



**CRIMINAL JUSTICE
COMMITTEE**

MEETING PACKET

**Wednesday, February 8, 2006
10:45 a.m. – 11:45 a.m.
404 HOB**

Allan G. Bense
Speaker

Dick Kravtiz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time: Wednesday, February 08, 2006 10:45 am

End Date and Time: Wednesday, February 08, 2006 11:45 am

Location: 404 HOB

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 45 CS False or Misleading Electronic Mail by Porth
HB 61 CS Postsentencing Testing of DNA Evidence by Quinones, Bogdanoff
HB 283 Correctional Probation Officers by Kreegel
HB 325 Commission on Capital Cases by Gelber
HB 349 Theft of Property by Brandenburg
HB 469 Human Trafficking by Gannon

NOTICE FINALIZED on 01/27/2006 15:09 by THOMPSON.SONJA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 45 CS

False or Misleading Electronic Mail

SPONSOR(S): Porth

TIED BILLS:

IDEN./SIM. BILLS: SB 80

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	12 Y, 1 N, w/CS	Cater	Holt
2) Criminal Justice Committee		Ferguson <i>KIF</i>	Kramer <i>TK</i>
3) Criminal Justice Appropriations Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

HB 45 amends the Electronic Mail Communications Act (Act) and creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages. HB 45 does the following:

- Amends section 668.606, F.S., to provide immunity from criminal prosecution to an interactive computer service, customer premises equipment provider, communications services provider, or cable provider whose equipment is used to transport, handle, or retransmit a commercial electronic mail message.
- Amends section 668.6075, F.S., to provide that remedies and criminal penalties under the Act are in addition to remedies and criminal penalties otherwise available under federal or state law.
- Creates section 668.608, F.S., to provide that it is a misdemeanor of the first degree or a felony in the third degree under certain circumstances to send an unsolicited false or misleading commercial electronic mail.

The fiscal impact of the bill is indeterminate at this time due to the unknown number of cases that may be prosecuted.

This act shall take effect July 1, 2006, and shall apply to violations committed on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- HB 45 creates criminal penalties for sending false or misleading electronic mail.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Legislation

In 2003, Congress passed the "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003" or the "CAN-SPAM Act of 2003."¹ The CAN-SPAM act provides that if the activity is in or affects interstate or foreign commerce, it is unlawful to knowingly:

- Access a protected computer, as defined in section 1030(e)(2)(B) of Title 18, without authorization, and intentionally initiate the transmission of multiple commercial electronic mail messages from or through the computer.
- Use a protected computer, as defined in section 1030(e)(2)(B) of Title 18, to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages.
- Materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of such messages.
- Register, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names.
- Falsely represent oneself to be the registrant or the legitimate successor in interest to the registrant of five or more Internet Protocol addresses, and intentionally initiate the transmission of multiple commercial electronic mail messages from such addresses.

The CAN-SPAM act specifies the penalties for a violation which may include a fine, imprisonment of up to five years, or both. Additionally, the court may order forfeiture of any property constituting or traceable to gross proceeds obtained from the offense or any equipment used or intended to be used to commit the offense.

State Legislation

In 2004, the Legislature passed The Electronic Mail Communications Act (Act).² Section 668.603, F.S., of the Act provides that a person may not:

- Initiate the transmission of an unsolicited commercial electronic mail message from a computer located in this state or to an electronic mail address that is held by a resident of this state which:
 - Uses a third party's Internet domain name without permission of the third party;

¹ 15 U.S.C. ss. 7701-13.

² Section 668.60, F.S.

- Contains falsified or missing routing information or otherwise misrepresents, falsifies, or obscures any information in identifying the point of origin or the transmission path of the unsolicited commercial electronic mail message; or
- Contains false or misleading information in the subject line.
- Contains false or misleading information in the body of the message.
- Distribute software or any other system designed to falsify missing routing information identifying the point of origin or the transmission path of the commercial electronic mail message.

Summarily, the Act also:

- Authorizes the Department of Legal Affairs to bring an action for damages, or to seek declaratory or injunctive relief, or to impose a civil penalty for a violation of the prohibited activities outlined in the Act;
- Creates a cause of action for a person who receives an unsolicited commercial electronic mail message in violation of the Act's provisions;
- Provides that a violation of the Act's prohibited activities is also a violation of the Florida Deceptive and Unfair Trade Practices Act within the meaning of part II of chapter 501;
- Provides an exemption from liability for certain commercial electronic mail providers and wireless providers who transmit commercial electronic mail, and allows an interactive computer service provider to block transmission of a commercial electronic message it believes may be sent in violation of the Act's provisions;
- Provides that prevailing plaintiffs are entitled to:
 - An injunction to enjoin future violations for sending unsolicited false or misleading commercial electronic mail message.
 - Compensatory damages equal to actual damages to have resulted from the initiation of the unsolicited false or misleading commercial electronic mail message or liquidated damages of \$500 for each unsolicited false or misleading commercial electronic mail message.
 - Plaintiff's attorney's fees and other reasonably incurred litigation costs.
- Provides that any person outside this state who initiates or assists in the transmission of a commercial electronic mail message received in this state and who knows, or should have known, that the commercial electronic mail message will be received in this state, submits to the jurisdiction of this state;
- Provides that the Act's provisions do not interfere with the confidential status of certain information relating to intelligence or investigative information; and
- Provides that an action must be commenced within 4 years following the date of any prohibited activity.

Section 668.6075, F.S., provides that sending an unsolicited false or misleading commercial electronic mail message shall be considered an unfair and deceptive trade practice within the meaning of part II of ch. 501, F.S., and that in addition to any remedies or penalties set forth in ch. 501, F.S., a violator is subject to the penalties and remedies provided in this part. The remedies in this part are in addition to the remedies otherwise available for the same conduct under federal or state law.

According to the Department of Legal Affairs, two cases under the current Act were litigated in 2005, and at this time, there are other active investigations. Other complaints have been filed, but the Department of Legal Affairs has not been able to determine who sent the message; therefore, has not been able to take further action.

Proposed Legislation

HB 45 amends section 668.606, F.S., to provide that the Act does not create a cause of action or provide for criminal charges against an interactive computer service, customer premises equipment provider, communications services provider, or cable provider whose equipment is used to transport, handle, or retransmit an unsolicited false or misleading commercial electronic mail message.

- Currently, there are only civil remedies for sending an unsolicited false or misleading electronic mail message.³ HB 45 creates section 668.608, F.S., which provides it is a misdemeanor in the first degree to send an unsolicited false or misleading commercial electronic mail message, which is punishable by a fine of up to \$1,000⁴ or imprisonment of up to one year.⁵ It is a felony in the third degree if:
 - The volume of commercial electronic mail messages transmitted by the person exceeds 10,000 attempted recipients in any 24-hour period;
 - The volume of commercial electronic mail messages transmitted by the person exceeds 100,000 attempted recipients in any 30-day period;
 - The volume of commercial electronic messages transmitted by the person exceeds 1 million attempted recipients in any 1-year period;
 - The revenue generated from a specific commercial electronic mail message transmitted by the person exceeds \$1,000;
 - The total revenue generated from all commercial electronic mail messages transmitted by the person to any electronic mail message service provider or its subscribers exceed \$50,000;
 - The person knowingly hires, employs, uses, or permits any minor to assist in the transmission of a commercial electronic mail message in violation of section 668.603, F.S.;
 - The person commits a violation within 5 years of a previous conviction under this section.

A felony in the third degree is punishable by a fine of up to \$5,000,⁶ or imprisonment up to five years.⁷ Felony violations may also be punishable under the provisions for habitual felony offenders contained in section 775.084, F.S.

HB 45 provides that the remedies and criminal penalties are in addition to the remedies and criminal penalties otherwise available under federal or state law.

C. SECTION DIRECTORY:

- Section 1: Amends s. 668.606 (2), F.S., providing an exemption from criminal liability for certain carriers and equipment providers whose equipment transmits commercial electronic mail messages.
- Section 2: Amends s. 668.6075, relating to unfair and deceptive trade practices and renumbers s. 668.6075 (2), F.S., as s. 668.610, F.S., relating to cumulative remedies.
- Section 3: Creates s. 668.608, F.S., relating to criminal penalties.
- Section 4: This act shall take effect July 1, 2006, and shall apply to violations committed on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³ Section 668.606(1), F.S.

⁴ Section 775.083(1)(d), F.S.

⁵ Section 775.082(4)(a), F.S.

⁶ Section 775.083(1)(c), F.S.

⁷ Section 775.082(3)(d), F.S.

1. Revenues:

Indeterminate. HB 45 provides for fines as a penalty for a criminal violation of the Act. It is not known how many cases may be brought under HB 45; thus, the revenue impact cannot be determined at this time.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates a third degree felony offense. The offense is not ranked in the offense severity ranking chart. As such, it is expected that the conference will determine that the bill will have insignificant prison bed impact.

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:

HB 45 creates section 668.608, F.S., to provide criminal penalties for sending unsolicited false or misleading commercial mail messages from a computer located in Florida or to an electronic mail address that is held by a resident of Florida. Constitutional challenges could be made based on the dormant commerce clause or the first amendment.

Dormant Commerce Clause

The Commerce Clause empowers Congress to regulate commerce among the several states.⁸ "This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the States to enact legislation affecting interstate commerce."⁹ The aspect of the Commerce Clause which operates as an implied limitation upon state and local government authority is often referred to as the dormant commerce clause.¹⁰

⁸ See U.S. Const., art. I, § 8, cl. 3.

⁹ Healy v. The Beer Institute, 491 U.S. 324 (1989).

¹⁰ MaryCle, LLC v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees' Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).

In Pike v. Bruce Church Inc.,¹¹ a two prong test was announced to determine if a state statute violates the dormant Commerce Clause:

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court held that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.¹² The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

[T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:

First, the "commerce clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State" Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.¹³

"The Healy Court explained that the extraterritoriality principles detailed above are not a separated or distinct Commerce Clause analysis. Rather, they are simply a more detailed way of explaining the two-part test established in Pike and clarified in Brown-Forman."¹⁴

Under the first prong of Pike, section 668.603, F.S., appears to apply evenhandedly to in-state and out-of-state transmitters of unsolicited false or misleading commercial electronic mail. "A *person* may not . . . transmi[t] . . . an unsolicited commercial electronic mail message from a computer located in this state or to an electronic mail address that is held by a resident of this state. . . ."¹⁵ Thus, section 668.603 applies to residents of Florida as well as residents of other states.

Under the second prong of Pike, the local benefit of section 668.603 is balanced against the alleged burden on interstate commerce.

¹¹ 397 U.S. 137 (1970).

¹² See Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

¹³ Healy at 336-37; see also MaryCle, at 15.

¹⁴ Id.

¹⁵ Section 668.603 (1), F.S.

Virtually identical statutes to section 668.608, F.S., pertaining to unsolicited false or misleading commercial electronic mail, have been examined by other courts under the dormant commerce clause and found to be constitutional.¹⁶

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.¹⁷

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.¹⁸

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.¹⁹

Similarly, the local benefit of section 668.603 is to protect the public and legitimate business from deceptive and unsolicited commercial electronic mail²⁰, and the only burden imposed is sending truthful and non-deceptive email.

First Amendment

In Central Hudson Gas & Electric Corp. v. Public Service Comm. of New York,²¹ the Supreme Court articulated a four part test for evaluating the constitutionality of a content-neutral regulation of commercial speech:

First, the court must determine whether the speech is lawful and not misleading, otherwise it is outside the First Amendment's protection. If the speech is neither misleading or unlawful, then the court must ascertain whether the government has asserted a substantial interest. If the government has asserted a substantial interest, then a court must evaluate whether the regulation directly advances the asserted governmental interest and whether it is more extensive than necessary to serve that interest.²²

Here, if the content of the electronic mail communication is unlawful or misleading, then under Central Hudson it is outside the protection of the first amendment. However, if the content of the electronic mail communication is not unlawful or misleading, then the state could assert its substantial interest in protecting the public from deceptive and unsolicited commercial electronic mail.²³ A court would then evaluate whether section 668.608, F.S., is the least restrictive means in advancing Florida's interest in protecting its citizens.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁶ See State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).

¹⁷ Heckel, at 412-13.

¹⁸ MaryCle, at 19.

¹⁹ Ferguson, at 1265.

²⁰ See section 668.601, F.S.

²¹ 447 U.S. 557 (1980).

²² White Buffalo Ventures, LLC. v. The University of Texas, 2004 WL 1854168 (W.D. Tex. 2004).

²³ See section 668.601, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 10, 2006, the Utilities & Telecommunications passed HB 45 with one amendment. The amendment provides that a customer premise equipment provider is immune from criminal penalties. Additionally, the amendment changed "telephone company" to "communications services provider" to ensure consistency.

CHAMBER ACTION

1 The Utilities & Telecommunications 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 false or misleading electronic mail;
8 amending s. 668.606, F.S.; providing an exemption from
9 criminal liability for certain carriers and equipment
10 providers whose equipment transmits commercial electronic
11 mail messages that violate s. 668.603, F.S., which
12 prohibits specified actions relating to transmission of
13 false or misleading unsolicited commercial electronic mail
14 messages; amending s. 668.6075, F.S., and renumbering and
15 amending subsection (2) thereof as s. 668.610, F.S.;
16 providing that remedies and penalties under the Electronic
17 Mail Communications Act are cumulative; creating s.
18 668.608, F.S.; providing criminal penalties for violations
19 of s. 668.603, F.S., which prohibits specified actions
20 relating to transmission of false or misleading
21 unsolicited commercial electronic mail messages; providing
22 applicability; providing an effective date.

HB 45

2006
CS

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

25

26 Section 1. Subsection (2) of section 668.606, Florida
27 Statutes, is amended to read:

28 668.606 Civil remedies; immunity.--

29 (2) This part does not create a cause of action or provide
30 for criminal charges against an interactive computer service,
31 customer premise equipment provider, communications services
32 provider ~~telephone company~~, or cable provider whose equipment is
33 used to transport, handle, or retransmit a commercial electronic
34 mail message that violates s. 668.603.

35 Section 2. Section 668.6075, Florida Statutes, is amended,
36 and subsection (2) of that section is renumbered as section
37 668.610, Florida Statutes, and amended to read:

38 668.6075 Unfair and deceptive trade practices Violations
39 ~~of s. 668.603.~~--

40 ~~(1)~~ A violation of s. 668.603 shall be deemed an unfair
41 and deceptive trade practice within the meaning of part II of
42 chapter 501. In addition to any remedies or penalties set forth
43 in that part, a violator shall be subject to the penalties and
44 remedies provided for in this part.

45 668.610 Cumulative remedies.--

46 ~~(2)~~ The remedies and criminal penalties of this part are
47 in addition to remedies and criminal penalties otherwise
48 available for the same conduct under federal or state law.

49 Section 3. Section 668.608, Florida Statutes, is created
50 to read:

51 668.608 Criminal violations.--

52 (1) Except as provided in subsection (2), any person who
 53 violates s. 668.603 commits a misdemeanor of the first degree,
 54 punishable as provided in s. 775.082 or s. 775.083.

55 (2) Any person who violates s. 668.603 commits a felony of
 56 the third degree, punishable as provided in s. 775.082, s.
 57 775.083, or s. 775.084, if:

58 (a) The volume of commercial electronic mail messages
 59 transmitted by the person exceeds 10,000 attempted recipients in
 60 any 24-hour period;

61 (b) The volume of commercial electronic mail messages
 62 transmitted by the person exceeds 100,000 attempted recipients
 63 in any 30-day period;

64 (c) The volume of commercial electronic mail messages
 65 transmitted by the person exceeds 1 million attempted recipients
 66 in any 1-year period;

67 (d) The revenue generated from a specific commercial
 68 electronic mail message transmitted by the person exceeds
 69 \$1,000;

70 (e) The total revenue generated from all commercial
 71 electronic mail messages transmitted by the person to any
 72 electronic mail message service provider or its subscribers
 73 exceeds \$50,000;

74 (f) The person knowingly hires, employs, uses, or permits
 75 any minor to assist in the transmission of a commercial
 76 electronic mail message in violation of s. 668.603; or

77 (g) The person commits a violation otherwise punishable
 78 under subsection (1) within a 5-year period after a previous
 79 conviction under this section.

HB 45

2006
CS

80 Section 4. This act shall take effect July 1, 2006, and
81 shall apply to violations committed on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61 CS Postsentencing DNA Testing
SPONSOR(S): Quinones and others
TIED BILLS: None IDEN./SIM. BILLS: SB 186

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Governmental Operations Committee, 6 Y, 0 N, w/CS, Williamson, Everhart. Row 2: 2) Criminal Justice Committee, Cunningham, Kramer. Row 3: 3) Justice Appropriations Committee. Row 4: 4) State Administration Council. Row 5: 5)

SUMMARY ANALYSIS

Current law provided a four-year window for a convicted person claiming innocence to file a postconviction motion seeking the testing of DNA evidence. The four-year window expired October 1, 2005.

The bill removes the four-year time limitation and expands those eligible to request DNA testing. Any person convicted of a felony and sentenced, including those who pled guilty, may petition the court for postconviction DNA testing. They may petition for the testing at any time following the date that the judgment and sentence is final. In addition, the bill requires the maintenance of physical evidence until the defendant's sentence is completed.

Application of the bill's provisions is retroactive to October 1, 2005.

The Florida Department of Law Enforcement estimates that the fiscal impact of the bill ranges between \$725,072.88 and \$2,088,000 for the first year.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires governmental entities to maintain physical evidence for a longer period.

Safeguard individual liberty – The bill allows any person to file a petition for postconviction DNA testing without any deadline for filing the motion.

