendant's  
964 condition have been judged to be inappropriate; and

965 (c) There is a substantial probability that the mental  
966 illness causing the defendant's incompetence will respond to  
967 treatment and the defendant will regain competency to proceed in  
968 the reasonably foreseeable future.

969 (2) A defendant who has been charged with a felony and who  
970 has been adjudicated incompetent to proceed due to mental  
971 illness, and who meets the criteria for involuntary commitment  
972 to the department under the provisions of this chapter, may be  
973 committed to the department, and the department shall retain and  
974 treat the defendant. No later than 6 months after the date of  
975 admission and ~~or~~ at the end of any period of extended  
976 commitment, or at any time the administrator or designee shall  
977 have determined that the defendant has regained competency to  
978 proceed or no longer meets the criteria for continued  
979 commitment, the administrator or designee shall file a report  
980 with the court pursuant to the applicable Florida Rules of

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981 Criminal Procedure.

982 Section 13. Section 916.145, Florida Statutes, is amended  
983 to read:

984 916.145 ~~Adjudication of incompetency due to mental~~  
985 ~~illness~~; Dismissal of charges.--The charges against any  
986 defendant adjudicated incompetent to proceed due to the  
987 defendant's mental illness shall be dismissed without prejudice  
988 to the state if the defendant remains incompetent to proceed 5  
989 years after such determination, unless the court in its order  
990 specifies its reasons for believing that the defendant will  
991 become competent to proceed within the foreseeable future and  
992 specifies the time within which the defendant is expected to  
993 become competent to proceed. The charges against the defendant  
994 are dismissed without prejudice to the state to refile the  
995 charges should the defendant be declared competent to proceed in  
996 the future.

997 Section 14. Section 916.15, Florida Statutes, is amended  
998 to read:

999 916.15 Involuntary commitment of defendant adjudicated not  
1000 guilty by reason of insanity.--

1001 (1) The determination of whether a defendant is not guilty  
1002 by reason of insanity shall be determined in accordance with  
1003 Rule 3.217, Florida Rules of Criminal Procedure.

1004 (2) ~~(1)~~ A defendant who is acquitted of criminal charges  
1005 because of a finding of not guilty by reason of insanity may be  
1006 involuntarily committed pursuant to such finding if the  
1007 defendant has a mental illness ~~is mentally ill~~ and, because of  
1008 the illness, is manifestly dangerous to himself or herself or



1009 others.

1010 (3)~~(2)~~ Every defendant acquitted of criminal charges by  
 1011 reason of insanity and found to meet the criteria for  
 1012 involuntary commitment may be committed and treated in  
 1013 accordance with the provisions of this section and the  
 1014 applicable Florida Rules of Criminal Procedure. The department  
 1015 shall admit a defendant so adjudicated to an appropriate  
 1016 facility or program for treatment and shall retain and treat  
 1017 such defendant. No later than 6 months after the date of  
 1018 admission, prior to the end of any period of extended  
 1019 commitment, or at any time the administrator or designee shall  
 1020 have determined that the defendant no longer meets the criteria  
 1021 for continued commitment placement, the administrator or  
 1022 designee shall file a report with the court pursuant to the  
 1023 applicable Florida Rules of Criminal Procedure.

1024 (4)~~(3)~~ In all proceedings under this section ~~subsection~~,  
 1025 both the defendant and the state shall have the right to a  
 1026 hearing before the committing court. Evidence at such hearing  
 1027 may be presented by the hospital administrator or the  
 1028 administrator's designee as well as by the state and the  
 1029 defendant. The defendant shall have the right to counsel at any  
 1030 such hearing. In the event that a defendant is determined to be  
 1031 indigent pursuant to s. 27.52, the public defender shall  
 1032 represent the defendant. The parties shall have access to the  
 1033 defendant's records at the treating facilities and may interview  
 1034 or depose personnel who have had contact with the defendant at  
 1035 the treating facilities.

1036 Section 15. Section 916.16, Florida Statutes, is amended

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1037 to read:

1038 916.16 Jurisdiction of committing court.--

1039 (1) The committing court shall retain jurisdiction over ~~in~~  
 1040 ~~the case of~~ any defendant involuntarily committed due to a  
 1041 determination of incompetency hospitalized as incompetent to  
 1042 proceed due to mental illness or ~~because of~~ a finding of not  
 1043 guilty by reason of insanity pursuant to this chapter. The ~~No~~  
 1044 ~~such~~ defendant may not be released except by order of the  
 1045 committing court. An ~~The~~ administrative hearing examiner does  
 1046 not shall have ~~no~~ jurisdiction to determine issues of continuing  
 1047 commitment hospitalization or release of any defendant  
 1048 involuntarily committed admitted pursuant to this chapter.

1049 (2) The committing court shall retain jurisdiction in the  
 1050 case of any defendant placed on conditional release pursuant to  
 1051 s. 916.17. ~~No~~ Such defendant may not be released from the  
 1052 conditions of release except by order of the committing court.

1053 Section 16. Section 916.17, Florida Statutes, is amended  
 1054 to read:

1055 916.17 Conditional release.--

1056 (1) Except for an inmate currently serving a prison  
 1057 sentence, The committing court may order a conditional release  
 1058 ~~of any defendant who has been found to be incompetent to proceed~~  
 1059 ~~or not guilty by reason of insanity, based on an approved plan~~  
 1060 ~~for providing appropriate outpatient care and treatment. the~~  
 1061 committing court may order a conditional release of any  
 1062 defendant in lieu of an involuntary commitment to a facility  
 1063 pursuant to s. 916.13 or s. 916.15 based upon an approved plan  
 1064 for providing appropriate outpatient care and treatment. Upon a

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1065 recommendation that outpatient treatment of the defendant is  
1066 appropriate, a written plan for outpatient treatment, including  
1067 recommendations from qualified professionals, must be filed with  
1068 the court, with copies to all parties. Such a plan may also be  
1069 submitted by the defendant and filed with the court with copies  
1070 to all parties. The plan shall include:

1071 (a) Special provisions for residential care or adequate  
1072 supervision of the defendant.

