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# **Criminal & Civil Justice Policy Council**

**Tuesday, February 2, 2010**

**10:00 AM**

**404 HOB**

**Larry Cretul  
Speaker**

**William Snyder  
Chair**

**Council Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Criminal & Civil Justice Policy Council**

**Start Date and Time:** Tuesday, February 02, 2010 10:00 am  
**End Date and Time:** Tuesday, February 02, 2010 12:00 pm  
**Location:** 404 HOB  
**Duration:** 2.00 hrs

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

HB 1 Statutes of Limitations by Porth  
HB 361 Trust Administration by Wood

**Consideration of the following proposed council bill(s):**

PCB CCJP 10-02 -- Criminal Justice Repealer  
PCB CCJP 10-03 -- Judiciary Repealer

Workshop to discuss laws and policy relating to employment background screening

**NOTICE FINALIZED on 01/26/2010 16:16 by Jones.Missy**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1 Statutes of Limitations

SPONSOR(S): Porth and others

TIED BILLS: IDEN./SIM. BILLS: SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee	12 Y, 0 N	De La Paz	De La Paz
2) Policy Council	15 Y, 0 N	Varn	Ciccone
3) Criminal & Civil Justice Policy Council		De La Paz	Havlicak RN
4)			
5)			

SUMMARY ANALYSIS

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law.

HB 1 amends s. 95.11, F.S., to provide an exception to the current two year statute of limitations for wrongful death actions, to provide that wrongful death actions for intentional torts resulting in death from acts described in the murder or manslaughter statutes may be commenced at any time.

This bill does not appear to have a fiscal impact on state or local government.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

HB 1 may also be referred to as the "Jeffrey Klee Act." Jeffrey Klee disappeared on June 21, 1977, after last being seen at a lounge in Tamarac, Florida. Witnesses said he left the lounge with a friend named David Cusanelli, but he didn't return home and was never seen again. On March 26, 2008, Jeffrey Klee's remains and van were found at the bottom of a canal in Coral Springs, Florida. Police detectives obtained statements from both David Cusanelli and his brother which revealed facts that appeared sufficient to charge David Cusanelli with manslaughter. The statute of limitations applicable to manslaughter at the time was 3 years. Due to the extended period of time between the day of Jeffrey's disappearance and the recovery of his body and the admissions of David and his brother, the statute of limitations has long since expired. As a result, a charge of manslaughter cannot be brought against David Cusanelli for the death of Jeffrey Klee.

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Such laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended).

##### Statute of Limitations on Manslaughter

Section 775.15, F.S., provides that "[a] prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time." Under this provision, a prosecution for manslaughter may be commenced at any time. With respect to all homicide offenses, what is now the current statutory provision was amended into the statute in 1996.<sup>1</sup>

##### Statute of Limitations on Wrongful Death Actions

Under current law, civil actions for deaths caused by the wrongful act, negligence, default, or breach of contract or warranty of another may be brought under the Wrongful Death Act.<sup>2</sup> Section 768.21, F.S., specifies the types of damages that may be recovered under a wrongful death action. Section 95.11(4)(d) provides for a two year statute of limitations for wrongful death actions. As a result,

<sup>1</sup> Ch. 96-145, Laws of Florida

<sup>2</sup> Section 768.19, F.S.

although under current law the state may pursue criminal charges against someone for the crimes of murder or manslaughter at any time, civil actions based on the same conduct are limited by the two year statute of limitations applicable to other wrongful death actions.

HB 1 amends s. 95.11, F.S., to provide an exception to the current two year statute of limitations for wrongful death actions, to provide that wrongful death actions for intentional torts resulting in death from acts described in the murder or manslaughter statutes may be commenced at any time. The bill also expressly states that the bringing of a civil action is not conditioned upon the criminal prosecution, arrest or conviction of the person being sued.

HB 1 contains language which limits the application of the changes to the time periods in s. 95.11, F.S., to claims that are not otherwise time barred on the effective date of the act.

The bill becomes effective upon becoming law.

**B. SECTION DIRECTORY:**

Section 1. Provides a name for the act.

Section 2. Amends s. 95.11, F.S., regarding the statute of limitations for civil actions.

Section 3. Provides for application of the changes to s. 95.11, F.S., to claims not otherwise time barred.

Section 4. Provides an effective date.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

This bill does not appear to have a fiscal impact on state or local government.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to statutes of limitations; providing a  
 3           short title; amending s. 95.11, F.S.; eliminating the  
 4           statute of limitations for wrongful death actions for  
 5           intentional torts resulting in death from acts described  
 6           in s. 782.04, F.S., relating to murder, or s. 782.07,  
 7           F.S., relating to manslaughter; providing for application;  
 8           providing an effective date.

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

11  
 12       Section 1.   This act may be cited as the "Jeffrey Klee  
 13       Memorial Act."

14       Section 2.   Subsection (9) is added to section 95.11,  
 15       Florida Statutes, to read:

16           95.11 Limitations other than for the recovery of real  
 17       property.--Actions other than for recovery of real property  
 18       shall be commenced as follows:

19           (9) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS  
 20       DESCRIBED IN S. 782.04 OR S. 782.07.--Notwithstanding paragraph  
 21       (4) (d), an action for wrongful death seeking damages authorized  
 22       under s. 768.21 brought against a natural person for an  
 23       intentional tort resulting in death from acts described in s.  
 24       782.04 or s. 782.07 may be commenced at any time. This  
 25       subsection shall not be construed to require an arrest, the  
 26       filing of formal criminal charges, or a conviction for a  
 27       violation of s. 782.04 or s. 782.07 as a condition for filing a  
 28       civil action.



HB 1

2010

29           Section 3. The amendment to section 95.11, Florida  
30 Statutes, by this act applies to any claim that is not otherwise  
31 time barred on the effective date of this act.

32           Section 4. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 361

Trust Administration

**SPONSOR(S):** Wood

**TIED BILLS:** None

**IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee	11 Y, 0 N	Bond	De La Paz
2) Policy Council	15 Y, 0 N	Varn	Ciccone
3) Criminal & Civil Justice Policy Council		Bond <i>YMB</i>	Havlicak <i>RH</i>
4)			
5)			

**SUMMARY ANALYSIS**

A trust is a legal entity created by a settlor for the benefit of one or more beneficiaries. Trusts are highly regulated, and are complicated by their relationship to federal tax laws and probate laws. This bill amends trust law, and probate law related to trusts, to:

- Specify how a trust may be assessed the expenses and obligations of the estate of the settlor.
- Provide that a court may deny compensation to an expert testifying as to reasonable compensation.
- Increase the amount of property that may be protected from creditors in certain trusts.

This bill does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

A trust is a legal entity created by a settlor<sup>1</sup> for the benefit of one or more beneficiaries. Trusts are highly regulated, and are complicated by their relationship to federal tax laws and probate laws. This bill amends trust law, and probate law related to trusts.

#### **Apportionment of Expenses and Obligations of an Estate**

Section 733.607(2), F.S., provides that, if a decedent's probate estate assets are insufficient to pay expenses of administering the estate and other obligations, the probate estate can request that the insufficiency be paid from the decedent's revocable trust, if one exists. Similarly, s. 733.707(3), F.S., provides that a probate estate may require a decedent's revocable trust to pay expenses and obligations of the probate estate. Section 736.05053, F.S., requires the trustee of a trust to comply with the requirement to pay expenses and obligations of the probate estate.

It is unclear from which portion of a revocable trust the payments required by ss. 733.607 and 733.707, F.S., are to be paid. The probate law, at s. 733.805, F.S., provides a means to determine which part of an estate is required to pay for the expenses and obligations of the probate estate (known as "abatement").

This bill amends ss. 733.607(2) and 733.707(3), F.S., to specifically reference the requirement in s. 736.05053, F.S., and to provide that the abatement provisions of the probate code at s. 733.805, F.S., apply to a revocable trust when that trust must pay expenses and obligations of a probate estate. This bill also amends s. 736.05053, F.S., to specifically provide that abatement applies to a revocable trust in the same manner as it applies to the probate estate. These changes conform to the provision in s. 733.805(4), F.S., that provides that a decedent's will and revocable trust be construed as one common instrument.

#### **Compensation of Trust Professionals**

The compensation of any person employed by a trust, including the trustee and professionals employed by the trustee (usually accountants and lawyers), is subject to court supervision and review. Section 736.0206(1), F.S., requires that all interested parties must be given notice of an application for

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<sup>1</sup> The settlor contributes the property to be managed and eventually distributed by the trust. The settlor also creates the trust instrument that names the beneficiaries of the trust and provides for management of the trust.

compensation. This bill removes the statutory requirement that all interested persons be given notice of an application for compensation. Current court rules require notice to all interested parties of all matters<sup>2</sup>, including an application for compensation of any person.<sup>3</sup> Unless the court rules are changed, this statutory change will have no effect.

In general, the court is not required to obtain expert testimony to justify a request for compensation. If a party objects to compensation, one or more of the parties may employ an expert witness to testify as to the reasonableness of the compensation. If an interested party objects to compensation of any person, s. 736.0206(5), F.S., requires the trust to pay an expert witness fee should an expert testify. This bill amends s. 736.0206(5), F.S., to provide that the court does not have to award compensation to an expert witness if the testimony did not assist the court.

This bill also repeals the attorney's fees provisions at ss. 736.1007(7), and 736.1007(9), F.S., that are duplicative of the provisions regarding compensation of any person at s. 736.0206, F.S.

### **Creditor Claims Against Trust Assets**

Traditionally, self-settled trusts have been treated harshly when it comes to creditors' rights. This follows from a widely accepted public policy maxim that an individual should not be permitted to put property in a trust for his or her own benefit and thereby escape creditor claims. Section 736.0505(1), F.S., provides that, whether or not a trust includes a spendthrift provision<sup>4</sup>:

- While the trust is revocable, the trust property is subject to the claims of the settlor's creditors; and
- In the case of an irrevocable trust, a settlor's creditor or assignee may reach the maximum that can be distributed to or for the benefit of the settlor. Notwithstanding this ability, the assets of the trust are not subject to the creditor's or assignee's claims merely because the trustee possesses the power to pay tax liabilities of the settlor.

Additionally, s. 736.0505(2)(a), F.S., provides that a person holding a power of withdrawal (the right to demand money from the trust) is treated the same as a settlor of the trust for purposes of the claims of creditors of the person holding that power. While the power of withdrawal is available, the full amount subject to withdrawal may be garnished by a creditor of a person holding the power. Upon the lapse, release, or waiver of the power of withdrawal, however, s. 736.0505(2)(b), F.S., provides that a creditor may only claim the amount that could have been withdrawn that was in excess of the greater of the federal gift tax exclusions.

#### *Increase in Protected Amount Related to Gift Tax Exclusion*

The United States tax code imposes an estate tax on transfers of property upon the death of an individual. The most obvious tax avoidance scheme to an estate tax is for a person to, while alive, give his or her property as gifts to the future beneficiaries. The intent of the gift tax law is to impose a tax on such gifts that is roughly equal to the future estate tax, thereby discouraging tax avoidance behavior.