B. EFFECT OF PROPOSED CHANGES:

EFFECT OF BILL

The bill deletes the timeframe for filing petitions for postconviction DNA (deoxyribonucleic acid) testing. Current law provides a four-year window for a person maintaining his or her innocence to file a postconviction motion seeking the testing of DNA evidence. The four-year window expired October 1, 2005.

The bill provides that any person convicted¹ of a felony and sentenced may petition the court for postconviction DNA testing at any time following the date that the judgment and sentence is final. As such, a person who pleads guilty or nolo contendere is eligible to petition the court for DNA testing. Current law only allows a person who was found guilty after a trial to petition the court for postconviction DNA testing.

The bill requires the maintenance of physical evidence until the defendant's sentence is completed. Governmental entities cannot dispose of the evidence prior to the defendant's completion of his or her sentence.

Application of the bill's provisions is retroactive to October 1, 2005.

BACKGROUND

GENERAL BACKGROUND

The legislature first addressed the issue of postconviction DNA testing in 2001. It gave a person, convicted at trial and sentenced, a statutory right to petition for postconviction DNA testing of physical evidence collected at the time of the crime. This right is based on the assertion that the DNA test results could exonerate that person or alternatively reduce the sentence.² In order to petition the court, the person must:

- Be convicted at trial and sentenced;
- Show that his or her identity was a genuinely disputed issue in the case and why;
- Claim to be innocent; and
- Meet the reasonable probability standard.³

¹ The term "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld. See, e.g. s. 960.0011, F.S.

² See ch. 2001-97, L.O.F.; ss. 925.11 and 943.3251, F.S.

³ The reasonable probability standard provides that the person would have been acquitted or received a lesser sentence if DNA testing was performed at the time of trial or at the time of the petition under the evolving forensic DNA testing technologies.

If the trial court determines that the facts are sufficiently alleged, the state attorney must respond within 30 days pursuant to court order. The trial court must make a determination based on a finding of whether:

- The physical evidence that may contain DNA still exists;
- The results of DNA testing of that evidence would have been admissible at trial;
- There is reliable proof that the evidence has not been materially altered;
- There is reliable proof that the evidence would be admissible at a future hearing; and
- A reasonable probability exists that the defendant would have been acquitted of the crime or received a lesser sentence if DNA test results had been admitted at trial.

If the court denies the petition for DNA testing, there is a 15-day period to file a motion for rehearing. The 30-day period for filing an appeal is tolled until the court rules on the motion. Otherwise, either party has 30 days to file an appeal of the ruling. The order denying relief must include notice of these time limitations. If the court grants the petition for DNA testing, the defendant is assessed the cost of the DNA testing unless the court finds that the defendant is indigent. The Florida Department of Law Enforcement (FDLE) performs the DNA test pursuant to court order.⁴ FDLE provides the test results to the court, the defendant, and the prosecuting authority.

CURRENT TIME LIMITATIONS

Current law imposes a four-year period for filing such petitions. The time limitation is measured from the later of the following dates based on the law's effective date of October 1, 2003:

- Four years from the date the judgment and sentence became final;
- Four years from the date the conviction was affirmed on direct appeal;
- Four years from the date collateral counsel was appointed;⁵ or
- October 1, 2005.⁶

The law provides a catchall exception to the four-year time limitation. A person convicted at trial and sentenced can petition at any time for postconviction DNA testing if the facts upon which the petition is founded were unknown or could not have been known with the exercise of due diligence.

PRESERVATION OF PHYSICAL EVIDENCE

Current law requires preservation of physical evidence collected at the time of the crime if postconviction DNA testing is possible.⁷ With the exception of death penalty cases, governmental entities maintain physical evidence for at least four years or until October 1, 2005.⁸ Evidence in death penalty cases is preserved for 60 days after the execution of the sentence. Governmental entities can dispose of physical evidence earlier under certain conditions.⁹

Most recently, the governor issued Executive Order 05-160.¹⁰ The order requires governmental entities in the possession of any physical evidence to preserve the evidence if DNA testing may be requested.

RIGHTS TO APPEAL, GENERALLY

Under current law, a convicted person has certain rights to appeal on direct appeal or on matters that are collateral to the conviction.¹¹

⁴ See s. 943.3251, F.S.

⁵ This is applicable solely in death penalty cases.

⁶ Section 925.11(1)(b), F.S.

⁷ Section 925.11(4), F.S.

⁸ See s. 925.11(4), F.S.

⁹ Section 925.11(4)(c), F.S., provides the conditions for early disposal of physical evidence. Any counsel of record, the prosecuting authority, and the Attorney General must receive notice prior to the disposition of evidence. Within 90 days after notification, if the notifying governmental entity does not receive either a copy of a petition for postconviction DNA testing or a request not to dispose of the evidence because of the filing of a petition, the evidence may be disposed of, unless some other provision of law or rule requires its preservation or retention.

¹⁰ The order was issued August 5, 2005.

DIRECT APPEALS AFTER TRIAL

Matters raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such, as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. The legislature codified the "contemporaneous objection" rule. It is a procedural bar that prevents defendants from raising issues on appeal not objected to at the trial level. The rule allows trial court judges to consider rulings carefully, perhaps correcting potential mistakes at the trial level.

In *State v. Jefferson*,¹² the Florida Supreme Court found that the provision did not represent a jurisdictional bar to appellate review in criminal cases, but rather that the legislature acted within its power to "place reasonable conditions" upon this right to appeal.¹³

APPEAL OR REVIEW AFTER A PLEA OF GUILTY OR NOLO CONTENDERE

Appeal rights are limited when a defendant pleads guilty or *nolo contendere* (no contest). Such a plea means a defendant chooses to waive the right to take his or her case to trial.¹⁴

In *Robinson v. State*,¹⁵ the Florida Supreme Court reviewed the constitutionality of the statutory provision. The court upheld the statute making it clear that once a defendant pleads guilty the only issues for appeal are actions that took place contemporaneous with the plea. The court stated: "[t]here is an exclusive and limited class of issues which occur contemporaneously with the entry of the plea that may be the proper subject of an appeal. To our knowledge, they would include only the following: (1) subject matter jurisdiction, (2) the illegality of the sentence, (3) the failure of the government to abide by the plea agreement, and (4) the voluntary and intelligent character of the plea." These principles continue to control.

COLLATERAL REVIEW

Postconviction proceedings, also known as collateral review,¹⁶ usually involve claims that:

- The defendant's trial counsel was ineffective;
- There is newly discovered evidence; and
- The prosecution failed to disclose exculpatory evidence.

The defendant must file a motion in the trial court where he or she was tried and sentenced.¹⁷ Unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and may then hold an evidentiary hearing.¹⁸ If the trial court denies the motion for postconviction relief, with or without holding an evidentiary hearing, the defendant is entitled to appeal this denial to the District Court of Appeal with jurisdiction over the circuit court where the motion was filed.¹⁹

¹¹ Article V, section 4(b) of the Florida Constitution conveys a constitutional protection of this right. See *Amendments to the Florida Rules of Appellate Procedure*, 696 So.2d 1103 (Fla. 1996).

¹² 758 So.2d 661 (Fla. 2000).

¹³ *Id.* at 664 (citing *Amendments to the Florida Rules of Appellate Procedure*, *supra*, at 1104-1105).

¹⁴ Section 924.06(3), F.S.

¹⁵ 373 So.2d 898 (Fla. 1979).

¹⁶ Procedurally, collateral review is generally governed by FLA. R. CRIM. P. 3.850.

¹⁷ The motion must be filed within two years of the finalization of the defendant's judgment and sentence unless the motion alleges that the facts on which the claim is based were unknown to the defendant and could not have been ascertained by the exercise of due diligence. See FLA. R. CRIM. P. 3.850(b).

¹⁸ See FLA. R. CRIM. P. 3.850(d).

¹⁹ In order to grant a new trial based on newly discovered evidence, the trial court must first find that the evidence was unknown and could not have been known at the time of trial through due diligence. In addition, the trial court must find that the evidence is of such a nature that it would probably produce an acquittal on retrial. See *Jones v. State*, 709 So.2d 512 (Fla. 1998); *Torres-Arboleda v. Dugger*, 636 So.2d 1321 (Fla. 1994).

Motions for postconviction relief based on newly discovered evidence must be raised within two years of the discovery of such evidence.²⁰ The Florida Supreme Court has held that the two-year time limit for filing a motion based on newly discovered evidence begins to run on a defendant's postconviction request for DNA testing when the testing method became available. For example, in *Sireci v. State*,²¹ the Florida Supreme Court held that the defendant's postconviction claim filed on his 1976 conviction, which was filed in 1993, was time barred because "DNA typing was recognized in this state as a valid test as early as 1988."²²

A defendant is entitled to challenge a conviction and death sentence in three stages. First, the public defender or private counsel must file a direct appeal to the Florida Supreme Court. An appeal of that decision is to the U.S. Supreme Court by petition for writ of *certiorari*. Second, if the U.S. Supreme Court rejects the appeal, the defendant's sentence becomes final and the state collateral postconviction proceeding or collateral review begins.²³ Third, the defendant seeks a federal writ of *habeas corpus*.²⁴ Appeals of federal *habeas* petitions from Florida are to the U.S. Court of Appeals for the Eleventh Circuit and then to the U.S. Supreme Court. Finally, once the governor signs a death warrant, a defendant typically files a second or successive collateral postconviction motions and a second federal *habeas* petition, along with motions to stay the execution.

C. SECTION DIRECTORY:

Section 1 amends s. 925.11, F.S., relating to postconviction DNA testing.

Section 2 provides an effective date of "upon becoming a law," applied retroactively to October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

Petitions generated by the bill will have an indeterminate impact on trial courts, state attorneys, public defenders, the Department of Corrections, and FDLE. FDLE estimates that costs could range between \$725,073 and \$2,088,000 for the first year.²⁵ See FISCAL COMMENTS.

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of state governmental entities including, but not limited to, FDLE, the courts, state attorneys' offices, public and private labs, hospital facilities, public defenders' offices and capital collateral offices.

²⁰ See *Adams v. State*, 543 So.2d 1244 (Fla.1989).

²¹ 773 So.2d 34 (Fla. 2000).

²² *Id.* at 43. See also *Ziegler v. State*, 654 So.2d 1162 (Fla. 1995).

²³ Rules 3.850, 3.851 and 3.852, FLA. R. CRIM. P., control state collateral postconviction proceedings. Unlike a direct appeal, a collateral postconviction proceeding raises claims that are "collateral" to what transpired in the trial court. Consequently, such postconviction proceedings usually involve three categories of claims: ineffective assistance of trial counsel; denial of due process by the prosecution's suppression of material, exculpatory evidence; and newly discovered evidence, for example, post-trial recantation by a principal witness. Since the consideration of these claims often require new fact-finding, collateral postconviction motions are filed in the trial court that sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.

²⁴ This is a proceeding controlled by Title 28 U.S.C. § 2254(a). Federal *habeas* allows a defendant to petition a U.S. district court to review whether the conviction or sentence violates or was obtained in violation of federal law. Federal *habeas* is almost exclusively limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings.

²⁵ FDLE Fiscal Analysis of HB 61 by Representative Quinones, October 26, 2005.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of local governmental entities, including, but not limited to, police and sheriff's departments, clerks of the court,²⁶ and hospital facilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of nongovernmental entities, including, but not limited to, private labs, hospital facilities, and private counsels' offices.

D. FISCAL COMMENTS:²⁷

FDLE calculates the fiscal impact of the bill based on two different scenarios:

- Scenario 1. FDLE performs the postconviction DNA testing analysis.
- Scenario 2. A private vendor performs the analysis because of outsourcing.

BACKGROUND

Currently there are 60,479 inmates in correctional facilities under the Department of Correction's jurisdiction for crimes including murder, sexual offenses, robbery, burglary and other crimes against people. Approximately four percent or 2,419 are eligible for postconviction DNA testing under the current statute. FDLE has received between 100 and 150 cases for testing. Six percent of the eligible inmates have sought postconviction DNA testing. If FDLE assumes that six percent of the newly eligible defendants will petition for postconviction DNA testing then the department can anticipate that it will receive approximately 3,483 cases. That is approximately 696 cases per year over a five-year period.

SCENARIO 1

FTE

Six hundred ninety six cases require approximately 4.8 FTEs. The analysts require one FTE for support. Cost for analysts is \$51,952.56 each (salary plus benefits). Cost for a Forensic Technologist is \$37,975.08 (salary plus benefits).

FTE (6)

5 Crime Laboratory Analysts	\$259,762.80
1 Forensic Technologist	<u>37,975.08</u>

FTE Total: \$297,737.88 (recurring)

²⁶ Per the Florida Association of Court Clerks and Comptrollers (FACC), the clerk is required to preserve evidence in a criminal case "virtually forever—law requires clerks to hold evidence in a criminal case in the event there could potentially be an appeal....there are appeals even on death row." The clerks are fine with the suggested extended timeframes in the bill. Email from the FACC, October 11, 2005.

²⁷ FDLE Fiscal Analysis of HB 61 by Representative Quinones, October 26, 2005.

COST FOR KITS AND EXPENDABLES

Assuming each case has five samples for DNA analysis, the number of samples is 3480, requiring 35 DNA kits at \$2,981 per kit. An additional \$50,000 is required for other expendables used in DNA analysis.

Expense Dollars Total: \$154,335 (recurring)

REQUIRED EQUIPMENT

The DNA analysis unit requires the following equipment:

2 Thermal Cyclers (\$8000 each)	\$ 16,000
1 Genetic Analyzer (\$157,000)	157,000
1 Real Time PCR Instrument (\$50,000)	50,000
5 Microscopes (\$3,000 each)	15,000
5 Centrifuges (\$2,000 each)	10,000
2 Biological Hoods (\$15,000 each)	30,000
2 Incubators (\$5,000 each)	<u>10,000</u>
Total:	\$273,000 (non-recurring)

TOTAL FISCAL IMPACT

First Year: \$725,072.88
Each year thereafter: \$452,072.88

SCENARIO 2

The cost for outsourcing cases to a private vendor is between \$1,500 and \$3,000 per case depending on the type of analysis and the size of the case. Therefore, the total cost for outsourcing 686 cases is between \$1,044,000 and \$2,088,000 each year for at least five years.

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:

SEPARATION OF POWERS: SUBSTANCE VERSUS PROCEDURE

The bill could raise concerns regarding separation of powers.

CONSTITUTIONAL AUTHORITY

Under Article V, Section 2 of the Florida Constitution, the Supreme Court "shall adopt rules of practice and procedure in all courts . . ." The section also authorizes the legislature to repeal court rules of procedure with a two-thirds vote of the membership of both houses.

SEPARATION OF POWERS

Article II, Section 3 of the Florida Constitution provides that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided

herein.” The legislature has the exclusive power to enact substantive laws²⁸ while Article V, section 2 of the Florida Constitution grants the Florida Supreme Court the power to “adopt rules for the practice and procedure in all courts, including the time for seeking appellate review.”

Changes to substantive law by court rules of procedure appear to violate the separation of powers provision of the Florida Constitution.²⁹

DISTINGUISHING SUBSTANCE FROM PROCEDURE

Generally speaking, “substantive law” involves matters of public policy affecting the authority of government and rights of citizens relating to life, liberty, and property. Court “rules of practice and procedure” govern the administration of courts and the behavior of litigants within a court proceeding. In practice, determining the difference is not simple or clear. In 1973, Justice Adkins described the difference between substance and procedure:

The entire area of substance and procedure may be described as a “twilight zone” and a statute or rule will be characterized as substantive or procedural according to the nature of the problem for which a characterization must be made. From extensive research, I have gleaned the following general tests as to what may be encompassed by the term “practice and procedure.” Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. “Practice and procedure” may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term “procedure,” I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term “rules of practice and procedure” includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.³⁰

This “twilight zone” remains to this day, and causes, in the analysis of many enactments, a difficult determination of whether a matter is procedural or substantive.

DNA TESTING

In 2001, the legislature created a limited statutory right to give defendants in closed criminal cases an additional opportunity to prove their innocence using DNA evidence.³¹ It provided a two-year period for pending and future cases that expired on October 1, 2003. Shortly after enactment, the court passed a rule to implement the statute reflecting the statutory deadlines.³² Prior to the October 1 expiration, the court issued an order temporarily suspending the deadline. In addition, the court ordered government entities to store evidence in all closed criminal cases indefinitely.³³ The opinion of the court suspending the statutory deadline was a four to three decision. Justice Wells said in dissent, “. . . this Court does not have jurisdiction to ‘suspend’ a provision of a lawfully enacted

²⁸ See Art. III, s. 1, Fla. Const.; *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); *Johnson v. State*, 336 So.2d 93 (Fla. 1976).

²⁹ *Id.*

³⁰ *In re Florida Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1973).

³¹ See s. 925.11, F.S.; ch. 2001-197, L.O.F.

³² See *Amendment to Florida Rules of Criminal Procedure Creating Rule 3.853*, 807 So.2d 633 (Fla. 2001).

³³ See *Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So.2d 190 (Fla. 2003).

statute or to mandate that evidence . . . be maintained beyond the period the statute specifically states that the evidence is to be maintained."³⁴

In 2004, the legislature further amended the law to extend the period from two to four years and provided for expiration October 1, 2005.³⁵ In September 2004, the court amended its rule to reflect the statutory changes.³⁶ The court amended the rule, once again, to extend the deadline from October 1, 2005, to July 1, 2006.³⁷

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Bar "adopted a legislative position calling for a permanent method for state inmates to seek DNA testing that could exonerate them."³⁸ The Bar took no position regarding the availability of postconviction DNA testing for those who plead guilty or no contest.³⁹

The Florida Innocence Initiative contends that maintenance of evidence is the most critical aspect of preserving a defendant's right to DNA testing.⁴⁰

FDLE recommends that the department receive notice at the time a motion for postconviction DNA testing is filed rather than when it is signed. FDLE staff could then assist the parties and expedite the testing process.⁴¹

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On October 19, 2005, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute. The strike-all amendment authorizes postconviction DNA testing of any person convicted of a felony and sentenced, at any time, rather than limiting testing to those persons maintaining their innocence. The strike-all amendment removes the authorization for early disposal of physical evidence by governmental entities.

