CRIMINAL JUSTICE COMMITTEE MEETING

Wednesday, December 7, 2005
9:00 a.m. – 11:00 a.m.
(404 HOB)

Allan G. Bense
Speaker

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time:	Wednesday, December 07, 2005 09:00 am
End Date and Time:	Wednesday, December 07, 2005 11:00 am
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 91 Residence of Sexual Offenders and Predators by Goldstein
HB 149 DUI Education Courses by Mahon
HB 155 Vehicle Crashes by Ross
HB 187 Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth

NOTICE FINALIZED on 11/21/2005 14:26 by THOMPSON.SONJA

FLORIDA HOUSE OF REPRESENTATIVES

Allan G. Bense, Speaker

Justice Council
Criminal Justice Committee

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Meeting Agenda
Wednesday, December 7, 2005
404 House Office Building
9:00 a.m. – 11:00 a.m.

I. Opening remarks by Chair Kravitz

II. Roll call

III. Consideration of the following bills:

HB 91—Residence of Sexual Offenders and Predators by Goldstein

HB 149—DUI Education Courses by Mahon

HB 155—Vehicle Crashes by Ross

HB 187—Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth

IV. Closing comments / Meeting adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 91 Residence of Sexual Offenders and Predators
SPONSOR(S): Goldstein
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

During the 2004 session, section 794.065, F.S. was created which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The bill substantially amends this section of statute to define a "restricted sex offender" as a person who has been convicted one of a larger list of enumerated sexual offenses (occurring after October 1, 2006) where the victim was under the age of 18 and the offender was 18 or older. The bill makes it unlawful for a restricted sex offender to reside within 2,500 feet of any school, public school bus stop, day care center, park, playground or other place where children regularly congregate. The bill provides that a restricted sex offender will not be prohibited from continuing to reside at his or her residence solely because a school, public school bus stop, day care center, park, playground or other place where children regularly congregate is built or established within 2,500 feet of that residence after the offender has established residence.

The bill also amends the sexual predator, probation and conditional release statutes to incorporate similar residency restrictions.

The bill provides that nothing shall prevent any county or municipality from enacting an ordinance relating to restrictions as the location of the residence of sexual offenders provided that the restrictions are identical to those in the bill. An ordinance may differ as to the offenses that might subject an offender to residence restrictions.

The bill provides that a landlord or owner of a residential dwelling unit may not knowingly rent or lease a residential dwelling unit located within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate if a prospective tenant is a restricted sex offender who intends to occupy the unit unless the landlord or owner can establish that, prior to rental or lease, he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender intending to occupy the unit. A violation of this provision will be a second degree misdemeanor.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill prohibits people who have been convicted of specified sexual offenses from living within 2,500 feet of certain locations. The bill prohibits landlords or owners from leasing or renting residential dwelling units to certain people.

Safeguard individual liberty: The bill will prohibit certain people from living in currently lawful locations.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator Registration: As of November 17, 2005, there were 5,492 registered sexual predators in the state. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
    a. kidnapping or false imprisonment[1] where the victim is a minor and the defendant is not the victim's parent;
    b. sexual battery;[2]
    c. lewd or lascivious offenses;[3]
    d. selling or buying a minors for child pornography;[4] or
    e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
    a. kidnapping, false imprisonment or luring or enticing a child[5] where the victim is a minor and the defendant is not the victim's parent,
    b. sexual battery;[6]
    c. procuring a person under the age of 18 for prostitution;[7]
    d. lewd or lascivious offenses;
    e. lewd or lascivious battery on an elderly person;[8]
    f. promoting sexual performance by a child;[9]
    g. selling or buying a minors for child pornography; or
    h. a violation of a similar law of another jurisdiction.[10]

In order to be counted as a prior felony, the felony must have resulted in a conviction sentenced separately or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony.

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[1] s. 787.01, F.S. or s. 787.02, F.S.,
[2] See chapter 794. F.S.
[3] s. 800.04, F.S.
[4] s. 847.0145, F.S.
[5] s. 787.025, F.S.
[6] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[7] s. 796.03, F.S.
[8] s. 825.1025(2)(b), F.S.
[9] s. 827.071, F.S.
[10] Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.[11]

A sexual predator's failure to comply with registration requirements is a third degree felony.[12] A sexual predator is required to maintain registration for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding. A sexual predator who was designated as a sexual predator by a court before October 1, 1998 and who has been released from confinement or supervision for at least 10 years and has not been arrested for any felony or misdemeanor offense since release, may petition the criminal division of the circuit court in the circuit where the sexual predator resides for removal of the sexual predator designation. For a person who was designated a sexual predator on or after October 1, 1998, a 20 year waiting period applies. For a person who was designated a sexual predator on or after September 1, 2005, a 30 year waiting period applies.

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders registered in the state. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of and whether the person has previously been convicted of a sexual offense. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

1. kidnapping, false imprisonment or luring or enticing a child[13] where the victim is a minor and the defendant is not the victim's parent;
2. sexual battery;[14]
3. procuring a person under the age of 18 for prostitution;[15]
4. lewd or lascivious offenses;
5. lewd or lascivious battery on an elderly person;[16]

[11] s. 775.21(8), F.S.
[12] s. 775.21(10), F.S.
[13] s. 787.025, F.S.
[14] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[15] s. 796.03, F.S.
[16] s. 825.1025(2)(b), F.S.

6. promoting sexual performance by a child;[17]
7. selling or buying a minors for child pornography;
8. selling or showing obscenity to a minor;[18]
9. using a computer to solicit sexual conduct of or with a minor;[19]
10. transmitting child pornography;[20]
11. transmitting material harmful to minors;[21]
12. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

Residency restrictions:

Unlawful place of residence for persons convicted of certain sex offenses: Before the 2004 legislative session, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.[22] In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 session, section 794.065, F.S. was created[23] which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense[24], against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender was previously convicted was classified as a first degree felony or higher. The offense is a first degree misdemeanor if the sexual offense for which the offender was previously convicted was classified as a second or third degree felony.

In recent months, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. Generally, the ordinances appear to be modeled after section 794.065, F.S. but extend the distance from 1,000 feet to 2,500 feet. Many of the ordinances also prohibit an offender from living within 2,500 feet of places such as libraries, churches and bus stops that are not included in the state statute. By request of the staff of the Judiciary Committee, the Legislative Committee on Intergovernmental Relations surveyed 321 municipalities and all 67 counties to determine whether they had passed an ordinance restricting the residence of sexual offenders. As of October 17, 2005, of the 153 municipalities that responded, 50 municipalities indicated that they had passed ordinances and 14 had pending proposed ordinances. Of the 44 counties that responded, two had passed ordinances and 5 had pending proposed ordinances.

The bill significantly amends s. 794.056, F.S.. The bill retains the existing language but changes the distance from 1,000 feet to 2,500 feet.

The bill defines the term "restricted sex offender" to mean a person convicted of a felony violation of any statute listed in s. 943.0435(1)(a)1.,F.S[25]., (which contains the sexual offender qualifying offenses),

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[17] s. 827.071, F.S.
[18] s. 847.0133, F.S.
[19] s. 847.0135, F.S.
[20] s. 847.0137, F.S.
[21] s. 847.0138, F.S.
[22] In cases in which the victim was a minor, a sexual predator is prohibited from *working* in a business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. ss. 775.21(6)(a)1b, 943.0435(2)(b)2, F.S.
[23] See 2004-391, Laws of Florida.
[24] Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.
[25] The following offenses are listed in s. 943.0435(1)(a)1: s. 787.01 (kidnapping), s. 787.02 (false imprisonment), s. 787.025 (luring or enticing a child), chapter 794 (sexual battery offenses), s. 796.03 (procuring a person under the age of 18 for prostitution); s. 800.04 (lewd or lascivious offenses); s. 825.1025 (lewd or lascivious battery on an elderly person); s. 827.071 (promoting sexual performance

or any similar offense committed in the state under a prior statute number or any similar offense in another jurisdiction that would be a felony if committed in the state where the victim of the offense was under the age of 18 at the time of the offense and the offender was 18 years of age or older or the offender was under 18 but was prosecuted as an adult. This applies to a person convicted of a qualifying offense on or after October 1, 2006.

The bill makes it unlawful for a person who is a restricted sex offender to reside within 2,500 feet of any school, public school bus stop, day care center, park, playground, or other place where children regularly congregate. If the restricted sex offender's qualifying offense was a first degree felony or higher, a violation of the residency restriction will be a third degree felony, punishable by up to five years in prison. If the restricted sex offender's qualifying offense was a second or third degree felony, a violation of the residency restriction will be a first degree misdemeanor, punishable by up to one year in county jail.