The creation and funding of a trust is a gift to the beneficiaries. Trusts are commonly used in estate planning, and persons of sufficient wealth craft such trusts in a manner intended to minimize tax consequences. Section 736.0505(2)(b)2., F.S., references 26 U.S.C. s. 2503(b), which contains the most commonly used and commonly know exclusion to the gift tax law. That section excludes from the gift tax gifts to any one individual in a calendar year that are less than the exclusion amount. For a long

<sup>2</sup> Florida Probate Rule 5.041(a).

<sup>3</sup> Florida Probate Rule 5.355.

<sup>4</sup> A spendthrift provision in a trust instrument is a provision by which a beneficiary has no control over trust distributions and distributions to the beneficiary are only made at the discretion of the trustee. Creditors of a beneficiary subject to a spendthrift provision may not attach the assets of the trust, although they may be able to garnish a distribution should the trustee elect to make a distribution to the beneficiary.

time, that amount was fixed at \$10,000. The sum has been inflation adjusted, and is currently \$13,000. It applies to a gift from one individual to another.

This bill amends the reference to the gift tax exclusion at 26 U.S.C. s. 2503(b) to provide that, where the donor was married at the time of the transfer to which the power of withdrawal applies, the assumption is that both spouses made a gift and the protected amount is twice that of an individual donor.

### *Protected Amounts Related to Spousal Trusts*

It is common in estate tax planning to create certain trusts between spouses to minimize tax consequences. The bill references 26 U.S.C. s. 2523(e) and 26 U.S.C. s. 2523(f). 26 U.S.C. s. 2523 relates to gift tax deductions applicable to transfers between spouses. A trust described under s. 2523(e) is a trust that is a life estate with a power of appointment in the donee spouse. The trust must pay all of the interest or earnings to the donee spouse to apply. Section 2523(f) relates to an election to treat a trust as a QTIP trust (qualified terminable interest property trust). A QTIP trust is a means by which a spouse can make a lifetime gift to the other spouse made for the purpose of maximizing marital deductions applicable to the estate and gift taxes, yet still maintain control of the assets in the trust, provided the donee spouse is entitled to the earnings of the trust.

Many estate planners recommend QTIP trusts to allow for the full use of the donee spouse's estate tax exemption without compromising the ability of the donor to control the disposition of the trust assets after the death of the donee spouse. However, it is argued that retaining that power of appointment makes the trust subject to continuing claims of creditors of the donor. For this reason, some donors have been unwilling to create a QTIP trust under Florida law, preferring to move such trusts to states where creditor protection has been created by statute.<sup>5</sup>

This bill adds subsection (3) to s. 736.0505, F.S., related to spousal trusts. It provides that, as to trusts under 26 U.S.C. s. 2523(e) and 26 U.S.C. s. 2523(f), upon the death of the settlor's spouse, the assets are considered to have been contributed by the settlor's spouse and not by the settlor. As the form of such trusts make them non-revocable as of the death of a spouse, this appears to have the effect of allowing certain self-settled trusts to protect assets from creditors upon the death of a spouse. The bill further provides, however, that this protection does not apply if the funding of the trust was a fraudulent conveyance, as such is defined in the fraudulent conveyance law at s. 726.105, F.S.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 733.607, F.S., related to possession of an estate.

Section 2 amends s. 733.707, F.S., related to the order of payment of expenses and obligations of an estate.

Section 3 amends s. 736.0206, F.S., related to compensation of professionals employed by a trust.

Section 4 amends s. 736.0505, F.S., related to creditor claims against the settlor of a trust.

Section 5 amends s. 736.05053, F.S., related to a trustee's duty to pay expenses and obligations of a settlor's estate.

Section 6 amends s. 736.1007, F.S., related to trustee's attorney's fees.

Section 7 provides an effective date of July 1, 2010.

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

<sup>5</sup> Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Revision to Florida Statutes Section 736.0505*, undated, received on December 30, 2009. On file with committee staff.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.





28 and payment of certain estate costs and fees from trust  
 29 assets; providing an effective date.  
 30

31 Be It Enacted by the Legislature of the State of Florida:  
 32

33 Section 1. Subsection (2) of section 733.607, Florida  
 34 Statutes, is amended to read:

35 733.607 Possession of estate.—

36 (2) If, after providing for statutory entitlements and all  
 37 devises other than residuary devises, the assets of the  
 38 decedent's estate are insufficient to pay the expenses of the  
 39 administration and obligations of the decedent's estate, the  
 40 personal representative is entitled to payment from the trustee  
 41 of a trust described in s. 733.707(3), in the amount the  
 42 personal representative certifies in writing to be required to  
 43 satisfy the insufficiency, subject to the exclusions and  
 44 preferences under s. 736.05053. The provisions of s. 733.805  
 45 shall apply in determining the amount of any payment required by  
 46 this section.

47 Section 2. Subsection (3) of section 733.707, Florida  
 48 Statutes, is amended to read:

49 733.707 Order of payment of expenses and obligations.—

50 (3) Any portion of a trust with respect to which a  
 51 decedent who is the grantor has at the decedent's death a right  
 52 of revocation, as defined in paragraph (e), either alone or in  
 53 conjunction with any other person, is liable for the expenses of  
 54 the administration and obligations of the decedent's estate to

55 the extent the decedent's estate is insufficient to pay them as  
 56 provided in ss. ~~s.~~ 733.607(2) and 736.05053.

57 (a) For purposes of this subsection, any trusts  
 58 established as part of, and all payments from, either an  
 59 employee annuity described in s. 403 of the Internal Revenue  
 60 Code of 1986, as amended, an Individual Retirement Account, as  
 61 described in s. 408 of the Internal Revenue Code of 1986, as  
 62 amended, a Keogh (HR-10) Plan, or a retirement or other plan  
 63 established by a corporation which is qualified under s. 401 of  
 64 the Internal Revenue Code of 1986, as amended, shall not be  
 65 considered a trust over which the decedent has a right of  
 66 revocation.

67 (b) For purposes of this subsection, any trust described  
 68 in s. 664 of the Internal Revenue Code of 1986, as amended,  
 69 shall not be considered a trust over which the decedent has a  
 70 right of revocation.

71 (c) This subsection shall not impair any rights an  
 72 individual has under a qualified domestic relations order as  
 73 that term is defined in s. 414(p) of the Internal Revenue Code  
 74 of 1986, as amended.

75 (d) For purposes of this subsection, property held or  
 76 received by a trust to the extent that the property would not  
 77 have been subject to claims against the decedent's estate if it  
 78 had been paid directly to a trust created under the decedent's  
 79 will or other than to the decedent's estate, or assets received  
 80 from any trust other than a trust described in this subsection,  
 81 shall not be deemed assets of the trust available to the  
 82 decedent's estate.

83 (e) For purposes of this subsection, a "right of  
 84 revocation" is a power retained by the decedent, held in any  
 85 capacity, to:

86 1. Amend or revoke the trust and revest the principal of  
 87 the trust in the decedent; or

88 2. Withdraw or appoint the principal of the trust to or  
 89 for the decedent's benefit.

90 Section 3. Subsections (1), (5), (6), and (7) of section  
 91 736.0206, Florida Statutes, are amended to read:

92 736.0206 Proceedings for review of employment of agents  
 93 and review of compensation of trustee and employees of trust.-

94 (1) ~~After notice to all interested persons,~~ The court may  
 95 review the propriety of the employment by a trustee of any  
 96 person, including any attorney, auditor, investment adviser, or  
 97 other specialized agent or assistant, and the reasonableness of  
 98 any compensation paid to that person or to the trustee.

99 (5) The court may determine reasonable compensation for a  
 100 trustee or any person employed by a trustee without receiving  
 101 expert testimony. Any party may offer expert testimony after  
 102 notice to interested persons. If expert testimony is offered, a  
 103 reasonable expert witness fee may ~~shall~~ be awarded by the court  
 104 and paid from the assets of the trust unless the court finds  
 105 that the expert testimony did not assist the court. The court  
 106 shall direct from which part of the trust assets the fee shall  
 107 be paid.

108 ~~(6) Persons given notice as provided in this section shall~~  
 109 ~~be bound by all orders entered on the complaint.~~

110           ~~(6)(7)~~ In a proceeding pursuant to subsection (2), the  
 111 petitioner may serve formal notice as provided in the Florida  
 112 Probate Rules, and such notice shall be sufficient for the court  
 113 to acquire jurisdiction over the person receiving the notice to  
 114 the extent of the person's interest in the trust.

115           Section 4. Paragraph (b) of subsection (2) of section  
 116 736.0505, Florida Statutes, is amended, and subsection (3) is  
 117 added to that section, to read:

118           736.0505 Creditors' claims against settlor.—

119           (2) For purposes of this section:

120           (b) Upon the lapse, release, or waiver of the power, the  
 121 holder is treated as the settlor of the trust only to the extent  
 122 the value of the property affected by the lapse, release, or  
 123 waiver exceeds the greater of the amount specified in:

- 124           1. Section 2041(b)(2) or s. 2514(e); or
- 125           2. Section 2503(b) and, if the donor was married at the  
 126 time of the transfer to which the power of withdrawal applies,  
 127 twice the amount specified in s. 2503(b),

128  
 129 of the Internal Revenue Code of 1986, as amended.

130           (3) Subject to the provisions of s. 726.105, for purposes  
 131 of this section, the assets in:

132           (a) A trust described in s. 2523(e) of the Internal  
 133 Revenue Code of 1986, as amended, or a trust for which the  
 134 election described in s. 2523(f) of the Internal Revenue Code of  
 135 1986, as amended, has been made; and

136 (b) Another trust, to the extent that the assets in the  
 137 other trust are attributable to a trust described in paragraph  
 138 (a),  
 139  
 140 shall, after the death of the settlor's spouse, be deemed to  
 141 have been contributed by the settlor's spouse and not by the  
 142 settlor.

143 Section 5. Subsection (5) is added to section 736.05053,  
 144 Florida Statutes, to read:

145 736.05053 Trustee's duty to pay expenses and obligations  
 146 of settlor's estate.-

147 (5) Nonresiduary trust dispositions shall abate pro rata  
 148 with nonresiduary devises pursuant to the priorities specified  
 149 in this section and s. 733.805, determined as if the  
 150 beneficiaries of the will and trust, other than the estate or  
 151 trust itself, were taking under a common instrument.

152 Section 6. Subsections (7) through (10) of section  
 153 736.1007, Florida Statutes, are amended to read:

154 736.1007 Trustee's attorney's fees.-

155 ~~(7) The court may determine reasonable attorney's~~  
 156 ~~compensation without receiving expert testimony. Any party may~~  
 157 ~~offer expert testimony after notice to interested persons. If~~  
 158 ~~expert testimony is offered, an expert witness fee may be~~  
 159 ~~awarded by the court and paid from the assets of the trust. The~~  
 160 ~~court shall direct from what part of the trust the fee is to be~~  
 161 ~~paid.~~

162 (7)(8) If a separate written agreement regarding  
 163 compensation exists between the attorney and the settlor, the

164 attorney shall furnish a copy to the trustee prior to  
 165 commencement of employment and, if employed, shall promptly file  
 166 and serve a copy on all interested persons. A separate agreement  
 167 or a provision in the trust suggesting or directing the trustee  
 168 to retain a specific attorney does not obligate the trustee to  
 169 employ the attorney or obligate the attorney to accept the  
 170 representation but, if the attorney who is a party to the  
 171 agreement or who drafted the trust is employed, the compensation  
 172 paid shall not exceed the compensation provided in the  
 173 agreement.