³⁴ Justice Wells was joined by Justices Cantero and Bell. Comments of the Criminal Court Steering Committee, October 13, 2003, at 8 and 9 n.33, (citing Wells, J., dissenting in *Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A)*).

³⁵ See ch. 2004-67, L.O.F.

³⁶ See 884 So.2d 934.

³⁷ See *Amendments to Florida Rule of Criminal Procedure 3.853(D)*, SC05-1702 (September 29, 2005).

³⁸ Blankenship, G. "Bar supports permanent DNA reforms," *The Florida Bar News*, September 15, 2005.

³⁹ *Id.*

⁴⁰ Pudlow, J. "Momentum builds for extending DNA testing," *The Florida Bar News*, September 1, 2005.

⁴¹ FDLE Analysis of HB 61, "Issues Related to FDLE," October 26, 2005.

HB 61

2006
CS

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the postsentencing testing of DNA
7 evidence; amending s. 925.11, F.S.; revising the
8 circumstances under which a person who has been sentenced
9 for committing a felony may petition the court for
10 postsentencing testing of DNA evidence; abolishing certain
11 time limitations imposed upon such testing; authorizing a
12 governmental entity to dispose of physical evidence if the
13 sentence imposed has expired and another law or rule does
14 not require that the evidence be retained; providing for
15 retroactive application; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. . Section 925.11, Florida Statutes, is amended to
20 read:

21 925.11 Postsentencing DNA testing.--

22 (1) PETITION FOR EXAMINATION.--

HB61

2006
CS

23 (a) A person who has been convicted of a felony and
 24 sentenced for committing that offense ~~tried and found guilty of~~
 25 ~~committing a crime and has been sentenced by a court established~~
 26 by the laws of this state may petition that court to order the
 27 examination of physical evidence collected at the time of the
 28 investigation of the crime for which he or she has been
 29 sentenced which may contain DNA (deoxyribonucleic acid) and
 30 which would exonerate that person or mitigate the sentence that
 31 person received.

32 (b) A petition for postsentencing DNA testing may be filed
 33 or considered at any time following the date that the judgment
 34 and sentence in the case becomes final. ~~Except as provided in~~
 35 ~~subparagraph 2., a petition for postsentencing DNA testing may~~
 36 ~~be filed or considered.~~

37 1. ~~Within 4 years following the date that the judgment and~~
 38 ~~sentence in the case becomes final if no direct appeal is taken,~~
 39 ~~within 4 years following the date that the conviction is~~
 40 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~
 41 ~~following the date that collateral counsel is appointed or~~
 42 ~~retained subsequent to the conviction being affirmed on direct~~
 43 ~~appeal in a capital case, or by October 1, 2005, whichever~~
 44 ~~occurs later, or~~

45 2. ~~At any time if the facts on which the petition is~~
 46 ~~predicated were unknown to the petitioner or the petitioner's~~
 47 ~~attorney and could not have been ascertained by the exercise of~~
 48 ~~due diligence.~~

49 (2) METHOD FOR SEEKING POSTSENTENCING DNA TESTING.--

HB61

2006
CS

50 (a) The petition for postsentencing DNA testing must be
51 made under oath by the sentenced defendant and must include the
52 following:

53 1. A statement of the facts relied on in support of the
54 petition, including a description of the physical evidence
55 containing DNA to be tested and, if known, the present location
56 or the last known location of the evidence and how it was
57 originally obtained;

58 2. A statement that the evidence was not previously tested
59 for DNA or a statement that the results of any previous DNA
60 testing were inconclusive and that subsequent scientific
61 developments in DNA testing techniques would likely produce a
62 definitive result;

63 3. A statement that the sentenced defendant is innocent
64 and how the DNA testing requested by the petition will exonerate
65 the defendant of the crime for which the defendant was sentenced
66 or will mitigate the sentence received by the defendant for that
67 crime;

68 4. A statement that identification of the defendant is a
69 genuinely disputed issue in the case, and why it is an issue;

70 5. Any other facts relevant to the petition; and

71 6. A certificate that a copy of the petition has been
72 served on the prosecuting authority.

73 (b) Upon receiving the petition, the clerk of the court
74 shall file it and deliver the court file to the assigned judge.

75 (c) The court shall review the petition and deny it if it
76 is insufficient. If the petition is sufficient, the prosecuting

HB 61

2006
CS

77 authority shall be ordered to respond to the petition within 30
78 days.

79 (d) Upon receiving the response of the prosecuting
80 authority, the court shall review the response and enter an
81 order on the merits of the petition or set the petition for
82 hearing.

83 (e) Counsel may be appointed to assist the sentenced
84 defendant if the petition proceeds to a hearing and if the court
85 determines that the assistance of counsel is necessary and makes
86 the requisite finding of indigency.

87 (f) The court shall make the following findings when
88 ruling on the petition:

89 1. Whether the sentenced defendant has shown that the
90 physical evidence that may contain DNA still exists;

91 2. Whether the results of DNA testing of that physical
92 evidence would be admissible at trial and whether there exists
93 reliable proof to establish that the evidence has not been
94 materially altered and would be admissible at a future hearing;
95 and

96 3. Whether there is a reasonable probability that the
97 sentenced defendant would have been acquitted or would have
98 received a lesser sentence if the DNA evidence had been admitted
99 at trial.

100 (g) If the court orders DNA testing of the physical
101 evidence, the cost of such testing may be assessed against the
102 sentenced defendant unless he or she is indigent. If the
103 sentenced defendant is indigent, the state shall bear the cost
104 of the DNA testing ordered by the court.

HB 61

2006
CS

105 (h) Any DNA testing ordered by the court shall be carried
106 out by the Department of Law Enforcement or its designee, as
107 provided in s. 943.3251.

108 (i) The results of the DNA testing ordered by the court
109 shall be provided to the court, the sentenced defendant, and the
110 prosecuting authority.

111 (3) RIGHT TO APPEAL; REHEARING.--

112 (a) An appeal from the court's order on the petition for
113 postsentencing DNA testing may be taken by any adversely
114 affected party.

115 (b) An order denying relief shall include a statement that
116 the sentenced defendant has the right to appeal within 30 days
117 after the order denying relief is entered.

118 (c) The sentenced defendant may file a motion for
119 rehearing of any order denying relief within 15 days after
120 service of the order denying relief. The time for filing an
121 appeal shall be tolled until an order on the motion for
122 rehearing has been entered.

123 (d) The clerk of the court shall serve on all parties a
124 copy of any order rendered with a certificate of service,
125 including the date of service.

126 (4) PRESERVATION OF EVIDENCE.--

127 (a) Governmental entities that may be in possession of any
128 physical evidence in the case, including, but not limited to,
129 any investigating law enforcement agency, the clerk of the
130 court, the prosecuting authority, or the Department of Law
131 Enforcement shall maintain any physical evidence collected at

HB61

2006
CS

132 the time of the crime for which a postsentencing testing of DNA
133 may be requested.

134 ~~(b) Except for a case in which the death penalty is~~
135 ~~imposed, the evidence shall be maintained for at least the~~
136 ~~period of time set forth in subparagraph (1)(b)1.~~ In a case in
137 which the death penalty is imposed, the evidence shall be
138 maintained for 60 days after execution of the sentence. In all
139 other cases, a governmental entity may dispose of the physical
140 evidence if the term of the sentence imposed in the case has
141 expired and

142 ~~(c) A governmental entity may dispose of the physical~~
143 ~~evidence before the expiration of the period of time set forth~~
144 ~~in paragraph (1)(b) if all of the conditions set forth below are~~
145 ~~met.~~

146 ~~1. The governmental entity notifies all of the following~~
147 ~~individuals of its intent to dispose of the evidence: the~~
148 ~~sentenced defendant, any counsel of record, the prosecuting~~
149 ~~authority, and the Attorney General.~~

150 ~~2. The notifying entity does not receive, within 90 days~~
151 ~~after sending the notification, either a copy of a petition for~~
152 ~~postsentencing DNA testing filed pursuant to this section or a~~
153 ~~request that the evidence not be destroyed because the sentenced~~
154 ~~defendant will be filing the petition before the time for filing~~
155 ~~it has expired.~~

156 ~~3.~~ no other provision of law or rule requires that the
157 physical evidence be preserved or retained.

158 Section 2. This act shall take effect upon becoming a law
159 and shall apply retroactively to October 1, 2005.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Correctional Probation Officers
SPONSOR(S): Kreegel
TIED BILLS: **IDEN./SIM. BILLS:** SB 690

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

SUMMARY ANALYSIS

Currently, if a correctional probation officer elects to carry a firearm while on duty, they are responsible for the cost of the firearm.

This bill requires that the Department of Corrections provide probation officers who elect to carry a firearm a standardized semiautomatic firearm and standardized ammunition for such firearm. This bill gives the Department the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the bill's provisions.

See fiscal section for fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill requires the Department of Corrections to provide standardized firearms and ammunition to probation officers who elect to carry a firearm. This bill also gives the Department of Corrections the authority to adopt rules.

Maintain Public Security - This bill requires the Department of Corrections to provide standardized firearms and ammunition to probation officers who elect to carry a firearm.

B. EFFECT OF PROPOSED CHANGES:

The Department of Corrections (Department) employs over 2,000 correctional probation officers (CPOs) whose primary responsibilities are the supervised custody, surveillance, and control of assigned offenders.¹ Currently, CPOs who have received authorization² from the Department may elect to carry Department-approved firearms, ammunition, and reloading devices while on duty.³ Although the Department currently provides standardized ammunition to its CPOs, the Department's rules require that CPOs purchase their own firearm.⁴

This bill requires that the Department provide CPOs who elect to carry a firearm a standardized semiautomatic firearm and standardized ammunition for such firearm. If the CPO decides to not carry a firearm, decides to change the type of firearm he/she carries, or is no longer employed by the Department, this bill provides that the CPO must return the firearm and any unused ammunition to the Department. This bill gives the Department the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its provisions.

C. SECTION DIRECTORY:

¹ Section 943.10(3), F.S., defines "correctional probation officer" as a "full time state employees whose primary responsibilities are the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community." See also Department of Corrections Procedure 302.313.

² CPOs requesting authorization to carry a firearm while on duty must submit a written request to the Department containing documentation that they have complied with the required training and qualification requirements of the Criminal Justice Standards and Training Commission and the Department. The Department must then review the request, review documentation of the officer's training and qualifications, and complete a Florida Crime Information Center/National Crime Information Center check on the officer and the firearm the officer intends to use. If approved, the Department issues the CPO a weapon card, which establishes that the CPO is authorized to carry a specific firearm while on duty. See Rule 33-302.104, F.A.C.

³ Department of Corrections' Procedure 302.313 authorizes CPOs to carry one of the following firearms:

- On or after July 13, 2005,
 - o Smith and Wesson five or six shot revolver of .38 or .357 caliber, with a barrel length of two-four inches
 - o one of the following semi-automatic pistols with a barrel length not to exceed five inches and a magazine with fifteen round law enforcement capacity:
 - Smith and Wesson 9 millimeter,
 - Beretta 9 millimeter, 92 series , or
 - Glock 9 millimeter.
- Prior to July 13, 2005, if an officer purchased an approved firearm not specified above, the officer will be allowed to qualify or maintain qualification with that firearm and will be allowed to continue with annual qualification with that specific firearm.

⁴ Rule 33-302.104(11), F.A.C.

Section 1. Creates s. 943.17001, F.S.; requiring the Department of Corrections to provide a standardized semiautomatic firearm and standardized ammunition to probation officers who choose to carry a firearm; requiring probation officers to return firearms and ammunition to the Department of Corrections if the officer no longer elects to carry a firearm, changes the type of firearm he/she chooses to carry; or is no longer employed by the Department of Corrections; granting the Department of Corrections the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department states that approximately 850 of its 2,000+ CPOs are currently authorized to carry a firearm. A Department survey of its CPOs revealed that approximately 1,801 CPOs would elect to carry a firearm if the Department were to provide them.⁵ For purposes of this analysis, it is assumed that approximately 950 additional CPOs will elect to carry a firearm if the Department were required to provide one.

The Department states in its fiscal analysis that it will cost \$1,516,946.28 to implement the provisions of this bill.⁶ However, this figure only includes the cost of a firearm and a holster. Current law/rules make it likely that there will be other costs associated with this bill, such as the following:

Training → CPOs must successfully complete a Criminal Justice Standards and Training Commission (CJSTC) Basic Recruit Training Program in order to receive their certification.⁷ Currently, firearm training is not included in the Basic Recruit program for CPOs. Thus, CPOs who elect to carry a firearm under current law/rules must undergo firearms training that is separate from their Basic Recruit program. The Department currently pays for CPO firearm training. Training costs would increase if an additional 950 CPOs elected to carry a firearm.

Storage Lockers → By rule, probation offices must have a secure space containing a secure locker for storage of firearms.⁸ The Department currently pays for these storage lockers. Additional lockers would likely be needed if an additional 950 CPOs elected to carry a firearm.

Chemical Agents → By rule, CPOs who carry firearms must be certified to carry and must carry chemical agents.⁹ The Department currently pays for the chemical agents. Additional chemical agent supplies would likely be needed if an additional 950 CPOs elected to carry a firearm.¹⁰

Handcuffs → By rule, CPOs who carry firearms must complete handcuff training and must carry handcuffs.¹¹ The Department currently pays for handcuffs. Additional handcuffs would likely be needed if an additional 950 CPOs elected to carry a firearm.

⁵ These numbers do not anticipate the number of officers in future years who may elect to carry a firearm.

⁶ This figure is derived by multiplying the cost of a 9 millimeter Smith and Wesson semiautomatic firearm and holster (\$842.28) times the number of CPOs who will elect to carry a firearm provided by the Department (1,801).

⁷ Rule 11b-35.002, F.A.C.

⁸ Rule 33-302.104(4)(c), F.A.C.

⁹ Rule 33-302.104(7)(c), F.A.C.; CPOs who are not authorized to carry a firearm may elect to carry chemical agents.

¹⁰ There would not be an increased cost to train the additional 950 CPOs in the use of chemical agents because such training is provided to all CPOs as part of the CPO Basic Recruit program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Department of Corrections to implement the bill's provisions (lines 26-29). The bill specifically provides rule-making authority to the Department to designate a standardized semiautomatic firearm and standardized ammunition. The bill appears to give sufficient rule making authority that is appropriately limited.

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 correctional probation officers;
 3 creating s. 943.17001, F.S.; requiring the Department of
 4 Corrections to provide a standardized firearm and
 5 ammunition to correctional probation officers; providing
 6 rulemaking authority of the department; providing an
 7 effective date.

8

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

10

11 Section 1. Section 943.17001, Florida Statutes, is created
 12 to read:

13 943.17001 Correctional probation officers; provision of
 14 standardized firearm and ammunition.--Upon completion of
 15 training, certification, and approval as a correctional
 16 probation officer, the Department of Corrections shall provide
 17 to any correctional probation officer who chooses to carry a
 18 firearm a standardized semiautomatic firearm as designated by
 19 department rule, and, for the duration of the correctional
 20 probation officer's employment, standardized ammunition as
 21 designated by department rule for the semiautomatic firearm
 22 issued to the correctional probation officer. If a correctional
 23 probation officer elects to no longer carry a firearm, changes
 24 the type of firearm he or she chooses to carry, or is no longer
 25 employed by the department, he or she must return the firearm
 26 and any unused ammunition issued by the department. The
 27 department has the authority to adopt rules pursuant to ss.

HB 283

2006

28 | 120.536(1) and 120.54 to implement the provisions of this
29 | section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325
SPONSOR(S): Gelber
TIED BILLS:

Commission on Capital Cases

IDEN./SIM. BILLS: SB 360

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

SUMMARY ANALYSIS

The Commission on Capital Cases, a legislative commission within the Office of Legislative Services, maintains a registry of attorneys qualified to represent defendants in capital collateral (postconviction) proceedings. Currently, a registry attorney is authorized to represent only 5 capital collateral defendants at one time. This bill authorizes a registry attorney to represent up to 10 capital collateral defendants at one time.

The bill significantly modifies the minimum qualifications for registry attorneys. The bill requires registry attorneys to submit reports to the commission on a quarterly basis. The bill authorizes the commission to remove an attorney from the registry who has not executed a contract for postconviction representation or filed a quarterly report as required by law.

Currently, a registry attorney is entitled to payment at each stage of the postconviction process according to a statutory schedule. The bill modifies the payment schedule by authorizing payment of an attorney after the final evidentiary hearing has been held on the defendant's postconviction motion rather than requiring the attorney to wait until the judge has ruled on the postconviction motion.

The bill addresses issues with regard to the payment of fees by setting forth the Legislative finding that not all capital collateral cases are extraordinary or unusual, and requiring written findings of fact where a judge deviates upward from the statutorily authorized fee schedule.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill authorizes an attorney to represent 10 capital postconviction defendants, rather than 5 as under current law.

B. EFFECT OF PROPOSED CHANGES:

Overview of Postconviction Proceedings in Capital Cases: A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court. At this stage, a capital defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. Matters which are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. If the Florida Supreme Court affirms the capital defendant's conviction and sentence, a defendant can appeal that decision to the United States Supreme Court by filing a petition for writ of certiorari. If the Supreme Court refuses to hear or rejects the defendant's appeal, a defendant is entitled to begin state postconviction proceedings.