The bill provides that a restricted sex offender will not be prohibited from continuing to reside at his or her residence solely because a school, public school bus stop, day care center, park, playground or other place where children regularly congregate is built or established within 2,500 feet of that residence after the offender has established residence.

The bill sets forth the method by which the distance from an offender's residence to a particular location will be measured. The bill defines the term "within 2,500 feet" to mean a distance measured in a straight line from the outer boundary of the real property upon which the residential dwelling unit of the restricted sex offender is located. The distance may not be measured by a pedestrian route or automobile route, but instead must be measured as the shortest straight line between the two points without regard to any intervening structures or objects. Under those circumstances in which the residential dwelling unit of the restricted sex offender is within a cooperative, condominium, or apartment building, the parcel of real property shall consist of the parcel or parcels of real property upon which the cooperative, condominium or apartment building that contains the residential dwelling unit of the restricted sex offender is located.

Probation and community control: Currently, an offender who is on probation or community control for a specified sexual offense[26] and therefore supervised by the Department of Corrections, is prohibited from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate if the victim was under the age of 18.[27]

HB 91 provides that for probationers and community controllees whose crime was committed after October 1, 2006, and who are placed under supervision for a specified sexual offense, the court must impose a prohibition on living within *2,500* feet of the above places as well as public school bus stops. Unlike current law, this requirement will apparently apply regardless of whether the victim was under the age of 18.

Further, the bill changes the manner in which the distance from an offender's residence to a specified location will be calculated. Current law specifies that the distance must be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, day care center, park, playground, or other place where children congregate and may not be measured by a pedestrian route or automobile route.[28] The bill specifies that the distance will be measured as set forth in s. 794.065, F.S., discussed above. If the offender's residence is in an apartment complex, the Department of Corrections currently measures the distance from the front or back door of the offender's dwelling unit.

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by a child); s. 847.0133 (selling or showing obscenity to a minor); s. 847.0135 (using a computer to solicit sexual conduct of or with a minor); s. 847.0137 (transmitting of child pornography); s. 847.0138 transmitting of material harmful to minors; s. 847.0145;

[26] s. 948.30(1)(b), F.S. The specified offenses include sexual battery offenses (chapter 794), lewd or lascivious offenses (s. 800.04, F.S), promoting sexual performance by a child (s. 827.071, F.S.) and selling or buying minors for child pornography (s. 847.0145, F.S.)

[27] Section 948.30(1)(b), F.S.

[28] s. 948.30(1)(b), F.S.

The bill will require that the distance be measured from the outer boundary of the real property on which the offender's residential dwelling unit is located.

Conditional release: The conditional release program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.[29] The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.[30] The Department of Corrections supervises the offender while on conditional release. For inmates convicted of certain sexual offenses[31] or offenses against children, who are subject to conditional release, section 947.1405(7)(a), F.S., also requires the Commission to impose a list of conditions including a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop or other place where children regularly congregate.[32]

The bill changes the 1,000 feet restriction to 2,500 feet. The bill provides that beginning October 1, 2006, the commission may not approve a residence for a releasee that is located within 2,500 feet of a location listed above. The bill further provides that if, on October 1, 2006, any public school bus stop is located within 2,500 feet of the existing residence of a releasee, a sexual predator, a sexual offender or a restricted sex offender, the school district must relocate the school bus stop and thereafter, may not establish or relocate a bus stop within 2,500 feet of such a residence.

Sexual predator residency: HB 91 amends the sexual predator law to provide that a sexual predator may not establish or maintain a permanent[33] or temporary[34] residence within 2,500 feet of a school, day care center, park, playground, public school bus stop[35] or other place where children regularly congregate. A violation of this provision would be a third degree felony, punishable by up to five years in prison.[36] Further, the bill provides that a county or municipality is not prevented from enacting an ordinance relating to restrictions on the location of the residence of a sexual offender provided that the ordinance is identical to those provided in the bill. An ordinance may differ as to the offenses that might subject an offender to residence restrictions.

Application to current residences: The bill provides that amendments in the act to provisions restricting the residence of sexual offenders and sexual predators shall not require the relocation of such an offender who had established, prior to the effective date of the act, a residence not in compliance with the amendments to such restrictions.

Landlord/owner renting or leasing to restricted sex offender:
The bill provides that a landlord or owner of a residential dwelling unit may not knowingly rent or lease a residential dwelling unit located within 2,500 feet of a school, public school bus stop, day care center,

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[29] Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S

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

[31] Offenses include sexual battery (s.794), lewd or lascivious offenses (s.800.04); sexual performance by a child (s. 827.071) and selling or buying of minors (s. 847.0145).

[32] Section 947.1405(7)(a)2, F.S

[33] The term "permanent residence" is defined as a place where a person abides, lodges, or resides for 14 or more consecutive days. s. 775.21(2)(f), F.S.

[34] The term "temporary residence" is defined as a place where a "person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address; for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence, including any out-of-state address." S. 775.21(2)(g), F.S.

[35] The bill refers to a public school bus stop "as provided in s. 947.1405(7)(a)". The referenced section prohibits certain offenders on conditional release from living within 1,000 feet of a "designated public school bus stop". The section does not contain a definition of the term and it is therefore not clear why the bill references this section.

[36] s. 775.21(10)(a), F.S. The offense would be ranked in Level 7 of the Offense Severity Ranking Chart. s. 921.0022(3)(g), F.S.

park, playground or other place where children regularly congregate if a prospective tenant[37] is a restricted sex offender (as defined above) who intends to occupy the unit unless the landlord or owner can establish that, prior to rental or lease, he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender intending to occupy the unit. A violation of this provision will be a second degree misdemeanor, punishable by up to 60 days in county jail and a $500 fine.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to residency restrictions on sexual predators.

Section 2. Amends s. 794.065, F.S., relating to residency requirements for restricted sex offenders.

Section 3. Amends s. 647.1405, F.S., relating to conditions of conditional release program.

Section 4. Amends s. 948.30, F.S. relating to terms of probation or community control.

Section 5. Provides that sexual predators and sexual offenders will not be required to relocated in certain circumstances.

Section 6. Provides 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 Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

   FDLE has indicated that the bill will have a non-recurring impact on that department as follows:

Notification & Documentation to registrants	35,500
Update & Distribute Forms	22,700
Criminal Justice Training	3,400
Staff Research Hours (83,300 hours)	986,397
System Programming	15,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[37] The bill states that prospective tenant is defined as in s. 83.43. That section contains a definition of the term "tenant" as "any person entitled to occupy a dwelling unit under a rental agreement".

This bill may have a fiscal impact on landlords or owners of residential dwelling units who will be prohibited from renting or leasing a unit to a restricted sex offender (as defined by the bill) and will apparently be required to determine whether a prospective tenant is a restricted sex offender. The bill may also have a fiscal impact on restricted sex offenders and other offender who will prohibited from living within 2,500 feet of certain locations. If offenders cannot find a place to live in a densely populated area, they may be required to travel a longer distance to their place of employment.

D. FISCAL COMMENTS:

See above comments.

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:

The bill will have the affect of prohibiting certain people who commit a sexual offense on a minor after October 1, 2006 and who may have already finished their term of incarceration or supervision, from residing within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate. Because these places, particularly school bus stops, are prevalent in most communities, it is possible that there will be communities in which such people will be effectively barred from residing. It may be particularly difficult for such people to find a place to reside in a populated area.

Section 794.065, F.S. which restricts the residence of a person who committed a sexual offense after October 1, 2004, was enacted during the 2004 session. As such, there is no reported decision challenging the constitutionality of the provision. There is no case law in Florida on the constitutionality of restricting the residence of a person who is not under the supervision of the Department of Corrections based on a prior criminal conviction.

In *Milks v. State*, 894 So.2d 924 (Fla. 2005), the Florida Supreme Court considered a challenge to the constitutionality of the Florida Sexual Predators Act. The defendant argued that the act violated his right to procedural due process because the act did not provide any procedure for determining in individual cases whether a person "actually presents a danger to the community that would justify the imposition of the Act's requirements, particularly the Act's registration and public-notification requirements." In rejecting these challenges, the court noted that the United States Supreme Court had rejected an identical challenge to Connecticut's sex offender law. *Connecticut Department of Public Safety v. Doe*, 123 S.Ct. 1160 (2003); *see also*, *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005)(rejecting substantive due process, equal protection and separation of powers challenges to Florida Sexual Predators Act).

Because state statutes restricting the residency of sex offenders are of recent origin, there are only two reported decisions nationwide on their constitutionality at this time.