174 ~~(9) Court proceedings to determine compensation, if~~  
 175 ~~required, are a part of the trust administration process, and~~  
 176 ~~the costs, including fees for the trustee's attorney, shall be~~  
 177 ~~determined by the court and paid from the assets of the trust~~  
 178 ~~unless the court finds the attorney's fees request to be~~  
 179 ~~substantially unreasonable. The court shall direct from what~~  
 180 ~~part of the trust the fees are to be paid.~~

181 (8)~~(10)~~ As used in this section, the term "initial trust  
 182 administration" means administration of a revocable trust during  
 183 the period that begins with the death of the settlor and ends on  
 184 the final distribution of trust assets outright or to continuing  
 185 trusts created under the trust agreement but, if an estate tax  
 186 return is required, not until after issuance of an estate tax  
 187 closing letter or other evidence of termination of the estate  
 188 tax proceeding. This initial period is not intended to include  
 189 continued regular administration of the trust.

190 Section 7. This act shall take effect July 1, 2010.

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                                    \_\_\_\_\_

1 Council/Committee hearing bill: Criminal & Civil Justice Policy  
2 Council  
3 Representative(s) Wood offered the following:  
4

**Amendment (with title amendment)**

6 Between lines 114-115, insert:

7 Section 4. Section 736.04114, Florida Statutes, is created  
8 to read:

9 736.04114 Limited judicial construction of irrevocable  
10 trust with federal tax provisions.-

11 (1) Upon the application of a trustee or any qualified  
12 beneficiary of a trust, a court at any time may construe the  
13 terms of a trust that is not then revocable to define the  
14 respective shares or determine beneficiaries, in accordance with  
15 the intention of the settlor, if a disposition occurs during the  
16 applicable period and the trust contains a provision that:

17 (a) Includes a formula disposition referring to the  
18 "unified credit", "estate tax exemption," "applicable exemption  
19 amount," "applicable credit amount," "applicable exclusion

Amendment No. 1

20 amount," "generation-skipping transfer tax exemption," "GST  
21 exemption," "marital deduction," "maximum marital deduction,"  
22 "unlimited marital deduction," or "maximum charitable  
23 deduction;"

24 (b) Measures a share of a trust based on the amount that  
25 can pass free of federal estate tax or the amount that can pass  
26 free of federal generation-skipping transfer tax;

27 (c) Otherwise makes a disposition referring to a charitable  
28 deduction, marital deduction, or another provision of federal  
29 estate tax or generation-skipping transfer tax law; or

30 (d) Appears to be intended to reduce or minimize federal  
31 estate tax or generation-skipping transfer tax.

32 (2) For the purpose of this section:

33 (a) "Applicable period" means a period beginning January 1,  
34 2010, and ending on the end of the day on the earlier of (i)  
35 December 31, 2010, or (ii) the day before the date that an act  
36 becomes law that repeals or otherwise modifies or has the effect  
37 of repealing or modifying s. 901 of The Economic Growth and Tax  
38 Relief Reconciliation Act of 2001.

39 (b) A "disposition occurs" when an interest takes effect in  
40 possession or enjoyment.

41 (3) In construing the trust, the court shall consider the  
42 terms and purposes of the trust, the facts and circumstances  
43 surrounding the creation of the trust, and the settlor's  
44 probable intent. In determining the settlor's probable intent,  
45 the court may consider evidence relevant to the settlor's intent  
46 even though the evidence contradicts an apparent plain meaning  
47 of the trust instrument.



Amendment No. 1

48 (4) This section does not apply to a disposition that is  
49 specifically conditioned upon no federal estate or generation-  
50 skipping transfer tax being imposed.

51 (5) Unless otherwise ordered by the court, during the  
52 applicable period and without court order, the trustee  
53 administering a trust containing one or more provisions  
54 described in subsection (1) may:

55 (a) Delay or refrain from making any distribution;

56 (b) Incur and pay fees and costs reasonably necessary to  
57 determine its duties and obligations (including compliance with  
58 provisions of existing and reasonably anticipated future federal  
59 tax laws); and

60 (c) Establish and maintain reserves for the payment of  
61 these fees and costs and federal taxes.

62  
63 The trustee shall not be liable for its actions as provided in  
64 this subsection made or taken in good faith.

65 (6) The provisions of this section are in addition to, and  
66 not in derogation of, rights under this code or the common law  
67 to construe a trust.

68 (7) This section is remedial to provide a new or modified  
69 legal remedy. This section shall have retroactive effect and be  
70 effective as of January 1, 2010.

71  
72  
73 -----

**T I T L E   A M E N D M E N T**

74 Remove line 14 and insert:  
75

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 361 (2010)

Amendment No. 1

76 such fees; providing a limitation; creating s. 736.04114, F.S.;  
77 providing for interpretation of trusts not subject to the  
78 federal estate tax; providing conditions; providing definitions;  
79 providing criteria for a court interpreting a trust; providing  
80 an exception; allowing a trustee to take certain actions pending  
81 a determination of trust distribution; limiting trustee  
82 liability; providing for interpretation; providing a retroactive  
83 effect; amending s. 736.0505,



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CCJP 10-02 Criminal Justice Repealer  
**SPONSOR(S):** Criminal & Civil Justice Policy Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council		Mato <i>PAM</i>	Havlicak <i>RH</i>
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill repeals obsolete and expired statutes and corrects cross references. The bill repeals the following statutes and amends other statutes to delete references to these statutes:

- s. 16.07, F.S., making it a misdemeanor for the Attorney General to receive any fee for defending an offender in court.
- s. 30.11, F.S., which requires a sheriff to live in the county seat or within two miles of county seat.
- s. 944.293, F.S., an outdated restoration of civil rights provision, which is now done automatically.
- s. 957.125, F.S., which authorized the Correctional Privatization Commission to build/operate three youthful offender facilities and then give two of them to the Department of Juvenile Justice to operate. The Correctional Privatization Commission was eliminated in 2004. The Department of Juvenile Justice no longer operates these facilities. The facilities are maintained by the Department of Corrections.
- s. 985.4891, F.S., which relates to the Sheriff's Training And Respect program.
- The bill removes a definition in s. 948.001, F.S., Criminal Quarantine Community Control. This type of supervision was established in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV. The Department of Corrections reports that since the statutes were enacted in 1993, no one has been sentenced to criminal quarantine community control for any offense.
- The bill amends s. 948.035, F.S., to remove Community Residential Drug Punishment Centers. These centers have never been funded and do not exist. No one has ever been sentenced to these centers.

The bill appears to have no fiscal impact on state or local government.

The bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

There are many criminal justice statutes which are out of date or not in use. This bill repeals these statutes and amends others that contain a reference to the repealed statutes. The following statutes are affected:

##### **Prohibition on collecting fee for defending**

Section 16.07, F.S., makes it a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts. This law was enacted in 1845, but is no longer used.

##### *Effect of the Bill*

This bill would repeal s.16.07, F.S., because it is obsolete.

##### **Sheriff's Place of Residence**

Section 30.11, F.S., requires the sheriff or his or her deputy to reside within two miles of the county seat. This law was enacted in 1851, but is no longer used.

##### *Effect of the Bill*

The bill would repeal s.30.11, F.S., because it is obsolete.

##### **Criminal Quarantine Community Control**

Section 948.001, F.S., defines "criminal quarantine community control" as "intensive supervision, by officers with restricted caseloads, with a condition of 24-hour-per-day electronic monitoring, and a condition of confinement to a designated residence during designated hours." This type of supervision was established in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV. Section 775.0877, F.S., establishes the crime of criminal transmission of HIV, which is currently a third degree felony punishable by a term of criminal quarantine community control.

The Department of Corrections reports that since the statutes were enacted in 1993, no one has been sentenced to criminal quarantine community control for any offense. Those convicted of criminal transmission of HIV have historically been sentenced to regular probation. Thus, this type of supervision has never existed operationally.

The following statutes contain references to Criminal Quarantine Community Control. Section 384.34, F.S., sets penalties. Section 796.08, F.S., relates to screening for HIV and sexually transmissible

diseases and provides penalties. Section 921.187, F.S., provides sentencing alternatives that may be used in criminal sentencing to best suit the needs of the community. Section 775.0877, F.S., relates to the criminal transmission of HIV and its penalties.

*Effect of the Bill*

The bill removes references to criminal quarantine community control throughout Florida Statutes. Additionally, the bill specifies that criminal transmission of HIV is a third degree felony punishable as provided in ss. 775.082, 775.083 and 775.084, F.S.

The following statutes are amended to remove references to Criminal Quarantine Community Control: ss. 948.001, 384.34, 775.0877, 796.08, and 921.187, F.S.

**Community Residential Drug Punishment Centers**

Section 948.034, F.S., defines community residential drug punishment centers. These centers allow for probation instead of prison, but require the offender to stay at the community center. These centers were never funded and do not exist according to the Department of Corrections. No one has ever been sentenced to one of these centers.

The following statutes contain references to the community residential drug punishment centers: s. 893.13, F.S., relating to penalties for Drug Abuse; s. 921.187, F.S., providing sentencing alternatives that may be used in criminal sentencing to best suit the needs of the community; s. 984.04, F.S., relating to the period of probation for drug offenses; and s. 948.0345, F.S., allowing the court to assign additional community service in lieu of a fine that would have been levied under s. 948.034, F.S.

*Effect of the Bill*

Section 948.034, F.S., relating to community residential drug punishment centers is repealed.

The following sections are amended to remove references to the community residential drug punishment centers: ss. 893.13, 921.187, and 984.04, F.S. The bill repeals s. 948.0345, F.S., since it becomes obsolete with the repeal of s. 948.034, F.S.

**Rights Restoration Process**

Currently, Section 944.293, F.S., requires the Department of Corrections, prior to the discharge of an offender from supervision, to obtain from the Governor the application and other necessary forms for restoring civil rights; to assist the offender in completing the forms; and to ensure that the application and other forms are forwarded to the Governor.

In years past, the restoration of civil rights process required persons to fill out and submit paper applications to the Florida Parole Commission, an agent of the Clemency Board. However, the restoration of civil rights process has undergone changes and is now fully automated. In 2001, the Clemency Board eliminated the requirement for inmates to file an application and instead a computer-generated list of felons eligible for restoration is sent directly to the Commission by the Department of Corrections. The Clemency Board also revised the rules in 2001 to make more offenders eligible for restoration without a hearing. Since 2001, the Department reports that it has electronically submitted the names of inmates released from incarceration and offenders who have completed supervision to the Clemency Administration Office in the Florida Parole Commission. These lists are submitted on a monthly basis and serve as electronic restoration of civil rights applications. Due to these current practices, s. 944.293, F.S., no longer accurately accounts for the department's process in assisting inmates and offenders with restoration of civil rights.

*Effect of the Bill*

The bill repeals s. 944.293, F.S., as it is obsolete.

**Correctional Privatization Commission**

Section 957.125, F.S., authorized the Correctional Privatization Commission to build/operate three youthful offender facilities and later, give two of them to the Department of Juvenile Justice to operate.