State postconviction proceedings are controlled by Florida Rules of Criminal Procedure 3.850, 3.851 and 3.852. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, a collateral postconviction proceeding is designed to raise claims which are "collateral" to what transpired in the trial court. Postconviction proceedings usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence or claims that the prosecution failed to disclose exculpatory evidence. Since the consideration of these claims often require new fact finding, collateral postconviction motions are filed in the trial court which sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.

After state postconviction proceedings have been completed, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. The federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. The most common issue raised is whether the defendant's trial counsel was ineffective.

Finally, once the Governor signs a death warrant, a defendant will typically file a second Rule 3.850 motion and a second federal habeas petition along with motions to stay the execution.

In the middle and southern regions of Florida, the Capital Collateral Regional Counsel provide postconviction representation to indigent capital defendants.¹ In the northern region of the state, representation is provided by private attorneys appointed by the court as explained in more detail below.

Commission on Capital Cases

Section 27.709, F.S. creates the Commission on Capital Cases, a legislative commission within the Office of Legislative Services which is tasked with reviewing the "administration of justice in capital collateral cases". The commission is comprised of two members appointed by the Governor, two

¹ s. 27.701, F.S.

Senators appointed by the President of the Senate and two members of the House of Representatives appointed by the Speaker of the House of Representatives.

Registry Attorneys

In 1998, the legislature created a registry of private attorneys to represent a death row inmate when a Capital Collateral Regional Counsel has an excessive caseload or has a conflict of interest. Since 2003 postconviction representation of all indigent capital defendants in the northern region of Florida has been provided by registry attorneys. The registry of attorneys is comprised of lawyers who have met certain statutory criteria and is maintained by the Commission on Capital Cases.² A registry attorney must be a member in good standing in the Florida Bar, with not less than 3 years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of these proceedings.³

A registry attorney is required to attend annually at least 10 hours of continuing legal education specifically devoted to the defense of capital cases. A registry attorney is not permitted to represent more than 5 defendants in capital postconviction litigation at any one time.

A registry attorney who is appointed by the court to represent a capital defendant is required to enter into a contract with the Chief Financial Officer. Section 27.711(4), F.S., provides a fee and payment schedule. Upon approval by the trial court, and after certain stages in litigation are complete, a registry attorney is entitled to payment of \$100 per hour by the Chief Financial Officer, up to a maximum of:

- \$2,500 upon accepting the appointment and filing the notice of appearance,
- \$20,000 after timely filing in the trial court the capital defendant's complete original motion for postconviction relief, or if the trial court schedules a hearing on the matter that makes the filing of the motion unnecessary or otherwise disposes of the case,
- \$20,000 after the trial court issues a final order granting or denying the defendant's motion for postconviction relief,
- \$20,000 after timely filing in the Supreme Court the defendant's briefs that address the trial court's final order granting or denying the defendant's motion for postconviction relief and the state petition for writ of habeas corpus,
- \$10,000 after the trial court issues an order, pursuant to a remand from the Supreme Court, which directs the trial court to hold further proceedings on the motion for postconviction relief,
- \$4,000 after the appeal of the trial court's denial of the motion for postconviction relief and the state petition for writ of habeas corpus become final in the Supreme Court,
- \$2,500 at the conclusion of the defendant's postconviction capital collateral proceeding in state court and after filing a petition for writ of certiorari in the U.S. Supreme Court,
- \$5,000 if at any time a death warrant is issued to compensate for attorneys fees and costs for representing the defendant throughout the proceedings before the state courts

² s. 27.710(2), F.S

³ s. 27.704(2), F.S

In addition, the attorney is authorized to hire an investigator for \$40 per hour, up to a maximum of \$15,000, to assist in the defendant's representation.⁴ The attorney is also entitled to a maximum of \$15,000 for miscellaneous expenses such as the cost of preparing transcripts, compensating expert witnesses and copying documents.

The court is required to monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation and must receive and evaluate allegations regarding the performance of assigned counsel.⁵

Fees in excess of statutory schedule

In the recent case of *Florida Department of Financial Services v. Freeman*⁶, the Florida Supreme Court reaffirmed the holding of several prior cases that it is "within the trial judge's discretion to grant fees beyond the statutory maximum to registry counsel in capital collateral cases when 'extraordinary or unusual circumstances exist.'" In *Freeman*, the Department of Financial Services appealed an order from a circuit court granting a registry attorney, who had signed the required contract for services, fees in excess of the statutory maximum. The trial court had granted \$27,940.74 in fees for services that were statutorily capped at \$2,500. The *Freeman* opinion reviewed the court's prior holdings on the issue of fees in excess of statutory caps. In *Olive v. Maas*,⁷ the court held that "fees in excess of the statutory cap are not always awarded to registry counsel in capital collateral cases; however, registry counsel is not foreclosed from requesting excess compensation 'should he or she establish that, given the facts and circumstances of a particular case, compensation within the statutory cap would be confiscatory of this or her time, energy and talent'". The *Olive* court relied on the opinion of *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986) which related to compensation to attorneys representing capital defendants at the trial and during direct appeal.

According to the *Freeman* court, the attorney requesting fees in excess of the statutory limits has the burden of establishing facts in support of the award. The Supreme Court found that the record from the trial court provided "no evidence upon which the judge could rely to determine if extraordinary or unusual circumstances existed to support an award of excessive fees" and remanded the case back to the trial court for an evidentiary hearing.

Effect of HB 325

Continuing legal education: HB 325 amends s. 27.709, F.S. to authorize the Commission on Capital Cases to sponsor continuing legal education training devoted specifically to capital cases and to undertake any project recommended or approved by the commission members.

The bill also amends s. 27.710, F.S. to modify the continuing legal education (CLE) requirements for registry attorneys. Currently, the registry attorneys must attend 10 hours of CLE annually. The bill requires registry attorneys who are handling a capital case to attend at least 12 hours of CLE every 2 years.

Currently, an attorney who is actively representing a capital defendant is entitled to a maximum of \$500 per fiscal year for tuition and expenses for continuing legal education that pertains to the representation of capital defendants. The bill clarifies that a registry attorney is entitled to \$500 for CLE expenses, regardless of how many capital defendants the attorney represents.

Qualifications: Currently, to be eligible for court appointment as counsel in postconviction proceedings, an attorney must certify that he or she satisfies the minimum experience and training requirements. As

⁴ s. 27.711(5), F.S.

⁵ s. 27.711(12), F.S.

⁶ *Florida Department of Financial Services v. Freeman*, 2006 WL 176748 (Fla. January 26, 2006).

⁷ *Olive v. Maas*, 811 So.2d 644 (Fla. 2002).

explained above, a registry attorney must have not less than 3 years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of these proceedings. These requirements are the same as those for the Capital Collateral Regional Counsel. The bill substantially modifies the minimum requirements for registry counsel by providing that a registry attorney must certify that he or she:

1. Is an active practitioner who has at least 5 years' experience in the practice of criminal law;
2. Is familiar with the production of evidence and the use of expert witnesses, including psychiatric and forensic evidence;
3. Has demonstrated proficiency necessary for representation in capital cases including the investigation and presentation of mitigation evidence;
4. Has satisfied the above CLE requirements;
5. Has tried at least 9 state or federal criminal jury trials to completion, two of which must have been capital cases and
 - a. Three of which must have been murder trials;
 - b. One of which must have been a murder trial and 5 of which must have been other felony trials; or
 - c. One of which must have included a postconviction evidentiary hearing and five of which must have been other felony trials
6. Alternatively, the attorney can certify that he or she has appealed one capital conviction and appealed:
 - a. at least three felony convictions, one of which must have been murder or
 - b. at least three felony convictions and participated in one capital postconviction evidentiary hearing.

If the trial court finds that exceptional circumstances exist requiring the appointment of an attorney who does not meet the criteria set forth above, the trial court must enter a written order specifying the exceptional circumstances requiring appointment of the attorney and explicit findings that the attorney chosen will provide competent representation in accordance with the intent of the section.

Failure to comply with criterion set forth in the section may be cause to remove the attorney from the registry until the criterion is satisfied. The bill provides that satisfaction of the minimum requirements must be proven by written notification to the commission. The certification requirement can be satisfied by submission of the application by electronic mail without a signature.

Contracting: Currently, a private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Chief Financial Officer. If an attorney fails to execute the contract within thirty days after the date the contract is mailed to the attorney, the executive director of the commission must notify the trial court. HB 325 requires the executive director to remove the attorney from the registry list.

Quarterly reporting: The bill also requires a registry attorney to agree to submit quarterly reports to the commission and provides that if an attorney fails to submit a quarterly report within 30 days following the end of the quarter, the executive director must remove the attorney from the registry.

Federal representation: The bill provides that if a registry attorney does not wish to continue representation in the federal courts, the attorney must make reasonable efforts to assist the defendant in finding replacement counsel who meets the federal requirements to represent a capital defendant in federal proceedings.

Payment: The bill also amends s. 27.711, F.S., to modify the payment schedule for registry attorneys. The bill authorizes payment of \$100 per hour, up to a maximum of \$20,000 after the final hearing on the capital defendant's motion for postconviction relief rather than when the trial court issues a final order granting or denying the defendant's motion. In some cases, judges take an extended amount of time in ruling on a postconviction motion after the evidentiary hearing – this provision will authorize

payment to the attorney sooner. The bill authorizes payment of \$100 per hour, up to a maximum of \$2,500 for the preparation of an initial federal pleading rather than after filing a petition for writ of certiorari in the United States Supreme Court.

The bill provides that an attorney who incurs costs for representing capital defendants on a pro bono basis will be paid from registry funds by the Chief Financial Officer if payments are approved by the trial court.

The bill provides that if a trial court judge intends to award attorney fees in excess of those outlined in statute, the judge must include written findings of fact that specifically state the extraordinary nature of the expenditures of the time, energy, and talents of the attorney in the case which are not ordinarily expended in other capital collateral cases. The bill also amends s. 27.7001, F.S. to provide that the Legislature finds that not all capital collateral cases are extraordinary and unusual.

Limitation on number of inmates represented: The bill will authorize a registry attorney to represent up to 10 inmates in capital postconviction litigation at any one time rather than only 5 inmates. The ten-inmate-representation limit includes capital postconviction cases proceeding under contract with the capital collateral regional counsel⁸, inmates represented pro bono and inmates privately retaining the attorney. An attorney may not be appointed to additional capital postconviction cases until the attorney's representation total falls below the 10-case limit.

C. SECTION DIRECTORY:

Section 1. Amends s. 27.7001, F.S. to provide legislative findings.

Section 2. Amends s. 27.709, F.S. to authorize Commission on Capital Cases to sponsor continuing legal education programs.

Section 3. Amends s. 27.710, F.S.; changes criteria for registry attorneys; requires quarterly reporting to commission; authorizes executive director to remove attorney from registry in certain circumstances.

Section 4. Amends s. 27.711, F.S.; modifies payment schedule for registry attorneys.

Section 5. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate, while authorizing additional cases per attorney, large changes to the number of death sentence cases is not expected.

Also, the bill provides that if a judge intends to award attorney fees in excess of those authorized by law, the judge must make findings of fact justifying the order. Courts are already allowing for fees in excess of statutory caps in certain circumstances. To the extent that judges are currently ordering fees in excess of the statutory maximum in cases that would not qualify as extraordinary, this bill may result in a limitation on excessive fees.

⁸ Section 27.704(2), F.S. authorizes the CCRC to contact with private counsel or with public defenders to provide representation to death sentenced inmates.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Court-appointed capital collateral counsel should receive certain fees more quickly than under current law, in that the bill provides for payment after the final hearing on the original motion for postconviction relief, rather than upon the issuance of the court's order on the motion. Further, costs incurred by an attorney who has taken a capital collateral case on a pro bono basis may be paid by the Chief Financial Officer, upon approval of the court.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the Commission on Capital Cases;
 amending s. 27.7001, F.S.; providing legislative findings;
 amending s. 27.709, F.S.; authorizing the Commission on
 Capital Cases to sponsor continuing legal education
 programs devoted specifically to capital cases; amending
 s. 27.710, F.S.; specifying criteria that a private
 attorney must satisfy in order to be eligible to be
 appointed as counsel in a postconviction capital
 collateral proceeding; providing that a judge may appoint
 an attorney who does not meet the appointment criteria if
 exceptional circumstances exist; providing that an
 attorney may be removed from the capital collateral
 registry if the attorney does not meet the criteria;
 directing the executive director of the commission to
 remove an attorney from the registry if the attorney fails
 to timely file an executed contract; requiring a private
 attorney appointed by a court to represent a capital
 defendant to submit a report each quarter to the
 commission; requiring that the executive director remove
 an attorney from the registry if the attorney does not
 submit the report within a specified time; requiring that
 an attorney make reasonable efforts to assist the person
 under a sentence of death in finding an attorney under
 certain circumstances; amending s. 27.711, F.S.; requiring
 that costs incurred during pro bono representation of a
 capital defendant be paid to the attorney; providing that
 an attorney who is listed on the registry and representing

29 at least one capital defendant is entitled to tuition and
 30 expenses for continuing legal education courses; providing
 31 that an attorney may represent no more than 10 inmates in
 32 capital postconviction cases at any one time; requiring
 33 that, if a trial court judge intends to award attorney's
 34 fees in excess of those set by law, the judge must include
 35 written findings of fact specifically stating the
 36 extraordinary nature of the expenditures of the time,
 37 energy, and talents of the attorney in the case which are
 38 not ordinarily expended in other capital collateral cases;
 39 providing an effective date.

40

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

42

43 Section 1. Section 27.7001, Florida Statutes, is amended
 44 to read:

45 27.7001 Legislative intent and findings.--It is the intent
 46 of the Legislature to create part IV of this chapter, consisting
 47 of ss. 27.7001-27.711, inclusive, to provide for the collateral
 48 representation of any person convicted and sentenced to death in
 49 this state, so that collateral legal proceedings to challenge
 50 any Florida capital conviction and sentence may be commenced in
 51 a timely manner and so as to assure the people of this state
 52 that the judgments of its courts may be regarded with the
 53 finality to which they are entitled in the interests of justice.
 54 It is the further intent of the Legislature that collateral
 55 representation shall not include representation during retrials,
 56 resentencings, proceedings commenced under chapter 940, or civil

57 | litigation. The Legislature further finds that not all capital
 58 | collateral cases are extraordinary and unusual.

59 | Section 2. Paragraph (d) is added to subsection (2) of
 60 | section 27.709, Florida Statutes, to read:

61 | 27.709 Commission on Capital Cases.--

62 | (2)

63 | (d) The commission may sponsor programs of continuing
 64 | legal education which are devoted specifically to capital cases
 65 | and shall undertake any project recommended or approved by the
 66 | commission members.

67 | Section 3. Section 27.710, Florida Statutes, is amended to
 68 | read:

69 | 27.710 Registry of attorneys applying to represent persons
 70 | in postconviction capital collateral proceedings; certification
 71 | of minimum requirements; appointment by trial court.--

72 | (1) The executive director of the Commission on Capital
 73 | Cases shall compile and maintain a statewide registry of
 74 | attorneys in private practice who have certified that they meet
 75 | the minimum requirements of s. 27.704(2) and, who are available
 76 | for appointment by the court under this section to represent
 77 | persons convicted and sentenced to death in this state in
 78 | postconviction collateral proceedings, ~~and who have attended~~
 79 | ~~within the last year a continuing legal education program of at~~
 80 | ~~least 10 hours' duration devoted specifically to the defense of~~
 81 | ~~capital cases, if available. Continuing legal education programs~~
 82 | ~~meeting the requirements of this rule offered by The Florida Bar~~
 83 | ~~or another recognized provider and approved for continuing legal~~
 84 | ~~education credit by The Florida Bar shall satisfy this~~

85 ~~requirement. The failure to comply with this requirement may be~~
 86 ~~cause for removal from the list until the requirement is~~
 87 ~~fulfilled.~~ To ensure that sufficient attorneys are available for
 88 appointment by the court, when the number of attorneys on the
 89 registry falls below 50, the executive director shall notify the
 90 chief judge of each circuit by letter and request the chief
 91 judge to promptly submit the names of at least three private
 92 attorneys who regularly practice criminal law in that circuit
 93 and who appear to meet the minimum requirements to represent
 94 persons in postconviction capital collateral proceedings. The
 95 executive director shall send an application to each attorney
 96 identified by the chief judge so that the attorney may register
 97 for appointment as counsel in postconviction capital collateral
 98 proceedings. As necessary, the executive director may also
 99 advertise in legal publications and other appropriate media for
 100 qualified attorneys interested in registering for appointment as
 101 counsel in postconviction capital collateral proceedings. Not
 102 later than September 1 of each year, and as necessary
 103 thereafter, the executive director shall provide to the Chief
 104 Justice of the Supreme Court, the chief judge and state attorney
 105 in each judicial circuit, and the Attorney General a current
 106 copy of its registry of attorneys who are available for
 107 appointment as counsel in postconviction capital collateral
 108 proceedings. The registry must be indexed by judicial circuit
 109 and must contain the requisite information submitted by the
 110 applicants in accordance with this section.

111 (2) (a) To be eligible for court appointment as counsel in
 112 postconviction capital collateral proceedings, an attorney must

113 certify on an application provided by the executive director
 114 that he or she:

115 1. Is an active practitioner who has at least 5 years'
 116 experience in the practice of criminal law, is familiar with the
 117 production of evidence and the use of expert witnesses,
 118 including psychiatric and forensic evidence, and has
 119 demonstrated the proficiency necessary for representation in
 120 capital cases, including the investigation and presentation of
 121 mitigation evidence;

122 2. Has attended a minimum of 12 hours of continuing legal
 123 education programs within the previous 2 years which were
 124 devoted to the defense of capital cases and offered by The
 125 Florida Bar or another recognized provider of continuing legal
 126 education courses; and

127 3.a. Has tried at least nine state or federal jury trials
 128 to completion, two of which must have been capital cases and:

129 (I) Three of which must have been murder trials;

130 (II) One of which must have been a murder trial and five
 131 of which must have been other felony trials; or

132 (III) One of which must have included a postconviction
 133 evidentiary hearing and five of which must have been other
 134 felony trials; or

135 b. Has appealed one capital conviction and appealed:

136 (I) At least three felony convictions, one of which must
 137 have been a murder; or

138 (II) At least three felony convictions and participated in
 139 one capital postconviction evidentiary hearing.

