



Criminal & Civil Justice Policy Council

Monday, March 22, 2010

1:00 PM

404 HOB

Council Actions

**Larry Cretul
Speaker**

**William Snyder
Chair**

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council
3/22/2010 1:00:00PM

Location: 404 HOB

Summary:

Criminal & Civil Justice Policy Council

Monday March 22, 2010 01:00 pm

CS/HB 285	Favorable With Council Substitute	Yeas: 16	Nays: 0
HB 595	Favorable	Yeas: 13	Nays: 0
CS/HB 829	Favorable With Council Substitute	Yeas: 13	Nays: 1
CS/HB 1101	Favorable	Yeas: 16	Nays: 0
HB 1517	Favorable With Council Substitute	Yeas: 13	Nays: 3

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council

3/22/2010 1:00:00PM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
William Snyder (Chair)	X		
Sandra Adams	X		
Kevin Ambler	X		
Carl Domino	X		
Eric Eisnaugle	X		
Adam M. Fetterman	X		
Luis Garcia	X		
Audrey Gibson	X		
Eduardo Gonzalez	X		
Tom Grady	X		
Doug Holder	X		
Julio Robaina	X		
Robert Schenck	X		
Perry Thurston	X		
James Waldman	X		
Michael Weinstein	X		
Totals:	16	0	0

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council

3/22/2010 1:00:00PM

Location: 404 HOB

CS/HB 285 : Parental Authority

Favorable With Council Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Sandra Adams				X	
Kevin Ambler	X				
Carl Domino	X				
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Luis Garcia	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Doug Holder	X				
Julio Robaina	X				
Robert Schenck	X				
Perry Thurston	X				
James Waldman	X				
Michael Weinstein	X				
Adam Hasner (Ex Officio)	X				
William Snyder (Chair)	X				
Total Yeas: 16 Total Nays: 0					

Appearances:

HB 285 Parental Authority
 Michael Haggard, President (General Public) - Proponent
 Florida Justice Association
 13505 SW 72nd Avenue
 Miami FL 33156
 Phone: 305-446-5700

HB 285 Parental Authority
 Mary-Lynn Cullen, Legislative Liaison (Lobbyist) - Proponent
 Advocacy Institute for Children
 1674 University
 Sarasota FL 34243
 Phone: 941-928-0278

HB 285 Parental Authority
 Stacey Webb (Lobbyist) - Proponent
 International Speedway Corp
 120 S Monroe St
 Tallahassee FL 32311
 Phone: 850-671-4401

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council

3/22/2010 1:00:00PM

Location: 404 HOB

HB 285 Parental Authority

Winn Peebles (Lobbyist) - Proponent

Florida Trail Riders Association/Unlimited Sports MX

207 W Park Avenue, Suite 13

Tallahassee FL 32301

Phone: 850-524-2039

HB 285 Parental Authority

Bob Harris (Lobbyist) - Opponent

Diving Equipment and Marketing Association (DEMA)

2618 Centennial Place

Tallahassee FL 32308

Phone: 850-222-0720

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

Amendment No. 1

COUNCIL/COMMITTEE ACTION

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

*Superseded by
Amber Robaina
Substitute Amd*

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
 2 Council
 3 Representative(s) Horner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (1) and subsection (3) of section 549.09, Florida Statutes, are amended to read:

549.09 Motorsport nonspectator liability release.-

(1) As used in this section:

(g) "Nonspectators" means event participants who have signed a motorsport liability release, including a minor if the minor's parent or guardian has also signed the release.

(3) (a) A motorsport liability release may be signed by more than one person if so long as the release form appears on each page, or side of a page, which is signed. A motorsport liability release shall be printed in 8 point type or larger.

Amendment No. 1

19 (b) A release signed by a minor is valid if the release is
20 also signed by the minor's parent or guardian.

21
22 Section 2. Section 768.38, Florida Statutes is created to
23 read:

24 768.38 Liability waivers executed on behalf of minor
25 children. -

26 (1) LEGISLATIVE FINDINGS AND INTENT - The Legislature
27 finds and declares that it is the policy of this state that:

28 (a) Children of this state should have the maximum
29 opportunity to participate in sporting, recreational,
30 educational, and other activities despite the fact that certain
31 risks may exist when participating in these activities.

32 (b) Public, private, and non-profit entities providing
33 these activities to children in Florida need a measure of
34 protection against lawsuits, and these entities may be unwilling
35 or unable to provide the activities without such protection.

36 (c) Parents have a fundamental right and responsibility to
37 make decisions concerning the care, custody, and control of
38 their children and the law has long presumed that parents act in
39 the best interest of their children.

40 (d) Parents make conscious choices every day on behalf of
41 their children concerning the risks and benefits of
42 participation in activities.

43 (e) These are proper parental choices on behalf of children
44 that should not be ignored, and so long as a parent's decision
45 is voluntary and informed, the decision should be given the same

Amendment No. 1

46 dignity as decisions regarding schooling, medical treatment, and
47 religious education.

48 (f) It is the intent of this state to encourage the
49 affordability of youth activities in this state by permitting a
50 parent of a child to release a prospective negligence claim of
51 the child against certain persons and entities involved in
52 providing the opportunity to participate in the activities.

53 (2) DEFINITIONS - As used in this section the term:

54 (a) "Child" means a person less than eighteen years of age.

55 (b) "Parent" means a child's biological mother or father,
56 adoptive mother or father, or legal guardian.

57 (3) A parent of a child may, on behalf of the child,
58 release or waive the child's prospective claim for negligence.

59 (4) Nothing in this section shall be construed to permit a
60 parent acting on behalf of his or her child to waive the child's
61 prospective claim against a person or entity for intentional
62 misconduct or for a grossly negligent act or omission.

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

64

65

66

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

67

Remove the entire title and insert:

68

An act relating to parental authority; amending s. 549.09,

69

F.S.; providing that a motorsport liability release signed

70

by a minor is valid if the release is also signed by the

71

minor's parent or guardian; creating s. 768.38, F.S.;

72

authorizing a parent to waive and release a negligence

73

claim on behalf of their child; providing an exclusion for

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 285 (2010)

Amendment No. 1

74 | intentional misconduct and gross negligence; providing an
75 | effective date.

76 |

Am 1 to Am 1

Amendment No. 1a

COUNCIL/COMMITTEE ACTION

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

*favorable
3-22-10
superseded by
Amber Robaina
substitute and*

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
 2 Council
 3 Representative(s) *Schuck* Eisnaugle offered the following:

Amendment to Amendment (1) by Representative Horner (with title amendment)

Remove line(s) 62 and insert:
misconduct, sexual misconduct, or for a grossly negligent act or omission.

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

Remove line(s) 74 and insert:
intentional misconduct, including sexual misconduct, and gross negligence; providing an

Am 2 to am 1

Amendment No.