In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), the court considered a challenge to an Iowa statute that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or registered child care facility. The court ruled unanimously that the residency restriction was not unconstitutional on its face. The court rejected appellees claims that the statute violated the procedural and substantive due process rights of sex offenders. The court held that although, in some cases, a sex offender would be unable to live at their family's residence, the statute did not directly operate on the family relationship. The court also rejected the idea that the

statute interfered with any right to travel. The court rejected the appellees call to recognize a "fundamental right 'to live where you want'". *Id.* at 713. The court further rejected appellees arguments that the law was irrational because the legislature did not have scientific proof that excluding sex offenders from living in certain locations will enhance the safety of children and noted that this is "the sort of task for which the elected policymaking officials of a State, and not the federal courts, are properly suited." *Id.* at 715. *See also, Iowa v. Seering*, 701 N.W.2d 655 (Iowa 2005))(Iowa Supreme Court case affirming statute).

The bill amends the sexual predator statute, s. 775.21, F.S. to provide that a sexual predator may not establish a permanent or temporary residence within 2,500 feet of certain locations. This provision will likely be challenged as a violation of the ex post facto clause of the federal constitution. In considering whether a law constitutes retroactive punishment forbidden by the Ex Post Facto Clause, a court determines whether the legislature meant the statute to establish civil proceedings. If the legislature intended to impose punishment, the court will find that the provision in question violates the ex post facto clause. If the court finds that the legislature intended to enact a regulatory scheme that is civil and nonpunitive, the court will examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil. *Smith v. Doe*, 123 S.Ct. 1140 (2003). In analyzing the effects of an act, the factors "most relevant to [an] analysis are whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose." *Id.* at 1149. The *Doe v. Miller,* case discussed above, applied the this test to the Iowa statute and two of the three judges determined that the statute did not violate the ex post facto clause.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill provides that a sexual predator may not establish or maintain a permanent or temporary residence within 2,500 feet of a school, day care center, park, playground, school bus stop or other place where children regularly congregate. The bill also provides that a county or municipality is not prohibited from enacting an ordinance relating to restrictions as to the location of the residence of *sexual offenders*. This reference should probably be to sexual *predators* instead of sexual offenders unless the term sexual offenders as used in this provision is meant to broadly apply to people who have been convicted of a sexual offense rather than only people who meet the statutory definition of a sexual offender contained in chapter 943.

Section 2 of the bill prohibits a landlord or owner of a residential dwelling unit from knowingly renting or leasing a unit within 2,500 feet of certain locations to a restricted sex offender unless the landlord or owner can establish that prior to the rental or lease he or she used *reasonable due diligence* and was unable to determine that a prospective tenant of the unit was a restricted sex offender.

While the term "due diligence" is used throughout the statutes, the term "reasonable due diligence" is not used.

The bill provides that the landlord shall not "knowingly" rent a dwelling unit located within 2,500 feet of certain locations to a restricted sex offender. It is not clear what the term "knowingly" is meant to modify. If may be intended to apply to the distance of the residence from a particular place or to whether a particular person is a sex offender or to both. If it is meant to require proof that the landlord knew that the person was a restricted sex offender, it is not clear why the phrase "unless the landlord or owner can establish that prior to the rental or lease he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender" is included. It does not seem feasible that a landlord could know that a person was a restricted sex offender and also be able to establish that he or she was unable to determine that a prospective tenant was a restricted

sex offender. It is possible that the statute is not intended to require proof that the landlord knew that the person was a restricted sex offender and that the reasonable due diligence portion is meant to be an affirmative defense to a prosecution.

A landlord or owner will apparently be required to determine whether a prospective tenant is a restricted sex offender as defined in statute. To do this, the landlord will need to discover whether a prospective tenant has been convicted of one of a list of sexual offenses or a similar offense in another jurisdiction. The landlord will need to discover whether a victim was under the age of 18 at the time of the offense and if the offender was 18 or older or was under 18 and prosecuted as an adult. Any person can request a name based state criminal history check through the Florida Department of Law Enforcement for a 23 dollar fee. This check, however, does not disclose all of the information relevant to determining whether a person is a restricted sex offender. For example, this type of check would not reveal convictions from another state. Federal law does not permit a member of the general public to request a nationwide criminal history check. Further, if a landlord had access to information regarding convictions from another state, it may be difficult for the landlord to determine whether a conviction was for an offense similar to one in this state.

A landlord will apparently also be required to know the locations of schools, public school bus stops, day care centers, parks, playgrounds and other places where children regularly congregate within the vicinity of the residential dwelling unit and know whether these places are within 2,500 feet of the residence, measured in conformity with the bill.

The bill refers to a "prospective tenant" as defined in s. 83.43, F.S. This section defines the term "tenant" as means any person entitled to occupy a dwelling unit under a rental agreement. This appears to include not only the person who signs the lease or rental agreement but anyone entitled to occupy the unit. This may impact how a landlord drafts a lease by specifying who is entitled to occupy the dwelling unit.

Section 2 of the bill amends s. 794.065, F.S. which currently prohibits persons convicted of certain sexual offenses committed after October 1, *2004* from residing within *1,000* feet of a school, day care center, park or playground. The bill amends this provision to prohibit persons convicted of certain sexual offenses committed after October 1, *2006* from living within *2,500* feet of a school, day care center, park or playground. Additionally the bill adds language prohibiting a restricted sex offender who committed the offense after October 1, *2006* from residing within 2,500 feet of a school, public school bus stop, day care center, park, playground or other place where children regularly congregate. It is not clear why the provision currently in statute, which is modified by the bill to apply to offenses committed after October 1, 2006 rather than 2004, has not been repealed or left as written to apply to offenses committed after October 1, 2004. As written, the bill appears to lift the current restriction on where offenders who committed their offense after October 1, 2004 but before October 1, 2006 are permitted to live. The new language in the section appears to supersede the former language because they both apply to persons convicted after October 1, 2006 and the new language places more restrictions on an offender. The bill analysis provided by the Department of Corrections described the impact of the section as follows:

> This bill may undo current residence restrictions on sex offenders whose crimes are committed between 10/1/04 and 9/30/06. Under section 2 of the bill former s. 794.065(2) is renumbered as (3)(b). The existing application of the law to offenses committed on or after 10/1/04 is deleted, and a new effective date applies the law to offenses committed on or after 10/1/06. The entire bill is effective 10/1/06 as well.
>
> On 10/1/06, when this bill becomes law, there will be no residence restriction against offenders not on supervision who committed their crimes between 10/1/04 and 9/30/06. Offenders required to move from a location under the earlier law would be allowed to return to the same location under this amendment. By specifying that the restrictions apply only to crimes committed on or after 10/1/06, and removing the 2004 effective offense date, the bill removes the residence restrictions for offenses committed prior to the new effective date. With the

passage of this bill, on 10/1/06 there is no law that restricts where offenders not on supervision who committed their crimes prior to 10/1/06 can reside.

Section 3 of the bill amends the conditional release statute which currently provides that if the victim was under age 18, a releasee is prohibited from *working* for pay or as a volunteer at any school, day care center, park, playground or other place where children regularly congregate. The bill adds designated school bus stop. Unlike the other locations in current law, it is not clear what possible employment a releasee could have *at* a designated public school bus stop.

Further, as written, effective October 1, 2006, this section will prohibit a district school board from establishing or relocating a public school bus stop within 2,500 (rather than 1,000) feet of a conditional releasee. Further, the bill will prohibit a school district from locating a bus stop within 2,500 feet of the "permanent residence of a sexual predator who is subject to s. 775.21(7)(e), the permanent residence of an individual subject to registration as a sexual offender under s. 943.0435, or the permanent residence of a restricted sex offender under s. 794.065". If on October 1, 2006, any school bus stop is located within 2,500 feet of the residence of a person listed above, the school district must relocate the bus stop. As written, this appears to apply not to just the relatively small list of offenders on conditional release but to all persons designated as a sexual offender, regardless of the age of the victim and regardless of when the offense was committed. The bill does not amend the sexual offender statute and does not prohibit all sexual offenders from living near a bus stop. As a result, school districts will apparently be required to move bus stops within 2,500 feet of the more than 30,000 sexual offenders even though not all sexual offenders will be prohibited from living near the bus stop.

Current law requires the Department of Corrections to notify school districts of the location of the residence of a conditional releasee. It is not clear how the school districts will know the residences of all of the offenders specified in the bill. Further, it may be preferable to relocate the provisions that do not relate specifically to conditional release to a more appropriate section of statute.