1073 (b) Provisions for outpatient mental health services.

1074 (c) If appropriate, recommendations for auxiliary services  
1075 such as vocational training, educational services, or special  
1076 medical care.

1077

1078 In its order of conditional release, the court shall specify the  
1079 conditions of release based upon the release plan and shall  
1080 direct the appropriate agencies or persons to submit periodic  
1081 reports to the court regarding the defendant's compliance with  
1082 the conditions of the release and progress in treatment, with  
1083 copies to all parties.

1084 (2) Upon the filing of an affidavit or statement under  
1085 oath by any person that the defendant has failed to comply with  
1086 the conditions of release, that the defendant's condition has  
1087 deteriorated to the point that inpatient care is required, or  
1088 that the release conditions should be modified, the court shall  
1089 hold a hearing within 7 days after receipt of the affidavit or  
1090 statement under oath. After the hearing, the court may modify  
1091 the release conditions. The court may also order that the  
1092 defendant be returned to the department if it is found, after

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1093 the appointment and report of experts, that the person meets the  
 1094 criteria for involuntary commitment under s. 916.13 or s. 916.15  
 1095 ~~treatment.~~

1096 (3) If at any time it is determined after a hearing that  
 1097 the defendant who has been conditionally released under  
 1098 subsection (1) no longer requires court-supervised followup  
 1099 care, the court shall terminate its jurisdiction in the cause  
 1100 and discharge the defendant.

1101 Section 17. Section 916.301, Florida Statutes, is amended  
 1102 to read:

1103 916.301 Appointment of experts.--

1104 (1) All evaluations ordered by the court under this part  
 1105 must be conducted by qualified experts who have expertise in  
 1106 evaluating persons with retardation or autism. The agency  
 1107 ~~department~~ shall maintain and provide the courts annually with a  
 1108 list of available retardation and autism professionals who are  
 1109 appropriately licensed and qualified to perform evaluations of  
 1110 defendants alleged to be incompetent to proceed due to  
 1111 retardation or autism. The courts may use professionals from  
 1112 this list when appointing experts and ordering evaluations under  
 1113 this part ~~for defendants suspected of being retarded or~~  
 1114 ~~autistic.~~

1115 (2) If a defendant's suspected mental condition is  
 1116 retardation or autism, the court shall appoint a panel of  
 1117 experts consisting of: ~~two experts, one of whom must be the~~  
 1118 ~~developmental services program of the department, each of whom~~  
 1119 ~~will evaluate whether the defendant meets the definition of~~  
 1120 ~~retardation or autism and, if so, whether the defendant is~~

1121 ~~competent to proceed.~~

1122 (a)(3) At least one, or at the request of any party, two  
 1123 experts ~~the court may appoint one additional expert~~ to evaluate  
 1124 ~~the defendant. The expert appointed by the court will evaluate~~  
 1125 whether the defendant meets the definition of retardation or  
 1126 autism and, if so, whether the defendant is competent to  
 1127 proceed.

1128 (b)(4) ~~The developmental services program shall select A~~  
 1129 psychologist selected by the agency who is licensed or  
 1130 authorized by law to practice in this state, with experience in  
 1131 evaluating persons suspected of having retardation or autism,  
 1132 and a social service professional, with experience in working  
 1133 with persons with retardation or autism ~~to evaluate the~~  
 1134 ~~defendant.~~

1135 1.(a) The psychologist shall evaluate whether the  
 1136 defendant meets the definition of retardation or autism and, if  
 1137 so, whether the defendant is incompetent to proceed due to  
 1138 retardation or autism.

1139 2.(b) The social service professional shall provide a  
 1140 social and developmental history of the defendant.

1141 ~~(5) All evaluations ordered by the court must be from~~  
 1142 ~~qualified experts with experience in evaluating persons with~~  
 1143 ~~retardation or autism.~~

1144 (3)(6) The panel of experts may examine the defendant in  
 1145 jail, in another appropriate local facility, in a facility of  
 1146 the Department of Corrections, or on an outpatient basis.

1147 (4)(7) Experts ~~Expert witnesses~~ appointed by the court to  
 1148 evaluate the mental condition of a defendant in a criminal case

1149 shall be allowed reasonable fees for services rendered as  
 1150 evaluators and as witnesses, which shall be paid by the court.  
 1151 State employees shall be paid expenses pursuant to s. 112.061.  
 1152 The fees shall be taxed as costs in the case. In order for the  
 1153 experts to be paid for the services rendered, the reports and  
 1154 testimony must explicitly address each of the factors and follow  
 1155 the procedures set out in this chapter and in the Florida Rules  
 1156 of Criminal Procedure.

1157 Section 18. Subsections (1), (2), and (3) of section  
 1158 916.3012, Florida Statutes, are amended to read:

1159 916.3012 Mental competence to proceed.--

1160 (1) A defendant whose suspected mental condition is  
 1161 retardation or autism is incompetent to proceed within the  
 1162 meaning of this chapter if the defendant does not have  
 1163 sufficient present ability to consult with the defendant's  
 1164 lawyer with a reasonable degree of rational understanding or if  
 1165 the defendant has no rational, as well as factual, understanding  
 1166 of the proceedings against the defendant.