COUNCIL/COMMITTEE ACTION

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

*amable
3.22.10*

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative Ambler and Robaina offered the following:
4

5 **Substitute Amendment to Amendment (1) by Representative**
6 **Horner (with title amendment)**

7 Remove everything after the enacting clause and insert:
8 Section 1. Paragraph (g) of subsection (1) and subsection
9 (3) of section 549.09, Florida Statutes, are amended to read:
10 549.09 Motorsport nonspectator liability release.—(1) As
11 used in this section:

12 (g) "Nonspectator" ~~"Nonspectators"~~ means an event
13 participant participants who has have signed a motorsport
14 liability release or, in the case of a minor, whose natural
15 guardian has signed a motorsport liability release on behalf of
16 the minor.

17 (3) (a) A motorsport liability release may be signed by more
18 than one person if ~~so long as~~ the release form appears on each

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 285 (2010)

Amendment No.

19 page, or side of a page, which is signed. A motorsport liability
20 release must ~~shall~~ be printed in 8 point type or larger.

21 (b)1. If a minor is participating in a motorsports event
22 as defined in s. 549.10, the motorsport liability release must
23 comply with the requirements of this section and is valid to the
24 same extent provided for other nonspectators under this section.

25 2. If a minor is participating in an activity at a closed-
26 course motorsport facility, other than a motorsports event as
27 defined in s. 549.10, a waiver or release must comply with the
28 requirements in s. 744.301(3) and is valid only to the extent,
29 and subject to the presumptions, provided in that subsection.

30 Section 2. Present subsection (3) of section 744.301,
31 Florida Statutes, is redesignated as subsection (4) and amended,
32 and a new subsection (3) is added to that section, to read:

33 744.301 Natural guardians.—

34 (3) In addition to the authority granted in subsection
35 (2), natural guardians are authorized, on behalf of any of their
36 minor children, to waive and release, in advance, any claim or
37 cause of action against a commercial activity provider, or its
38 owners, affiliates, employees, or agents, which would accrue to
39 a minor child for personal injury, including death, and property
40 damage resulting from an inherent risk in the activity.

41 (a) As used in this subsection, the term "inherent risk"
42 means those dangers or conditions, known or unknown, which are
43 characteristic of, intrinsic to, or an integral part of the
44 activity and which are not eliminated even if the activity
45 provider acts with due care in a reasonably prudent manner. The
46 term includes, but is not limited to:

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 285 (2010)

Amendment No.

- 47 | 1. The failure by the activity provider to warn the
48 | natural guardian or minor child of an inherent risk; and
49 | 2. The risk that the minor child or another participant in
50 | the activity may act in a negligent or intentional manner and
51 | contribute to the injury or death of the minor child. A
52 | participant does not include the activity provider or its
53 | owners, affiliates, employees, or agents.

54 | (b) To be enforceable, a waiver or release executed under
55 | this subsection must, at a minimum, include the following
56 | statement in uppercase type that is at least 5 points larger
57 | than, and clearly distinguishable from, the rest of the text of
58 | the waiver or release:

59 |

60 | NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

61 |

62 | READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE AGREEING TO LET
63 | YOUR MINOR CHILD ENGAGE IN A POTENTIALLY DANGEROUS ACTIVITY. YOU
64 | ARE AGREEING THAT, EVEN IF (...name of released party or
65 | parties...) USES REASONABLE CARE IN PROVIDING THIS ACTIVITY,
66 | THERE IS A CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED
67 | BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE CERTAIN
68 | DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT BE AVOIDED OR
69 | ELIMINATED. BY SIGNING THIS FORM YOU ARE GIVING UP YOUR CHILD'S
70 | RIGHT AND YOUR RIGHT TO RECOVER FROM (...name of released party
71 | or parties...) IN A LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING
72 | DEATH, TO YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM
73 | THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU HAVE THE
74 | RIGHT TO REFUSE TO SIGN THIS FORM, AND (...name of released

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 285 (2010)

Amendment No.

75 party or parties...) HAS THE RIGHT TO REFUSE TO LET YOUR CHILD
76 PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

77
78 (c) If a waiver or release complies with paragraph (b) and
79 waives no more than allowed under this subsection, there is a
80 rebuttable presumption that the waiver or release is valid and
81 that any injury or damage to the minor child arose from the
82 inherent risk involved in the activity.

83 1. To rebut the presumption that the waiver or release is
84 valid, a claimant must demonstrate by a preponderance of the
85 evidence that the waiver or release does not comply with this
86 subsection.

87 2. To rebut the presumption that the injury or damage to
88 the minor child arose from an inherent risk involved in the
89 activity, a claimant must demonstrate by clear and convincing
90 evidence that the conduct, condition, or other cause resulting
91 in the injury or damage was not an inherent risk of the
92 activity.

93 3. If a presumption under this paragraph is rebutted,
94 liability and compensatory damages must be established by a
95 preponderance of the evidence.

96 (d) Nothing in this subsection limits the ability of
97 natural guardians, on behalf of any of their minor children, to
98 wave and release, in advance, any claim or cause of action
99 against a non-commercial activity provider, or its owners,
100 affiliates, employees, or agents, to the extent authorized by
101 common law.

Amendment No.

102 ~~(4)~~~~(3)~~ All instruments executed by a natural guardian for
103 the benefit of the ward under the powers specified in this
104 section are ~~subsection (2)~~ shall be binding on the ward. The
105 natural guardian may not, without a court order, use the
106 property of the ward for the guardian's benefit or to satisfy
107 the guardian's support obligation to the ward.

108 Section 3. This act shall take effect upon becoming a law.
109

110 -----

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

112 Remove the entire title and insert:

113 A bill to be entitled

114 An act relating to liability releases; amending s. 549.09,
115 F.S.; redefining the term "nonspectators" to include a
116 minor on whose behalf a natural guardian has signed a
117 motorsport liability release; providing that a motorsport
118 liability release signed by a natural guardian on behalf of
119 a minor participating in a sanctioned motorsports event is
120 valid to the same extent as for other nonspectators;
121 limiting the validity of a waiver or release signed by a
122 natural guardian on behalf of a minor participating in an
123 activity at a closed-course motorsport facility other than
124 a sanctioned motorsports event; amending s. 744.301, F.S.;
125 authorizing natural guardians to waive, in advance, claims
126 for injuries arising from risks inherent in a commercial
127 activity; defining the term "inherent risk"; providing a
128 statement that must be included in the waiver; creating a
129 rebuttable presumption that a waiver is valid and that the

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 285 (2010)

Amendment No.