Department of Juvenile Justice no longer operates these facilities. The facilities are maintained by the Department of Corrections. The Correctional Privatization Commission was eliminated in 2004 by ch. 2004-248, L.O.F.

*Effect of the Bill*

Section 957.125, F.S., is repealed because it is obsolete.

**Sheriff's Training and Respect Program**

Section 985.4891 F.S., authorizes a county or municipal law enforcement agency to implement and operate a sheriff's training and respect program to provide intensive education, physical training, and rehabilitation program for certain youthful offenders. The Department of Juvenile Justice indicates that these programs do not exist.

*Effect of the Bill*

This bill repeals s. 985.4891, F.S., because it is obsolete.

**B. SECTION DIRECTORY:**

- Section 1 – repeals s. 16.07, F.S., relating to prohibition on collecting fee for defending.
- Section 2 – repeals s. 30.11, F.S., relating to sheriff's place of residence.
- Section 3 – amends s. 384.34, F.S., relating to penalties for sexually transmitted diseases.
- Section 4 – amends s. 775.0877, F.S., relating to penalties for sexually transmitted diseases.
- Section 5 – amends s. 796.08, F.S., relating to screening for HIV and sexually transmitted diseases.
- Section 6 – amends s. 893.13, F.S., relating to prohibited acts.
- Section 7 – amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.
- Section 8 – repeals s. 944.293, F.S., relating to initiation of restoration of civil rights.
- Section 9 – amends s. 948.001, F.S., removing the definition of criminal quarantine community control.
- Section 10 – repeals s. 948.034, F.S., relating to community residential drug treatment centers.
- Section 11 – repeals s. 948.0345, F.S., relating to community service alternative to fines.
- Section 12 – amends s. 948.04, F.S., removing a reference to community residential drug punishment centers.
- Section 13 – repeals s. 957.125, F.S., relating to the Correctional Privatization Commission.
- Section 14 – repeals s. 985.4891, F.S., relating to sheriff's training and respect programs.
- Section 15 – Provides and effective date of July 1, 2010.

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

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

- 1. Revenues: none
- 2. Expenditures: none

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

- 1. Revenues: none
- 2. Expenditures: none

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: none**

D. FISCAL COMMENTS: none

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other: none

#### B. RULE-MAKING AUTHORITY: none

#### C. DRAFTING ISSUES OR OTHER COMMENTS: none

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES



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A bill to be entitled  
 An act relating to criminal justice; repealing s. 16.07,  
 F.S., relating to prohibition on collecting fee for  
 defending; repealing s. 30.11, F.S., relating to sheriff's  
 place of residence; amending s. 384.34, F.S., relating to  
 penalties; amending s. 775.0877, F.S.; removing a penalty  
 provision related to criminal transmission of HIV;  
 amending s. 796.08, F.S., removing a penalty provision  
 related to criminal transmission of HIV; amending s.  
 893.13, F.S., removing penalty provisions relating to  
 obsolete community residential drug punishment centers;  
 amending s. 921.187, F.S., removing sentencing provisions  
 relating to community residential drug punishment centers  
 and quarantine of offenders convicted of criminal  
 transmission of HIV; repealing s. 944.293, F.S., relating  
 to initiation of restoration of civil rights; amending s.  
 948.001, F.S., removing the definition of criminal  
 quarantine community control; repealing s. 948.034, F.S.,  
 relating to community residential drug punishment centers;  
 repealing s. 948.0345, F.S., relating to community service  
 alternative to fines; amending s. 984.04, F.S., removing a  
 reference to community residential drug punishment  
 centers; repealing s. 957.125, F.S., authorizing the  
 Correctional Privatization Commission to contract for  
 youthful offender correctional facilities; repealing s.  
 985.4891, F.S., relating to sheriff's training and respect  
 programs; providing an effective date.

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

30

31 Section 1. Section 16.07, Florida Statutes, is repealed.

32 Section 2. Section 30.11, Florida Statutes, is repealed.

33 Section 3. Subsection (5) of section 384.34, Florida  
 34 Statutes, is amended to read:

35 384.34 Penalties.—

36 (5) Any person who violates the provisions of s. 384.24(2)  
 37 commits a felony of the third degree, punishable as provided in  
 38 s. ~~ss.~~ 775.082, s. 775.083, or s. 775.084, ~~and 775.0877(7).~~ Any  
 39 person who commits multiple violations of the provisions of s.  
 40 384.24(2) commits a felony of the first degree, punishable as  
 41 provided in s. ~~ss.~~ 775.082, s. 775.083, or s. 775.084, ~~and~~  
 42 ~~775.0877(7).~~

43 Section 4. Subsections (3) and (7) of section 775.0877,  
 44 Florida Statutes, are amended to read:

45 775.0877 Criminal transmission of HIV; procedures;  
 46 penalties.—

47 (3) An offender who has undergone HIV testing pursuant to  
 48 subsection (1), and to whom positive test results have been  
 49 disclosed pursuant to subsection (2), who commits a second or  
 50 subsequent offense enumerated in paragraphs (1)(a)-(n), commits  
 51 criminal transmission of HIV, a felony of the third degree,  
 52 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 53 ~~subsection (7).~~ A person may be convicted and sentenced  
 54 separately for a violation of this subsection and for the  
 55 underlying crime enumerated in paragraphs (1)(a)-(n).

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56 ~~(7) In addition to any other penalty provided by law for~~  
 57 ~~an offense enumerated in paragraphs (1)(a)-(n), the court may~~  
 58 ~~require an offender convicted of criminal transmission of HIV to~~  
 59 ~~serve a term of criminal quarantine community control, as~~  
 60 ~~described in s. 948.001.~~

61 Section 5. Subsection (5) of section 796.08, Florida  
 62 Statutes, is amended to read:

63 796.08 Screening for HIV and sexually transmissible  
 64 diseases; providing penalties.—

65 (5) A person who:

66 (a) Commits or offers to commit prostitution; or

67 (b) Procures another for prostitution by engaging in  
 68 sexual activity in a manner likely to transmit the human  
 69 immunodeficiency virus, and who, prior to the commission of such  
 70 crime, had tested positive for human immunodeficiency virus and  
 71 knew or had been informed that he or she had tested positive for  
 72 human immunodeficiency virus and could possibly communicate such  
 73 disease to another person through sexual activity commits  
 74 criminal transmission of HIV, a felony of the third degree,  
 75 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 76 ~~or s. 775.0877(7)~~. A person may be convicted and sentenced  
 77 separately for a violation of this subsection and for the  
 78 underlying crime of prostitution or procurement of prostitution.

79 Section 6. Subsections (10), (11), and (12) of section  
 80 893.13, Florida Statutes, are amended to read:

81 893.13 Prohibited acts; penalties.—

82 ~~(10) Notwithstanding any provision of the sentencing~~  
 83 ~~guidelines or the Criminal Punishment Code to the contrary, on~~

84 | ~~or after October 1, 1993, any defendant who:~~

85 |     ~~(a) Violates subparagraph (1)(a)1., subparagraph (1)(c)2.,~~  
86 | ~~subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph~~  
87 | ~~(5)(a); and~~

88 |     ~~(b) Has not previously been convicted, regardless of~~  
89 | ~~whether adjudication was withheld, of any felony, other than a~~  
90 | ~~violation of subparagraph (1)(a)1., subparagraph (1)(c)2.,~~  
91 | ~~subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph~~  
92 | ~~(5)(a), may be required by the court to successfully complete a~~  
93 | ~~term of probation pursuant to the terms and conditions set forth~~  
94 | ~~in s. 948.034(1), in lieu of serving a term of imprisonment.~~

95 |     ~~(11) Notwithstanding any provision of the sentencing~~  
96 | ~~guidelines or the Criminal Punishment Code to the contrary, on~~  
97 | ~~or after January 1, 1994, any defendant who:~~

98 |     ~~(a) Violates subparagraph (1)(a)2., subparagraph (2)(a)2.,~~  
99 | ~~paragraph (5)(b), or paragraph (6)(a); and~~

100 |     ~~(b) Has not previously been convicted, regardless of~~  
101 | ~~whether adjudication was withheld, of any felony, other than a~~  
102 | ~~violation of subparagraph (1)(a)2., subparagraph (2)(a)2.,~~  
103 | ~~paragraph (5)(b), or paragraph (6)(a), may be required by the~~  
104 | ~~court to successfully complete a term of probation pursuant to~~  
105 | ~~the terms and conditions set forth in s. 948.034(2), in lieu of~~  
106 | ~~serving a term of imprisonment.~~

107 |     (10)~~(12)~~ If a person violates any provision of this  
108 | chapter and the violation results in a serious injury to a state  
109 | or local law enforcement officer as defined in s. 943.10,  
110 | firefighter as defined in s. 633.30, emergency medical  
111 | technician as defined in s. 401.23, paramedic as defined in s.

112 401.23, employee of a public utility or an electric utility as  
 113 defined in s. 366.02, animal control officer as defined in s.  
 114 828.27, volunteer firefighter engaged by state or local  
 115 government, law enforcement officer employed by the Federal  
 116 Government, or any other local, state, or Federal Government  
 117 employee injured during the course and scope of his or her  
 118 employment, the person commits a felony of the third degree,  
 119 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 120 If the injury sustained results in death or great bodily harm,  
 121 the person commits a felony of the second degree, punishable as  
 122 provided in s. 775.082, s. 775.083, or s. 775.084.

123 Section 7. Section 921.187, Florida Statutes, is amended  
 124 to read:

125 921.187 Disposition and sentencing; alternatives;  
 126 restitution.--

127 (1) The alternatives provided in this section for the  
 128 disposition of criminal cases shall be used in a manner that  
 129 will best serve the needs of society, punish criminal offenders,  
 130 and provide the opportunity for rehabilitation.

131 ~~(a)~~ If the offender does not receive a state prison  
 132 sentence, the court may:

133 (a) ~~1-~~ Impose a split sentence whereby the offender is to  
 134 be placed on probation upon completion of any specified period  
 135 of such sentence, which period may include a term of years or  
 136 less.

137 (b) ~~2-~~ Make any other disposition that is authorized by  
 138 law.

139 (c) ~~3-~~ Place the offender on probation with or without an

140 adjudication of guilt pursuant to s. 948.01.

141 (d) ~~4.~~ Impose a fine and probation pursuant to s. 948.011  
 142 when the offense is punishable by both a fine and imprisonment  
 143 and probation is authorized.

144 (e) ~~5.~~ Place the offender into community control requiring  
 145 intensive supervision and surveillance pursuant to chapter 948.

146 (f) ~~6.~~ Impose, as a condition of probation or community  
 147 control, a period of treatment which shall be restricted to a  
 148 county facility, a Department of Corrections probation and  
 149 restitution center, a probation program drug punishment  
 150 treatment community, or a community residential or  
 151 nonresidential facility, excluding a community correctional  
 152 center as defined in s. 944.026, which is owned and operated by  
 153 any qualified public or private entity providing such services.  
 154 Before admission to such a facility, the court shall obtain an  
 155 individual assessment and recommendations on the appropriate  
 156 treatment needs, which shall be considered by the court in  
 157 ordering such placements. Placement in such a facility, except  
 158 for a county residential probation facility, may not exceed 364  
 159 days. Placement in a county residential probation facility may  
 160 not exceed 3 years. Early termination of placement may be  
 161 recommended to the court, when appropriate, by the center  
 162 supervisor, the supervising probation officer, or the probation  
 163 program manager.