Section 4 of the bill prohibits probationers and community controllees who have committed certain specified offenses from residing within 2,500 feet of a school, public school bus stop, day care center, park, playground, or other place where children regularly congregate. Unlike the residency restrictions elsewhere in statute and in the bill, this apparently applies to specified offenders regardless of the age of the victim.

Section 5 of the bill provides that the amendments of this act to provisions restricting the residence of sexual offenders and sexual predators shall not require the relocation of such an offender who has established, prior to the effective date of the act, a residence not in compliance with the amendments to such restrictions contained in the act. However, this section of the bill does not create or amend a section of statute and, as a result, will not be codified in the statutes with the sections of statute that it is intended to apply to. It may be preferable to have this language amended on to each section of statute amended by the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to residence of sexual offenders and predators; amending s. 775.21, F.S.; prohibiting sexual predators from establishing or maintaining a residence within 2,500 feet of specified locations; providing for county or municipal ordinances that restrict the residence of sexual offenders; providing requirements for such ordinances; providing exceptions; amending s. 794.065, F.S.; revising provisions relating to the residence of specified sex offenders; providing definitions; prohibiting the knowing rental or lease of a residence within 2,500 feet of specified locations to a restricted sex offender who intends to occupy the unit; providing a due diligence defense; providing criminal penalties; amending s. 947.1405, F.S.; revising conditional release program restrictions on the residence of certain sexual offenders; revising the requirements for the location of public school bus stops in relation to the permanent residence of specified sexual offenders; amending s. 948.30, F.S.; revising terms and conditions of probation or community control restricting the residence of persons convicted of certain sex offenses; providing that amendments in this act to provisions restricting the residence of sexual offenders and sexual predators shall not require the relocation of such an offender who had established, prior to the effective date of this act, a residence not in compliance with the amendments to such restrictions; providing an effective date.

WHEREAS, recent attacks on children by registered sex offenders within this state have shed light on the necessity of providing greater protection to children from the risks posed by registered sex offenders, and

WHEREAS, the recidivism rate of sex offenders is high, especially for offenders who commit crimes involving children, and

WHEREAS, the Legislature is deeply concerned about the health, safety, and protection of all of Florida's residents, particularly its children, NOW, THEREFORE

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

Section 1. Subsection (7) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.--

(7) COMMUNITY AND PUBLIC NOTIFICATION; RESIDENCE RESTRICTIONS.--

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a

sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;

2. A description of the sexual predator, including a photograph;

3. The sexual predator's current address, including the name of the county or municipality if known;

4. The circumstances of the sexual predator's offense or offenses; and

5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators.

(e)1. The sexual predator shall not establish or maintain a permanent or temporary residence within 2,500 feet, as measured in s. 794.065, of a school, day care center, park, playground, public school bus stop located as provided in s. 947.1405(7)(a), or other place where children regularly congregate.

2. Nothing contained in this paragraph shall prevent any county or municipality from enacting an ordinance relating to restrictions as to the location of the residence of sexual offenders provided that such restrictions are identical to the provisions of subparagraph 1. Such an ordinance may differ as to the offenses that might subject an offender to residence restrictions.

Section 2. Section 794.065, Florida Statutes, is amended to read:

794.065 Unlawful place of residence for restricted sex offenders; certain leases prohibited ~~persons convicted of certain sex offenses~~.--

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

(a) "Convicted" shall have the same meaning as provided in s. 943.0435.

(b) "Restricted sex offender" means a person convicted of:

1. A felony violation of any statute listed in s. 943.0435(1)(a)1.;

2. Any similar offense committed in this state that has

been redesignated from a former statute number to one of those listed in s. 943.0435(1)(a)1.; or

3. Any similar offense in another jurisdiction that would be a felony if committed in this state,

where the victim of the offense was under the age of 18 at the time of the offense and the offender was 18 years of age or older at the time of the offense, or the offender was under the age of 18 at the time of the offense and was prosecuted as an adult.

(c) "Within 2,500 feet" means a distance that shall be measured in a straight line from the outer boundary of the real property upon which the residential dwelling unit of the restricted sex offender is located. The distance may not be measured by a pedestrian route or automobile route, but instead shall be measured as the shortest straight line between the two points without regard to any intervening structures or objects. Without otherwise limiting the foregoing measurement instructions, under those circumstances in which the residential dwelling unit of the restricted sex offender is within a cooperative, condominium, or apartment building, the parcel of real property described in this paragraph shall consist of the parcel or parcels of real property upon which the cooperative, condominium, or apartment building that contains the residential dwelling unit of the restricted sex offender is located.

(2)(a) It is unlawful for any person who is a restricted sex offender to reside within 2,500 feet of any school, public school bus stop located as provided in s. 947.1405(7)(a), day

care center, park, playground, or other place where children regularly congregate. A restricted sex offender who violates this section and whose conviction of an offense described in paragraph (1)(b) was classified as a felony of the first degree or higher commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A restricted sex offender who violates this section and whose conviction of an offense described in paragraph (1)(b) was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The provisions of this subsection shall not prohibit a restricted sex offender from continuing to reside at his or her residence solely because a school, public school bus stop located as provided in s. 947.1405(7)(a), day care center, park, playground, or other place where children regularly congregate is built or established within 2,500 feet of that residence after the offender has established residence.

(c) This subsection applies to any person convicted of an offense described in paragraph (1)(b) that occurs on or after October 1, 2006.

(3)(a) ~~(1)~~ It is unlawful for any person who has been convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, to reside within 2,500 ~~1,000~~ feet of any school, day care center, park, or playground. A person who violates this section and whose conviction under s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 was classified as a felony of the first

degree or higher commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this section and whose conviction under s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) ~~(2)~~ This subsection ~~section~~ applies to any person convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 for offenses that occur on or after October 1, 2006 ~~2004~~.

(4) A landlord or owner of a residential dwelling unit shall not knowingly rent or lease a residential dwelling unit located within 2,500 feet of a school, public school bus stop located as provided in s. 947.1405(7)(a), day care center, park, playground, or other place where children regularly congregate if a prospective tenant, as defined in s. 83.43, is a restricted sex offender who intends to occupy the unit unless the landlord or owner can establish that, prior to rental or lease, he or she used reasonable due diligence and was unable to determine that a prospective tenant of the unit was a restricted sex offender intending to occupy the unit. A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Paragraph (a) of subsection (7) of section 947.1405, Florida Statutes, is amended to read:

947.1405 Conditional release program.--

(7)(a) Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has been previously convicted

of a crime committed on or after October 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is subject to conditional release supervision, shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:

1. A mandatory curfew from 10 p.m. to 6 a.m. The commission may designate another 8-hour period if the offender's employment precludes the above specified time, and such alternative is recommended by the Department of Corrections. If the commission determines that imposing a curfew would endanger the victim, the commission may consider alternative sanctions.

2. If the victim was under the age of 18, a prohibition on living within 2,500 ~~1,000~~ feet of a school, day care center, park, playground, designated public school bus stop, or other place where children regularly congregate. A releasee who is subject to this subparagraph may not relocate to a residence that is within 2,500 ~~1,000~~ feet of a public school bus stop. Beginning October 1, 2006 ~~2004~~, the commission or the department may not approve a residence that is located within 2,500 ~~1,000~~ feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate for any releasee who is subject to this subparagraph. On October 1, 2006 ~~2004~~, the department shall notify each affected school district of the location of the residence of a releasee 30 days prior to release and thereafter, if the releasee relocates to a new residence, shall notify any affected school district of the residence of the releasee within 30 days after relocation. If, on October 1, 2006 ~~2004~~, any public school

bus stop is located within 2,500 ~~1,000~~ feet of the existing residence of such releasee, the permanent residence of a sexual predator who is subject to s. 775.21(7)(e), the permanent residence of an individual subject to registration as a sexual offender under s. 943.0435, or the permanent residence of a restricted sex offender under s. 794.065, the district school board shall relocate that school bus stop. Beginning October 1, 2006 ~~2004~~, a district school board may not establish or relocate a public school bus stop within 2,500 ~~1,000~~ feet of the residence of a releasee who is subject to this subparagraph, the permanent residence of a sexual predator who is subject to s. 775.21(7)(e), the permanent residence of an individual subject to registration as a sexual offender under s. 943.0435, or the permanent residence of a restricted sex offender under s. 794.065. The failure of the district school board to comply with this subparagraph shall not result in a violation of conditional release supervision or a violation of s. 775.21(7)(e). For purposes of this subparagraph, a 2,500-foot distance shall be measured as in s. 794.065.

3. Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the releasee's own expense. If a qualified practitioner is not available within a 50-mile radius of the releasee's residence, the offender shall participate in other appropriate therapy.