140 (b) If the trial court finds that exceptional

141 circumstances exist requiring appointment of an attorney who
 142 does not meet the criteria set forth in paragraph (a), the trial
 143 court shall enter a written order specifying the exceptional
 144 circumstances requiring appointment of the attorney and explicit
 145 findings that the attorney chosen will provide competent
 146 representation in accordance with the intent of this section.

147 (c) A failure to comply with any criterion set forth in
 148 paragraph (a) may be cause to remove the attorney from the
 149 registry until the criterion is satisfied.

150 (d) Satisfaction of the criterion may be proven by
 151 submitting a written certification to the commission. The
 152 certification is complete upon submission of the application by
 153 electronic mail without a signature satisfies the minimum
 154 requirements for private counsel set forth in s. 27.704(2).

155 ~~(3) An attorney who applies for registration and court~~
 156 ~~appointment as counsel in postconviction capital collateral~~
 157 ~~proceedings must certify that he or she is counsel of record in~~
 158 ~~not more than four such proceedings and, if appointed to~~
 159 ~~represent a person in postconviction capital collateral~~
 160 ~~proceedings, shall continue the such representation under the~~
 161 ~~terms and conditions set forth in s. 27.711 until the sentence~~
 162 ~~is reversed, reduced, or carried out or unless permitted to~~
 163 ~~withdraw from representation by the trial court. The court may~~
 164 ~~not permit an attorney to withdraw from representation without a~~
 165 ~~finding of sufficient good cause. The court may impose~~
 166 ~~appropriate sanctions if it finds that an attorney has shown bad~~
 167 ~~faith with respect to continuing to represent a defendant in a~~
 168 ~~postconviction capital collateral proceeding. This section does~~

169 not preclude the court from reassigning a case to a capital
 170 collateral regional counsel following discontinuation of
 171 representation if a conflict of interest no longer exists with
 172 respect to the case.

173 (4) (a) Each private attorney who is appointed by the court
 174 to represent a capital defendant must enter into a contract with
 175 the Chief Financial Officer. If the appointed attorney fails to
 176 execute the contract within 30 days after the date the contract
 177 is mailed to the attorney, the executive director of the
 178 Commission on Capital Cases shall notify the trial court and
 179 shall remove the attorney from the registry list. The Chief
 180 Financial Officer shall develop the form of the contract,
 181 function as contract manager, and enforce performance of the
 182 terms and conditions of the contract. By signing such contract,
 183 the attorney certifies that he or she intends to continue the
 184 representation under the terms and conditions set forth in the
 185 contract until the sentence is reversed, reduced, or carried out
 186 or until released by order of the trial court.

187 (b) Each private attorney appointed by a court to
 188 represent a capital defendant shall submit a report each quarter
 189 to the commission in the format designated by the commission. If
 190 the attorney does not submit the report within 30 days after the
 191 end of the quarter, the executive director shall remove the
 192 attorney from the registry.

193 (5) (a) Upon the motion of the capital collateral regional
 194 counsel to withdraw under ~~pursuant to~~ s. 924.056(1) (a); or

195 (b) Upon notification by the state attorney or the
 196 Attorney General that:

197 | 1. Thirty days have elapsed since appointment of the
 198 | capital collateral regional counsel and no entry of appearance
 199 | has been filed under ~~pursuant to~~ s. 924.056; or
 200 | 2. A person under sentence of death who was previously
 201 | represented by private counsel is currently unrepresented in a
 202 | postconviction capital collateral proceeding,
 203 |
 204 | the executive director shall immediately notify the trial court
 205 | that imposed the sentence of death that the court must
 206 | immediately appoint an attorney, selected from the current
 207 | registry, to represent the ~~such~~ person in collateral actions
 208 | challenging the legality of the judgment and sentence in the
 209 | appropriate state and federal courts. If the attorney appointed
 210 | to represent a person under a sentence of death does not wish to
 211 | continue representing the person in federal proceedings, the
 212 | attorney must make reasonable efforts to assist the person in
 213 | finding an attorney who meets the federal criteria to represent
 214 | the person in any federal proceedings. The court shall have the
 215 | authority to strike a notice of appearance filed by a Capital
 216 | Collateral Regional Counsel, if the court finds the notice was
 217 | not filed in good faith and may so notify the executive director
 218 | that the client is no longer represented by the Office of
 219 | Capital Collateral Regional Counsel. In making an assignment,
 220 | the court shall give priority to attorneys whose experience and
 221 | abilities in criminal law, especially in capital proceedings,
 222 | are known by the court to be commensurate with the
 223 | responsibility of representing a person sentenced to death. The
 224 | trial court must issue an order of appointment which contains

225 specific findings that the appointed counsel meets the statutory
 226 requirements and has the high ethical standards necessary to
 227 represent a person sentenced to death.

228 (6) More than one attorney may not be appointed and
 229 compensated at any one time under s. 27.711 to represent a
 230 person in postconviction capital collateral proceedings.
 231 However, an attorney appointed under this section may designate
 232 another attorney to assist him or her if the designated attorney
 233 meets the qualifications of this section.

234 Section 4. Subsections (3), (4), (7), and (9) of section
 235 27.711, Florida Statutes, are amended, and subsection (15) is
 236 added to that section, to read:

237 27.711 Terms and conditions of appointment of attorneys as
 238 counsel in postconviction capital collateral proceedings.--

239 (3) An attorney appointed to represent a capital defendant
 240 is entitled to payment of the fees set forth in this section
 241 only upon full performance by the attorney of the duties
 242 specified in this section and approval of payment by the trial
 243 court, and the submission of a payment request by the attorney,
 244 subject to the availability of sufficient funding specifically
 245 appropriated for this purpose. An attorney may not be
 246 compensated under this section for work performed by the
 247 attorney before July 1, 2003, while employed by the northern
 248 regional office of the capital collateral counsel. The Chief
 249 Financial Officer shall notify the executive director and the
 250 court if it appears that sufficient funding has not been
 251 specifically appropriated for this purpose to pay any fees which
 252 may be incurred. The attorney shall maintain appropriate

253 | documentation, including a current and detailed hourly
 254 | accounting of time spent representing the capital defendant. The
 255 | fee and payment schedule in this section is the exclusive means
 256 | of compensating a court-appointed attorney who represents a
 257 | capital defendant. When appropriate, a court-appointed attorney
 258 | must seek further compensation from the Federal Government, as
 259 | provided in 18 U.S.C. s. 3006A or other federal law, in habeas
 260 | corpus litigation in the federal courts. An attorney who incurs
 261 | costs for representing capital defendants on a pro bono basis
 262 | shall be paid from registry funds by the Chief Financial
 263 | Officer. These payments must be approved by the trial court
 264 | before payment.

265 | (4) Upon approval by the trial court, an attorney
 266 | appointed to represent a capital defendant under s. 27.710 is
 267 | entitled to payment of the following fees by the Chief Financial
 268 | Officer:

269 | (a) Regardless of the stage of postconviction capital
 270 | collateral proceedings, the attorney is entitled to \$100 per
 271 | hour, up to a maximum of \$2,500, after accepting appointment and
 272 | filing a notice of appearance.

273 | (b) The attorney is entitled to \$100 per hour, up to a
 274 | maximum of \$20,000, after timely filing in the trial court the
 275 | capital defendant's complete original motion for postconviction
 276 | relief under the Florida Rules of Criminal Procedure. The motion
 277 | must raise all issues to be addressed by the trial court.
 278 | However, an attorney is entitled to fees under this paragraph if
 279 | the court schedules a hearing on a matter that makes the filing
 280 | of the original motion for postconviction relief unnecessary or

281 | if the court otherwise disposes of the case.

282 | (c) The attorney is entitled to \$100 per hour, up to a
 283 | maximum of \$20,000, after the final hearing on trial court
 284 | ~~issues a final order granting or denying~~ the capital defendant's
 285 | motion for postconviction relief.

286 | (d) The attorney is entitled to \$100 per hour, up to a
 287 | maximum of \$20,000, after timely filing in the Supreme Court the
 288 | capital defendant's brief or briefs that address the trial
 289 | court's final order granting or denying the capital defendant's
 290 | motion for postconviction relief and the state petition for writ
 291 | of habeas corpus.

292 | (e) The attorney is entitled to \$100 per hour, up to a
 293 | maximum of \$10,000, after the trial court issues an order,
 294 | following ~~pursuant to~~ a remand from the Supreme Court, which
 295 | directs the trial court to hold further proceedings on the
 296 | capital defendant's motion for postconviction relief.

297 | (f) The attorney is entitled to \$100 per hour, up to a
 298 | maximum of \$4,000, after the appeal of the trial court's denial
 299 | of the capital defendant's motion for postconviction relief and
 300 | the capital defendant's state petition for writ of habeas corpus
 301 | become final in the Supreme Court.

302 | (g) At the conclusion of the capital defendant's
 303 | postconviction capital collateral proceedings in state court,
 304 | the attorney is entitled to \$100 per hour, up to a maximum of
 305 | \$2,500, for the preparation of the initial federal pleading
 306 | ~~after filing a petition for writ of certiorari in the Supreme~~
 307 | ~~Court of the United States.~~

308 | (h) If, at any time, a death warrant is issued, the

309 attorney is entitled to \$100 per hour, up to a maximum of
 310 \$5,000. This payment shall be full compensation for attorney's
 311 fees and costs for representing the capital defendant throughout
 312 the proceedings before the state courts of Florida.

313

314 The hours billed by a contracting attorney under this subsection
 315 may include time devoted to representation of the defendant by
 316 another attorney who is qualified under s. 27.710 and who has
 317 been designated by the contracting attorney to assist him or
 318 her.

319 (7) Each registry ~~An attorney who is representing at least~~
 320 one capital defendant ~~actively representing a capital defendant~~
 321 is entitled to a maximum of \$500 per fiscal year for tuition and
 322 expenses for continuing legal education that pertains to the
 323 representation of capital defendants, regardless of the total
 324 number of capital defendants the attorney is representing. Upon
 325 approval by the trial court, the attorney is entitled to payment
 326 by the Chief Financial Officer for expenses for such tuition and
 327 continuing legal education.

328 (9) An attorney may not represent more than 10 inmates
 329 ~~five defendants~~ in capital postconviction litigation at any one
 330 time. The 10-inmate-representation limit includes capital
 331 postconviction cases proceeding under contract with the capital
 332 collateral regional counsel, inmates represented pro bono, and
 333 inmates privately retaining the attorney. An attorney may not be
 334 appointed to additional capital postconviction cases until the
 335 attorney's representation total falls below the 10-case limit.

336 (15) If a trial court judge intends to award attorney fees

HB 325

2006

337 in excess of those outlined in this section, the judge must
338 include written findings of fact that specifically state the
339 extraordinary nature of the expenditures of the time, energy,
340 and talents of the attorney in the case which are not ordinarily
341 expended in other capital collateral cases.

342 Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 325**

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) Gelber offered the following:

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

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 27.7001, Florida Statutes, is amended
7 to read:

8 27.7001 Legislative intent and findings.--It is the
9 intent of the Legislature to create part IV of this chapter,
10 consisting of ss. 27.7001-27.711, inclusive, to provide for the
11 collateral representation of any person convicted and sentenced
12 to death in this state, so that collateral legal proceedings to
13 challenge any Florida capital conviction and sentence may be
14 commenced in a timely manner and so as to assure the people of
15 this state that the judgments of its courts may be regarded with
16 the finality to which they are entitled in the interests of
17 justice. It is the further intent of the Legislature that
18 collateral representation shall not include representation
19 during retrials, resentencings, proceedings commenced under
20 chapter 940, or civil litigation. The Legislature further finds
21 that not all capital collateral cases are extraordinary or
22 unusual.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

23 Section 2. Paragraph (d) is added to subsection (2) of
24 section 27.709, Florida Statutes, to read:

25 27.709 Commission on Capital Cases.--

26 (2)

27 (d) The commission may sponsor programs of continuing
28 legal education which are devoted specifically to capital cases
29 and shall undertake any project recommended or approved by the
30 commission members.

31 Section 3. Section 27.710, Florida Statutes, is amended to
32 read:

33 27.710 Registry of attorneys applying to represent
34 persons in postconviction capital collateral proceedings;
35 certification of minimum requirements; appointment by trial
36 court.--

37 (1) The executive director of the Commission on Capital
38 Cases shall compile and maintain a statewide registry of
39 attorneys in private practice who have certified that they meet
40 the ~~minimum~~ requirements of this section and s. 27.704(2), who
41 are available for appointment by the court under this section to
42 represent persons convicted and sentenced to death in this state
43 in postconviction collateral proceedings, ~~and who have attended~~
44 ~~within the last year a continuing legal education program of at~~
45 ~~least 10 hours' duration devoted specifically to the defense of~~
46 ~~capital cases, if available. Continuing legal education programs~~
47 ~~meeting the requirements of this rule offered by The Florida Bar~~
48 ~~or another recognized provider and approved for continuing legal~~
49 ~~education credit by The Florida Bar shall satisfy this~~
50 ~~requirement. The failure to comply with this requirement may be~~
51 ~~cause for removal from the list until the requirement is~~
52 ~~fulfilled.~~ To ensure that sufficient attorneys are available for
53 appointment by the court, when the number of attorneys on the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

54 registry falls below 50, the executive director shall notify the
55 chief judge of each circuit by letter and request the chief
56 judge to promptly submit the names of at least three private
57 attorneys who regularly practice criminal law in that circuit
58 and who appear to meet the minimum requirements to represent
59 persons in postconviction capital collateral proceedings. The
60 executive director shall send an application to each attorney
61 identified by the chief judge so that the attorney may register
62 for appointment as counsel in postconviction capital collateral
63 proceedings. As necessary, the executive director may also
64 advertise in legal publications and other appropriate media for
65 qualified attorneys interested in registering for appointment as
66 counsel in postconviction capital collateral proceedings. Not
67 later than September 1 of each year, and as necessary
68 thereafter, the executive director shall provide to the Chief
69 Justice of the Supreme Court, the chief judge and state attorney
70 in each judicial circuit, and the Attorney General a current
71 copy of its registry of attorneys who are available for
72 appointment as counsel in postconviction capital collateral
73 proceedings. The registry must be indexed by judicial circuit
74 and must contain the requisite information submitted by the
75 applicants in accordance with this section.

76 (2) (a) To be eligible for court appointment as counsel in
77 postconviction capital collateral proceedings, an attorney must
78 certify on an application provided by the executive director
79 that he or she is a member in good standing of The Florida Bar
80 and:

81 1. Is an active practitioner who has at least 5 years'
82 experience in the practice of criminal law, is familiar with the
83 production of evidence and the use of expert witnesses,
84 including psychiatric and forensic evidence, and has

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

85 demonstrated the proficiency necessary for representation in
86 capital cases, including the investigation and presentation of
87 mitigation evidence;

88 2. Has attended a minimum of 12 hours of continuing legal
89 education programs within the previous 2 years which were
90 devoted to the defense of capital cases and offered by The
91 Florida Bar or another recognized provider of continuing legal
92 education courses; and

93 3.a. Has tried at least nine state or federal jury trials
94 to completion, two of which must have been capital cases and:

95 (I) Three of which must have been murder trials;

96 (II) One of which must have been a murder trial and five
97 of which must have been other felony trials; or

98 (III) One of which must have included a postconviction
99 evidentiary hearing and five of which must have been other
100 felony trials; or

101 b. Has appealed one capital conviction and appealed:

102 (I) At least three felony convictions, one of which must
103 have been a murder;

104 (II) At least three felony convictions and participated
105 in one capital postconviction evidentiary hearing; or

106 (III) At least six felony convictions, two of which must
107 have been murders.

108 (b) If the trial court finds that exceptional
109 circumstances exist requiring appointment of an attorney who
110 does not meet the criteria set forth in paragraph (a), the trial
111 court shall enter a written order specifying the exceptional
112 circumstances requiring appointment of the attorney and explicit
113 findings that the attorney chosen will provide competent
114 representation in accordance with the intent of this section.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

115 (c) A failure to comply with any criterion set forth in
116 paragraph (a) may be cause to remove the attorney from the
117 registry until the criterion is satisfied.

118 (d) Satisfaction of the criterion may be proven by
119 submitting a written certification to the commission. The
120 certification is complete upon submission of the application by
121 electronic mail without a signature ~~satisfies the minimum~~
122 ~~requirements for private counsel set forth in s. 27.704(2).~~

123 (3) ~~An attorney who applies for registration and court~~
124 ~~appointment as counsel in postconviction capital collateral~~
125 ~~proceedings must certify that he or she is counsel of record in~~
126 ~~not more than four such proceedings and, if appointed to~~
127 ~~represent a person in postconviction capital collateral~~
128 ~~proceedings, shall continue the such representation under the~~
129 ~~terms and conditions set forth in s. 27.711 until the sentence~~
130 ~~is reversed, reduced, or carried out or unless permitted to~~
131 ~~withdraw from representation by the trial court. The court may~~
132 ~~not permit an attorney to withdraw from representation without a~~
133 ~~finding of sufficient good cause. The court may impose~~
134 ~~appropriate sanctions if it finds that an attorney has shown bad~~
135 ~~faith with respect to continuing to represent a defendant in a~~
136 ~~postconviction capital collateral proceeding. This section does~~
137 ~~not preclude the court from reassigning a case to a capital~~
138 ~~collateral regional counsel following discontinuation of~~
139 ~~representation if a conflict of interest no longer exists with~~
140 ~~respect to the case.~~

141 (4) (a) Each private attorney who is appointed by the
142 court to represent a capital defendant must enter into a
143 contract with the Chief Financial Officer. If the appointed
144 attorney fails to execute the contract within 30 days after the
145 date the contract is mailed to the attorney, the executive

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

146 director of the Commission on Capital Cases shall notify the
147 trial court and shall remove the attorney from the registry
148 list. The Chief Financial Officer shall develop the form of the
149 contract, function as contract manager, and enforce performance
150 of the terms and conditions of the contract. By signing such
151 contract, the attorney certifies that he or she intends to
152 continue the representation under the terms and conditions set
153 forth in the contract until the sentence is reversed, reduced,
154 or carried out or until released by order of the trial court.