130 | injury arose from the inherent risk; providing the
131 | requirements and standard of evidence for overcoming the
132 | presumption; authorizing natural guardians to waive, in
133 | advance, any claim against a non-commercial provider to the
134 | extent allowed by common law; providing an effective date.

am 3-am 1

Amendment No. 2

COUNCIL/COMMITTEE ACTION

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

W/d
3.22.10

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Eisnaugle offered the following:
4

5 **Substitute Amendment to Amendment (1) by Representative**
6 **Horner (with title amendment)**

7 Remove everything after the enacting clause and insert:
8 Section 1. Paragraph (g) of subsection (1) and subsection (3)
9 of section 549.09, Florida Statutes, are amended to read:

10 549.09 Motorsport nonspectator liability release.-

11 (1) As used in this section:

12 (g) "Nonspectator" "~~Nonspectators~~" means an event
13 participant participants who has have signed a motorsport
14 liability release or, in the case of a minor, whose natural
15 guardian has signed a motorsport liability release on behalf of
16 the minor.

17 (3) (a) A motorsport liability release may be signed by
18 more than one person if so long as the release form appears on
19 each page, or side of a page, which is signed. A motorsport

Amendment No. 2

20 liability release must ~~shall~~ be printed in 8 point type or
21 larger.

22 (b)1. If a minor is participating in a motorsports event
23 as defined in s. 549.10, the motorsport liability release must
24 comply with the requirements of this section and is valid to the
25 same extent provided for other nonspectators under this section.

26 2. If a minor is participating in an activity at a closed-
27 course motorsport facility, other than a motorsports event as
28 defined in s. 549.10, a waiver or release must comply with the
29 requirements in s. 744.301(3) and is valid only to the extent,
30 and subject to the presumptions, provided in that subsection.

31 Section 2. Present subsection (3) of section 744.301,
32 Florida Statutes, is redesignated as subsection (4) and amended,
33 and a new subsection (3) is added to that section, to read:

34 744.301 Natural guardians.-

35 (3) In addition to the authority granted in subsection
36 (2), natural guardians are authorized, on behalf of any of their
37 minor children, to waive and release, in advance, any claim or
38 cause of action against a commercial activity provider, or its
39 owners, affiliates, employees, or agents, which would accrue to
40 a minor child for personal injury, including death, and property
41 damage resulting from an inherent risk in the activity.

42 (a) As used in this subsection, the term "inherent risk"
43 means those dangers or conditions, known or unknown, which are
44 characteristic of, intrinsic to, or an integral part of the
45 activity. The term includes, but is not limited to:

46 1. The failure by the activity provider to warn the
47 natural guardian or minor child of an inherent risk; and

Amendment No. 2

48 2. The risk that the minor child or another participant in
49 the activity may act in a negligent or intentional manner and
50 contribute to the injury or death of the minor child. A
51 participant does not include the activity provider or its
52 owners, affiliates, employees, or agents.

53 (b) To be enforceable, a waiver or release executed under
54 this subsection must, at a minimum, include the following
55 statement in uppercase type that is at least 5 points larger
56 than, and clearly distinguishable from, the rest of the text of
57 the waiver or release:

58
59 NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

60
61 READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE
62 AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A
63 POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT,
64 THERE IS A CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED
65 OR KILLED BY PARTICIPATING IN THIS ACTIVITY BECAUSE
66 THERE ARE CERTAIN DANGERS INHERENT IN THE ACTIVITY
67 WHICH CANNOT BE AVOIDED OR ELIMINATED. BY SIGNING THIS
68 FORM YOU ARE GIVING UP YOUR CHILD'S RIGHT AND YOUR
69 RIGHT TO RECOVER FROM (...name of released party or
70 parties...) IN A LAWSUIT FOR ANY PERSONAL INJURY,
71 INCLUDING DEATH, TO YOUR CHILD OR ANY PROPERTY DAMAGE
72 THAT RESULTS FROM THE RISKS THAT ARE A NATURAL PART OF
73 THE ACTIVITY. YOU HAVE THE RIGHT TO REFUSE TO SIGN
74 THIS FORM, AND (...name of released party or

Amendment No. 2

75 parties...) HAS THE RIGHT TO REFUSE TO LET YOUR CHILD
76 PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

77
78 (c) If a waiver or release complies with paragraph (b) and
79 waives no more than allowed under this subsection, there is a
80 rebuttable presumption that the waiver or release is valid and
81 that any injury or damage to the minor child arose from the
82 inherent risk involved in the activity.

83 1. To rebut the presumption that the waiver or release is
84 valid, a claimant must demonstrate by a preponderance of the
85 evidence that the waiver or release does not comply with this
86 subsection.

87 2. To rebut the presumption that the injury or damage to
88 the minor child arose from an inherent risk involved in the
89 activity, a claimant must demonstrate by clear and convincing
90 evidence that the conduct, condition, or other cause resulting
91 in the injury or damage was not an inherent risk of the
92 activity.

93 3. If a presumption under this paragraph is rebutted,
94 liability and compensatory damages must be established by a
95 preponderance of the evidence.

96 (d) Nothing in this subsection limits the ability of
97 natural guardians, on behalf of any of their minor children, to
98 waive and release, in advance, any claim or cause of action
99 against a noncommercial activity provider, or its owners,
100 affiliates, employees, or agents, to the extent authorized by
101 common law.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 285 (2010)

Amendment No. 2

130 | requirements and standard of evidence for overcoming the
131 | presumption; authorizing natural guardians to waive, in
132 | advance, any claim against a noncommercial provider to the
133 | extent allowed by common law; providing an effective date.
134 |

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council

3/22/2010 1:00:00PM

Location: 404 HOB

HB 595 : Open House Parties

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Sandra Adams				X	
Kevin Ambler	X				
Carl Domino				X	
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Luis Garcia	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady				X	
Doug Holder	X				
Julio Robaina	X				
Robert Schenck	X				
Perry Thurston	X				
James Waldman	X				
Michael Weinstein	X				
Adam Hasner (Ex Officio)			X		
William Snyder (Chair)	X				
Total Yeas: 13 Total Nays: 0					

Appearances:

HB 595 Open House Parties
 Dwight Severs (General Public) - Proponent
 1308 Riverside Dr
 Titusville FL 32780
 Phone: 321-383-5696

HB 595 Open House Parties
 Laura McLeod, Executive Director (Lobbyist) - Proponent
 Florida Association of DUI Programs, Inc.
 1725 Mahan Drive
 Tallahassee FL 32308
 Phone: 850-671-3384

HB 595 Open House Parties
 Mark Fontaine, Executive Director (Lobbyist) - Proponent
 Florida Alcohol & Drug Abuse Association
 2868 Mahan Drive
 Tallahassee FL 32308
 Phone: 850-878-2196