4. A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved

by the victim, the offender's therapist, and the sentencing court.

5. If the victim was under the age of 18, a prohibition against contact with children under the age of 18 without review and approval by the commission. The commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment. Further, the sex offender must be currently enrolled in or have successfully completed a sex offender therapy program. The commission may not grant supervised contact with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time. When considering whether to approve supervised contact with a child, the commission must review and consider the following:

a. A risk assessment completed by a qualified practitioner. The qualified practitioner must prepare a written report that must include the findings of the assessment and address each of the following components:

(I) The sex offender's current legal status;

(II) The sex offender's history of adult charges with apparent sexual motivation;

(III) The sex offender's history of adult charges without apparent sexual motivation;

(IV) The sex offender's history of juvenile charges, whenever available;

(V) The sex offender's offender treatment history, including a consultation from the sex offender's treating, or most recent treating, therapist;

(VI) The sex offender's current mental status;

(VII) The sex offender's mental health and substance abuse history as provided by the Department of Corrections;

(VIII) The sex offender's personal, social, educational, and work history;

(IX) The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;

(X) A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;

(XI) The child's preference and relative comfort level with the proposed contact, when age-appropriate;

(XII) The parent's or legal guardian's preference regarding the proposed contact; and

(XIII) The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.

The written report of the assessment must be given to the commission.

b. A recommendation made as a part of the risk-assessment report as to whether supervised contact with the child should be approved;

c. A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the results of the risk assessment. The commission may not approve contact with the child if the parent or legal guardian refuses to give written consent for supervised contact;

d. A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, and the child, when age appropriate, which details the acceptable conditions of contact between the sex offender and the child. The safety plan must be reviewed and approved by the Department of Corrections before being submitted to the commission; and

e. Evidence that the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide, constant supervision any time the child is in contact with the offender.

The commission may not appoint a person to conduct a risk assessment and may not accept a risk assessment from a person who has not demonstrated to the commission that he or she has met the requirements of a qualified practitioner as defined in this section.

6. If the victim was under age 18, a prohibition on working for pay or as a volunteer at any school, day care center, designated public school bus stop, park, playground, or other place where children regularly congregate, as prescribed by the commission.

7. Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

8. Effective for a releasee whose crime is committed on or after July 1, 2005, a prohibition on accessing the Internet or other computer services until the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

9. A requirement that the releasee must submit two specimens of blood to the Florida Department of Law Enforcement to be registered with the DNA database.

10. A requirement that the releasee make restitution to the victim, as determined by the sentencing court or the commission, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

11. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

Section 4. Subsection (4) is added to section 948.30, Florida Statutes, to read:

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

(4) Effective for probationers or community controllees whose crime was committed on or after October 1, 2006, and who are placed under supervision for violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, in addition to all other standard and special conditions imposed, the court must impose a prohibition on living within 2,500 feet of a school, public school bus stop located as provided in s. 947.1405(7)(a), day care center, park, playground, or other place where children regularly congregate as prescribed by the court. For purposes of this subsection, a 2,500-foot distance shall be measured as in s. 794.065.

Section 5. The amendments in this act to provisions restricting the residence of sexual offenders and sexual predators shall not require the relocation of such an offender who had established, prior to the effective date of this act, a residence not in compliance with the amendments to such restrictions contained in this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 149 DUI Education Courses
SPONSOR(S): Mahon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N	Thompson	Miller
2) Criminal Justice Committee		Kramer TK	Kramer TK
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 149 requires that DUI education courses be conducted only by certified DUI instructors. The bill calls for face to face instruction and for interaction in the classroom among offenders and instructors. The bill prohibits DUI education courses from being conducted via the Internet, remote electronic technology, home study, distance learning, or any other method in which the instructor and all offenders are not physically present in the same classroom.

DUI programs are provided by both public and private organizations that provide education, evaluation and treatment referral services to DUI offenders as required by court order or by the Department of Highway Safety & Motor Vehicles (DHSMV). The programs are governed by administrative rules which require certain minimum hours of classroom instruction with certified instructors and interactive educational techniques. While DHSMV rules require that DUI programs include classroom instruction, no specific provision in the Florida Statutes currently requires the program to be delivered in this manner.

The bill may impact those providers that would propose to conduct DUI courses via the Internet or by other alternative methods. The bill has no fiscal impact on state or local governments and becomes effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- The bill would prevent organizations that could potentially offer alternative methods of DUI educational courses from providing such services in the state. However, these alternative methods are not currently allowed by DHSMV rules.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 316.193(5), F.S., requires a person who is convicted of a DUI offense to complete a substance abuse course conducted by a DUI program. The Department of Highway Safety and Motor Vehicles (DHSMV) licenses and regulates DUI programs.[1] DUI programs are provided by both public and private organizations that provide education, evaluation, and treatment referral services as required by court order or by DHSMV. The DUI education programs are operated by various safety councils, counseling centers, private traffic schools, and other public and private entities.

Current law requires that DUI program applicants must have a classroom in each county in the circuit located in a permanent structure that is readily accessible by public transportation, if transportation is available. However, a classroom is not required in any county where the total number of DUI convictions in the most recent calendar year is less than 100.[2]

DUI programs are governed by administrative rules which require certain minimum hours of classroom instruction with certified instructors and interactive educational techniques. Chapter 15A-10 of the Florida Administrative Code outlines the standards for DHSMV's DUI programs. Currently, the rules require the following for DUI education classes:

- DUI programs are only to employ instructors, Special Supervision Services evaluators, clinical supervisors and evaluators who are certified by DHSMV.[3]
- Each organization conducting a DUI program shall have sufficient classroom space to comfortably accommodate all students with a minimum of twenty (20) square feet of space per student unless otherwise authorized by local officials.[4]
- Courses shall be taught by using primarily interactive educational techniques.[5]

While DUI program classroom instruction is required under department rules, no specific provision in the Florida Statutes requires the program to be delivered in this manner. No specific language in the rules prohibits DUI education courses from being conducted via the Internet, remote electronic technology, home study, distance learning, or any other method. However, the requirements in the administrative code relating to interactive instruction and classroom space appear to indicate that the only method for DUI education courses will be in a classroom.

Effect of Proposed Changes

HB 149 incorporates current DUI program standards from the Florida Administrative Code into law. The bill amends s. 322.292, F.S., requiring that DUI education courses be conducted only by certified DUI instructors. The bill requires face-to-face instruction and interaction in the classroom among

[1] §322.292(1), F.S.
[2] §322.292(2)(c)5.c., F.S.
[3] Rule 15A-10.022(1), F.A.C.
[4] Rule 15A-10.023(1), F.A.C.
[5] Rule 15A-10.025(2), F..A.C.

offenders and instructors. The bill specifically prohibits DUI education courses from being conducted via the Internet, remote electronic technology, home study, distance learning, or any other method in which the instructor and all offenders are not physically present in the same classroom.

C. SECTION DIRECTORY:

Section 1. Creates subsection (4) of s. 322.292, F.S., requiring DUI certified instructors in the classroom and prohibiting alternative methods for DUI education courses.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prevent organizations that might specialize in alternative methods of DUI educational courses from providing such services in the state. HB 149 will allow DUI educational courses to be conducted only by organizations that are registered with DHSMV's DUI program and meet its classroom only guidelines.

D. FISCAL COMMENTS:

According to a representative of the Florida Association of DUI Programs, Inc., the fee for Level I DUI program courses (first offense) is $210 and the fee for Level II courses (second offense) is $320.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require counties or municipalities to spend funds or take actions requiring 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to DUI education courses; amending s. 322.292, F.S.; providing additional requirements for DUI education courses; providing an effective date.

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

Section 1. Subsection (4) is added to section 322.292, Florida Statutes, to read:

322.292 DUI programs supervision; powers and duties of the department.--

(4) All DUI education courses must be conducted by a certified DUI instructor in a classroom with face-to-face instruction and provide for interaction in the classroom among offenders and the instructor. DUI education courses may not be conducted via the Internet, remote electronic technology, home study, distance learning, or any other method in which the instructor and all offenders are not physically present in the same classroom.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 155 Vehicle Crashes
SPONSOR(S): Ross and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	16 Y, 0 N	Thompson	Miller
2) Criminal Justice Committee		Kramer	Kramer
3) Justice Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 155 creates the "Justin McWilliams 'Justice For Justin' Act." Currently a driver of a vehicle involved in a crash that results in an injury or death and that occurs on a public road or elsewhere open to public travel, must immediately stop and remain at the scene of the crash to give information and render aid. Violations of the current law are punishable as a third degree felony if the crash resulted in an injury and are punishable as a second degree felony if the crash resulted in a death.