164 (g) ~~7.~~ Sentence the offender pursuant to s. 922.051 to  
 165 imprisonment in a county jail when a statute directs  
 166 imprisonment in a state prison, if the offender's cumulative  
 167 sentence, whether from the same circuit or from separate

168 circuits, is not more than 364 days.

169 (h) ~~8.~~ Sentence the offender who is to be punished by  
 170 imprisonment in a county jail to a jail in another county if  
 171 there is no jail within the county suitable for such prisoner  
 172 pursuant to s. 950.01.

173 (i) ~~9.~~ Require the offender to participate in a work-  
 174 release or educational or technical training program pursuant to  
 175 s. 951.24 while serving a sentence in a county jail, if such a  
 176 program is available.

177 (j) ~~10.~~ Require the offender to perform a specified public  
 178 service pursuant to s. 775.091.

179 (k) ~~11.~~ Require the offender who violates chapter 893 or  
 180 violates any law while under the influence of a controlled  
 181 substance or alcohol to participate in a substance abuse  
 182 program.

183 (l) ~~1.12.a.~~ Require the offender who violates any criminal  
 184 provision of chapter 893 to pay an additional assessment in an  
 185 amount up to the amount of any fine imposed, pursuant to ss.  
 186 938.21 and 938.23.

187 2.b. Require the offender who violates any provision of s.  
 188 893.13 to pay an additional assessment in an amount of \$100,  
 189 pursuant to ss. 938.25 and 943.361.

190 (m) ~~13.~~ Impose a split sentence whereby the offender is to  
 191 be placed in a county jail or county work camp upon the  
 192 completion of any specified term of community supervision.

193 (n) ~~14.~~ Impose split probation whereby upon satisfactory  
 194 completion of half the term of probation, the Department of  
 195 Corrections may place the offender on administrative probation

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196 pursuant to s. 948.013 for the remainder of the term of  
 197 supervision.

198 (o)15. Require residence in a state probation and  
 199 restitution center or private drug treatment program for  
 200 offenders on community control or offenders who have violated  
 201 conditions of probation.

202 (p)16. Impose any other sanction which is provided within  
 203 the community and approved as an intermediate sanction by the  
 204 county public safety coordinating council as described in s.  
 205 951.26.

206 (q)17. Impose, as a condition of community control,  
 207 probation, or probation following incarceration, a requirement  
 208 that an offender who has not obtained a high school diploma or  
 209 high school equivalency diploma or who lacks basic or functional  
 210 literacy skills, upon acceptance by an adult education program,  
 211 make a good faith effort toward completion of such basic or  
 212 functional literacy skills or high school equivalency diploma,  
 213 as defined in s. 1003.435, in accordance with the assessed adult  
 214 general education needs of the individual offender.

215 ~~(b)1. Notwithstanding any provision of former s. 921.001~~  
 216 ~~or s. 921.002 to the contrary, on or after October 1, 1993, the~~  
 217 ~~court may require any defendant who violates s. 893.13(1)(a)1.,~~  
 218 ~~(1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and meets the criteria~~  
 219 ~~described in s. 893.13(10), to successfully complete a term of~~  
 220 ~~probation pursuant to the terms and conditions set forth in s.~~  
 221 ~~948.034(1), in lieu of serving a term of imprisonment.~~

222 ~~2. Notwithstanding any provision of former s. 921.001 or~~  
 223 ~~s. 921.002 to the contrary, on or after October 1, 1993, the~~



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224 ~~court may require any defendant who violates s. 893.13(1)(a)2.,~~  
 225 ~~(2)(a)2., (5)(b), or (6)(a), and meets the criteria described in~~  
 226 ~~s. 893.13(11), to successfully complete a term of probation~~  
 227 ~~pursuant to the terms and conditions set forth in s. 948.034(2),~~  
 228 ~~in lieu of serving a term of imprisonment.~~

229 ~~(2) In addition to any other penalty provided by law for~~  
 230 ~~an offense enumerated in s. 775.0877(1)(a)-(n), if the offender~~  
 231 ~~is convicted of criminal transmission of HIV pursuant to s.~~  
 232 ~~775.0877, the court may sentence the offender to criminal~~  
 233 ~~quarantine community control as described in s. 948.001.~~

234 (2)(3) The court shall require an offender to make  
 235 restitution under s. 775.089, unless the court finds clear and  
 236 compelling reasons not to order such restitution. If the court  
 237 does not order restitution, or orders restitution of only a  
 238 portion of the damages, as provided in s. 775.089, the court  
 239 shall state the reasons on the record in detail. An order  
 240 requiring an offender to make restitution to a victim under s.  
 241 775.089 does not remove or diminish the requirement that the  
 242 court order payment to the Crimes Compensation Trust Fund under  
 243 chapter 960.

244 Section 8. Section 944. 293, Florida Statutes, is  
 245 repealed.

246 Section 9. Subsections (4) through (10) of section  
 247 948.001, Florida Statutes, are renumbered as subsections (3)  
 248 through (9), respectively, and subsection (3) of that section is  
 249 amended to read:

250 948.001 Definitions.—As used in this chapter, the term:

251 ~~(3) "Criminal quarantine community control" means~~  
 252 ~~intensive supervision, by officers with restricted caseloads,~~  
 253 ~~with a condition of 24-hour per day electronic monitoring, and a~~  
 254 ~~condition of confinement to a designated residence during~~  
 255 ~~designated hours.~~

256 Section 10. Section 948.034, Florida Statutes, is  
 257 repealed.

258 Section 11. Section 948.0345, Florida Statutes, is  
 259 repealed.

260 Section 12. Subsection (1) of section 948.04, Florida  
 261 Statutes, is amended to read:

262 948.04 Period of probation; duty of probationer; early  
 263 termination.—

264 (1) Defendants found guilty of felonies who are placed on  
 265 probation shall be under supervision not to exceed 2 years  
 266 unless otherwise specified by the court. No defendant placed on  
 267 probation pursuant to s. 948.012(1) ~~or s. 948.034~~ is subject to  
 268 the probation limitations of this subsection. A defendant who is  
 269 placed on probation or community control for a violation of  
 270 chapter 794 or chapter 827 is subject to the maximum level of  
 271 supervision provided by the supervising agency, and that  
 272 supervision shall continue through the full term of the court-  
 273 imposed probation or community control.

274 Section 13. Section 957.125, Florida Statutes, is  
 275 repealed.

276 Section 14. Section 985.4891, Florida Statutes, is  
 277 repealed.

278 Section 15. This act shall take effect July 1, 2010.

## Florida Statutes repealed by PCB CCJP 10-02

**16.07 Fee for defending offender prohibited.**--It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts.

**History.**--s. 6, ch. 2, 1845; RS 89; GS 92; RGS 106; CGL 130.

**30.11 Place of residence.**--The sheriff, or his or her deputy, shall reside at the county seat or within 2 miles thereof.

**History.**--s. 1, ch. 1851, 1871; RS 1249; GS 1677; RGS 2885; CGL 4582; s. 176, ch. 95-147.

**944.293 Initiation of restoration of civil rights.**--With respect to those persons convicted of a felony, the following procedure shall apply: Prior to the time an offender is discharged from supervision, an authorized agent of the department shall obtain from the Governor the necessary application and other forms required for the restoration of civil rights. The authorized agent shall assist the offender in completing these forms and shall ensure that the application and all necessary material are forwarded to the Governor before the offender is discharged from supervision.

**History.**--s. 29, ch. 74-112; s. 1, ch. 76-139; s. 60, ch. 79-3.

**948.034 Terms and conditions of probation; community residential drug punishment centers.**--

(1) On or after October 1, 1993, any person who violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a) may, in the discretion of the trial court, be required to successfully complete a term of probation in lieu of serving a term of imprisonment as required or authorized by s. 775.084, former s. 921.001, or s. 921.002, as follows:

(a) If the person has not previously been convicted of violating s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may be withheld and the offender may be placed on probation for not less than 18 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 90 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug

punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$500 nor more than \$10,000 pursuant to s. 775.083(1)(c).
2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.
3. Perform at least 100 hours of public service.
4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.
5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(b) If the person has been previously convicted of one felony violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 24 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 180 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,000 nor more than \$10,000 pursuant to s. 775.083(1)(c).
2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay

for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 200 hours of public service.
4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.
5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(c) If the person has been previously convicted of two felony violations of s. 893.13(2)(a)1. or (5)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 36 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 360 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,500 nor more than \$10,000 pursuant to s. 775.083(1)(c).
2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.
3. Perform at least 300 hours of public service.
4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.
5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(d) An offender who violates probation imposed pursuant to this section shall be sentenced in accordance with s. 921.002.

(2) On or after October 1, 1993, any person who violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a) may, in the discretion of the trial court, be required to successfully complete a term of probation in lieu of serving a term of imprisonment as required or authorized by s. 775.084, former s. 921.001, or s. 921.002, as follows:

(a) If the person has not previously been convicted of violating s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may be withheld and the offender shall be placed on probation for not less than 12 months, as a condition of which the court may require the offender to comply with one or more of the following terms and conditions:

1. Pay a fine of not less than \$250 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 50 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(b) If the person has been previously convicted of one felony violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 18 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 90 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$500 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse intervention program of at least 80 hours provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 100 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(c) If the person has been previously convicted of two felony violations of s. 893.13(2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 24 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 120 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,000 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 150 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(d) If the person has been previously convicted of three felony violations of s. 893.13(2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 30 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 200 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,500 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 200 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(e) If the person has been previously convicted of four felony violations of s. 893.13(2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 36 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 360 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:



1. Pay a fine of not less than \$2,000 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 250 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(f) An offender who violates probation imposed pursuant to this section shall be sentenced in accordance with s. 921.002.

(3) Whenever the authorized provider for substance abuse treatment pursuant to this section is the same provider that conducts the substance abuse evaluations, that provider must submit a quarterly statistical report that shall be reviewed by the Department of Children and Family Services to ensure that excessive referrals to treatment have not been made. A programmatic and statistical report must be submitted annually to the Department of Children and Family Services by each provider authorized to provide services under this section.

(4) For the purposes of this section, multiple violations of any provision of chapter 893 which are pending before the court for sentencing at the same time and from the same criminal episode shall be considered as one violation.

(5) The Department of Corrections, in consultation with the Department of Children and Family Services, shall adopt rules as necessary to implement the provisions of this section relating to program standards and performance objectives of community residential drug punishment centers.

**History.**--s. 4, ch. 93-59; s. 7, ch. 94-107; s. 1685, ch. 97-102; s. 34, ch. 97-194; s. 19, ch. 98-204; s. 8, ch. 2000-320; s. 24, ch. 2005-128.

**948.0345 Community service alternative to fine; fine disposal.**--Fines imposed pursuant to s. 948.034(1) and (2) shall be disposed of pursuant to s. 938.23(2). If the court finds that an offender is financially unable to pay all or part of the fine, the court may order the offender to perform community service for a specified additional period of time in lieu of payment of that portion of the fine which the court determines the offender is unable to pay. The court shall take into consideration the amount of the unpaid portion of the fine and the reasonable value of the services; however, the court shall not compute the reasonable value of services at a rate less than the federal minimum wage at the time of placing the offender on probation.