1167 (2) The Experts in retardation or autism appointed  
 1168 pursuant to s. 916.301 shall first consider whether the  
 1169 defendant meets the definition of retardation or autism and, if  
 1170 so, consider the factors related to the issue of whether the  
 1171 defendant meets the criteria for competence to proceed as  
 1172 described in subsection (1), that is, whether the defendant has  
 1173 sufficient present ability to consult with counsel with a  
 1174 reasonable degree of rational understanding and whether the  
 1175 defendant has a rational, as well as factual, understanding of  
 1176 the pending proceedings.

1177 (3) In considering the issue of competence to proceed, the  
 1178 examining experts shall first consider and specifically include  
 1179 in their report the defendant's capacity to:

1180 (a) Appreciate the charges or allegations against the  
 1181 defendant.†

1182 (b) Appreciate the range and nature of possible penalties,  
 1183 if applicable, that may be imposed in the proceedings against  
 1184 the defendant.†

1185 (c) Understand the adversarial nature of the legal  
 1186 process.†

1187 (d) Disclose to counsel facts pertinent to the proceedings  
 1188 at issue.†

1189 (e) Manifest appropriate courtroom behavior.† and

1190 (f) Testify relevantly.†

1191 (g) ~~and include in their report~~ Any other factor deemed  
 1192 relevant by the experts.

1193 Section 19. Section 916.302, Florida Statutes, is amended  
 1194 to read:

1195 916.302 Involuntary commitment of defendant determined to  
 1196 be incompetent to proceed ~~due to retardation or autism.--~~

1197 (1) CRITERIA.--Every defendant who is charged with a  
 1198 felony and who is adjudicated ~~found to be~~ incompetent to proceed  
 1199 due to retardation or autism, ~~pursuant to this chapter and the~~  
 1200 ~~applicable Florida Rules of Criminal Procedure,~~ may be  
 1201 involuntarily committed for training upon a finding by the court  
 1202 of clear and convincing evidence that:

1203 (a) The defendant has retardation or autism ~~is retarded or~~  
 1204 ~~autistic;~~

1205 (b) There is a substantial likelihood that in the near  
 1206 future the defendant will inflict serious bodily harm on himself  
 1207 or herself or another person, as evidenced by recent behavior  
 1208 causing, attempting, or threatening such harm;

1209 (c) All available, less restrictive alternatives,  
 1210 including services provided in community residential facilities  
 1211 or other community settings, which would offer an opportunity  
 1212 for improvement of the condition have been judged to be  
 1213 inappropriate; and

1214 (d) There is a substantial probability that the  
 1215 retardation or autism causing the defendant's incompetence will  
 1216 respond to training and the defendant will regain competency to  
 1217 proceed in the reasonably foreseeable future.

1218 (2) ADMISSION TO A FACILITY.--

1219 (a) A defendant who has been charged with a felony and who  
 1220 is found to be incompetent to proceed due to retardation or  
 1221 autism, and who meets the criteria for involuntary commitment to  
 1222 the agency department under the provisions of this chapter,  
 1223 shall be committed to the agency department, and the agency  
 1224 department shall retain and provide appropriate training for  
 1225 serve the defendant. No later than 6 months after the date of  
 1226 admission or at the end of any period of extended commitment or  
 1227 at any time the administrator or designee shall have determined  
 1228 that the defendant has regained competency to proceed or no  
 1229 longer meets the criteria for continued commitment, the  
 1230 administrator or designee shall file a report with the court  
 1231 pursuant to this chapter and the applicable Florida Rules of  
 1232 Criminal Procedure.



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1233 (b) A defendant determined to be incompetent to proceed  
 1234 due to retardation or autism may be ordered by a circuit court  
 1235 into a forensic secure facility designated by the agency  
 1236 ~~department~~ for ~~retarded or autistic~~ defendants who have mental  
 1237 retardation or autism.

1238 (c) The agency department may transfer a defendant from a  
 1239 designated forensic secure facility to another designated  
 1240 forensic secure facility and must notify the court of the  
 1241 transfer within 30 days after the transfer is completed.

1242 (d) The agency department may not transfer a defendant  
 1243 from a designated forensic secure facility to a civil nonsecure  
 1244 facility without first notifying the court, and all parties, 30  
 1245 days before the proposed transfer. If the court objects to the  
 1246 proposed transfer ~~to a nonsecure facility~~, it must send its  
 1247 written objection to the agency department. The agency  
 1248 ~~department~~ may transfer the defendant unless it receives the  
 1249 written objection from the court within 30 days after the  
 1250 court's receipt of the notice of the proposed transfer.

1251 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

1252 (a) If a defendant has is both mental retardation or  
 1253 autism ~~retarded or autistic~~ and has a mental illness ~~mentally~~  
 1254 ~~ill~~, evaluations must address which condition is primarily  
 1255 affecting the defendant's competency to proceed. Referral of the  
 1256 defendant should be made to a civil or forensic ~~the~~ facility ~~or~~  
 1257 ~~program~~ most appropriate to address the symptoms that ~~which~~ are  
 1258 the cause of the defendant's incompetence.

1259 (b) Transfer from one civil or forensic facility ~~or~~  
 1260 ~~program~~ to another civil or forensic facility ~~or program~~ may

1261 occur when, in the department's and agency's judgment, it is in  
 1262 the defendant's best treatment or training interests. The  
 1263 department and agency shall submit an evaluation and  
 1264 justification for the transfer to the court. The court may  
 1265 consult with an outside expert if necessary. Transfer will  
 1266 require an amended order from the committing court.