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council
3/22/2010 1:00:00PM

Location: 404 HOB

CS/HB 829 : Local Government

Favorable With Council Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Sandra Adams	X				
Kevin Ambler			X		
Carl Domino	X				
Eric Eisnaugle			X		
Adam M. Fetterman	X				
Luis Garcia		X			
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Doug Holder	X				
Julio Robaina	X				
Robert Schenck	X				
Perry Thurston	X				
James Waldman	X				
Michael Weinstein	X				
Adam Hasner (Ex Officio)			X		
William Snyder (Chair)	X				
Total Yeas: 13		Total Nays: 1			

Appearances:

HB 829 Local Government
 Jess McCarty, Assistant County Attorney (Lobbyist) - Proponent
 Miami-Dade County
 111 NW 1st Street
 Miami FL
 Phone: 305-979-7110

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 829 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

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

*favorable
3.22.10*

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Bovo offered the following:

Amendment (with title amendment)

Remove line 26 and insert:

2. Negotiate the lease of real property, other than an

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

Remove line 4 and insert:

negotiate the lease of certain real property for a

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council

3/22/2010 1:00:00PM

Location: 404 HOB

CS/HB 1101 : Misdemeanor Pretrial Substance Abuse Programs

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Sandra Adams	X				
Kevin Ambler	X				
Carl Domino	X				
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Luis Garcia	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Doug Holder	X				
Julio Robaina	X				
Robert Schenck	X				
Perry Thurston	X				
James Waldman	X				
Michael Weinstein	X				
Adam Hasner (Ex Officio)			X		
William Snyder (Chair)	X				
Total Yeas: 16		Total Nays: 0			

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

COUNCIL MEETING REPORT
Criminal & Civil Justice Policy Council
3/22/2010 1:00:00PM

Location: 404 HOB

HB 1517 : Criminal Trials

Favorable With Council Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Sandra Adams				X	
Kevin Ambler		X			
Carl Domino	X				
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Luis Garcia	X				
Audrey Gibson		X			
Eduardo Gonzalez	X				
Tom Grady	X				
Doug Holder	X				
Julio Robaina	X				
Robert Schenck	X				
Perry Thurston		X			
James Waldman	X				
Michael Weinstein	X				
Adam Hasner (Ex Officio)	X				
William Snyder (Chair)	X				
Total Yeas: 13		Total Nays: 3			

Appearances:

HB 1517 Criminal Trials
 Bob Dillinger, Public Defender, 6th (State Employee) - Opponent
 Public Defender Association
 Criminal Justice Center
 Clearwater FL 33762
 Phone: 727-464-6865

HB 1517 Criminal Trials
 Jeff Takacs, Legislative Coordinator - Proponent
 Attorney General's Office
 PL-01, The Capitol
 Tallahassee FL 32399
 Phone: 850-245-0155

Committee meeting was reported out: Monday, March 22, 2010 5:33:04PM

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COUNCIL/COMMITTEE ACTION

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

*Favorable
3-22-10*

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Eisnaugle offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 918.015, Florida Statutes, is amended
8 to read:

9 918.015 Right to speedy trial.—

10 (1) RIGHT.—In all criminal prosecutions the state and the
11 defendant shall each have the right to a speedy trial.

12 (2) FINDINGS; INTENT.—The Legislature finds that Rule
13 3.191, Florida Rules of Criminal Procedure, is substantive in
14 character in every respect where it compels strict enforcement
15 of time periods for prosecutions of persons accused of crimes,
16 where it grants the benefits of its provisions to persons upon
17 arrest or service of a notice to appear, regardless of whether
18 formal charges are filed, where it continues application of the
19 time limitations where the state enters a nolle prosequi of the

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20 charge, and where it operates to circumvent and preclude the
21 filing for formal charges within the statute of limitations
22 periods for appropriate offenses. To the extent that these and
23 all other substantive effects of rules of court regarding the
24 speedy trial of persons charged with crimes expand, alter, or
25 enlarge the constitutional right to speedy trial, the
26 Legislature adopts the provisions of this section to govern a
27 defendant's right to speedy trial. This section shall govern
28 unless the Supreme Court declares this section or a provision
29 thereof to be procedural. To the extent any provision of this
30 section is found procedural, all remaining provisions shall
31 supersede any court rule in conflict with such remaining
32 substantive provisions. In the event the Supreme Court adopts a
33 rule of procedure to replace this section, or any portion of
34 this section, such rule shall neither abridge, enlarge, or
35 modify the constitutional right to a speedy trial nor require a
36 dismissal of the charge with prejudice where no substantive
37 violation of the constitutional right to a speedy trial has
38 occurred. It is the intent of the Legislature that the
39 principles and findings described in this subsection similarly
40 apply with respect to juveniles charged with delinquent acts and
41 to the provisions of s. 985.36. The Supreme Court shall, by rule
42 of said court, provide procedures through which the right to a
43 speedy trial as guaranteed by subsection (1) and by s. 16, Art.
44 I of the State Constitution, shall be realized.

45 (3) SPEEDY TRIAL GENERAL PROVISIONS.—Except as otherwise
46 provided, and subject to the limitations imposed under
47 subsections (10) and (11), a person charged with a felony by

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48 indictment or information, or in the case of a misdemeanor by
49 whatever document constitutes a formal charge, shall be brought
50 to trial within the following time periods:

51 (a) Ninety days after the filing of a misdemeanor;

52 (b) One hundred eighty days after the filing of a first,
53 second, or third degree felony;

54 (c) Two hundred seventy five days after the filing of a
55 first degree felony punishable by imprisonment for a term of
56 years not exceeding life or a life felony; or

57 (d) Three hundred sixty five days after the filing of a
58 capital felony.

59

60 This subsection does not apply whenever a motion requesting
61 application of the speedy trial time periods has been granted
62 under subsection (4) or when the state files a no information
63 indicating its intent not to file formal charges.

64 (4) REQUEST FOR SPEEDY TRIAL TIME PERIODS. -Except as
65 otherwise provided in this section, and subject to the
66 limitations imposed under subsections (10) and (11), a person
67 charged with a felony by indictment or information, or in the
68 case of a misdemeanor by whatever document constitutes a formal
69 charge, may file a motion with the trial court requesting
70 application of the speedy trial time periods under this
71 subsection.

72 (a) An order granting a motion under this subsection
73 requires the defendant to be brought to trial within the
74 following time periods:

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75 1. Sixty days from the date of an order granting the
76 motion for a misdemeanor;

77 2. One hundred twenty days from the date of an order
78 granting the motion for a first, second or third degree felony;

79 3. One hundred ninety days from the date of an order
80 granting the motion for a first degree felony punishable by
81 imprisonment for a term of years not exceeding life or a life
82 felony; or

83 4. Two hundred seventy five days from the date of an order
84 granting the motion for a capital felony.

85 (b) A motion requesting application of the speedy trial
86 time periods shall be considered a pleading that the defendant
87 is available for trial, has diligently investigated the case,
88 and is prepared or will be prepared for trial within 20 days
89 after filing the motion. If granted, the motion binds the
90 defendant and the state. No motion requesting application of
91 the speedy trial time periods shall be filed or served unless
92 the defendant has a bona fide desire to obtain a trial sooner
93 than otherwise might be provided.