155 (b) Each private attorney appointed by a court to
156 represent a capital defendant shall submit a report each quarter
157 to the commission in the format designated by the commission. If
158 the attorney does not submit the report within 30 days after the
159 end of the quarter, the executive director shall remove the
160 attorney from the registry and the court may impose a fine or
161 remove the attorney from the case.

162 (5) (a) Upon the motion of the capital collateral regional
163 counsel to withdraw pursuant to s. 924.056(1) (a); or

164 (b) Upon notification by the state attorney or the
165 Attorney General that:

166 1. Thirty days have elapsed since appointment of the
167 capital collateral regional counsel and no entry of appearance
168 has been filed under pursuant to s. 924.056; or

169 2. A person under sentence of death who was previously
170 represented by private counsel is currently unrepresented in a
171 postconviction capital collateral proceeding,

172
173 the executive director shall immediately notify the trial court
174 that imposed the sentence of death that the court must
175 immediately appoint an attorney, selected from the current
176 registry, to represent the ~~such~~ person in collateral actions

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

177 challenging the legality of the judgment and sentence in the
178 appropriate state and federal courts. If the attorney appointed
179 to represent a person under a sentence of death does not wish to
180 continue representing the person in federal proceedings, the
181 attorney must make reasonable efforts to assist the person in
182 finding an attorney who meets the federal criteria to represent
183 the person in any federal proceedings. The court shall have the
184 authority to strike a notice of appearance filed by a Capital
185 Collateral Regional Counsel, if the court finds the notice was
186 not filed in good faith and may so notify the executive director
187 that the client is no longer represented by the Office of
188 Capital Collateral Regional Counsel. In making an assignment,
189 the court shall give priority to attorneys whose experience and
190 abilities in criminal law, especially in capital proceedings,
191 are known by the court to be commensurate with the
192 responsibility of representing a person sentenced to death. The
193 trial court must issue an order of appointment which contains
194 specific findings that the appointed counsel meets the statutory
195 requirements and has the high ethical standards necessary to
196 represent a person sentenced to death.

197 (6) More than one attorney may not be appointed and
198 compensated at any one time under s. 27.711 to represent a
199 person in postconviction capital collateral proceedings.
200 However, an attorney appointed under this section may designate
201 another attorney to assist him or her if the designated attorney
202 meets the qualifications of this section.

203 Section 4. Subsections (3), (4), (7), and (9) of section
204 27.711, Florida Statutes, are amended, and subsection (15) is
205 added to that section, to read:

206 27.711 Terms and conditions of appointment of attorneys
207 as counsel in postconviction capital collateral proceedings.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

208 (3) An attorney appointed to represent a capital
209 defendant is entitled to payment of the fees set forth in this
210 section only upon full performance by the attorney of the duties
211 specified in this section and approval of payment by the trial
212 court, and the submission of a payment request by the attorney,
213 subject to the availability of sufficient funding specifically
214 appropriated for this purpose. An attorney may not be
215 compensated under this section for work performed by the
216 attorney before July 1, 2003, while employed by the northern
217 regional office of the capital collateral counsel. The Chief
218 Financial Officer shall notify the executive director and the
219 court if it appears that sufficient funding has not been
220 specifically appropriated for this purpose to pay any fees which
221 may be incurred. The attorney shall maintain appropriate
222 documentation, including a current and detailed hourly
223 accounting of time spent representing the capital defendant. The
224 fee and payment schedule in this section is the exclusive means
225 of compensating a court-appointed attorney who represents a
226 capital defendant. When appropriate, a court-appointed attorney
227 must seek further compensation from the Federal Government, as
228 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
229 corpus litigation in the federal courts. An attorney appointed
230 under s. 27.710, or appointed by the court to replace a capital
231 collateral regional counsel staff attorney or capital collateral
232 regional counsel contract attorney, who incurs costs for
233 representing capital defendants on a pro bono basis shall be
234 paid from registry funds by the Chief Financial Officer. These
235 payments must be approved by the trial court before payment.

236 (4) Upon approval by the trial court, an attorney
237 appointed to represent a capital defendant under s. 27.710 is

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

238 entitled to payment of the following fees by the Chief Financial
239 Officer:

240 (a) Regardless of the stage of postconviction capital
241 collateral proceedings, the attorney is entitled to \$100 per
242 hour, up to a maximum of \$2,500, after accepting appointment and
243 filing a notice of appearance.

244 (b) The attorney is entitled to \$100 per hour, up to a
245 maximum of \$20,000, after timely filing in the trial court the
246 capital defendant's complete original motion for postconviction
247 relief under the Florida Rules of Criminal Procedure. The motion
248 must raise all issues to be addressed by the trial court.
249 However, an attorney is entitled to fees under this paragraph if
250 the court schedules a hearing on a matter that makes the filing
251 of the original motion for postconviction relief unnecessary or
252 if the court otherwise disposes of the case.

253 (c) The attorney is entitled to \$100 per hour, up to a
254 maximum of \$20,000, after the final hearing on ~~trial court~~
255 ~~issues a final order granting or denying~~ the capital defendant's
256 motion for postconviction relief.

257 (d) The attorney is entitled to \$100 per hour, up to a
258 maximum of \$20,000, after timely filing in the Supreme Court the
259 capital defendant's brief or briefs that address the trial
260 court's final order granting or denying the capital defendant's
261 motion for postconviction relief and the state petition for writ
262 of habeas corpus.

263 (e) The attorney is entitled to \$100 per hour, up to a
264 maximum of \$10,000, after the trial court issues an order,
265 following ~~pursuant to~~ a remand from the Supreme Court, which
266 directs the trial court to hold further proceedings on the
267 capital defendant's motion for postconviction relief.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

268 (f) The attorney is entitled to \$100 per hour, up to a
269 maximum of \$4,000, after the appeal of the trial court's denial
270 of the capital defendant's motion for postconviction relief and
271 the capital defendant's state petition for writ of habeas corpus
272 become final in the Supreme Court.

273 (g) At the conclusion of the capital defendant's
274 postconviction capital collateral proceedings in state court,
275 the attorney is entitled to \$100 per hour, up to a maximum of
276 \$2,500, for the preparation of the initial federal pleading
277 ~~after filing a petition for writ of certiorari in the Supreme~~
278 ~~Court of the United States.~~

279 (h) If, at any time, a death warrant is issued, the
280 attorney is entitled to \$100 per hour, up to a maximum of
281 \$5,000. This payment shall be full compensation for attorney's
282 fees and costs for representing the capital defendant throughout
283 the proceedings before the state courts of Florida.

284
285 The hours billed by a contracting attorney under this
286 subsection may include time devoted to representation of the
287 defendant by another attorney who is qualified under s. 27.710
288 and who has been designated by the contracting attorney to
289 assist him or her.

290 (7) Each registry ~~An~~ attorney who is representing at
291 least one capital defendant ~~actively representing a capital~~
292 ~~defendant~~ is entitled to a maximum of \$500 per fiscal year for
293 tuition and expenses for continuing legal education that
294 pertains to the representation of capital defendants, regardless
295 of the total number of capital defendants the attorney is
296 representing. Upon approval by the trial court, the attorney is
297 entitled to payment by the Chief Financial Officer for expenses
298 for such tuition and continuing legal education.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

299 (9) An attorney may not represent more than 7 inmates
300 ~~five defendants~~ in capital postconviction litigation at any one
301 time. The 7-inmate-representation limit includes capital
302 postconviction cases proceeding under contract with the capital
303 collateral regional counsel, inmates represented pro bono, and
304 inmates privately retaining the attorney. An attorney may not be
305 appointed to additional capital postconviction cases until the
306 attorney's representation total falls below the 7-case limit.

307 (15) If a trial court judge intends to award attorney
308 fees in excess of those outlined in this section, the judge must
309 include written findings of fact that specifically state the
310 extraordinary nature of the expenditures of the time, energy,
311 and talents of the attorney in the case which are not ordinarily
312 expended in other capital collateral cases.

313 Section 5. This act shall take effect July 1, 2006.

314
315

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

317 Remove the entire title and insert:

318 A bill to be entitled
319 An act relating to the Commission on Capital Cases; amending s.
320 27.7001, F.S.; providing legislative findings; amending s.
321 27.709, F.S.; authorizing the Commission on Capital Cases to
322 sponsor continuing legal education programs devoted specifically
323 to capital cases; amending s. 27.710, F.S.; specifying criteria
324 that a private attorney must satisfy in order to be eligible to
325 be appointed as counsel in a postconviction capital collateral
326 proceeding; providing that a judge may appoint an attorney who
327 does not meet the appointment criteria if exceptional
328 circumstances exist; providing that an attorney may be removed
329 from the capital collateral registry if the attorney does not

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

330 meet the criteria; directing the executive director of the
331 commission to remove an attorney from the registry if the
332 attorney fails to timely file an executed contract; requiring a
333 private attorney appointed by a court to represent a capital
334 defendant to submit a report each quarter to the commission;
335 requiring that the executive director remove an attorney from
336 the registry if the attorney does not submit the report within a
337 specified time; requiring that an attorney make reasonable
338 efforts to assist the person under a sentence of death in
339 finding an attorney under certain circumstances; amending s.
340 27.711, F.S.; requiring that costs incurred during pro bono
341 representation of a capital defendant be paid to the attorney;
342 providing that an attorney who is listed on the registry and
343 representing at least one capital defendant is entitled to
344 tuition and expenses for continuing legal education courses;
345 providing that an attorney may represent no more than 7 inmates
346 in capital postconviction cases at any one time; requiring that,
347 if a trial court judge intends to award attorney's fees in
348 excess of those set by law, the judge must include written
349 findings of fact specifically stating the extraordinary nature
350 of the expenditures of the time, energy, and talents of the
351 attorney in the case which are not ordinarily expended in other
352 capital collateral cases; providing an effective date.

353

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 349 Theft of Property
SPONSOR(S): Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:** SB 174

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) _____			

SUMMARY ANALYSIS

This bill modifies the definitions of robbery, robbery by sudden snatching, and carjacking, by adding that a person commits the crime by "endeavoring" to commit the crime. Effectively, this bill provides that attempt to commit such crimes is punishable the same as completion of the criminal offense.

The Criminal Justice Estimating Conference estimates that this legislation has a cumulative impact over the next five years of 150 prison beds at a cost of \$14.3 million.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- This bill increases criminal penalties for certain offenses.

B. EFFECT OF PROPOSED CHANGES:

Section 812.13, F.S., defines "robbery" as the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear. Armed robbery, where the offender carried a firearm or other deadly weapon, is a life felony. Other armed robbery is a first degree felony and unarmed robbery is a second degree felony.

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking. The primary difference is that robbery by sudden snatching, as opposed to robbery, does not require proof of force, violence, assault, or putting in fear. Armed robbery by sudden snatching, where the offender carried a firearm or other deadly weapon, is a second degree felony. Otherwise, robbery by sudden snatching is a third degree felony.

Section 812.133(1), F.S., defines "carjacking" as "the taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear."

Section 777.04(1), F.S., provides that a person who attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such offense, but fails in the perpetration or is intercepted or prevented in the execution thereof, commits the offense of criminal attempt. The penalty for attempt is based on the penalty for the underlying offense attempted. An attempt to commit a capital felony is punishable as a first degree felony, an attempt to commit a first degree felony is punishable as a second degree felony, and so on. For purposes of the Criminal Punishment Code, an attempt is scored at one level below the substantive offense in the Offense Severity Ranking Chart.

These offenses are summarized in the following chart:

Current law: Robbery Offenses Affected by Bill			
Description of Offense	Offense Level and Max. Penalty	CPC Level, Min. Sentence	Attempt
Robbery with a firearm	Life Felony	Level 9 10/20/Life applies	2nd degree felony, Level 8, 10/20/Life
Robbery with deadly weapon other than firearm	Life Felony	Level 9 48 months	2nd degree felony, Level 8
Robbery with weapon, not deadly, no firearm	1st degree felony, 30 years	Level 8 34.5 months	2nd degree felony, Level 7
Robbery with no weapon	2nd degree felony, 15 years	Level 6 Any nonstate	3rd degree felony Level 5

Current law: Robbery Offenses Affected by Bill			
Description of Offense	Offense Level and Max. Penalty	CPC Level, Min. Sentence	Attempt
Sudden snatching with firearm	2nd degree felony, 15 years	Level 7 10/20/Life applies	3rd degree felony, Level 6, 10/20/Life
Sudden snatching with deadly weapon no firearm	2nd degree felony, 15 years	Level 7 21 months	3rd degree felony Level 6
Sudden snatching, no weapon	2rd degree felony, 15 years	Level 5 Any nonstate	3rd degree felony Level 4
Carjacking with firearm	Life felony	Level 9 10/20/Life applies	2nd degree felony Level 8, 10/20/Life
Carjacking with deadly weapon, no firearm	Life felony	Level 9 48 months	2nd degree felony Level 8
Carjacking without firearm or deadly weapon	1st degree felony	Level 7 21 months	2nd degree felony Level 7

By comparison, note that a person commits the crime of theft "if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to" steal the property. Section 812.014(1), F.S.

Effect of Bill

This bill modifies the definitions of robbery, robbery by sudden snatching, and carjacking, by adding that a person commits the crime by "endeavoring" to commit the crime. Effectively, this bill provides that attempt to commit such crimes is punishable the same as completion of the criminal offense.

This bill also adds to the first degree felony of robbery where the offender carries a weapon, s. 812.13(2)(b), F.S., to include a threat to use a weapon or firearm.

C. SECTION DIRECTORY:

Section 1 amends s. 812.13, F.S., to modify the definition of "robbery."

Section 2 amends s. 812.131, F.S., to modify the definition of "robbery by sudden snatching."

Section 3 amends s. 812.133, F.S., to modify the definition of "carjacking."

Section 4 reenacts paragraphs (e) through (i) of subsection (3) of s. 921.0022, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference estimates the fiscal cost of this legislation as:

Fiscal Impact of HB 349						
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Funds Required			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2006-2007	18	18	\$171,666	\$3,293,274	\$3,464,940	\$3,464,940
2007-2008	83	65	\$978,640	\$2,045,900	\$3,024,540	\$6,489,480
2008-2009	133	50	\$2,134,836	\$1,669,440	\$3,804,276	\$10,293,756
2009-2010	173	40	\$3,087,846	\$1,491,420	\$4,579,266	\$14,873,022
2010-2011	208	35	\$3,933,063	\$1,133,392	\$5,066,455	\$19,939,477
Total	208	208	\$10,306,051	\$9,633,426	\$19,939,477	\$19,939,477

Notes: It was assumed that the incarceration rates for the affected attempted offenses would increase to the FY 04-05 levels for the same completed offenses and that the sentence length distribution for these additional admissions to prison would be the same as for those currently receiving a prison sentence.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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 theft of property; amending s. 812.13,
 3 F.S.; redefining the term "robbery" to include the
 4 unlawful endeavoring to take property; providing that if
 5 an offender threatens to use a weapon or firearm during
 6 the course of a robbery, the offender commits a felony of
 7 the first degree; providing penalties; amending ss.
 8 812.131 and 812.133, F.S.; redefining the terms "robbery
 9 by sudden snatching" and "carjacking" to include the
 10 unlawful endeavoring to take property; reenacting s.
 11 921.0022(3)(e), (f), (g), (h), and (i), F.S., relating to
 12 the offense severity ranking chart of the Criminal
 13 Punishment Code, to incorporate the amendments to ss.
 14 812.13, 812.131, and 812.133, F.S., in references thereto;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 812.13, Florida Statutes, is amended to
 20 read:

21 812.13 Robbery.--

22 (1) "Robbery" means the taking of or endeavoring to take
 23 money or other property that ~~which~~ may be the subject of larceny
 24 from the person or custody of another, with intent to either
 25 permanently or temporarily deprive the person or the owner of
 26 the money or other property, when in the course of the taking or
 27 endeavoring to take there is the use of force, violence,
 28 assault, or putting in fear.

29 (2) (a) If in the course of committing the robbery the
 30 offender carried a firearm or other deadly weapon, then the
 31 robbery is a felony of the first degree, punishable by
 32 imprisonment for a term of years not exceeding life imprisonment
 33 or as provided in s. 775.082, s. 775.083, or s. 775.084.

34 (b) If in the course of committing the robbery the
 35 offender carried a weapon or threatened to use a weapon or
 36 firearm, then the robbery is a felony of the first degree,
 37 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

38 (c) If in the course of committing the robbery the
 39 offender carried no firearm, deadly weapon, or other weapon or
 40 did not threaten to use any weapon or firearm, then the robbery
 41 is a felony of the second degree, punishable as provided in s.
 42 775.082, s. 775.083, or s. 775.084.

43 (3) (a) An act shall be deemed "in the course of committing
 44 the robbery" if it occurs in an attempt to commit robbery or in
 45 flight after the attempt or commission.