1267 Section 20. Section 916.3025, Florida Statutes, is amended  
 1268 to read:

1269 916.3025 Jurisdiction of committing court.--

1270 (1) The committing court shall retain jurisdiction in the  
 1271 case of any defendant found to be incompetent to proceed due to  
 1272 retardation or autism and ordered into a forensic secure  
 1273 facility designated by the agency department for retarded or  
 1274 autistic defendants who have mental retardation or autism. ~~A~~ No  
 1275 defendant may not be released except by the order of the  
 1276 committing court. An administrative hearing examiner does not  
 1277 have jurisdiction to determine issues of continuing commitment  
 1278 or release of any defendant involuntarily committed pursuant to  
 1279 this chapter.

1280 (2) The committing court shall retain jurisdiction in the  
 1281 case of any defendant placed on conditional release pursuant to  
 1282 s. 916.304. ~~No~~ Such defendant may not be released from the  
 1283 conditions of release except by order of the committing court.

1284 (3) The committing court shall consider a ~~the~~ petition to  
 1285 involuntarily admit a defendant whose charges have been  
 1286 dismissed to residential services provided by the agency  
 1287 ~~department's developmental services program a person whose~~  
 1288 ~~charges have been dismissed,~~ and, when applicable, to continue

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1289 secure placement of such person as provided in s. 916.303. The  
 1290 committing court shall retain jurisdiction over such person so  
 1291 long as he or she remains in secure placement or is on  
 1292 conditional release as provided in s. 916.304. However, upon  
 1293 request the court may transfer continuing jurisdiction to the  
 1294 court in the circuit where the defendant resides. The defendant  
 1295 may not be released from an order for secure placement except by  
 1296 order of the court.

1297 Section 21. Section 916.303, Florida Statutes, is amended  
 1298 to read:

1299 916.303 Determination of incompetency due to retardation  
 1300 or autism; dismissal of charges.--

1301 (1) The charges against any defendant found to be  
 1302 incompetent to proceed due to retardation or autism shall be  
 1303 dismissed without prejudice to the state if the defendant  
 1304 remains incompetent to proceed within a reasonable time after  
 1305 such determination, not to exceed 2 years, unless the court in  
 1306 its order specifies its reasons for believing that the defendant  
 1307 will become competent to proceed within the foreseeable future  
 1308 and specifies the time within which the defendant is expected to  
 1309 become competent to proceed. The charges may be refiled by the  
 1310 state if against the defendant are dismissed without prejudice  
 1311 to the state to refile the charges should the defendant is be  
 1312 declared competent to proceed in the future.

1313 (2) ~~(a)~~ If the charges are dismissed and if the defendant  
 1314 is considered to lack sufficient capacity to give express and  
 1315 informed consent to a voluntary application for services and  
 1316 lacks the basic survival and self-care skills to provide for his

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1317 or her well-being or is likely to physically injure himself or  
 1318 herself or others if allowed to remain at liberty, the agency  
 1319 ~~department~~, the state attorney, or the defendant's attorney  
 1320 shall ~~may~~ apply to the committing court to involuntarily admit  
 1321 the defendant to residential services pursuant to s. 393.11.

1322 (3) ~~(b)~~ If the defendant is considered to need involuntary  
 1323 residential services for reasons described in subsection (2)  
 1324 ~~under s. 393.11~~ and, further, there is a substantial likelihood  
 1325 that the defendant will injure another person or continues to  
 1326 present a danger of escape, and all available less restrictive  
 1327 alternatives, including services in community residential  
 1328 facilities or other community settings, which would offer an  
 1329 opportunity for improvement of the condition have been judged to  
 1330 be inappropriate, ~~then the agency person or entity filing the~~  
 1331 ~~petition under s. 393.11, the state attorney, or the defendant's~~  
 1332 ~~counsel may request, the petitioning commission, or the~~  
 1333 ~~department may also petition~~ the committing court to continue  
 1334 the defendant's placement in a secure facility ~~or program~~  
 1335 pursuant to this part section. Any placement so continued under  
 1336 this subsection must be ~~defendant involuntarily admitted under~~  
 1337 ~~this paragraph shall have his or her status reviewed by the~~  
 1338 court at least annually at a hearing. The annual review and  
 1339 hearing shall determine whether the defendant continues to meet  
 1340 the criteria described in this subsection ~~for involuntary~~  
 1341 ~~residential services~~ and, if so, whether the defendant still  
 1342 requires involuntary placement in a secure facility ~~or program~~  
 1343 ~~because the court finds that the defendant is likely to~~  
 1344 ~~physically injure others as specified in s. 393.11~~ and whether

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1345 the defendant is receiving adequate care, treatment,  
 1346 habilitation, and rehabilitation, including psychotropic  
 1347 medication and behavioral programming. Notice of the annual  
 1348 review and review hearing shall be given to the state attorney  
 1349 and ~~to~~ the defendant's attorney. In no instance may a  
 1350 defendant's placement in a secure facility ~~or program~~ exceed the  
 1351 maximum sentence for the crime for which the defendant was  
 1352 charged.