94 (c) A motion requesting application of the speedy trial
95 time periods shall be granted by the court unless the court
96 determines:

97 1. No document constituting a formal charge has been filed
98 with the court;

99 2. The defendant is not or will not be prepared for trial
100 within 20 days after filing the motion; or

101 3. The factual circumstances, seriousness, or complexity
102 of the case are such that the applicable time period provided

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103 under this paragraph is insufficient to allow the state or
104 defense adequate time to prepare the case for trial.

105 (d) A motion requesting application of the speedy trial
106 time periods may be re-filed not less than 30 days after a
107 denial of a previous motion requesting application of the speedy
108 trial time periods.

109 (e) An order granting a motion requesting application of
110 the speedy trial time periods may only be vacated with consent
111 of the state or for good cause shown. Good cause for vacating
112 an order granted under this subsection and granting subsequent
113 requests for continuances on behalf of the defendant thereafter
114 shall not include nonreadiness for trial, except as to matters
115 that may arise after the motion requesting application of the
116 speedy trial time periods was filed and that reasonably could
117 not have been anticipated by the defendant or counsel for the
118 defendant.

119 (5) EXTENSIONS OF TIME.—Extension of the time periods
120 under subsections (3) and (4) may be granted under the following
121 circumstances:

122 (a) Unexpected illness, unexpected incapacity, or
123 unforeseeable and unavoidable absence of a person whose presence
124 or testimony is uniquely necessary for a full and adequate
125 trial;

126 (b) A showing by the state that the case is so unusual and
127 so complex, because of the number of defendants or the nature of
128 the prosecution or otherwise, that it is unreasonable to expect
129 adequate investigation or preparation within the prescribed time
130 periods;

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131 (c) A showing by the state that specific evidence or
132 testimony is not available despite diligent efforts to secure
133 it, but will become available within a reasonable time;

134 (d) A showing by the defendant or the state of necessity
135 for delay grounded on developments that could not have been
136 anticipated and that will materially affect the trial;

137 (e) A showing that a delay is necessary to accommodate a
138 codefendant, when there is reason to not sever the cases to
139 proceed promptly with trial of the defendant;

140 (f) A showing by the state that the defendant has caused
141 major delay or disruption of preparation of proceedings, such as
142 preventing the attendance of witnesses or otherwise;

143 (g) Other exceptional circumstances exist which, as a
144 matter of substantial justice to the defendant or the state or
145 both, require an extension;

146 (h) The state and defense have signed a stipulation for an
147 extension;

148 (i) The defendant establishes good cause to grant an
149 extension without waiving his or her right to speedy trial; or

150 (j) The court determines there exists a reasonable and
151 necessary period of delay resulting from proceedings including
152 but not limited to an examination and hearing to determine the
153 mental competency or physical ability of the defendant to stand
154 trial, for hearings on pretrial motions, for appeals by the
155 state, for review by the state under extraordinary writ, for DNA
156 testing ordered on the defendant's behalf upon defendant's
157 motion specifying the physical evidence to be tested under s.

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158 925.12(2), and for trial of other pending criminal charges
159 against the defendant.

160 (6) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of
161 this section shall be deemed waived by the defendant when any of
162 the following occurs:

163 (a) A defendant who has not filed a motion requesting
164 application of the speedy trial time periods under subsection
165 (4) moves for a continuance.

166 (b) A defendant who has filed a motion requesting
167 application of the speedy trial time periods under subsection
168 (4) moves for a continuance and the motion is granted.

169 (c) The defendant is unavailable for trial.

170 (d) The defendant agrees to provide substantial assistance
171 to the state or law enforcement while his or her case is
172 pending.

173 (e) The state proves by clear and convincing evidence that
174 the defendant has caused major delay or disruption of
175 preparation of proceedings, such as preventing the attendance of
176 witnesses or otherwise.

177 (7) MOTION FOR SPEEDY TRIAL.—

178 (a) A motion for speedy trial may be filed after the time
179 periods under subsections (3) or (4), or any period of extension
180 granted by the court, have expired.

181 (b) For purposes of calculating the time periods of this
182 section, the filing date of the initial formal charging document
183 shall be the only event which commences the running of speedy
184 trial periods except as provided in subsections (4) and (10).
185 In the event an information or indictment is filed in lieu of

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186 charges initially brought by citation, notice to appear or any
187 other document which serves a charging document, the time period
188 shall commence from the date of filing of the citation, notice
189 to appear or other document serving as a charging document, but
190 the applicable time period shall be the period which adheres to
191 the charge as filed by information or indictment. No later than
192 5 days after the date of filing the motion for speedy trial, the
193 court shall hold a hearing on the motion.

194 (c) A motion for speedy trial shall be granted unless it
195 is shown that:

196 1. The failure to hold the trial is attributable to the
197 defendant, a codefendant in the same trial, or their counsel;

198 2. The defendant was unavailable for trial;

199 3. The applicable time period or extension granted by the
200 court has not expired; or

201 4. The defendant is not prepared to proceed to trial
202 within 10 days after the hearing on the motion for speedy trial.

203
204 If the court finds that none of the reasons set forth in this
205 paragraph exist, it shall grant the motion and order the
206 defendant brought to trial within 10 days unless the court in
207 its discretion authorizes a longer time period of up to 30 days.

208 (d) A defendant not brought to trial within the 10-day
209 period or other time period prescribed by the court, through no
210 fault of the defendant or the defendant's counsel, may file a
211 motion for dismissal under subsection (8). A person will be
212 considered to have been brought to trial if the trial commences
213 within the required time period. For purposes of this paragraph,

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214 a trial is considered commenced when the jury panel for that
215 specific trial has been sworn after voir dire examination and
216 selection or, on waiver of a jury trial, when the proceedings
217 begin before the judge.

218 (8) MOTION FOR DISMISSAL.-

219 (a) A defendant whose motion for speedy trial has been
220 granted and who has not been brought to trial pursuant to
221 subsection (7) may file a motion for dismissal of all charges
222 and of any uncharged crime arising out the same criminal
223 episode. A dismissal granted solely due to the failure to bring
224 the defendant to trial before the expiration of the applicable
225 time periods shall be without prejudice. A motion for dismissal
226 with prejudice may be ordered if the defendant filed a motion
227 requesting application of the speedy trial time periods under
228 subsection (4) and such motion was granted, and:

229 1. The length of delay was substantially beyond the
230 applicable time periods and has materially prejudiced the
231 defendant in his or her defense. Prejudice may be established
232 where the defendant can show by clear and convincing evidence
233 that while outside applicable time period, or during any
234 extended period authorized by the court, an essential witness
235 has died or has become unavailable through no fault of the
236 defendant, the defendant's counsel, or anyone acting on behalf
237 of the defendant or his or her counsel. An essential witness
238 means a witness possessing exculpatory information that cannot
239 be provided by another witness of comparable credibility, or a
240 witness who is essential to explain, identify, or introduce
241 admissible evidence the defendant intended to introduce at

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242 trial. Prejudice may also be established where the defendant can
243 show by clear and convincing evidence that exculpatory evidence
244 known to the defense during the applicable time periods has been
245 destroyed, substantially degraded, lost, or become unavailable
246 through no fault of the defendant, the defendant's counsel, or
247 anyone acting on behalf of the defendant or his or her counsel;
248 or

249 2. The delay has otherwise constituted a substantive
250 violation of the defendant's constitutional right to a speedy
251 trial.