**History.**--s. 6, ch. 93-59; s. 45, ch. 97-271.

**957.125 Correctional facilities for youthful offenders.**--

(1) The Correctional Privatization Commission may enter into contracts in fiscal year 1994-1995 for designing, financing, acquiring, leasing, constructing, and operating three correctional facilities, notwithstanding s. 957.07. These three facilities shall be designed to have a capacity of up to 350 beds each and house inmates sentenced or classified as youthful offenders within the custody of the Department of Corrections under chapter 958. Two of these facilities shall be designed to house youthful offenders between the ages of 14 and 18, and one shall be designed to house youthful offenders between the ages of 19 and 24.

(2) These youthful offender facilities shall be designed to provide the optimum capacity for programs for youthful offenders designed to reduce recidivism, including, but not limited to: educational and vocational programs, substance abuse and mental health counseling, prerelease orientation and planning, job and career counseling, physical exercise, dispute resolution, and life skills training. In order to ensure this quality programming, the commission shall give no more than 30 percent weight to cost in evaluating proposals.

(3) Effective July 1, 1996, the authority to contract for the operation of two youthful offender facilities shall be transferred from the Correctional Privatization Commission to the Department of Juvenile Justice, and those facilities shall be used for male or female committed juvenile offenders. The Department of Juvenile Justice is authorized to modify any operational contract with the same contractor to whom the Correctional Privatization Commission awarded the contract for these facilities, without rebidding, in order to conform with the requirements of this subsection.

(4) The commission shall specify the area in which each facility will be located and require that each be located in or near a different metropolitan area in areas of the state close to the home communities of the youthful offenders they house in order to assist in the most effective rehabilitation efforts, including family visitation.

**History.**--s. 107, ch. 94-209; s. 23, ch. 96-422.

**985.4891 Sheriff's training and respect programs.--**

(1)(a) For purposes of this section, the term "agency" means a county or municipal law enforcement agency.

(b) Contingent upon specific appropriation, local funding, or specific appropriation and local funding, an agency may, under contract with the department, implement and operate a sheriff's training and respect program to provide intensive education, physical training, and rehabilitation for children who are eligible under subsection (2). A sheriff's training and respect program shall be under the agency's supervisory authority as determined by the contract between the department and the agency.

(2) A child is eligible for placement in a sheriff's training and respect program if he or she:

(a) Is at least 14 years of age but less than 18 years of age at the time of adjudication.

(b) Has been committed to the department for any offense that, if committed by an adult, would be a felony other than a capital felony, a life felony, or a violent felony of the first degree.

(c) Is physically examined by a physician licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed and certified under chapter 464.

(d) Has a physical, psychological, and substance abuse profile that is conducive to successful completion of the program, as determined by the agency's and department's review of the preadmission physical examination under paragraph (c) and of preadmission psychological and substance abuse screenings, which must be conducted or ordered to be conducted by the department.

(e) Will be placed in the judicial circuit in which the child was adjudicated or, if there is no sheriff's training and respect program in that judicial circuit, the child may be placed in the judicial circuit nearest to the judicial circuit in which he or she was adjudicated which has a sheriff's training and respect program.

(3) A sheriff's training and respect program shall require children to:

(a) Receive a written, easily understandable statement that sets forth, and a verbal description of, their rights under this section. At the time of admission into the sheriff's training and respect program, each child must acknowledge in writing

his or her receipt and understanding of the written statement and verbal description.

(b) Participate in physical training exercises.

(c) Complete educational, vocational, community service, and substance abuse programs.

(d) Receive training in life and job skills and in techniques for appropriate decisionmaking.

(e) Receive counseling that is directed at replacing criminal thinking, beliefs, and values with moral thinking, beliefs, and values.

(4) A sheriff's training and respect program must provide for youth medical treatment needs by a physician licensed under chapter 458 or chapter 459, an advanced registered nurse practitioner licensed and certified under chapter 464, or a registered nurse licensed under chapter 464 who works daily between the hours of 7:00 a.m. and 9:00 p.m. and must provide for on-call access to at least one such medical professional at all other times.

(5) A sheriff's training and respect program shall be a moderate-risk residential program and must provide conditional release assessment and services in accordance with s. 985.46. The minimum period of participation in the residential component of a sheriff's training and respect program is 4 months; however, this subsection does not prohibit operation of a program that requires the participants to spend more than 4 months in the residential component of the program or that requires the participants to complete two sequential programs of 4 months each in the residential component of the program.

(6) Staff in a sheriff's training and respect program who exercise direct care, as defined in s. 985.645, shall comply with the Protective Action Response policy established in department rules adopted under s. 985.645(2)(a).

(7) The department shall adopt rules under ss. 120.536(1) and 120.54 for the sheriff's training and respect program that specify:

(a) Requirements for the preadmission physical examinations and psychological and substance abuse screenings required by subsection (2).

(b) Authorized disciplinary sanctions and restrictions on the privileges of the general population of children in the program.

(c) Prohibitions on the use of harmful psychological intimidation techniques. For purposes of this section, the term "harmful psychological intimidation techniques":

1. Includes the following actions when intentionally used as a therapeutic or training technique or as a means to encourage compliance with program requirements:

a. The threat of physical force or violence.

b. An intentional attempt to humiliate or embarrass a child.

c. An intentional attempt to diminish a child's self-confidence or otherwise psychologically break a child's will.

d. Any action that would be considered child abuse or neglect under chapter 39 or chapter 827.

2. Does not include the following actions:

a. Direct and forceful communication to a child of program requirements or legitimate performance expectations prior to or during participation in program activities, including positive, active encouragement of children engaged in physical training exercises.

b. Communication necessary to inform a child of noncompliance with program requirements or appropriate actions to remediate such noncompliance.

c. Communication necessary to inform a child of poor performance or appropriate actions to remediate such poor performance.

d. Communications or other actions necessary to maintain order or safety in a program.

e. Any lawful and reasonable communications or actions that are permissible for parents, other juvenile justice programs, school officials, or other adults who have custody of or supervisory responsibilities for children.

(d) Requirements for provision of notice by the program to the department and for the removal of a child from the program if the child becomes unmanageable or ineligible for the program due to changes in his or her physical, psychological, or substance abuse profile.

(e) Requirements for the prominent display of the telephone number of the statewide abuse registry and for immediate access by children in the program, upon request, to a telephone for the purpose of contacting the statewide abuse registry, the public defender's office, his or her attorney, or a law enforcement agency.

(f) Requirements for the delivery of a copy of each child's exit statement under subsection (10) to the department by facsimile or electronic mail.

(8)(a) Evaluations under s. 985.632(5) of each sheriff's training and respect program shall be conducted quarterly during the first year of the program's operation. Thereafter, if the program met the minimum thresholds during its most recent evaluation, the program shall be evaluated at least once annually. If a sheriff's training and respect program fails to meet the minimum thresholds, the department shall cancel the contract for the program:

1. Immediately if the program has a deficiency in a critical lifesafety aspect of its operations, as defined in department rule, or has failed to train its staff as required under subsection (9).

2. If the program fails to achieve compliance with the minimum thresholds within 3 months, unless there are documented extenuating circumstances, as defined in department rule.

(b) Upon cancellation of a contract under paragraph (a), the program's operations shall immediately cease and the department shall immediately discontinue any state payments to the program.

(9)(a) The department shall adopt rules under ss. 120.536(1) and 120.54 that establish training requirements that must be completed by staff in a sheriff's training and respect program within 90 calendar days following the person's date of hire, and that must, at a minimum, require:

1. Administrative staff to successfully complete 120 contact hours of department-approved training.

2. Staff who provide direct care, as defined in s. 985.645 to be:

a. Certified correctional, correctional probation, or law enforcement officers under chapter 943 and to receive at least 20 hours of department-approved training in the Protective Action Response policy established in department rules adopted under s. 985.645(2)(a); or

b. Certified in protective action response under s. 985.645(2)(b)-(e) and to successfully complete 200 contact hours of department-approved training, which must include, but is not limited to, training on:

(I) State and federal laws relating to child abuse.

(II) Authorized disciplinary sanctions and privilege restrictions under paragraph (7)(b) and prohibited harmful psychological intimidation techniques under paragraph (7)(c).

(III) Appropriate counseling techniques and aggression control methods.

(IV) Appropriate methods for dealing with children who have been placed in programs that emphasize physical fitness and personal discipline, including training on the identification of, and appropriate responses to, children who are experiencing physical or mental distress.

(V) Cardiopulmonary resuscitation, choke-relief, and other emergency medical procedures.

(b) All department-approved training courses under this subsection must be taught by one or more persons who are certified as, or who have completed the necessary education and training to be, an instructor for the course being taught. A training course in counseling techniques must be taught by a person who has at least a bachelor's degree in social work, counseling, psychology, or a related field.

(c) A person who exercises direct care, as defined in s. 985.645, in a sheriff's training and respect program prior to successful completion of the training requirements in this subsection must be directly supervised by a person who has successfully completed the training requirements in this subsection.

(10) Prior to release of a child from a sheriff's training and respect program, the child:

(a) Must be physically examined by a physician licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed and certified under chapter 464. Any evidence of abuse as defined in s. 39.01(2) must be documented and immediately reported by the examiner to the statewide abuse registry and the department.

(b) Must sign an exit statement indicating whether his or her rights under this section were observed and whether he or she was subjected to any abuse as defined in s. 39.01(2), harmful psychological intimidation techniques, or violations of the Protective Action Response policy established in department rules adopted under s. 985.645(2)(a). Any allegation by the child that:

1. He or she was subjected to abuse as defined in s. 39.01(2) in the sheriff's training and respect program must be investigated by the Department of Children and Family Services under s. 39.302.

2. His or her rights under this section were not observed or that he or she was subjected to harmful psychological intimidation techniques or to violations of the department's Protective Action Response policy must be investigated by the department's Inspector General.

(c) The sheriff's training and respect program shall deliver a copy of each child's exit statement at the time it is executed to:

1. The department in the manner prescribed under paragraph (7)(f).

2. The statewide abuse registry if it contains any allegation of abuse as defined in s. 39.01(2).

(11) The department must:

(a) Maintain records for each sheriff's training and respect program participant and shall monitor his or her recidivism, educational progress, and employment placement for at least 1 year following his or her release from the program. Recidivism statistics shall indicate the degree and severity of the criminal activity.

(b) Annually publish an outcome evaluation study of each sheriff's training and respect program that includes recidivism statistics.

(12) Children shall not be admitted to a sheriff's training and respect program until the department has adopted the rules required by this section and has verified that each program is in compliance with all laws and rules applicable to the program. The department may adopt emergency rules pursuant to s. 120.54(4) if necessary to allow operation of sheriff's training and respect programs beginning July 1, 2006.

**History.**--s. 6, ch. 2006-62.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CCJP 10-03 Judiciary Repealer
SPONSOR(S): Criminal & Civil Justice Policy Council
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Criminal & Civil Justice Policy Council, Analyst: Mato, Staff Director: Havlicak. Rows 2-6 are empty.