1353 Section 22. Section 916.304, Florida Statutes, is amended  
 1354 to read:

1355 916.304 Conditional release.--

1356 (1) Except for an inmate currently serving a prison  
 1357 sentence, the committing court may order a conditional release  
 1358 of any defendant who has been found to be incompetent to proceed  
 1359 due to retardation or autism, based on an approved plan for  
 1360 providing ~~continuing~~ community-based training. The committing  
 1361 criminal court may order a conditional release of any defendant  
 1362 to a civil facility in lieu of an involuntary commitment to a  
 1363 forensic facility pursuant to s. 916.302. Upon a recommendation  
 1364 that community-based training for the defendant is appropriate,  
 1365 a written plan for community-based training, including  
 1366 recommendations from qualified professionals, may be filed with  
 1367 the court, with copies to all parties. Such a plan may also be  
 1368 submitted by the defendant and filed with the court, with copies  
 1369 to all parties. The plan must ~~shall~~ include:

1370 (a) Special provisions for residential care and adequate  
 1371 supervision of the defendant, including recommended location of  
 1372 placement.

1373 (b) Recommendations for auxiliary services such as  
 1374 vocational training, psychological training, educational  
 1375 services, leisure services, and special medical care.

1376

1377 In its order of conditional release, the court shall specify the  
 1378 conditions of release based upon the release plan and shall  
 1379 direct the appropriate agencies or persons to submit periodic  
 1380 reports to the courts regarding the defendant's compliance with  
 1381 the conditions of the release and progress in training, with  
 1382 copies to all parties.

1383 (2) Upon the filing of an affidavit or statement under  
 1384 oath by any person that the defendant has failed to comply with  
 1385 the conditions of release, that the defendant's condition has  
 1386 deteriorated, or that the release conditions should be modified,  
 1387 the court shall hold a hearing within 7 days after receipt of  
 1388 the affidavit or statement under oath. With notice to the court,  
 1389 the agency may detain a defendant in a forensic facility until  
 1390 the hearing occurs. After the hearing, the court may modify the  
 1391 release conditions. The court may also order that the defendant  
 1392 be placed into more appropriate programs for further training or  
 1393 may order the defendant to be committed ~~returned~~ to a forensic  
 1394 facility ~~involuntary residential services of the department~~ if  
 1395 it is found, after the appointment and report of experts, that  
 1396 the defendant meets the criteria for placement in a forensic  
 1397 facility ~~involuntary residential services.~~

1398 (3) If at any time it is determined after a hearing that  
 1399 the defendant conditionally released under subsection (1) no  
 1400 longer requires court-supervised followup care, the court shall

1401 terminate its jurisdiction in the cause and discharge the  
 1402 defendant.

1403 Section 23. Subsection (1) of section 921.137, Florida  
 1404 Statutes, is amended to read:

1405 921.137 Imposition of the death sentence upon a ~~mentally~~  
 1406 ~~retarded~~ defendant with mental retardation prohibited.--

1407 (1) As used in this section, the term "mental retardation"  
 1408 means significantly subaverage general intellectual functioning  
 1409 existing concurrently with deficits in adaptive behavior and  
 1410 manifested during the period from conception to age 18. The term  
 1411 "significantly subaverage general intellectual functioning," for  
 1412 the purpose of this section, means performance that is two or  
 1413 more standard deviations from the mean score on a standardized  
 1414 intelligence test specified in the rules of the Agency for  
 1415 Persons with Disabilities ~~Department of Children and Family~~  
 1416 ~~Services~~. The term "adaptive behavior," for the purpose of this  
 1417 definition, means the effectiveness or degree with which an  
 1418 individual meets the standards of personal independence and  
 1419 social responsibility expected of his or her age, cultural  
 1420 group, and community. The Agency for Persons with Disabilities  
 1421 ~~Department of Children and Family Services~~ shall adopt rules to  
 1422 specify the standardized intelligence tests as provided in this  
 1423 subsection.

1424 Section 24. Paragraphs (d), (e), (g), and (h) of  
 1425 subsection (1), subsections (2), (3), and (4), paragraph (b) of  
 1426 subsection (5), and paragraph (a) of subsection (6) of section  
 1427 985.223, Florida Statutes, are amended to read:

1428 985.223 Incompetency in juvenile delinquency cases.--

1429 (1) If, at any time prior to or during a delinquency case,  
 1430 the court has reason to believe that the child named in the  
 1431 petition may be incompetent to proceed with the hearing, the  
 1432 court on its own motion may, or on the motion of the child's  
 1433 attorney or state attorney must, stay all proceedings and order  
 1434 an evaluation of the child's mental condition.

1435 (d) For incompetency evaluations related to mental  
 1436 illness, the Department of Children and Family Services shall  
 1437 maintain and annually provide the courts with a list of  
 1438 available mental health professionals who have completed a  
 1439 training program approved by the Department of Children and  
 1440 Family Services to perform the evaluations.

1441 (e) For incompetency evaluations related to mental  
 1442 retardation or autism, the court shall order the Agency for  
 1443 Persons with Disabilities ~~Developmental Disabilities Program~~  
 1444 ~~Office within the Department of Children and Family Services~~ to  
 1445 examine the child to determine if the child meets the definition  
 1446 of "retardation" or "autism" in s. 393.063 and, if so, whether  
 1447 the child is competent to proceed with delinquency proceedings.

1448 (g) Immediately upon the filing of the court order finding  
 1449 a child incompetent to proceed, the clerk of the court shall  
 1450 notify the Department of Children and Family Services and the  
 1451 Agency for Persons with Disabilities and fax or hand deliver to  
 1452 the department and to the agency of Children and Family Services  
 1453 a referral packet that ~~which~~ includes, at a minimum, the court  
 1454 order, the charging documents, the petition, and the court-  
 1455 appointed evaluator's reports.