46 (b) An act shall be deemed "in the course of the taking or
 47 endeavoring to take" if it occurs before ~~either prior to,~~
 48 contemporaneous with, or after ~~subsequent to~~ the taking of or
 49 endeavoring to take the property and if it and the act of taking
 50 or endeavoring to take constitute a continuous series of acts or
 51 events.

52 Section 2. Section 812.131, Florida Statutes, is amended
 53 to read:

54 812.131 Robbery by sudden snatching.--

55 (1) "Robbery by sudden snatching" means the taking of or
 56 endeavoring to take money or other property from the victim's

57 person, with intent to permanently or temporarily deprive the
 58 victim or the owner of the money or other property, when, in the
 59 course of the taking or endeavoring to take, the victim was or
 60 became aware of the taking or endeavoring to take. In order to
 61 satisfy this definition, it is not necessary to show that:

62 (a) The offender used any amount of force beyond that
 63 effort necessary to obtain possession of the money or other
 64 property; or

65 (b) There was any resistance offered by the victim to the
 66 offender or that there was injury to the victim's person.

67 (2) (a) If, in the course of committing a robbery by sudden
 68 snatching, the offender carried a firearm or other deadly
 69 weapon, the robbery by sudden snatching is a felony of the
 70 second degree, punishable as provided in s. 775.082, s. 775.083,
 71 or s. 775.084.

72 (b) If, in the course of committing a robbery by sudden
 73 snatching, the offender carried no firearm or other deadly
 74 weapon, the robbery by sudden snatching is a felony of the third
 75 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 76 775.084.

77 (3) (a) An act shall be deemed "in the course of committing
 78 a robbery by sudden snatching" if the act occurs in an attempt
 79 to commit robbery by sudden snatching or in fleeing after the
 80 attempt or commission.

81 (b) An act shall be deemed "in the course of the taking or
 82 endeavoring to take" if the act occurs before ~~prior to~~,
 83 contemporaneous with, or after ~~subsequent to~~ the taking of or
 84 endeavoring to take the property and if it ~~such act~~ and the act

85 of taking or endeavoring to take constitute a continuous series
 86 of acts or events.

87 Section 3. Section 812.133, Florida Statutes, is amended
 88 to read:

89 812.133 Carjacking.--

90 (1) "Carjacking" means the taking of or endeavoring to
 91 take a motor vehicle that ~~which~~ may be the subject of larceny
 92 from the person or custody of another, with intent to either
 93 permanently or temporarily deprive the person or the owner of
 94 the motor vehicle, when in the course of the taking or
 95 endeavoring to take there is the use of force, violence,
 96 assault, or putting in fear.

97 (2) (a) If in the course of committing the carjacking the
 98 offender carried a firearm or other deadly weapon, then the
 99 carjacking is a felony of the first degree, punishable by
 100 imprisonment for a term of years not exceeding life imprisonment
 101 or as provided in s. 775.082, s. 775.083, or s. 775.084.

102 (b) If in the course of committing the carjacking the
 103 offender carried no firearm, deadly weapon, or other weapon,
 104 then the carjacking is a felony of the first degree, punishable
 105 as provided in s. 775.082, s. 775.083, or s. 775.084.

106 (3) (a) An act shall be deemed "in the course of committing
 107 the carjacking" if it occurs in an attempt to commit carjacking
 108 or in flight after the attempt or commission.

109 (b) An act shall be deemed "in the course of the taking or
 110 endeavoring to take" if it occurs before ~~either prior to,~~
 111 contemporaneous with, or after ~~subsequent to~~ the taking of or
 112 endeavoring to take the property and if it and the act of taking

113 or endeavoring to take constitute a continuous series of acts or
 114 events.

115 Section 4. For the purpose of incorporating the amendments
 116 made by this act to sections 812.13, 812.131, and 812.133,
 117 Florida Statutes, in references thereto, paragraphs (e) through
 118 (i) of subsection (3) of section 921.0022, Florida Statutes, are
 119 reenacted to read:

120 921.0022 Criminal Punishment Code; offense severity
 121 ranking chart.--

122 (3) OFFENSE SEVERITY RANKING CHART

123	Florida	Felony	
	Statute	Degree	Description
124			(e) LEVEL 5
125	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
126	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
127	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
128	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
129	381.0041	3rd	Donate blood, plasma, or organs

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

	(11) (b)		knowing HIV positive.
130	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
131	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
132	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
133	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
134	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
135	790.01 (2)	3rd	Carrying a concealed firearm.
136	790.162	2nd	Threat to throw or discharge destructive device.
137	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
138			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

139	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
140	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
141	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
142	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
143	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
144	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
145	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
146	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
147	812.131(2)(b)	3rd	Robbery by sudden snatching.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

148	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
149	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
150	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
151	817.2341(1), (2)(a)&(3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
152	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
153	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or

154	827.071(4)	2nd	disabled adult. Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
155	827.071(5)	3rd	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.
156	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
157	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
158	847.0137(2)&(3)	3rd	Transmission of pornography by electronic device or equipment.
159	847.0138(2)&(3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
160	874.05(2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
161			

HB 349

2006

- 162 893.13 (1) (a) 1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
- 163 893.13 (1) (c) 2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
- 164 893.13 (1) (d) 1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
- 164 893.13 (1) (e) 2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000

			feet of property used for religious services or a specified business site.
165	893.13 (1) (f) 1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), or (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of public housing facility.
166	893.13 (4) (b)	2nd	Deliver to minor cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs).
167			(f) LEVEL 6
168	316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
169	499.0051 (3)	2nd	Forgery of pedigree papers.
170	499.0051 (4)	2nd	Purchase or receipt of legend drug from unauthorized person.
171	499.0051 (5)	2nd	Sale of legend drug to unauthorized person.
172	775.0875 (1)	3rd	Taking firearm from law enforcement

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

			officer.
173	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
174	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
175	784.041	3rd	Felony battery.
176	784.048(3)	3rd	Aggravated stalking; credible threat.
177	784.048(5)	3rd	Aggravated stalking of person under 16.
178	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
179	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
180	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
181	784.081(2)	2nd	Aggravated assault on specified official or employee.
182	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
183			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

184	784.083 (2)	2nd	Aggravated assault on code inspector.
185	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
186	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
187	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
188	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
189	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
190	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
191	794.05 (1)	2nd	Unlawful sexual activity with specified minor.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
192	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
193	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
194	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
195	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
196	812.015(9)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
197	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
198	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
199	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular

HB 349

2006

			telephones.
200	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
201	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
202	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
203	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
204	827.03(1)	3rd	Abuse of a child.
205	827.03(3)(c)	3rd	Neglect of a child.
206	827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
207	836.05	2nd	Threats; extortion.
208	836.10	2nd	Written threats to kill or do bodily injury.
209	843.12	3rd	Aids or assists person to escape.
210	847.0135(2)	3rd	Facilitates sexual conduct of or

HB 349

2006

			with a minor or the visual depiction of such conduct.
211	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
212	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
213	944.40	2nd	Escapes.
214	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
215	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
216	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
217			(g) LEVEL 7
218	316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.

HB 349

2006

219	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
220	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
221	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
222	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
223	409.920 (2)	3rd	Medicaid provider fraud.
224	456.065 (2)	3rd	Practicing a health care profession without a license.
225	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
226			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

227	458.327(1)	3rd	Practicing medicine without a license.
228	459.013(1)	3rd	Practicing osteopathic medicine without a license.
229	460.411(1)	3rd	Practicing chiropractic medicine without a license.
230	461.012(1)	3rd	Practicing podiatric medicine without a license.
231	462.17	3rd	Practicing naturopathy without a license.
232	463.015(1)	3rd	Practicing optometry without a license.
233	464.016(1)	* 3rd	Practicing nursing without a license.
234	465.015(2)	3rd	Practicing pharmacy without a license.
235	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
236	467.201	3rd	Practicing midwifery without a license.
	468.366	3rd	Delivering respiratory care services

HB 349

2006

			without a license.
237	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
238	483.901 (9)	3rd	Practicing medical physics without a license.
239	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
240	484.053	3rd	Dispensing hearing aids without a license.
241	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
242	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
243	560.125 (5) (a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
244			

HB 349

2006

	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
245	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
246	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
247	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
248	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
249	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
250	782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

(vehicular homicide).

251	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
252	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
253	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
254	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
255	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
256	784.048 (7)	3rd	Aggravated stalking; violation of court order.
257	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
258	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
259	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.

260

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

261	784.081(1)	1st	Aggravated battery on specified official or employee.
262	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
263	784.083(1)	1st	Aggravated battery on code inspector.
264	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
265	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
266	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
267	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
268	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of

HB 349

2006

			mass destruction while committing or attempting to commit a felony.
269	796.03	2nd	Procuring any person under 16 years for prostitution.
270	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
271	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
272	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
273	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
274	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
275	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
276	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

			degree grand theft.
277	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
278	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
279	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
280	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
281	812.131 (2) (a)	2nd	Robbery by sudden snatching.
282	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
283	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
284	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
285			

HB 349

2006

286	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
287	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
288	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
289	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
290	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
291	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
	837.05 (2)	3rd	Giving false information about alleged capital felony to a law

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

			enforcement officer.
292	838.015	2nd	Bribery.
293	838.016	2nd	Unlawful compensation or reward for official behavior.
294	838.021(3)(a)	2nd	Unlawful harm to a public servant.
295	838.22	2nd	Bid tampering.
296	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
297	872.06	2nd	Abuse of a dead human body.
298	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
299	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b),

			(1) (d), (2) (a), (2) (b), or (2) (c) 4., within 1,000 feet of property used for religious services or a specified business site.
300	893.13 (4) (a)	1st	Deliver to minor cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
301	893.135 (1) (a) 1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
302	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
303	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
304	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
305	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
306	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
307	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

HB 349

2006

308	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
309	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
310	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
311	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
312	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
313	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
314	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

HB 349

2006

315	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
316	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
317	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
318	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
319	944.607 (10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
320	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
321	944.607 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
322			(h) LEVEL 8
323	316.193	2nd	DUI manslaughter.

HB 349

2006

(3) (c) 3.a.

324

316.1935 (4) (b) 1st Aggravated fleeing or attempted eluding with serious bodily injury or death.

325

327.35 (3) (c) 3. 2nd Vessel BUI manslaughter.

326

499.0051 (7) 1st Forgery of prescription or legend drug labels.

327

499.0052 1st Trafficking in contraband legend drugs.

328

560.123 (8) (b) 2. 2nd Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.

329

560.125 (5) (b) 2nd Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.

330

655.50 (10) (b) 2. 2nd Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

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HB 349

2006

332	777.03(2)(a)	1st	Accessory after the fact, capital felony.
333	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
334	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
335	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
336	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
337	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical

HB 349

2006

			force likely to cause serious injury.
338	800.04(4)	2nd	Lewd or lascivious battery.
339	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
340	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
341	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
342	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
343	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
344	812.13(2)(b)	1st	Robbery with a weapon.
345	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
346	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
347			

HB 349

2006

348	825.102 (2)	2nd	Aggravated abuse of an elderly person or disabled adult.
349	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
350	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
351	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
352	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
353	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
354	860.16	1st	Aircraft piracy.
355	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s.

HB 349

2006

			893.03(1)(a) or (b).
356	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
357	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
358	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
359	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
360	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
361	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
362	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
363	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
364	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more,

HB 349

2006

			less than 10 kilograms.
365	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
366	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
367	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
368	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
369	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
370	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
371	896.104 (4) (a) 2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

372			(i) LEVEL 9
373	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
374	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
375	499.00535	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
376	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
377	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
378	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
379	775.0844	1st	Aggravated white collar crime.
380	782.04 (1)	1st	Attempt, conspire, or solicit to

381			commit premeditated murder.
	782.04 (3)	1st, PBL	robbery, burglary, and other specified felonies.
382			
	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04 (3).
383			
	782.07 (2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
384			
	787.01 (1) (a) 1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
385			
	787.01 (1) (a) 2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
386			
	787.01 (1) (a) 4.	1st, PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
387			
	787.02 (3) (a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
388			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

	790.161	1st	Attempted capital destructive device offense.
389	790.166 (2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
390	794.011 (2)	1st	Attempted sexual battery; victim less than 12 years of age.
391	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
392	794.011 (4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
393	794.011 (8) (b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
394	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
395	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
396			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
397	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
398	817.568 (7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
399	827.03 (2)	1st	Aggravated child abuse.
400	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
401	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
402	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
403	893.135	1st	Attempted capital trafficking offense.
404	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 349

2006

			10,000 lbs.
405	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
406	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
407	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
408	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
409	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
410	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
411	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
412	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
413	896.101(5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.
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HB 349

2006

896.104(4)(a)3. 1st Structuring transactions to evade
reporting or registration
requirements, financial transactions
totaling or exceeding \$100,000.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Human Trafficking
SPONSOR(S): Gannon and others
TIED BILLS: IDEN./SIM. BILLS: SB 250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson <i>KF</i>	Kramer <i>TK</i>
2) Future of Florida's Families Committee			
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

Currently, section 787.06, F.S., makes it a second degree felony to knowingly engage in human trafficking with the intent that the trafficked person engage in forced labor or services. HB 469 expands the definition of forced labor or services to include labor coerced from a person when the person's identification documents are destroyed, concealed, or withheld by another.

HB 469 amends section 772.102, F.S. by expanding the definition of the term "criminal activity" to include the offense of human trafficking for purpose of seeking civil remedies for criminal offenses.

HB 469 amends section 895.02, F.S. by redefining the term "racketeering activity" to include the offense of human trafficking for purposes of the Florida RICO Act.

HB 469 provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- The bill expands the scope of the offense of human trafficking.

B. EFFECT OF PROPOSED CHANGES:

Human Trafficking

In 2000, Congress passed the "Victims of Trafficking and Violence Protection Act of 2000" and published findings including the following¹:

As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

Many of these persons are trafficked into the international sex trade, often by force, fraud or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominately women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human trafficking rights standards worldwide.

On June 3, 2005, Secretary of State Condoleezza Rice released the fifth annual Department of State trafficking in persons report²:

We estimate that up to 800,000 people are trafficked across international borders every year. And millions more are trafficked internally. Victims of trafficking, most of them women and children, are forced, defrauded or coerced into inhumane conditions. They are made to toil on farms and in work camps, in brothels and in sweatshops. Children are even forced to become soldiers. Whatever cruel form of servitude they may take, trafficking victims live in fear and misery. And wherever the trafficking trade flourishes, the rule of law erodes, corruption thrives, public health suffers and organized crime threatens the security of entire communities.

Federal legislation

As part of the Victims of Trafficking and Violence Protection Act, Congress created 18 U.S.C. 1591 which prohibits sex trafficking. The sections makes it a felony to recruit, entice, harbor, transport or provide another person knowing that force, fraud or coercion will be used to cause the person to engage in a "commercial sex act."

Current law

¹ Public Law 106-386, sec. 102.

² Trafficking in Persons Report June 2005. See <http://www.state.gov/secretary/rm/2005/47193.htm>

On October 1, 2004, section 787.06, F.S. was enacted providing that any person who knowingly engages in human trafficking with the intent that the trafficked person engage in "forced labor or services" commits a felony of the second degree.

Human trafficking is defined as transporting, soliciting, recruiting, harboring, providing or obtaining another person for transport.

"Forced labor or services" is currently defined as:

- Using or threatening to use physical force against that person or another person; or
- Restraining or confining or threatening to restrain or confine that person or another person without lawful authority and against her or his will.

Effect of bill

HB 469 amends section 787.06, F.S., providing legislative findings and intent; those findings are summarized as follows:

The Legislature finds that human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, and adults. Thousands of victims are trafficked annually across international borders worldwide. Many of these victims are trafficked into this state. The Legislature finds that while many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work. The Legislature finds that traffickers use various techniques to instill fear in victims and to keep them enslaved. It is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies.

HB 469 amends section 787.06, F.S. by expanding the term "forced labor or services" to include:

- Isolating a person without lawful authority and against his or her will; or
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of that person or another.

HB 469 amends section 787.06, F.S., to provide:

The Florida Court Educational Council shall establish standards of instruction for circuit and county court judges who hear cases involving victims of human trafficking and shall provide for periodic and timely instruction.

The Florida Court Educational Council is statutorily created. Section 25.384, F.S. states that, "there is created a Court Education Trust Fund to be administered by the Supreme Court through the Florida Court Educational Council." This statute provides that trust fund moneys shall be used to provide education and training for judges and other court personnel as defined and determined by the Florida Court Education Council.³

HB 469 amends section 772.102, F.S. by expanding the definition of the term "criminal activity" to include the offense of human trafficking for purpose of seeking civil remedies for criminal offenses.

HB 469 amends section 895.02, F.S. by redefining the term "racketeering activity" to include the offense of human trafficking for purposes of the Florida RICO Act.

³ See section 25.384(2)(a), F.S.

HB 469 reenacts ss. 16.56 (1) (a), 655.50 (3) (g), 896.101 (2) (g), and 905.34, F.S. relating to the authority of the Office of the Statewide Prosecutor, the definition of "specified unlawful activity" in a law prohibiting money laundering in financial institutions and in the Florida Money Laundering Act, and the subject matter jurisdiction of a statewide grand jury.

HB 469 provides an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 787.06, F.S., providing legislative findings and intent; redefining the term "forced labor or services"; establishing standards for circuit and county judges.

Section 2. Amends s. 772.102, F.S., expanding the definition of the term "criminal activity".

Section 3. Amends s. 895.02, F.S., redefining the term "racketeering activity".

Section 4. Reenacts s. 16.56 (1) (a), F.S., relating to the authority of the Office of the Statewide Prosecutor.