SUMMARY ANALYSIS

This bill repeals obsolete statutes relating to the judiciary. The bill repeals the following statutes:

- s. 16.10, F.S., relating to the receipt of Supreme Court reports for the Office of Attorney General.
• s. 25.051, F.S., relating to regular terms of court for the Florida Supreme Court.
• s. 25.281, F.S., relating to compensation of the Florida Supreme Court marshal.
• s. 26.011, F.S., relating to Census commission, judicial circuits.
• ss. 26.21-26.365, F.S., relating to terms of the circuit courts.
• s. 26.37, F.S., relating to judge to attend first day of term.
• s. 26.38, F.S., relating to judge to state reason for nonattendance.
• s. 26.39, F.S., relating to penalty for nonattendance of judge.
• s. 26.40, F.S., relating to adjournment of court upon nonattendance.
• s. 26.42, F.S., relating to calling docket at end of term.
• s. 26.49, F.S., identifying the sheriff as the executive officer of the circuit court.
• s. 28.08, F.S., requiring the clerk of circuit court, or his or her deputy clerk, to reside at the county seat or within two miles of the county seat.
• s. 35.10, F.S., relating to regular terms of court for the district courts of appeal.
• s. 35.27, F.S., relating to compensation of the district courts of appeal marshal.
• s. 744.103, F.S., relating to guardians of incapacitated world war veterans.

There appears to be no fiscal impact on state or local government.

The bill provides and effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

There are many out-dated statutes relating to the judiciary. This bill repeals the following statutes:

#### **s. 16.10, F.S., relating to the receipt of Supreme Court reports for the Office of Attorney General.**

Requires the Clerk of the Supreme Court to deliver opinions, which the Attorney general does not have, to the Attorney General. Requires the Attorney General to give receipt for them.

Enacted: 1881

#### *Effect of the Bill*

Repeal s. 16.10, F.S., as obsolete.

#### **s. 25.051, F.S., relating to regular terms.**

Requires the Supreme Court shall hold two terms in each year, in the Supreme Court Building, commencing respectively on the first day of January and July, or the first day thereafter if that is a Sunday or holiday.

Enacted: 1957

#### *Effect of the Bill*

Repeals s. 25.051, F.S., as obsolete.

#### **s. 25.281, F.S., relating to compensation of the marshal.**

Requires the compensation of the Florida Supreme Court marshal to be provided by law.

Enacted: 1957

#### *Effect of the Bill*

Repeals s. 25.281, F.S., as obsolete.

#### **s. 26.011, F.S., relating to census commission, judicial circuits.**

Provides the methods through which the Legislature can have the Governor appoint commissioners to take a census of the population of a judicial circuit and gives those findings, as proclaimed by the Governor, the force of law.

Enacted: 1956

*Effect of the Bill*

Repeals s. 26.011, F.S., as obsolete.

**ss. 26.21-26.365, F.S., relating to terms of all of the circuit courts.**

Requires at least two regular terms of the circuit court to be held in each county each year and allows for special terms as needed. All twenty circuits have their own statute which provides for the starting day of each term.

Enacted: between 1866 - 1969

*Effect of the Bill*

Repeals ss. 26.21-26.365, F.S., as obsolete.

**s. 26.37, F.S., relating to judge to attend first day of term.**

Requires every judge of a circuit court, unless prevented by sickness or other providential causes, to attend the first day of each term of the circuit court. If the judge fails to attend, he or she is subject to a \$100 deduction from his or her salary.

Enacted: 1849

*Effect of the Bill*

Repeals s. 26.37, F.S., as obsolete.

**s. 26.38, F.S., relating to judge to state reason for nonattendance.**

Requires a judge who misses the first day of each term to state the reasons of such failure in writing to be handed to the clerk of the court.

Enacted: 1849

*Effect of the Bill*

Repeals s. 26.38, F.S., as obsolete.

**s. 26.39, F.S., relating to penalty for nonattendance of judge.**

Requires the clerk of court to notify the Chief Financial Officer of the state when a judge fails to attend the first day of the term of court. The CFO is then directed to deduct \$100 from the judge's pay for every such default.

Enacted: 1849

*Effect of the Bill*

Repeals s. 26.39, F.S., as obsolete.

**s. 26.40, F.S., relating to adjournment of court upon nonattendance.**

Requires that whenever a judge does not attend on the first day of any term, the court shall stand adjourned until 12 o'clock on the second day. If the judge does not attend court at that time, the clerk must continue all causes and adjourn the court to such time as the judge may appoint or to the next regular term.

Enacted: 1828

*Effect of the Bill*

Repeals s. 26.40, F.S. as obsolete.

**s. 26.42, F.S., relating to calling docket at end of term.**

Requires a judge, after other court business of the term has been completed, to call the remaining cases on the docket and make such orders and entries as necessary.

Enacted: 1828

*Effect of the Bill*

Repeals s. 26.42, F.S., as obsolete.

**s. 26.49, F.S., relating to executive officer of circuit court.**

Identifies the sheriff of the county as the executive officer of the circuit court of the county.

Enacted: 1845

*Effect of the Bill*

Repeals s. 26.49, F.S., as obsolete.

**s. 28.08, F.S., relating to place of residence.**

Requires that the clerk of the circuit court or a deputy clerk must reside at the county seat or within two miles of the county seat.

Enacted: 1851

*Effect of the Bill*

Repeals s. 28.08, F.S., as obsolete.

**s. 35.10, F.S., relating to regular terms of District Courts of Appeal.**

Requires the district courts of appeal to hold two regular terms each year at their headquarters. The terms commencing on the second Tuesday in January and July.

Enacted: 1957

*Effect of the Bill*

Repeals s. 35.10, F.S., as obsolete.

**s. 35.27, F.S., relating to compensation of the marshal.**

Establishes that the salaries of the district courts of appeal's marshals shall be provided by law.

Enacted: 1957

*Effect of the Bill*

Repeals s. 35.27, F.S., as obsolete.

**s. 744.103, F.S., relating to guardians of incapacitated world war veterans.**

Provides the provisions of this law shall extend to incapacitated world war veterans, provided for in chapters 293 and 294. The provisions of this law are cumulative to those chapters.

Chapters 293 and 294 have both been repealed in previous legislative sessions. Former s. 293.16, F.S., setting forth the procedure for placing veterans with a federal agency such as United States Department of Veterans Affairs, was transferred and renumbered as s. 394.4672, F.S.

Enacted: 1974

*Effect of the Bill*

Repeals s. 744.103, F.S., as obsolete.

**B. SECTION DIRECTORY:**

- Section 1 – repeals s. 16.10, F.S., relating to the receipt of Supreme Court reports for the Office of Attorney General.
- Section 2 – repeals s. 25.051, F.S., relating to regular terms.
- Section 3 – repeals s. 25.281, F.S., relating to compensation of the marshal.
- Section 4 – repeals s. 26.011, F.S., relating to Census Commission, judicial circuits.
- Section 5 – repeals s. 26.21, F.S., relating to terms of circuit courts.
- Section 6 – repeals s. 26.22, F.S., relating to terms of the First Judicial Circuit.
- Section 7 – repeals s. 26.23, F.S., relating to terms of the Second Judicial Circuit.
- Section 8 – repeals s. 26.24, F.S., relating to terms of the Third Judicial Circuit.
- Section 9 – repeals s. 26.25, F.S., relating to terms of the Fourth Judicial Circuit.
- Section 10 – repeals s. 26.26, F.S., relating to terms of the Fifth Judicial Circuit.
- Section 11 – repeals s. 26.27, F.S., relating to terms of the Sixth Judicial Circuit.
- Section 12 – repeals s. 26.28, F.S., relating to terms of the Seventh Judicial Circuit.
- Section 13 – repeals s. 26.29, F.S., relating to terms of the Eighth Judicial Circuit.
- Section 14 – repeals s. 26.30, F.S., relating to terms of the Ninth Judicial Circuit.
- Section 15 – repeals s. 26.31, F.S., relating to terms of the Tenth Judicial Circuit.
- Section 16 – repeals s. 26.32, F.S., relating to terms of the Eleventh Judicial Circuit.
- Section 17 – repeals s. 26.33, F.S., relating to terms of the Twelfth Judicial Circuit.
- Section 18 – repeals s. 26.34, F.S., relating to terms of the Thirteenth Judicial Circuit.
- Section 19 – repeals s. 26.35, F.S., relating to terms of the Fourteenth Judicial Circuit.
- Section 20 – repeals s. 26.36, F.S., relating to terms of the Fifteenth Judicial Circuit.
- Section 21 – repeals s. 26.361, F.S., relating to terms of the Sixteenth Judicial Circuit.
- Section 22 – repeals s. 26.362, F.S., relating to terms of the Seventeenth Judicial Circuit.
- Section 23 – repeals s. 26.363, F.S., relating to terms of the Eighteenth Judicial Circuit.
- Section 24 – repeals s. 26.364, F.S., relating to terms of the Nineteenth Judicial Circuit.
- Section 25 – repeals s. 26.365, F.S., relating to terms of the Twentieth Judicial Circuit.
- Section 26 – repeals s. 26.37, F.S., relating to judge to attend first day of term.
- Section 27 – repeals s. 26.38, F.S., relating to judge to state reason for nonattendance.
- Section 28 – repeals s. 26.39, F.S., relating to penalty for nonattendance of judge.
- Section 29 – repeals s. 26.40, F.S., relating to adjournment of court upon nonattendance.
- Section 30 – repeals s. 26.42, F.S., relating to calling docket at end of term.
- Section 31 – repeals s. 26.49, F.S., relating to executive officer of circuit court.
- Section 32 – repeals s. 28.08, F.S., relating to place of residence.
- Section 33 – repeals s. 35.10, F.S., relating to regular terms.
- Section 34 – repeals s. 35.27, F.S., relating to compensation of the marshal.
- Section 35 – repeals s. 744.103, F.S., relating to guardians of incapacitated world war veterans.
- Section 36 – provides an effective date of July 1, 2010.

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

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

- 1. Revenues: none

2. Expenditures: none

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

1. Revenues: none

2. Expenditures: none

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: none**

**D. FISCAL COMMENTS: none**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: none

**B. RULE-MAKING AUTHORITY: none**

**C. DRAFTING ISSUES OR OTHER COMMENTS: none**

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**





29 | the Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,  
30 | relating to terms of the Sixteenth Judicial Circuit;  
31 | repealing s. 26.362, F.S., relating to terms of the  
32 | Seventeenth Judicial Circuit; repealing s. 26.363, F.S.,  
33 | relating to terms of the Eighteenth Judicial Circuit;  
34 | repealing s. 26.364, F.S., relating to terms of the  
35 | Nineteenth Judicial Circuit; repealing s. 26.365, F.S.,  
36 | relating to terms of the Twentieth Judicial Circuit;  
37 | repealing s. 26.37, F.S., relating to Judge to attend  
38 | first day of term; repealing s. 26.38, F.S., relating to  
39 | judge to state reason for nonattendance; repealing s.  
40 | 26.39, F.S., relating to penalty for nonattendance of  
41 | judge; repealing s. 26.40, F.S., relating to adjournment  
42 | of court upon nonattendance; repealing s. 26.42, F.S.,  
43 | relating to calling docket at end of term.; repealing s.  
44 | 26.49, F.S., relating to executive officer of circuit  
45 | court; repealing s. 28.08, F.S., relating to place of  
46 | residence; repealing s. 35.10, F.S., relating to regular  
47 | terms; repealing s. 35.27, F.S., relating to compensation  
48 | of the marshal; repealing s. 744.103, F.S., relating to  
49 | guardians of incapacitated world war veterans; providing  
50 | an effective date.