The bill provides that a driver involved in a crash has the duty to stop and remain at the scene of the crash regardless of whether the crash occurred on public or on private property. The bill also changes the offense from a second degree felony to a first degree felony when the crash results in a death.

This bill has no significant fiscal impact and will take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility— The bill extends the duty of a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, from crashes occurring on public roads or other locations open to public travel, to include crashes occurring on private property. It also changes the offense from a second degree felony to a first degree felony when the crash results in a death.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under s. 316.027, F.S., the driver of a vehicle involved in a crash resulting in an injury of a person must immediately stop the vehicle at the scene of the crash, or as close as possible, and remain at the scene of the crash. The driver is required by s. 316.062, F.S., to give their name, address, vehicle registration number, and, upon request, show their driver's license to any person injured in the crash, to the driver or occupant of a vehicle involved in the crash or person attending any vehicle, or police officer at the scene. The driver is also required to render reasonable assistance to the injured person, including carrying or making arrangements for carrying the injured person to a doctor or hospital for treatment.

Generally, the provisions of chapter 316, the Florida Uniform Traffic Control Law, apply to vehicles, bicycles and pedestrians on all public highways, roads and streets, and wherever vehicles have the right to travel. State law enforcement agencies, county sheriff's offices and city police departments are authorized to enforce the state's traffic laws, (Chapter 316, F.S.), on all public roads, and elsewhere wherever the public has the right to travel by motor vehicle. See ss. 316.072 and 316.640, F.S.

Under current law, violations of s. 316.027, F.S., resulting in injury are punishable as a third degree felony and those resulting in death are punishable as a second degree felony. A third degree felony is punishable by up to five years in prison and a maximum $5,000 fine and a second degree felony is punishable by up to 15 years in prison and a maximum $10,000 fine.[1]

Proposed Changes:

The bill creates the "Justin McWilliams 'Justice for Justin' Act, "[2] extending the duty of a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, from crashes occurring on public roads or other locations open to public travel, to include crashes occurring on private property.

The bill also changes the offense from a second degree felony to a first degree felony when the crash results in a death. As a result, the sanction would be up to 30 years in prison and a maximum fine of $10,000, rather than up to 15 years in prison and a maximum $10,000 fine. The bill would also amend s. 921.0022, F.S., the "Offense Severity Ranking Chart," to provide that failure to stop or leaving the scene of an accident involving death, would result in a first degree felony.

C. SECTION DIRECTORY:

Section 1. Gives the act the name "Justin McWilliams 'Justice For Justin' Act."

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[1] *See* ss. 775.082 and 775.083, Fla. Stat. (2004)

[2] According to newspaper reports, Justin McWilliams, age 20, was struck and killed by a driver on private property on April 7, 2002. The driver was charged with leaving the scene of an accident involving injuries. The case was dismissed by the circuit judge because the incident occurred on private property which was fenced and locked. Orlando Sentinel, March 13, 2004.

Section 2. Amends s. 316.027, F.S., to revise provisions for a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, increasing penalties.

Section 3. Section 3. Amends s. 921.0022, F.S., to revise felony classification in the Criminal Punishment Code offense severity ranking chart for leaving the scene of accidents involving death.

Section 4. Provides that the act will take effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. On April 15, 2005, the Criminal Justice Impact Conference determined that HB 761, a similar bill from the 2005 session, would have an insignificant prison bed impact on the Department of Corrections. That bill did not increase the offense from a second to a first degree felony. This change would have the affect of increasing the maximum penalty for the offense from fifteen years in prison to thirty years in prison. However, because the bill does not modify the ranking of the offense in the offense severity ranking chart (from its current level 7 ranking), the lowest permissible sentence for the offense will not change. As a result, it is not expected that this provision will have a significant impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a significant direct economic impact on the private sector.

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 cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

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 vehicle crashes; creating the "Justin McWilliams 'Justice For Justin' Act"; amending s. 316.027, F.S.; requiring the driver of a vehicle involved in a crash occurring on public or private property that results in injury of a person to immediately stop the vehicle and remain at the scene; providing that failure to stop the vehicle and remain at the scene by the driver of a vehicle involved in a crash occurring on public or private property that results in the death of a person is a first degree felony; providing penalties; amending s. 921.0022, F.S.; revising felony classification in the Criminal Punishment Code offense severity ranking chart for specified violations; providing an effective date.

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

Section 1. This act may be cited as the "Justin McWilliams 'Justice For Justin' Act."

Section 2. Subsection (1) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.--

(1)(a) The driver of any vehicle involved in a crash occurring on public or private property that results ~~resulting~~ in injury of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. Any person who willfully

violates this paragraph commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The driver of any vehicle involved in a crash occurring on public or private property that results ~~resulting~~ in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. Any person who willfully violates this paragraph commits ~~is guilty of~~ a felony of the first ~~second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

(3) OFFENSE SEVERITY RANKING CHART

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

			serious bodily injury.
49			
	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.
50			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
51			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm,

			permanent disfiguration, permanent disability, or death.
52			
	409.920(2)	3rd	Medicaid provider fraud.
53			
	456.065(2)	3rd	Practicing a health care profession without a license.
54			
	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
55			
	458.327(1)	3rd	Practicing medicine without a license.
56			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
57			

58	460.411(1)	3rd	Practicing chiropractic medicine without a license.
59	461.012(1)	3rd	Practicing podiatric medicine without a license.
60	462.17	3rd	Practicing naturopathy without a license.
61	463.015(1)	3rd	Practicing optometry without a license.
62	464.016(1)	3rd	Practicing nursing without a license.
63	465.015(2)	3rd	Practicing pharmacy without a license.
64	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
	467.201	3rd	Practicing midwifery

			without a license.
65			
	468.366	3rd	Delivering respiratory care services without a license.
66			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
67			
	483.901(9)	3rd	Practicing medical physics without a license.
68			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
69			
	484.053	3rd	Dispensing hearing aids without a license.
70			
	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.
71			
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.
72			
	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
73			
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but

			less than $20,000 by financial institution.
74			
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
75			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
76			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
77			
	782.051(3)	2nd	Attempted felony murder of a person by a person other

			than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd		Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd		Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery

			on sexually violent predators facility staff.
784.08(2)(a)		1st	Aggravated battery on a person 65 years of age or older.
784.081(1)		1st	Aggravated battery on specified official or employee.
784.082(1)		1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)		1st	Aggravated battery on code inspector.
790.07(4)		1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while

			committing or attempting to commit a felony.
98			
	796.03	2nd	Procuring any person under 16 years for prostitution.
99			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
100			
	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.
101			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
102			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed;

			no assault or battery.
103			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
104			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
105			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
106			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
107			
	812.014(2)(b)3.	2nd	Property stolen,

			emergency medical equipment; 2nd degree grand theft.
108			
	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
109			
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
110			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
111			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
112			
	817.234(8)(a)	2nd	Solicitation of motor vehicle

			accident victims with intent to defraud.
113			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
114			
	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
115			
	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.
116			
	825.102(3)(b)	2nd	Neglecting an

			elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
117			
	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.
118			
	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
119			
	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
120			
	837.05(2)	3rd	Giving false information about

			alleged capital felony to a law enforcement officer.
121			
	838.015	2nd	Bribery.
122			
	838.016	2nd	Unlawful compensation or reward for official behavior.
123			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
124			
	838.22	2nd	Bid tampering.
125			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
126			
	872.06	2nd	Abuse of a dead human body.
127			
	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.
128			
	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.
129			
	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).
130			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
131			
	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
132			
	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
133			
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less

			than 200 grams.
134			
	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
135			
	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
136			
	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
137			
	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
138			
	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more,

			less than 5 kilograms.
139			
	893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
140			
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
141			
	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
142			
	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure

			to comply with reporting requirements.
143			
	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
144			
	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
145			
	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
146			
	943.0435(14)	3rd	Sexual offender; failure to report and reregister;

			failure to respond to address verification.
147			
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
148			
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
149			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
150			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address

verification.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances
SPONSOR(S): Porth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 232

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

SUMMARY ANALYSIS

HB 187 increases the sanction for refusing to submit to a lawful test of breath, urine or blood when an officer has reasonable cause to believe that a person was driving under the influence. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a prior refusal to submit to such a test. As a result of the bill, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill makes a corresponding change to the relevant boating under the influence (BUI) statutes.