1456 (h) After placement of the child in the appropriate



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1457 setting, the Department of Children and Family Services in  
1458 consultation with the Agency for Persons with Disabilities, as  
1459 appropriate, must, within 30 days after placement of the  
1460 ~~Department of Children and Family Services places~~ the child,  
1461 prepare and submit to the court a treatment or training plan for  
1462 the child's restoration of competency. A copy of the ~~treatment~~  
1463 plan must be served upon the child's attorney, the state  
1464 attorney, and the attorneys representing the Department of  
1465 Juvenile Justice.

1466 (2) A child ~~who is mentally ill or retarded,~~ who is  
1467 adjudicated incompetent to proceed, and who has committed a  
1468 delinquent act or violation of law, either of which would be a  
1469 felony if committed by an adult, must be committed to the  
1470 Department of Children and Family Services for treatment or  
1471 training. A child who has been adjudicated incompetent to  
1472 proceed because of age or immaturity, or for any reason other  
1473 than for mental illness or retardation or autism, must not be  
1474 committed to the department or to the Department of Children and  
1475 Family Services for restoration-of-competency treatment or  
1476 training services. For purposes of this section, a child who has  
1477 committed a delinquent act or violation of law, either of which  
1478 would be a misdemeanor if committed by an adult, may not be  
1479 committed to the department or to the Department of Children and  
1480 Family Services for restoration-of-competency treatment or  
1481 training services.

1482 (3) If the court finds that a child has mental illness,  
1483 mental retardation, or autism ~~is mentally ill or retarded~~ and  
1484 adjudicates the child incompetent to proceed, the court must

1485 also determine whether the child meets the criteria for secure  
 1486 placement. A child may be placed in a secure facility or program  
 1487 if the court makes a finding by clear and convincing evidence  
 1488 that:

1489 (a) The child has mental illness, mental retardation, or  
 1490 autism ~~is mentally ill~~ and because of the mental illness, mental  
 1491 ~~retardation, or autism; or the child is mentally retarded and~~  
 1492 ~~because of the mental retardation:~~

1493 1. The child is manifestly incapable of surviving with the  
 1494 help of willing and responsible family or friends, including  
 1495 available alternative services, and without treatment or  
 1496 training the child is likely to either suffer from neglect or  
 1497 refuse to care for self, and such neglect or refusal poses a  
 1498 real and present threat of substantial harm to the child's well-  
 1499 being; or

1500 2. There is a substantial likelihood that in the near  
 1501 future the child will inflict serious bodily harm on self or  
 1502 others, as evidenced by recent behavior causing, attempting, or  
 1503 threatening such harm; and

1504 (b) All available less restrictive alternatives, including  
 1505 treatment or training in community residential facilities or  
 1506 community settings which would offer an opportunity for  
 1507 improvement of the child's condition, are inappropriate.

1508 (4) A child who is determined to have mental retardation  
 1509 or autism ~~be mentally ill or retarded~~, who has been adjudicated  
 1510 incompetent to proceed, and who meets the criteria set forth in  
 1511 subsection (3), must be committed to the Department of Children  
 1512 and Family Services, and receive treatment or training ~~the~~

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1513 ~~Department of Children and Family Services must treat or train~~  
 1514 ~~the child~~ in a secure facility or program that ~~which~~ is the  
 1515 least restrictive alternative consistent with public safety. Any  
 1516 placement of a child to a secure residential program must be  
 1517 separate from adult forensic programs. If the child attains  
 1518 competency, then custody, case management, and supervision of  
 1519 the child will be transferred to the department in order to  
 1520 continue delinquency proceedings; however, the court retains  
 1521 authority to order the Department of Children and Family  
 1522 Services to provide continued treatment or training to maintain  
 1523 competency.

1524 (a) A child adjudicated incompetent due to mental  
 1525 retardation or autism may be ordered into a secure program or  
 1526 facility designated by the Department of Children and Family  
 1527 Services for ~~retarded~~ children with mental retardation or  
 1528 autism.

1529 (b) A child adjudicated incompetent due to mental illness  
 1530 may be ordered into a secure program or facility designated by  
 1531 the Department of Children and Family Services for ~~mentally ill~~  
 1532 children have mental illnesses.

1533 (c) Whenever a child is placed in a secure residential  
 1534 facility, the department will provide transportation to the  
 1535 secure residential facility for admission and from the secure  
 1536 residential facility upon discharge.

1537 (d) The purpose of the treatment or training is the  
 1538 restoration of the child's competency to proceed.

1539 (e) The service provider must file a written report with  
 1540 the court pursuant to the applicable Florida Rules of Juvenile

1541 Procedure not later than 6 months after the date of commitment,  
 1542 or at the end of any period of extended treatment or training,  
 1543 and at any time the Department of Children and Family Services,  
 1544 through its service provider determines the child has attained  
 1545 competency or no longer meets the criteria for secure placement,  
 1546 or at such shorter intervals as ordered by the court. A copy of  
 1547 a written report evaluating the child's competency must be filed  
 1548 by the provider with the court and with the state attorney, the  
 1549 child's attorney, the department, and the Department of Children  
 1550 and Family Services.

1551 (5)

1552 (b) Whenever the provider files a report with the court  
 1553 informing the court that the child will never become competent  
 1554 to proceed, the Department of Children and Family Services will  
 1555 develop a discharge plan for the child prior to any hearing  
 1556 determining whether the child will ever become competent to  
 1557 proceed and send the. ~~The Department of Children and Family~~  
 1558 ~~Services must send the proposed discharge plan to the court, the~~  
 1559 state attorney, the child's attorney, and the attorneys  
 1560 representing the Department of Juvenile Justice. The provider  
 1561 will continue to provide services to the child until the court  
 1562 issues the order finding the child will never become competent  
 1563 to proceed.