252
253 An order granting a dismissal with prejudice under this
254 paragraph must specify factual findings in support of its
255 conclusion.

256 (b)1. Charges filed by the state after a dismissal without
257 prejudice arising out the same criminal episode that was the
258 subject of dismissal may not include a new charge or any charge
259 of a higher degree that was not previously dismissed. This
260 subparagraph does not prohibit amendment of the charging
261 document as necessary to correct errors or deficiencies which do
262 not add a new charge or increase the degree of severity of a
263 charged offense.

264 2. If a nolle prosequi is filed after the expiration of
265 the applicable time period under subsection (3) or subsection
266 (4) or provided in any court-prescribed extension, charges based
267 on the same criminal episode filed after such nolle prosequi may
268 not include any new charge or any charge of a higher degree that
269 was not previously the subject of the nolle prosequi. This

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270 subparagraph does not prohibit amendment of the charging
271 document as necessary to correct errors or deficiencies which do
272 not add a new charge or increase the degree of severity of a
273 charged offense.

274 3. A trial on re-filed charges arising out of the same
275 criminal episode filed after a dismissal without prejudice or
276 after a nolle prosequi entered as described in subparagraph 2.
277 must be commenced within 60 days for a misdemeanor offense and
278 120 days for a felony offense. If the state fails to bring the
279 defendant to trial on such re-filed charges as required under
280 this subparagraph through no fault of the defendant, the
281 defendant's counsel, or anyone acting on behalf of the defendant
282 or his or her counsel, the court shall dismiss the charges with
283 prejudice.

284 (c) The state may appeal a dismissal with prejudice.

285 (9) AVAILABILITY FOR TRIAL.—A defendant is unavailable for
286 trial if the defendant or his or her counsel fails to attend a
287 proceeding at which either's presence is required by this
288 section or the defendant or his or her counsel is not ready for
289 trial on the date trial is scheduled. No presumption of
290 unavailability attaches, but if the state objects to a motion
291 for speedy trial and presents any evidence tending to show the
292 defendant's unavailability, the defendant must establish, by
293 competent proof, availability during the applicable time period.

294 (10) PRISONERS OUTSIDE JURISDICTION.—A person who is in
295 federal custody or incarcerated in a jail or correctional
296 institution outside the jurisdiction of this state or a
297 subdivision thereof is not entitled to the benefit of this

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298 section until that person is returned to the jurisdiction of the
299 court in this state within which a charge is pending or within
300 which a charge is to be filed upon such person's return and
301 until written notice of the person's return is filed with the
302 court and served on the prosecutor. For these persons, the time
303 period under subsection (3) commences on the date the last act
304 required under this subsection occurs and the time period under
305 subsection (4) commences on the date an order granting a motion
306 requesting application of the speedy trial time periods is
307 entered following the completion of all acts required under this
308 subsection. If the acts required under this subsection do not
309 precede the issuance of an order granting a motion requesting
310 application of the speedy trial time periods, the order granting
311 the motion is a nullity.

312 (11) APPLICABILITY OF TIME PERIODS— When multiple counts
313 are charged, the applicable time period is the period applicable
314 to the highest degree of offense.

315 (12) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A
316 person who is to be tried again or whose trial has been delayed
317 by an appeal by the state or the defendant shall be brought to
318 trial within 60 days in the case of a misdemeanor and within 120
319 days in the case of a felony after the date of declaration of a
320 mistrial by the trial court, the date of an order by the trial
321 court granting a new trial, the date of an order by the trial
322 court granting a motion in arrest of judgment, or the date of
323 receipt by the trial court of a mandate, order, or notice of
324 whatever form from a reviewing court that makes possible a new
325 trial for the defendant, whichever is last in time. If a

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326 defendant is not brought to trial within the prescribed time
327 period, the defendant may file a motion for speedy trial under
328 subsection (7).

329 (13) PERIOD FOR NEW OR RE-FILED CHARGES AFTER NO
330 INFORMATION, NO TRUE BILL, OR AFTER A TIMELY NOLLE PROSEQUI.-
331 This section does not prohibit the state from filing any
332 criminal charge after the entry of a no information or no true
333 bill at any time within the statute of limitations period for
334 such offense. This section does not prohibit the re-filing of
335 any original charges or any new charges after the entry of a
336 nolle prosequi when such charges are filed within the statute of
337 limitations period for such offense, if the nolle prosequi was
338 filed prior to the expiration of the time periods provided in
339 subsection (3) or subsection (4) or, in the case of an extension
340 granted by the court, prior to the expiration of the court's
341 extended time period. The speedy trial period for new or re-
342 filed charges shall be the balance of days remaining on the
343 speedy trial period of the charge or charges that were the
344 subject of the nolle prosequi or 60 days for a misdemeanor
345 offense and 120 days for a felony offense, whichever is greater.
346 If the state fails to bring the defendant to trial on such re-
347 filed charges within the time periods provided under this
348 subsection through no fault of the defendant, the defendant's
349 counsel, or anyone acting on behalf of the defendant or his or
350 her counsel, the court shall dismiss the charges with prejudice.

351 Section 2. Subsection (1) of section 985.35, Florida
352 Statutes, is amended to read:

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353 985.35 Adjudicatory hearings; withheld adjudications;
354 orders of adjudication.—

355 (1) The adjudicatory hearing must be held as soon as
356 practicable after the petition alleging that a child has
357 committed a delinquent act or violation of law is filed and in
358 accordance with s. 985.36 ~~the Florida Rules of Juvenile~~
359 ~~Procedure~~; but reasonable delay for the purpose of
360 investigation, discovery, or procuring counsel or witnesses
361 shall be granted. If the child is being detained, the time
362 limitations in s. 985.26(2) and (3) apply.

363 Section 3. Section 985.36, Florida Statutes, is created to
364 read:

365 985.36 Juvenile right to speedy trial.—

366 (1) TIME.—If a petition has been filed alleging a juvenile
367 to have committed a delinquent act, the juvenile shall be
368 brought to an adjudicatory hearing within 90 days after the
369 earlier of the following:

370 (a) The date the juvenile was taken into custody; or
371 (b) The date of service of the summons that is issued
372 when the petition is filed.