The bill also expands the circumstances in which a law enforcement officer can request that a blood sample be taken in DUI and BUI cases. Currently, a person who accepts the privilege of driving in this state is deemed to have given his or her consent to a *blood* test if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at hospital, clinic or other medical facility and if the administration of a breath or urine test if impractical or impossible. HB 187 provides that a person will be deemed to have given his or her consent to a blood test if the administration of a breath or urine test is impractical or impossible, regardless of whether the person appeared for treatment at a medical facility. The bill makes a corresponding change to the relevant BUI statute.

Current law provides that a law enforcement officer must require that a blood sample be taken when the officer has probable cause to believe that a vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being. An officer is authorized to use reasonable force, if necessary, to require a person to submit to the blood test. The bill will allow an officer to require a blood test if a person refused to submit to a urine test, regardless of whether death or serious bodily injury is involved. In other words, if an officer has probable cause to believe that a motor vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being *or* if the person has refused to submit to a requested urine test, the officer may require that a blood sample be taken and may use reasonable force, if necessary. The bill makes a corresponding change to the relevant BUI statute.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Safeguard Individual Liberty: HB 187 will authorize law enforcement to compel a blood test in an increased number of DUI and BUI cases. The bill also makes it a first degree misdemeanor for a person to refuse to submit to a lawful breath, urine or blood test in a DUI or BUI case.

Promote Personal Responsibility: The bill will provide for increased sanctions for refusal to submit to a lawful breath, urine or blood test in DUI and BUI cases.

B. EFFECT OF PROPOSED CHANGES:

DUI/BUI

The offense of driving under the influence[1] (DUI) is committed if a person is driving or in the actual physical control of a vehicle within the state and:

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

The offense is punishable as follows[2]:

- For a first conviction, by a fine of not less than $250 or more than $500 and by imprisonment for not more than 6 months
- For a second conviction, by a fine of not less than $500 or more than $1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.[3]
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than $1000 or more than $2500 and by imprisonment for not more than 12 months.

A third conviction that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail[4] and up to five years in prison and a fine of up to $1000.[5] A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than $1000 or more than $5000.[6]

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

Breath, urine and blood tests

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[1] s. 316.193(1), F.S.
[2] s. 316.193(2), F.S.
[3] s. 316.193(6)(b), F.S.
[4] s. 316.193(6)(c), F.S.
[5] s. 316.193(2)(b), F.S.
[6] Additionally, a person who has been convicted of DUI faces suspension of his or her driving privilege and may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

A chemical or physical test of a person's breath can be used to determine the alcoholic content of a person's blood or breath. A breath test cannot detect the presence of a controlled substance or a chemical substance. A urine test can be used to detect the presence of a controlled substance or a chemical substance but is not used for the purpose of determining alcoholic content. A blood test can be used to detect controlled substances and chemical substances and to determine alcoholic content.

Implied consent

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. Specifically, section 316.1932(1)(a)1, F.S. provides that:

> Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her *breath* for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages.

Similarly, section 316.1932(1)(a)2, F.S. provides that a person who accepts the privilege of driving in the state is deemed to have consented to a *urine* test for the purpose of detecting the presence of a chemical substance or controlled substance. A breath or urine test must be incidental to a lawful arrest at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence.

A person is deemed to have given his or her consent to a *blood* test even if the person has not yet been arrested, if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at a medical facility and if the administration of a breath or urine test if impractical or impossible.[7]

When an officer requests the breath, urine or blood test, the offender must be told that:

- Refusal to submit to the test will result in the suspension of the offender's driving privilege for one year.
- Refusal to submit to the test will result in the suspension of the offender's driving privilege for 18 months if the offenders driving privilege has previously been suspended for a refusal to submit.
- Refusal to submit to test is a misdemeanor if the offender's driving privilege has previously been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood.

According to the Department of Highway Safety & Motor Vehicles, there were 23,517 driver license suspensions in 2003 and 23,058 in 2004 for refusal to consent to a lawful test of breath, urine or blood.

Sanctions for refusing to comply

Prior to the 2002 legislative session, if a person refused to submit to a breath, blood or urine test after an arrest for driving under the influence (DUI), the offender's driving privilege would be suspended. The refusal to submit was not a criminal offense. During the 2002 session, the law was changed to make a refusal to submit to a breath, urine or blood test a first degree misdemeanor if the offender's driving privilege has previously been suspended for a refusal to submit. See 2002-263, Laws of Fla.

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[7] s. 316.1932(1)(c), F.S The refusal to submit to a breath, urine or blood test is admissible into evidence in any criminal proceeding. The result of any test pursuant to this section which indicates the presence of a controlled substances is not admissible in a trial for the possession of a controlled substance. s. 316.1932(2), F.S.

Specifically, section 316.1939, F.S. provides that a person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine as described in s. 316.1932, F.S., and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine or blood:

1. Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.

2. Who was placed under lawful arrest for a violation of s. 316.193, unless such test was requested pursuant to s. 316.1932(1)(c)[8].

3. Who was informed that if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months, and that the refusal to submit to such test is a misdemeanor.

4. Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a first degree misdemeanor, punishable by up to one year in jail.

Blood test for impairment in cases of death or serious bodily injury Section 316.1933, F.S., requires a person to submit to a blood test, upon request of a law enforcement officer, when a law enforcement officer has probable cause to believe the person was driving under the influence and caused death or serious bodily injury[9]. The law enforcement officer may use reasonable force if necessary to require the person to submit to the blood test. The testing does not need to be incidental to a lawful arrest of a person. The blood must be withdrawn by a medical professional or technician.

Constitutional law According to the Florida courts, the implied consent statutes discussed above place greater limitations on law enforcement's authority to obtain breath, urine or blood samples than is constitutionally required. The Third District Court of Appeal discussed the issue as follows:

> Indeed, it is the established law of this state that Florida's implied consent statutes [§§ 316.1932, 316.1933, 316.1934, Fla. Stat. (1991)] impose, in certain respects, higher standards on police conduct in obtaining breath, urine, and blood samples from a defendant in a DUI case than those required by the Fourth Amendment. The Florida Supreme Court in *Sambrine v. State,* 386 So.2d 546, 548 (Fla.1980), has so stated:
>
> > What is at issue here ... is ... the right of the state of Florida to extend to its citizenry protections against unreasonable searches and seizures greater than those afforded by the federal constitution [through the Fourth Amendment]. This it has done through the enactment of section 322.261, Florida Statutes (1975) [now sections 316.1932, 316.1933, Florida Statutes (1991)]
>
> As further stated by the Fifth District Court of Appeal in *State v. McInnis,* 581 So.2d 1370, 1374 (Fla. 5th DCA), *cause dismissed,* 584 So.2d 998 (Fla.1991),
>
> > One public policy reason for enacting such a statutory scheme [Florida's implied consent statutes] is the legislature's decision to extend to some motorists driving in Florida

[8] s. 316.1932(1)(c) applies in cases in which there is reasonable cause to believe that the person was driving which under the influence and the person appears for treatment at a hospital, clinic or other medical facility and the administration of a breath or urine test is impractical or impossible.

[9] Serious bodily injury is defined as an injury "which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ." Sec. 316.1933(1)(b), F.S.

greater protection and rights of privacy than are provided by the state or federal constitutions.

In particular, Florida's implied consent statutes (1) limit the power of the police to require a person who is lawfully arrested for DUI to give samples of his/her breath, urine, or blood without the person's consent, and (2) prescribe the exact methods by which such samples may be taken and tested. These limitations and prescribed procedures represent higher standards for police conduct in obtaining samples of this nature from a DUI defendant than those required by the Fourth Amendment and are entirely permissible as a matter of state law.

State v. Langsford, 816 So.2d 136, 139 (Fla. 4th DCA 2002); *Schmerber v. California,* 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)(holding that it is not an unreasonable search under the Fourth Amendment for police to obtain a warrantless involuntary blood sample from a defendant who is under arrest for DUI if there is probable cause to arrest the defendant for that offense, and the blood is extracted in a reasonable manner by medical personnel pursuant to medically approved procedures).

Effect of HB 187

HB 187 amends s. 316.1939, F.S. to make it a first degree misdemeanor to refuse to consent to a lawful test of breath, urine or blood. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a refusal to submit to such a test. As a result, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill also amends s. 316.1932, F.S. to require that an officer inform a person that his or her refusal to submit to the test will be punishable as a misdemeanor. The bill makes a corresponding change to the relevant BUI statutes, ss. 327.352 and 327.359, F.S.

As discussed above, s. 316.1932(1)(c), F.S. currently provides that a person is deemed to have given his or her consent to a blood test if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at hospital, clinic or other medical facility and if the administration of a breath or urine test if impractical or impossible. HB 187 removes the requirement that the person appeared for treatment at a hospital, clinic or other medical facility. As such, a person will be deemed to have given his or her consent to a blood test if the administration of a breath or urine test is impractical or impossible, regardless of whether the person has appeared for treatment at a medical facility. The bill makes a corresponding change to the relevant BUI statute, s. 327.352(1)(c), F.S.