1564 (6) (a) If a child is determined to have mental illness,  
 1565 mental retardation, or autism ~~be mentally ill or retarded~~ and is  
 1566 found to be incompetent to proceed but does not meet the  
 1567 criteria set forth in subsection (3), the court shall commit the  
 1568 child to the Department of Children and Family Services and

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1569 shall order the Department of Children and Family Services to  
 1570 provide appropriate treatment and training in the community. The  
 1571 purpose of the treatment or training is the restoration of the  
 1572 child's competency to proceed.

1573 Section 25. Paragraph (b) of subsection (14) of section  
 1574 287.057, Florida Statutes, is amended to read:

1575 287.057 Procurement of commodities or contractual  
 1576 services.--

1577 (14)

1578 (b) Notwithstanding paragraph (a), the Department of  
 1579 Children and Family Services may enter into agreements, not to  
 1580 exceed 20 years, with a private provider to finance, design, and  
 1581 construct a forensic treatment facility, as defined in s.

1582 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects  
 1583 of daily operations within the forensic treatment facility. The  
 1584 selected contractor is authorized to sponsor the issuance of  
 1585 tax-exempt certificates of participation or other securities to  
 1586 finance the project, and the state is authorized to enter into a  
 1587 lease-purchase agreement for the forensic treatment facility.  
 1588 This paragraph expires July 1, 2006.

1589 Section 26. Paragraph (r) of subsection (3) of section  
 1590 408.036, Florida Statutes, is amended to read:

1591 408.036 Projects subject to review; exemptions.--

1592 (3) EXEMPTIONS.--Upon request, the following projects are  
 1593 subject to exemption from the provisions of subsection (1):

1594 (r) For beds in state mental health treatment facilities  
 1595 operated under s. 394.455(30) and state mental health forensic  
 1596 facilities operated under chapter 916 s. ~~916.106(8)~~.

1597 Section 27. Paragraph (a) of subsection (4) of section  
 1598 943.0585, Florida Statutes, is amended to read:  
 1599 943.0585 Court-ordered expunction of criminal history  
 1600 records.--The courts of this state have jurisdiction over their  
 1601 own procedures, including the maintenance, expunction, and  
 1602 correction of judicial records containing criminal history  
 1603 information to the extent such procedures are not inconsistent  
 1604 with the conditions, responsibilities, and duties established by  
 1605 this section. Any court of competent jurisdiction may order a  
 1606 criminal justice agency to expunge the criminal history record  
 1607 of a minor or an adult who complies with the requirements of  
 1608 this section. The court shall not order a criminal justice  
 1609 agency to expunge a criminal history record until the person  
 1610 seeking to expunge a criminal history record has applied for and  
 1611 received a certificate of eligibility for expunction pursuant to  
 1612 subsection (2). A criminal history record that relates to a  
 1613 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 1614 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,  
 1615 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
 1616 s. 916.1075, or a violation enumerated in s. 907.041 may not be  
 1617 expunged, without regard to whether adjudication was withheld,  
 1618 if the defendant was found guilty of or pled guilty or nolo  
 1619 contendere to the offense, or if the defendant, as a minor, was  
 1620 found to have committed, or pled guilty or nolo contendere to  
 1621 committing, the offense as a delinquent act. The court may only  
 1622 order expunction of a criminal history record pertaining to one  
 1623 arrest or one incident of alleged criminal activity, except as  
 1624 provided in this section. The court may, at its sole discretion,

1625 order the expunction of a criminal history record pertaining to  
 1626 more than one arrest if the additional arrests directly relate  
 1627 to the original arrest. If the court intends to order the  
 1628 expunction of records pertaining to such additional arrests,  
 1629 such intent must be specified in the order. A criminal justice  
 1630 agency may not expunge any record pertaining to such additional  
 1631 arrests if the order to expunge does not articulate the  
 1632 intention of the court to expunge a record pertaining to more  
 1633 than one arrest. This section does not prevent the court from  
 1634 ordering the expunction of only a portion of a criminal history  
 1635 record pertaining to one arrest or one incident of alleged  
 1636 criminal activity. Notwithstanding any law to the contrary, a  
 1637 criminal justice agency may comply with laws, court orders, and  
 1638 official requests of other jurisdictions relating to expunction,  
 1639 correction, or confidential handling of criminal history records  
 1640 or information derived therefrom. This section does not confer  
 1641 any right to the expunction of any criminal history record, and  
 1642 any request for expunction of a criminal history record may be  
 1643 denied at the sole discretion of the court.

1644 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
 1645 criminal history record of a minor or an adult which is ordered  
 1646 expunged by a court of competent jurisdiction pursuant to this  
 1647 section must be physically destroyed or obliterated by any  
 1648 criminal justice agency having custody of such record; except  
 1649 that any criminal history record in the custody of the  
 1650 department must be retained in all cases. A criminal history  
 1651 record ordered expunged that is retained by the department is  
 1652 confidential and exempt from the provisions of s. 119.07(1) and

1653 s. 24(a), Art. I of the State Constitution and not available to  
 1654 any person or entity except upon order of a court of competent  
 1655 jurisdiction. A criminal justice agency may retain a notation  
 1656 indicating compliance with an order to expunge.