373 (2) EXTENSIONS OF TIME.—Extension of the time period under
374 subsection (1) may be granted under the following circumstances:

375 (a) Unexpected illness, unexpected incapacity, or
376 unforeseeable and unavoidable absence of a person whose presence
377 or testimony is uniquely necessary for a full and adequate
378 trial;

379 (b) A showing by the state that the case is so unusual and
380 so complex, because of the number of persons charged or the

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381 nature of the prosecution or otherwise, that it is unreasonable
382 to expect adequate investigation or preparation within the
383 prescribed time period;

384 (c) A showing by the state that specific evidence or
385 testimony is not available despite diligent efforts to secure
386 it, but will become available within a reasonable time;

387 (d) A showing by the defense or the state of necessity for
388 delay grounded on developments that could not have been
389 anticipated and that will materially affect the trial;

390 (e) A showing that a delay is necessary to accommodate a
391 codefendant, when there is reason to not sever the cases to
392 proceed promptly with trial of the juvenile;

393 (f) A showing by the state that the juvenile has caused
394 major delay or disruption of preparation of proceedings, such as
395 by preventing the attendance of witnesses or otherwise.

396 (g) Other exceptional circumstances exist which, as a
397 matter of substantial justice to the juvenile or the state or
398 both, require an extension;

399 (h) The state and defense have signed a stipulation for an
400 extension;

401 (i) The juvenile establishes good cause to grant an
402 extension without waiving his or her right to speedy trial; or

403 (j) The court determines there exists a reasonable and
404 necessary period of delay resulting from proceedings including
405 but not limited to an examination and hearing to determine the
406 mental competency or physical ability of the juvenile to stand
407 for the adjudicatory hearing, for hearings on pretrial motions,
408 for appeals by the state, for review by the state under

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409 extraordinary writ, and for adjudicatory hearings of other
410 pending charges against the juvenile.

411 (3) WAIVER OF SPEEDY TRIAL PERIODS.—The time periods of
412 this section shall be deemed waived by the juvenile when any of
413 the following occurs:

414 (a) The juvenile moves for a continuance.

415 (b) The juvenile is unavailable for trial.

416 (c) The juvenile agrees to provide substantial assistance
417 to the state or law enforcement while his or her case is
418 pending.

419 (d) The state proves by clear and convincing evidence that
420 the juvenile has caused major delay or disruption of preparation
421 of proceedings, such as by preventing the attendance of
422 witnesses or otherwise.

423 (4) MOTION FOR SPEEDY TRIAL.—A motion for speedy trial may
424 be filed after the time period under subsection (1) or any
425 period of extension granted by the court has expired. No later
426 than 5 days after the date of filing the motion for speedy
427 trial, the court shall hold a hearing on the motion. A motion
428 for speedy trial shall be granted unless it is shown that:

429 (a) The failure to hold the adjudicatory hearing is
430 attributable to the juvenile, a codefendant in the same case, or
431 their counsel;

432 (b) The juvenile was unavailable for trial;

433 (c) The time period or extension granted by the court has
434 not expired; or

435 (d) The juvenile is not prepared to proceed to trial
436 within 10 days after the hearing on the motion for speedy trial.

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If the court finds that none of the reasons set forth in this subsection exist, it shall grant the motion and order the juvenile to be brought to an adjudicatory hearing within 10 days. A juvenile not brought to his or her adjudicatory hearing within the 10-day period, through no fault of the juvenile or the juvenile's counsel, may file a motion for dismissal under subsection (5). A juvenile will be considered to have been brought to his or her adjudicatory hearing if the hearing commences within the required time period. For purposes of this subsection, the adjudicatory hearing is considered commenced when the proceedings begin before the judge.

(5) MOTION FOR DISMISSAL.—

(a) A juvenile whose motion for speedy trial has been granted and who has not been brought to an adjudicatory hearing under subsection (4) may file a motion for dismissal of the petition and of any uncharged delinquent act arising out the same criminal episode. If the state failed to bring the juvenile to an adjudicatory hearing as required under subsection (4) through no fault of the juvenile or the juvenile's counsel, the court may, in its discretion, dismiss the charge without prejudice, or with prejudice if the court finds good cause exists which warrants permanent dismissal of the petition based on consideration of the following factors:

1. The length of the delay.
2. The circumstances and reason for the delay.
3. The seriousness of the charge.
4. The degree of prejudice to the defense.

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465
466 An order dismissing a petition with prejudice under this
467 paragraph must be in writing and supported by facts which
468 support a finding that the length of the delay was unreasonable
469 and that the prejudice to the juvenile diminished his or her
470 defense in a material way.

471 (b)1. Charges filed by the state after a dismissal without
472 prejudice arising out the same criminal episode that was the
473 subject of dismissal may not include any new charge or any
474 charge of a higher degree that was not previously dismissed.
475 This subsection does not prohibit amendment of the petition as
476 necessary to correct errors or deficiencies which do not add a
477 new charge or increase the degree of severity of a charged
478 offense.

479 2. If a nolle prosequi is filed after the expiration of
480 the time period specified in subsection (1), charges based on
481 the same criminal episode filed after such nolle prosequi may
482 not include any new charge or any charge of a higher degree that
483 was not previously the subject of the nolle prosequi. This
484 subsection does not prohibit amendment of the petition as
485 necessary to correct errors or deficiencies which do not add a
486 new charge or increase the degree of severity of a charged
487 offense.

488 3. An adjudicatory hearing on re-filed charges arising out
489 the same criminal episode filed after a dismissal without
490 prejudice or after a nolle prosequi entered as described in
491 subparagraph 2. must be commenced within 60 days. If the state
492 fails to bring the juvenile to an adjudicatory hearing on such

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493 re-filed charges as required under this subparagraph through no
494 fault of the juvenile or juvenile's counsel, the court shall
495 dismiss the charges with prejudice.

496 (c) The state may appeal a dismissal with prejudice.

497 (6) AVAILABILITY FOR TRIAL.—A juvenile is unavailable for
498 trial if the juvenile or his or her counsel fails to attend a
499 proceeding at which either's presence is required by this
500 section, or the juvenile or his or her counsel is not ready for
501 the adjudicatory hearing on the date it is scheduled. No
502 presumption of unavailability attaches, but if the state objects
503 to a motion for speedy trial and presents any evidence tending
504 to show the juvenile's unavailability, the juvenile must
505 establish, by competent proof, availability during the time
506 period.

507 (7) INCOMPETENCY OF JUVENILE.—Upon the filing of a motion
508 to declare the juvenile incompetent, the speedy trial period
509 shall be tolled until a subsequent finding of the court that the
510 child is competent to proceed.