The bill also amends s. 316.1933, F.S. which currently provides that a law enforcement officer must require a blood test when the officer has probable cause to believe that a vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being. An officer is authorized to use reasonable force, if necessary, to require a person to submit to the blood test. The bill will allow an officer to require a blood test if a person refused to submit to a urine test requested pursuant to s. 316.1932, F.S., regardless of whether death or serious bodily injury is involved. In other words, if an officer has probable cause to believe that a motor vehicle driven by a person under the influence has caused the death or serious bodily injury of a human being *or* if the person has refused to submit to a requested urine test, the officer may require that a blood test be taken and may use reasonable force, if necessary. The bill makes a corresponding change to the relevant BUI statute, s.327.353, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1932, F.S. relating to refusal to submit to a breath, urine or blood test.

Section 2. Amends s. 316.1933, F.S.; permitting law enforcement to require person to submit to blood test if person has refused to take urine test.

Section 3. Amends s. 316.1939, F.S.; removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in DUI case.

Section 4. Amends s. 327.352, F.S. relating to refusal to submit to breath, urine or blood test in BUI cases.

Section 5. Amends s. 327.353, F.S.; permitting law enforcement officer to require person to submit to blood test in BUI case if person has refused to submit to urine test.

Section 6. Amends s. 327.359, F.S.; removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in BUI case.

Section 7. Provides October 1, 2005 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Highway Safety and Motor Vehicles reports that the bill will not have a fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill will make a first refusal to submit to a lawful breath, urine or blood test a first degree misdemeanor. Currently, a person commits a misdemeanor in refusing to submit to a breath, urine or blood test only if the person's driving privilege had previously been suspended for a refusal to submit to a test. A first degree misdemeanor is punishable by up to a year in county jail. This may have an impact on county jail populations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to lawful testing for alcohol, chemical substances, or controlled substances; amending s. 316.1932, F.S.; revising provisions to notify a person that refusal to submit to a lawful test of the person's breath, urine, or blood is a misdemeanor, to conform to changes made by the act; revising language relating to presumption of consent to submit to a blood test; removing reference to treatment at a medical facility; amending s. 316.1933, F.S.; directing a law enforcement officer to require a person driving or in actual physical control of the motor vehicle to submit to a blood test for the purpose of determining alcoholic content of the blood or the presence of specified chemical or controlled substances if that person has refused or failed to submit to a lawful urine test; amending s. 316.1939, F.S.; removing prior suspension as a condition for the commission of a misdemeanor by refusal to submit to a lawful test of breath, urine, or blood; amending s. 327.352, F.S.; revising provisions to notify a person that refusal to submit to a lawful test of the person's breath, urine, or blood is a misdemeanor, to conform to changes made by the act; revising language relating to presumption of consent to submit to a blood test; removing reference to treatment at a medical facility; amending s. 327.353, F.S.; directing a law enforcement officer to require a person operating or in actual physical control of the vessel to submit to a blood test for the purpose of

determining alcoholic content of the blood or the presence of specified chemical or controlled substances if that person has refused or failed to submit to a lawful urine test; amending s. 327.359, F.S.; removing prior suspension as a condition for the commission of a misdemeanor by refusal to submit to a lawful test of breath, urine, or blood; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1.a. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the

motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath ~~and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest

and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine ~~and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the

operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with the provisions of this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the

driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and ~~the person appears for treatment at a hospital, clinic, or other medical facility and~~ the administration of a breath or urine test is impractical or impossible. ~~As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle.~~ The blood test shall be performed in a reasonable manner. Any person who is

incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood~~, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been suspended previously as a result of a refusal to submit to such a test or tests, and that a refusal to submit to a lawful test of his or her blood~~, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

Section 2. Paragraph (a) of subsection (1) of section 316.1933, Florida Statutes, is amended to read:

316.1933 Blood test for alcohol, chemical substances, or controlled substances ~~impairment or intoxication in cases of death or serious bodily injury~~; right to use reasonable force.--

(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, or if the person driving or in actual physical control of a motor vehicle has refused or failed to submit to a urine test requested pursuant to s. 316.1932(1)(a)1.b., a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person unless the testing is required because the person refused or failed to submit to a urine test requested pursuant to s. 316.1932(1)(a)1.b.

Section 3. Section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.--

(1) Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 316.1932, ~~and whose driving privilege was~~

~~previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ and:

(a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(b) Who was placed under lawful arrest for a violation of s. 316.193 unless such test was requested pursuant to s. 316.1932(1)(c);

(c) Who was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood~~, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor; and

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

(2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under this section.

(3) The disposition of a criminal action under this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. ~~The department's records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood shall be admissible and shall create a rebuttable presumption of such suspension.~~

Section 4. Paragraphs (a) and (c) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe

such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in a civil penalty of $500~~,~~ and shall also be told that if he or she refuses to submit to a lawful test of his or her breath ~~and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test

shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in a civil penalty of $500~~,~~ and shall also be told that if he or she refuses to submit to a lawful test of his or her urine ~~and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood~~, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances and ~~the person appears for treatment at a hospital, clinic, or other medical facility and~~ the administration of a breath or urine test is impractical or impossible. ~~As used in this paragraph, the term "other medical~~

~~facility" includes an ambulance or other medical emergency vehicle.~~ The blood test shall be performed in a reasonable manner. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of $500 and that a refusal to submit to a lawful test of his or her blood~~, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood,~~ is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 5. Paragraph (a) of subsection (1) of section 327.353, Florida Statutes, is amended to read:

327.353 Blood test for alcohol, chemical substances, or controlled substances ~~impairment or intoxication in cases of death or serious bodily injury~~; right to use reasonable force.--

(1)(a) If a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, or if the person operating or in actual physical control of a vessel has refused or failed to submit to a urine test requested pursuant to s. 327.352(1)(a)2., a law enforcement officer shall require the person operating or in actual physical control of the vessel to submit to a test of the person's blood for the purpose of determining the alcoholic

content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require the person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 327.352, the testing required by this paragraph need not be incidental to a lawful arrest of the person unless the testing is required because the person refused or failed to submit to a urine test requested pursuant to s. 327.352(1)(a)2.

Section 6. Section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.--Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 327.352, ~~and who has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ and:

(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test he or she is subject to a fine of $500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood~~, if he or she has~~

~~been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 7. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **187**

COUNCIL/COMMITTEE ACTION

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

ADOPTED

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Between lines 219 and 220 insert:

(f)1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. Such rules must specify precisely the test or tests that are approved by the Department of Law Enforcement for reliability of result and ease of administration, and must provide an approved method of administration which must be followed in all such tests given under this section. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2.a. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the

purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

b. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in s. 316.193(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.

c. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

d. Nothing contained in s. 395.3025(4), s. 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s. 395.3025(4), s. 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a

breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

e. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the

person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed;

b. The time of the collection of the blood or breath sample analyzed;

c. The numerical results of the test indicating the alcohol content of the blood and breath;

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

Full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed

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

clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line(s) 39-40 and insert:

Section 1. Paragraphs (a), (c) and (f) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

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

Remove line(s) 9 and insert:

reference to treatment at a medical facility; revising language relating to information given to person tested; amending s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **187**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Between lines 376 and 377 insert:

(e)1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the

withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed;

b. The time of the collection of the blood or breath sample analyzed;

c. The numerical results of the test indicating the alcohol content of the blood and breath;

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

Full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line(s) 287-288 and insert:

Amendment No. 2(for drafter's use only)

Section 4. Paragraphs (a), (c) and (e) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

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

Remove line(s) 25 and insert:

to treatment at a medical facility; revising language relating to information given to person tested; amending s. 327.353,

COMMITTEE MEETING REPORT

Criminal Justice Committee

11/9/2005 9:45:00AM

Location: 404 HOB

Summary:

Criminal Justice Committee

Wednesday November 09, 2005 09:45 am

HB 85	Favorable	Yeas:	8	Nays:	0
HB 95	Favorable With Committee Substitute	Yeas:	8	Nays:	0
HB 139	Favorable	Yeas:	7	Nays:	0
HB 147	Favorable	Yeas:	8	Nays:	0
HB 175	Favorable With Committee Substitute	Yeas:	8	Nays:	0
HB 187	Retained				

Committee meeting was reported out: Wednesday, November 09, 2005 1:23:55PM