Section 5. Reenacts s. 655.50 (3) (g), F.S., relating to the definition of "specified unlawful activity" in a law prohibiting money laundering in financial institutions.

Section 6. Reenacts s. 896.101 (2) (g), F.S., relating to the definition of "specified unlawful activity" in the Florida Money Laundering Act.

Section 7. Reenacts s. 905.34, F.S., relating to the subject matter jurisdiction of a statewide grand jury.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On January 9, 2006, the Criminal Justice Estimating Conference met and determined that HB 469 would have no impact on the prison bed population for the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to human trafficking; amending s. 787.06, F.S.; providing legislative findings and intent; redefining the term "forced labor or services" to include labor coerced from a person when the person's identification documents are destroyed, concealed, or withheld by another; directing the Florida Court Educational Council to establish standards for instructing circuit and county court judges on matters relating to victims of human trafficking; directing the council to provide for periodic and timely instruction; amending s. 772.102, F.S.; expanding the definition of the term "criminal activity" to include the offense of human trafficking for purposes of seeking civil remedies for criminal offenses; amending s. 895.02, F.S.; redefining the term "racketeering activity" to include the offense of human trafficking for purposes of the Florida RICO Act; reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g), and 905.34, F.S., relating to the authority of the Office of the Statewide Prosecutor, the definition of "specified unlawful activity" in a law prohibiting money laundering in financial institutions and in the Florida Money Laundering Act, and the subject matter jurisdiction of a statewide grand jury, to incorporate the amendments made to s. 895.02, F.S., in references thereto; providing an effective date.

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

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Section 1. Section 787.06, Florida Statutes, is amended to read:

787.06 Human trafficking.--

(1) (a) The Legislature finds that human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, and adults. Thousands of victims are trafficked annually across international borders worldwide. Many of these victims are trafficked into this state. The Legislature finds that victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.

(b) The Legislature finds that while many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.

(c) The Legislature finds that traffickers use various techniques to instill fear in victims and to keep them enslaved. Some traffickers keep their victims under lock and key. However, the most frequently used practices are less-obvious techniques that include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the

57 money for "safekeeping."

58 (d) It is the intent of the Legislature that the
 59 perpetrators of human trafficking be penalized for their illegal
 60 conduct and that the victims of trafficking be protected and
 61 assisted by this state and its agencies. In furtherance of this
 62 policy, it is the intent of the Legislature that the State
 63 Supreme Court, The Florida Bar, and relevant state agencies
 64 prepare and implement training programs in order that judges,
 65 attorneys, law enforcement personnel, investigators, and others
 66 are able to identify traffickers and victims of human
 67 trafficking and direct victims to appropriate agencies for
 68 assistance. It is the intent of the Legislature that the
 69 Department of Children and Family Services and other state
 70 agencies cooperate with other state and federal agencies to
 71 ensure that victims of human trafficking can access social
 72 services and benefits to alleviate their plight.

73 (2)(1) As used in this section, the term:

74 (a) "Forced labor or services" means labor or services
 75 obtained from a person by:

76 1. Using or threatening to use physical force against that
 77 person or another person; ~~or~~

78 2. Restraining, isolating, or confining or threatening to
 79 restrain, isolate, or confine that person or another person
 80 without lawful authority and against her or his will; ~~or-~~

81 3. Destroying, concealing, removing, confiscating,
 82 withholding, or possessing any actual or purported passport,
 83 visa, or other immigration document, or any other actual or
 84 purported government identification document, of that person or

85 another person.

86 (b) "Human trafficking" means transporting, soliciting,
87 recruiting, harboring, providing, or obtaining another person
88 for transport.

89 ~~(3)(2)~~ Any person who knowingly engages in human
90 trafficking with the intent that the trafficked person engage in
91 forced labor or services commits a felony of the second degree,
92 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

93 (4) The Florida Court Educational Council shall establish
94 standards of instruction for circuit and county court judges who
95 hear cases involving victims of human trafficking and shall
96 provide for periodic and timely instruction.

97 Section 2. Subsection (1) of section 772.102, Florida
98 Statutes, is amended to read:

99 772.102 Definitions.--As used in this chapter, the term:

100 (1) "Criminal activity" means to commit, to attempt to
101 commit, to conspire to commit, or to solicit, coerce, or
102 intimidate another person to commit:

103 (a) Any crime that ~~which~~ is chargeable by indictment or
104 information under the following provisions:

105 1. Section 210.18, relating to evasion of payment of
106 cigarette taxes.

107 2. Section 414.39, relating to public assistance fraud.

108 3. Section 440.105 or s. 440.106, relating to workers'
109 compensation.

110 4. Part IV of chapter 501, relating to telemarketing.

111 5. Chapter 517, relating to securities transactions.

112 6. Section 550.235, s. 550.3551, or s. 550.3605, relating

- 113 to dogracing and horseracing.
- 114 7. Chapter 550, relating to jai alai frontons.
- 115 8. Chapter 552, relating to the manufacture, distribution,
116 and use of explosives.
- 117 9. Chapter 562, relating to beverage law enforcement.
- 118 10. Section 624.401, relating to transacting insurance
119 without a certificate of authority, s. 624.437(4)(c)1., relating
120 to operating an unauthorized multiple-employer welfare
121 arrangement, or s. 626.902(1)(b), relating to representing or
122 aiding an unauthorized insurer.
- 123 11. Chapter 687, relating to interest and usurious
124 practices.
- 125 12. Section 721.08, s. 721.09, or s. 721.13, relating to
126 real estate timeshare plans.
- 127 13. Chapter 782, relating to homicide.
- 128 14. Chapter 784, relating to assault and battery.
- 129 15. Chapter 787, relating to kidnapping or human
130 trafficking.
- 131 16. Chapter 790, relating to weapons and firearms.
- 132 17. Section 796.03, s. 796.04, s. 796.05, or s. 796.07,
133 relating to prostitution.
- 134 18. Chapter 806, relating to arson.
- 135 19. Section 810.02(2)(c), relating to specified burglary
136 of a dwelling or structure.
- 137 20. Chapter 812, relating to theft, robbery, and related
138 crimes.
- 139 21. Chapter 815, relating to computer-related crimes.
- 140 22. Chapter 817, relating to fraudulent practices, false

141 | pretenses, fraud generally, and credit card crimes.
 142 | 23. Section 827.071, relating to commercial sexual
 143 | exploitation of children.
 144 | 24. Chapter 831, relating to forgery and counterfeiting.
 145 | 25. Chapter 832, relating to issuance of worthless checks
 146 | and drafts.
 147 | 26. Section 836.05, relating to extortion.
 148 | 27. Chapter 837, relating to perjury.
 149 | 28. Chapter 838, relating to bribery and misuse of public
 150 | office.
 151 | 29. Chapter 843, relating to obstruction of justice.
 152 | 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
 153 | s. 847.07, relating to obscene literature and profanity.
 154 | 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
 155 | 849.25, relating to gambling.
 156 | 32. Chapter 893, relating to drug abuse prevention and
 157 | control.
 158 | 33. Section 914.22 or s. 914.23, relating to witnesses,
 159 | victims, or informants.
 160 | 34. Section 918.12 or s. 918.13, relating to tampering
 161 | with jurors and evidence.
 162 | (b) Any conduct which is subject to indictment or
 163 | information as a criminal offense and listed in 18 U.S.C. s.
 164 | 1961(1) (A), (B), (C), or (D).
 165 | Section 3. Subsection (1) of section 895.02, Florida
 166 | Statutes, is amended to read:
 167 | 895.02 Definitions.--As used in ss. 895.01-895.08, the
 168 | term:

169 (1) "Racketeering activity" means to commit, to attempt to
 170 commit, to conspire to commit, or to solicit, coerce, or
 171 intimidate another person to commit:

172 (a) Any crime that ~~which~~ is chargeable by indictment or
 173 information under the following provisions of the Florida
 174 Statutes:

175 1. Section 210.18, relating to evasion of payment of
 176 cigarette taxes.

177 2. Section 403.727(3)(b), relating to environmental
 178 control.

179 3. Section 409.920 or s. 409.9201, relating to Medicaid
 180 fraud.

181 4. Section 414.39, relating to public assistance fraud.

182 5. Section 440.105 or s. 440.106, relating to workers'
 183 compensation.

184 6. Section 443.071(4), relating to creation of a
 185 fictitious employer scheme to commit unemployment compensation
 186 fraud.

187 7. Section 465.0161, relating to distribution of medicinal
 188 drugs without a permit as an Internet pharmacy.

189 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
 190 499.0691, relating to crimes involving contraband and
 191 adulterated drugs.

192 9. Part IV of chapter 501, relating to telemarketing.

193 10. Chapter 517, relating to sale of securities and
 194 investor protection.

195 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
 196 to dogracing and horseracing.

- 197 12. Chapter 550, relating to jai alai frontons.
- 198 13. Chapter 552, relating to the manufacture,
- 199 distribution, and use of explosives.
- 200 14. Chapter 560, relating to money transmitters, if the
- 201 violation is punishable as a felony.
- 202 15. Chapter 562, relating to beverage law enforcement.
- 203 16. Section 624.401, relating to transacting insurance
- 204 without a certificate of authority, s. 624.437(4)(c)1., relating
- 205 to operating an unauthorized multiple-employer welfare
- 206 arrangement, or s. 626.902(1)(b), relating to representing or
- 207 aiding an unauthorized insurer.
- 208 17. Section 655.50, relating to reports of currency
- 209 transactions, when such violation is punishable as a felony.
- 210 18. Chapter 687, relating to interest and usurious
- 211 practices.
- 212 19. Section 721.08, s. 721.09, or s. 721.13, relating to
- 213 real estate timeshare plans.
- 214 20. Chapter 782, relating to homicide.
- 215 21. Chapter 784, relating to assault and battery.
- 216 22. Chapter 787, relating to kidnapping or human
- 217 trafficking.
- 218 23. Chapter 790, relating to weapons and firearms.
- 219 24. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
- 220 796.05, or s. 796.07, relating to prostitution and sex
- 221 trafficking.
- 222 25. Chapter 806, relating to arson.
- 223 26. Section 810.02(2)(c), relating to specified burglary
- 224 of a dwelling or structure.

- 225 27. Chapter 812, relating to theft, robbery, and related
- 226 crimes.
- 227 28. Chapter 815, relating to computer-related crimes.
- 228 29. Chapter 817, relating to fraudulent practices, false
- 229 pretenses, fraud generally, and credit card crimes.
- 230 30. Chapter 825, relating to abuse, neglect, or
- 231 exploitation of an elderly person or disabled adult.
- 232 31. Section 827.071, relating to commercial sexual
- 233 exploitation of children.
- 234 32. Chapter 831, relating to forgery and counterfeiting.
- 235 33. Chapter 832, relating to issuance of worthless checks
- 236 and drafts.
- 237 34. Section 836.05, relating to extortion.
- 238 35. Chapter 837, relating to perjury.
- 239 36. Chapter 838, relating to bribery and misuse of public
- 240 office.
- 241 37. Chapter 843, relating to obstruction of justice.
- 242 38. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 243 s. 847.07, relating to obscene literature and profanity.
- 244 39. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 245 849.25, relating to gambling.
- 246 40. Chapter 874, relating to criminal street gangs.
- 247 41. Chapter 893, relating to drug abuse prevention and
- 248 control.
- 249 42. Chapter 896, relating to offenses related to financial
- 250 transactions.
- 251 43. Sections 914.22 and 914.23, relating to tampering with
- 252 a witness, victim, or informant, and retaliation against a

253 witness, victim, or informant.

254 44. Sections 918.12 and 918.13, relating to tampering with
255 jurors and evidence.

256 (b) Any conduct defined as "racketeering activity" under
257 18 U.S.C. s. 1961(1).

258 Section 4. For the purpose of incorporating the amendment
259 made by this act to section 895.02, Florida Statutes, in a
260 reference thereto, paragraph (a) of subsection (1) of section
261 16.56, Florida Statutes, is reenacted to read:

262 16.56 Office of Statewide Prosecution.--

263 (1) There is created in the Department of Legal Affairs an
264 Office of Statewide Prosecution. The office shall be a separate
265 "budget entity" as that term is defined in chapter 216. The
266 office may:

267 (a) Investigate and prosecute the offenses of:

268 1. Bribery, burglary, criminal usury, extortion, gambling,
269 kidnapping, larceny, murder, prostitution, perjury, robbery,
270 carjacking, and home-invasion robbery;

271 2. Any crime involving narcotic or other dangerous drugs;

272 3. Any violation of the provisions of the Florida RICO
273 (Racketeer Influenced and Corrupt Organization) Act, including
274 any offense listed in the definition of racketeering activity in
275 s. 895.02(1)(a), providing such listed offense is investigated
276 in connection with a violation of s. 895.03 and is charged in a
277 separate count of an information or indictment containing a
278 count charging a violation of s. 895.03, the prosecution of
279 which listed offense may continue independently if the
280 prosecution of the violation of s. 895.03 is terminated for any

281 reason;

282 4. Any violation of the provisions of the Florida Anti-

283 Fencing Act;

284 5. Any violation of the provisions of the Florida

285 Antitrust Act of 1980, as amended;

286 6. Any crime involving, or resulting in, fraud or deceit

287 upon any person;

288 7. Any violation of s. 847.0135, relating to computer

289 pornography and child exploitation prevention, or any offense

290 related to a violation of s. 847.0135;

291 8. Any violation of the provisions of chapter 815;

292 9. Any criminal violation of part I of chapter 499;

293 10. Any violation of the provisions of the Florida Motor

294 Fuel Tax Relief Act of 2004;

295 11. Any criminal violation of s. 409.920 or s. 409.9201;

296 or

297 12. Any crime involving voter registration, voting, or

298 candidate or issue petition activities;

299

300 or any attempt, solicitation, or conspiracy to commit any of the

301 crimes specifically enumerated above. The office shall have such

302 power only when any such offense is occurring, or has occurred,

303 in two or more judicial circuits as part of a related

304 transaction, or when any such offense is connected with an

305 organized criminal conspiracy affecting two or more judicial

306 circuits.

307 Section 5. For the purpose of incorporating the amendment

308 made by this act to section 895.02, Florida Statutes, in a

HB 469

2006

309 reference thereto, paragraph (g) of subsection (3) of section
 310 655.50, Florida Statutes, is reenacted to read:

311 655.50 Florida Control of Money Laundering in Financial
 312 Institutions Act; reports of transactions involving currency or
 313 monetary instruments; when required; purpose; definitions;
 314 penalties.--

315 (3) As used in this section, the term:

316 (g) "Specified unlawful activity" means any "racketeering
 317 activity" as defined in s. 895.02.

318 Section 6. For the purpose of incorporating the amendment
 319 made by this act to section 895.02, Florida Statutes, in a
 320 reference thereto, paragraph (g) of subsection (2) of section
 321 896.101, Florida Statutes, is reenacted to read:

322 896.101 Florida Money Laundering Act; definitions;
 323 penalties; injunctions; seizure warrants; immunity.--

324 (2) As used in this section, the term:

325 (g) "Specified unlawful activity" means any "racketeering
 326 activity" as defined in s. 895.02.

327 Section 7. For the purpose of incorporating the amendment
 328 made by this act to section 895.02, Florida Statutes, in a
 329 reference thereto, section 905.34, Florida Statutes, is
 330 reenacted to read:

331 905.34 Powers and duties; law applicable.--The
 332 jurisdiction of a statewide grand jury impaneled under this
 333 chapter shall extend throughout the state. The subject matter
 334 jurisdiction of the statewide grand jury shall be limited to the
 335 offenses of:

336 (1) Bribery, burglary, carjacking, home-invasion robbery,

337 criminal usury, extortion, gambling, kidnapping, larceny,
 338 murder, prostitution, perjury, and robbery;
 339 (2) Crimes involving narcotic or other dangerous drugs;
 340 (3) Any violation of the provisions of the Florida RICO
 341 (Racketeer Influenced and Corrupt Organization) Act, including
 342 any offense listed in the definition of racketeering activity in
 343 s. 895.02(1)(a), providing such listed offense is investigated
 344 in connection with a violation of s. 895.03 and is charged in a
 345 separate count of an information or indictment containing a
 346 count charging a violation of s. 895.03, the prosecution of
 347 which listed offense may continue independently if the
 348 prosecution of the violation of s. 895.03 is terminated for any
 349 reason;
 350 (4) Any violation of the provisions of the Florida Anti-
 351 Fencing Act;
 352 (5) Any violation of the provisions of the Florida
 353 Antitrust Act of 1980, as amended;
 354 (6) Any violation of the provisions of chapter 815;
 355 (7) Any crime involving, or resulting in, fraud or deceit
 356 upon any person;
 357 (8) Any violation of s. 847.0135, s. 847.0137, or s.
 358 847.0138 relating to computer pornography and child exploitation
 359 prevention, or any offense related to a violation of s.
 360 847.0135, s. 847.0137, or s. 847.0138;
 361 (9) Any criminal violation of part I of chapter 499; or
 362 (10) Any criminal violation of s. 409.920 or s. 409.9201;
 363
 364 or any attempt, solicitation, or conspiracy to commit any

365 violation of the crimes specifically enumerated above, when any
366 such offense is occurring, or has occurred, in two or more
367 judicial circuits as part of a related transaction or when any
368 such offense is connected with an organized criminal conspiracy
369 affecting two or more judicial circuits. The statewide grand
370 jury may return indictments and presentments irrespective of the
371 county or judicial circuit where the offense is committed or
372 triable. If an indictment is returned, it shall be certified
373 and transferred for trial to the county where the offense was
374 committed. The powers and duties of, and law applicable to,
375 county grand juries shall apply to a statewide grand jury except
376 when such powers, duties, and law are inconsistent with the
377 provisions of ss. 905.31-905.40.

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