511 (8) EFFECT OF MISTRIAL; APPEAL; ORDER OF NEW TRIAL.—A
512 juvenile who is to have another adjudicatory hearing or whose
513 adjudicatory hearing has been delayed by an appeal by the state
514 or the defense shall be brought to an adjudicatory hearing
515 within 60 days after the date of declaration of a mistrial by
516 the trial court, the date of an order by the trial court
517 granting a new trial, the date of an order by the trial court
518 granting a motion in arrest of judgment, or the date of receipt
519 by the trial court of a mandate, order, or notice of whatever
520 form from a reviewing court that makes possible a new trial for

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521 the respondent, whichever is last in time. If a juvenile is not
522 brought to an adjudicatory hearing within the prescribed time
523 period, the juvenile may file a motion for speedy trial under
524 subsection (5).

525 (9) PERIOD FOR NEW OR RE-FILED CHARGES AFTER NO PETITION
526 OR TIMELY NOLLE PROSEQUI.—This section does not prohibit the
527 state from filing a petition after the entry of a no petition at
528 any time within the statute of limitations period for such
529 offense if the person who is the subject of the petition remains
530 under the jurisdiction of the juvenile court the day a new
531 petition is filed. This section does not prohibit the re-filing
532 of any original charges or any new charges after the entry of a
533 nolle prosequi when such charges are filed within the statute of
534 limitations period for such offense, if the nolle prosequi was
535 filed prior to the expiration of the time period provided in
536 subsection (1) and if the person who is the subject of the new
537 charges in the petition remains under the jurisdiction of the
538 juvenile court the day a new petition is filed. The speedy trial
539 period for new or re-filed charges shall be the balance of days
540 remaining on the speedy trial period of the charge or charges
541 that were the subject of the nolle prosequi or 60 days,
542 whichever is greater. If the state fails to bring the juvenile
543 to trial on such re-filed charges as required under this
544 subparagraph through no fault of the juvenile, the juvenile's
545 counsel, or anyone acting on behalf of the juvenile or his or
546 her counsel, the court shall dismiss the petition with
547 prejudice.

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548 Section 4. Rule 3.191, Florida Rules of Criminal
549 Procedure, is repealed.

550 Section 5. Rule 8.090, Florida Rules of Juvenile Procedure
551 is repealed.

552 Section 6. This act shall take effect upon becoming law,
553 but sections 4 and 5 of this act shall take effect only if this
554 act is enacted by a two-thirds vote of the membership of each
555 house of the Legislature.

556

557

558

559 **T I T L E A M E N D M E N T**

560 Remove the entire title and insert:

561 An act relating to criminal trials; amending s.
562 918.015, F.S.; providing legislative findings and
563 intent concerning speedy trial requirements; specifying
564 periods for commencement of a trial absent a demand
565 for a speedy trial; specifying periods for commencement
566 of a trial when a request for application of speedy
567 trial periods is made; providing grounds for denial of
568 such a motion; providing for vacation of such a motion
569 upon good cause; providing for extensions of time;
570 providing requirements for a speedy trial motion;
571 providing for dismissal of charges if a defendant is
572 not brought to trial within the time period prescribed
573 by the court; providing requirements for motions for
574 dismissal; providing limitations on re-filing of
575 charges following a dismissal without prejudice;

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576 providing requirements for orders dismissing charges
577 with prejudice; providing factors to be considered in
578 determining whether charges should be dismissed with
579 prejudice; providing for determination of whether a
580 defendant is available for trial for purposes of speedy
581 trial provisions; providing for application of
582 provisions to prisoners outside the jurisdiction;
583 providing for applicability when a defendant is charged
584 with both felony and misdemeanor offenses; providing
585 for applicability when a defendant is charged with more
586 than one felony providing for the effect of appeals;
587 providing for retrial after declaration of a mistrial;
588 providing for application to new or re-filed charges
589 after timely nolle prosequi; deleting reference to a
590 rule of the Supreme Court concerning speedy trials;
591 amending s. 985.35, F.S.; providing that adjudicatory
592 hearings for juveniles must be held in accordance with
593 a specified statute relating to speedy trials rather
594 than according to specified court rules; creating s.
595 985.36, F.S.; providing a time period for juvenile
596 adjudicatory hearings; providing for extensions of
597 time; providing for waiver of speedy trial period;
598 providing for motions for speedy trial; providing for
599 motions for dismissal; providing for dismissal of
600 charges if a juvenile is not brought to trial within
601 the time period prescribed by the court; providing
602 requirements for motions for dismissal; providing
603 limitations on re-filing of charges following a

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604 dismissal without prejudice; providing requirements for
605 orders dismissing charges with prejudice; providing
606 factors to be considered in determining whether charges
607 should be dismissed with prejudice; providing for
608 determination of whether a juvenile is available for
609 trial for purposes of speedy trial provisions;
610 providing of tolling of speedy trial period during the
611 determination of a juvenile's competency; providing for
612 the effect of a declaration of a mistrial, an appeal,
613 or an order for a new trial; providing for application
614 to new or re-filed charges after timely nolle prosequi;
615 repealing Rule 3.191, Florida Rules of Criminal
616 Procedure, relating to speedy trials; repealing Rule
617 8.090, Florida Rules of Juvenile Procedure, relating to
618 speedy trials in juvenile proceedings; providing a
619 contingent effective date.

620
621 WHEREAS, Section 16, Article I of the State Constitution
622 and the Sixth Amendment to the United States Constitution
623 provide persons accused of crimes a right to speedy trial, and

624 WHEREAS, the United States Supreme Court has explicitly
625 stated that there is "no constitutional basis for holding that
626 the speedy trial right can be quantified into a specified number
627 of days or months." (Barker v. Wingo, 407 U.S. 514, 523 (1972)),
628 and

629 WHEREAS, the Legislature finds that there is no basis in
630 the State Constitution or the United States Constitution to
631 permanently and forever discharge a defendant for a crime based

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632 solely upon the expiration of strict time limits for criminal
633 prosecutions when no substantive violation of the constitutional
634 right to speedy trial has occurred, and

635 WHEREAS, the Legislature finds that Rule 3.191, Florida
636 Rules of Criminal Procedure, creates time periods for a speedy
637 trial far stricter than necessary and that require courts to
638 dismiss prosecutions against accused criminals who have suffered
639 neither a violation of a constitutional right nor an unfair
640 trial, and

641 WHEREAS, the Legislature finds that Rule 3.191, Florida
642 Rules of Criminal Procedure, is substantive in character by
643 expanding a criminal defendant's right to speedy trial to a
644 right to be forever discharged from his or her crime if not
645 tried within a specific number of days and to attach that right
646 upon a person's arrest even where the state attorney declines to
647 file formal charges pending further investigation, NOW,
648 THEREFORE,

649