1657 (a) The person who is the subject of a criminal history  
 1658 record that is expunged under this section or under other  
 1659 provisions of law, including former s. 893.14, former s. 901.33,  
 1660 and former s. 943.058, may lawfully deny or fail to acknowledge  
 1661 the arrests covered by the expunged record, except when the  
 1662 subject of the record:

- 1663 1. Is a candidate for employment with a criminal justice  
 1664 agency;
- 1665 2. Is a defendant in a criminal prosecution;
- 1666 3. Concurrently or subsequently petitions for relief under  
 1667 this section or s. 943.059;
- 1668 4. Is a candidate for admission to The Florida Bar;
- 1669 5. Is seeking to be employed or licensed by or to contract  
 1670 with the Department of Children and Family Services or the  
 1671 Department of Juvenile Justice or to be employed or used by such  
 1672 contractor or licensee in a sensitive position having direct  
 1673 contact with children, the developmentally disabled, the aged,  
 1674 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 1675 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 1676 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~  
 1677 ~~(13)~~, s. 985.407, or chapter 400; or
- 1678 6. Is seeking to be employed or licensed by the Department  
 1679 of Education, any district school board, any university  
 1680 laboratory school, any charter school, any private or parochial



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1681 school, or any local governmental entity that licenses child  
 1682 care facilities.

1683 Section 28. Paragraph (a) of subsection (4) of section  
 1684 943.059, Florida Statutes, is amended to read:

1685 943.059 Court-ordered sealing of criminal history  
 1686 records.--The courts of this state shall continue to have  
 1687 jurisdiction over their own procedures, including the  
 1688 maintenance, sealing, and correction of judicial records  
 1689 containing criminal history information to the extent such  
 1690 procedures are not inconsistent with the conditions,  
 1691 responsibilities, and duties established by this section. Any  
 1692 court of competent jurisdiction may order a criminal justice  
 1693 agency to seal the criminal history record of a minor or an  
 1694 adult who complies with the requirements of this section. The  
 1695 court shall not order a criminal justice agency to seal a  
 1696 criminal history record until the person seeking to seal a  
 1697 criminal history record has applied for and received a  
 1698 certificate of eligibility for sealing pursuant to subsection  
 1699 (2). A criminal history record that relates to a violation of s.  
 1700 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 1701 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
 1702 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or  
 1703 a violation enumerated in s. 907.041 may not be sealed, without  
 1704 regard to whether adjudication was withheld, if the defendant  
 1705 was found guilty of or pled guilty or nolo contendere to the  
 1706 offense, or if the defendant, as a minor, was found to have  
 1707 committed or pled guilty or nolo contendere to committing the  
 1708 offense as a delinquent act. The court may only order sealing of

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1709 a criminal history record pertaining to one arrest or one  
1710 incident of alleged criminal activity, except as provided in  
1711 this section. The court may, at its sole discretion, order the  
1712 sealing of a criminal history record pertaining to more than one  
1713 arrest if the additional arrests directly relate to the original  
1714 arrest. If the court intends to order the sealing of records  
1715 pertaining to such additional arrests, such intent must be  
1716 specified in the order. A criminal justice agency may not seal  
1717 any record pertaining to such additional arrests if the order to  
1718 seal does not articulate the intention of the court to seal  
1719 records pertaining to more than one arrest. This section does  
1720 not prevent the court from ordering the sealing of only a  
1721 portion of a criminal history record pertaining to one arrest or  
1722 one incident of alleged criminal activity. Notwithstanding any  
1723 law to the contrary, a criminal justice agency may comply with  
1724 laws, court orders, and official requests of other jurisdictions  
1725 relating to sealing, correction, or confidential handling of  
1726 criminal history records or information derived therefrom. This  
1727 section does not confer any right to the sealing of any criminal  
1728 history record, and any request for sealing a criminal history  
1729 record may be denied at the sole discretion of the court.

1730 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
1731 history record of a minor or an adult which is ordered sealed by  
1732 a court of competent jurisdiction pursuant to this section is  
1733 confidential and exempt from the provisions of s. 119.07(1) and  
1734 s. 24(a), Art. I of the State Constitution and is available only  
1735 to the person who is the subject of the record, to the subject's  
1736 attorney, to criminal justice agencies for their respective

1737 criminal justice purposes, or to those entities set forth in  
 1738 subparagraphs (a)1., 4., 5., and 6. for their respective  
 1739 licensing and employment purposes.

1740 (a) The subject of a criminal history record sealed under  
 1741 this section or under other provisions of law, including former  
 1742 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 1743 deny or fail to acknowledge the arrests covered by the sealed  
 1744 record, except when the subject of the record:

- 1745 1. Is a candidate for employment with a criminal justice  
 1746 agency;
- 1747 2. Is a defendant in a criminal prosecution;
- 1748 3. Concurrently or subsequently petitions for relief under  
 1749 this section or s. 943.0585;
- 1750 4. Is a candidate for admission to The Florida Bar;
- 1751 5. Is seeking to be employed or licensed by or to contract  
 1752 with the Department of Children and Family Services or the  
 1753 Department of Juvenile Justice or to be employed or used by such  
 1754 contractor or licensee in a sensitive position having direct  
 1755 contact with children, the developmentally disabled, the aged,  
 1756 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 1757 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 1758 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~  
 1759 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or
- 1760 6. Is seeking to be employed or licensed by the Department  
 1761 of Education, any district school board, any university  
 1762 laboratory school, any charter school, any private or parochial  
 1763 school, or any local governmental entity that licenses child  
 1764 care facilities.

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1765 Section 29. This act shall take effect upon becoming a  
1766 law.