51 |  
52 | Be It Enacted by the Legislature of the State of Florida:

- 53 |  
54 | Section 1. Section 16.10, Florida Statutes, is repealed.  
55 | Section 2. Section 25.051, Florida Statutes, is repealed.  
56 | Section 3. Section 25.281, Florida Statutes, is repealed.

- 57 Section 4. Section 26.011, Florida Statutes, is repealed.
- 58 Section 5. Section 26.21, Florida Statutes, is repealed.
- 59 Section 6. Section 26.22, Florida Statutes, is repealed.
- 60 Section 7. Section 26.23, Florida Statutes, is repealed.
- 61 Section 8. Section 26.24, Florida Statutes, is repealed.
- 62 Section 9. Section 26.25, Florida Statutes, is repealed.
- 63 Section 10. Section 26.26, Florida Statutes, is repealed.
- 64 Section 11. Section 26.27, Florida Statutes, is repealed.
- 65 Section 12. Section 26.28, Florida Statutes, is repealed.
- 66 Section 13. Section 26.29, Florida Statutes, is repealed.
- 67 Section 14. Section 26.30, Florida Statutes, is repealed.
- 68 Section 15. Section 26.31, Florida Statutes, is repealed.
- 69 Section 16. Section 26.32, Florida Statutes, is repealed.
- 70 Section 17. Section 26.33, Florida Statutes, is repealed.
- 71 Section 18. Section 26.34, Florida Statutes, is repealed.
- 72 Section 19. Section 26.35, Florida Statutes, is repealed.
- 73 Section 20. Section 26.36, Florida Statutes, is repealed.
- 74 Section 21. Section 26.361, Florida Statutes, is repealed.
- 75 Section 22. Section 26.362, Florida Statutes, is repealed.
- 76 Section 23. Section 26.363, Florida Statutes, is repealed.
- 77 Section 24. Section 26.364, Florida Statutes, is repealed.
- 78 Section 25. Section 26.365, Florida Statutes, is repealed.
- 79 Section 26. Section 26.37, Florida Statutes, is repealed.
- 80 Section 27. Section 26.38, Florida Statutes, is repealed.
- 81 Section 28. Section 26.39, Florida Statutes, is repealed.
- 82 Section 29. Section 26.40, Florida Statutes, is repealed.
- 83 Section 30. Section 26.42, Florida Statutes, is repealed.
- 84 Section 31. Section 26.49, Florida Statutes, is repealed.

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85 Section 32. Section 28.08, Florida Statutes, is repealed.

86 Section 33. Section 35.10, Florida Statutes, is repealed.

87 Section 34. Section 35.27, Florida Statutes, is repealed.

88 Section 35. Section 744.103, Florida Statutes, is

89 repealed.

90 Section 36. This act shall take effect July 1, 2010.

## Florida Statutes repealed by PCB CCJP 10-03

**16.10 Receipt of Supreme Court reports for office.**--The Clerk of the Supreme Court shall deliver to the Attorney General a copy of each volume, or part of volume, of the decisions of the Supreme Court, which may be in the care or custody of said clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in her or his office at the capitol, and each retiring Attorney General shall take the receipt of her or his successor for the same and file such receipt in the Chief Financial Officer's office; provided that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said court.

**History.**--ch. 3264, 1881; RS 92; GS 95; RGS 109; CGL 133; s. 50, ch. 95-147; s. 11, ch. 2003-261.

**25.051 Regular terms.**--The Supreme Court shall hold two terms in each year, in the Supreme Court Building, commencing respectively on the first day of January and July, providing, that if such day be a Sunday or legal holiday, then on the first subsequent day which is not a Sunday or legal holiday.

**History.**--s. 1, ch. 57-274.

**25.281 Compensation of marshal.**--The compensation of the said marshal shall be provided by law.

**History.**--s. 1, ch. 57-274.

### **26.011 Census commission, judicial circuits.**--

(1) APPOINTMENT OF COMMISSIONERS.--When it shall be deemed advisable by the Legislature that the population of any judicial circuit be determined, it may from time to time provide for the appointment by the Governor of three commissioners from such judicial circuit who shall obtain from the United States Census Bureau an outline of proper criteria other than by the actual counting of individuals, to be used by the commissioners for the purpose of determining the population of a circuit, and the commissioners shall proceed in accordance with the criteria to determine the number of inhabitants of such circuit. In making their determination the commissioners shall also, after public notice, hold a public hearing or hearings at such place or places in the circuit as they deem advisable to receive such further proof needed to assist them in determining the number of inhabitants. After the

conclusion of their study and after the public hearings to be held, as aforesaid, the commissioners shall make proof to the Governor, first, of the establishment of criteria by the United States Census Bureau and second, their findings based thereon. They shall also forward to the Governor a certified transcript of the record taken at the public hearings to be held as aforesaid.

(2) PROCLAMATION BY GOVERNOR.--The findings by any such commission or commissioners as to the number of inhabitants or the population of any judicial circuit when proclaimed by the Governor shall have the same force and effect in law as if according to a census taken pursuant to either federal or state law insofar as a census affects the number of circuit judges permitted by law but such determination shall not otherwise be effective for any purpose.

(3) The commissioners shall not be paid any compensation but shall be reimbursed for travel expenses as provided in s. 112.061.

**History.**--ss. 1-3, ch. 31395, 1956; s. 19, ch. 63-400; s. 1, ch. 65-265; s. 7, ch. 79-164.

**26.21 Terms of circuit courts.**--At least two regular terms of the circuit court shall be held in each county each year, as hereinafter provided, also such special term or terms that may be necessary from time to time. Regular and special terms of court may be held and be in session, in the same or different counties of any circuit, simultaneously; provided, that separate minutes of each term, whether regular or special, shall be kept by the clerk. The time for holding the terms of the circuit court in the several judicial circuits shall be as set forth in ss. 26.22-26.365.

**History.**--s. 1, ch. 1561, 1866; RS 1373; s. 1, ch. 5121, 1903; GS 1805, 1813; s. 1, ch. 6173, 1911; RGS 3041, 3056; CGL 4808, 4837; ss. 4, 4A, ch. 17085, 1935; s. 7, ch. 69-220.

## **26.22 First Judicial Circuit.--**

### SPRING TERMS.

Escambia County, second Monday in June.

Okaloosa County, last Monday in April.

Santa Rosa County, second Monday after the second Monday in May.

Walton County, second Monday in May.

FALL TERMS.

Escambia County, second Monday in October.

Okaloosa County, last Monday in August.

Santa Rosa County, second Monday after the second Monday in September.

Walton County, second Monday in September.

WINTER TERMS.

Escambia County, second Monday in February.

Okaloosa County, second Monday in December.

Santa Rosa County, second Monday after the second Monday in January.

Walton County, second Monday in January.

**History.**--s. 1, ch. 3117, 1879; s. 1, ch. 3259, 1881; RS 1366; s. 1, ch. 5121, 1903; GS 1805; s. 2, ch. 6173, 1911; s. 2, ch. 6937, 1915; s. 1, ch. 7400, 1917; RGS 3042; s. 1, ch. 8522, 1921; ss. 1, chs. 9342, 9364<sup>1/2</sup>, 1923; s. 1, ch. 10078, 1925; CGL 4809.

**26.23 Second Judicial Circuit.--**

SPRING TERMS.

Wakulla County, first Monday in March.

Franklin County, third Monday in March.

Gadsden County, first Monday in April.

Jefferson County, fourth Monday in April.

Liberty County, second Monday in May.

Leon County, first Monday in June.

FALL TERMS.

Wakulla County, second Monday in September.

Franklin County, fourth Monday in September.

Gadsden County, second Monday in October.

Jefferson County, first Monday in November.

Liberty County, third Monday in November.

Leon County, first Monday in December.

**History.**--ss. 1, 2, ch. 3733, 1887; ss. 1, 2, ch. 4059, 1891; RS 1367; s. 2, ch. 5121, 1903; GS 1806; s. 3, ch. 6173, 1911; s. 1, ch. 6459, 1913; s. 1, ch. 7848, 1919; RGS 3043; s. 1, ch. 8484, 1921; s. 1, ch. 9165, 1923; s. 1, ch. 11885, 1927; CGL 4810; s. 1, ch. 14695, 1931; s. 1, ch. 20230, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 26988, 1951.

## **26.24 Third Judicial Circuit.--**

### SPRING TERMS.

Lafayette County, second Monday in January.

Dixie County, fourth Monday in January.

Hamilton County, second Monday in February.

Taylor County, first Monday in March.

Madison County, fourth Monday in March.

Suwannee County, third Monday in April.

Columbia County, second Monday in May.

### FALL TERMS.

Lafayette County, third Monday in July.

Dixie County, first Monday in August.

Hamilton County, third Monday in August.

Taylor County, second Monday in September.

Madison County, first Monday in October.

Suwannee County, fourth Monday in October.

Columbia County, third Monday in November.

**History.**--ss. 1, 2, ch. 4060, 1891; RS 1368; s. 3, ch. 5121, 1903; GS 1807; s. 4, ch. 6173, 1911; s. 1, ch. 7844, 1919; RGS 3044; s. 22, ch. 8514, 1921; CGL 4811; s. 1, ch. 13582, 1929; s. 1, ch. 15912, 1933; s. 1, ch. 29631, 1955.

## **26.25 Fourth Judicial Circuit.--**

### SPRING TERMS.

Clay County, first Monday in April.

Duval County, first Monday in May.

Nassau County, third Monday in April.

### FALL TERMS.

Clay County, first Monday in October.

Duval County, first Monday in November.

Nassau County, third Monday in October.

**History.**--ss. 1, 2, ch. 4061, 1891; RS 1369; s. 4, ch. 5121, 1903; GS 1808; s. 5, ch. 6173, 1911; ss. 1-4, ch. 7348, 1917; RGS 3045; s. 1, ch. 9282, 1923; s. 4, ch. 12437, 1927; CGL 4812; ss. 1, 2, ch. 26326, 1949.

## **26.26 Fifth Judicial Circuit.--**

### SPRING TERMS.



Sumter County, second Tuesday in January.

Citrus County, first Tuesday in February.

Hernando County, first Tuesday in March.

Marion County, first Tuesday in April.

Lake County, first Tuesday in May.

FALL TERMS.

Sumter County, second Tuesday in July.

Citrus County, first Tuesday in August.

Hernando County, first Tuesday in September.

Marion County, first Tuesday in October.

Lake County, first Tuesday in October.

**History.**--s. 1, ch. 3732, 1887; RS 1370; s. 5, ch. 5121, 1903; GS 1809; s. 6, ch. 6173, 1911; ss. 3, 4, ch. 7847, 1919; RGS 3046; s. 1, ch. 8485, 1921; ss. 3, 4, ch. 9164, 1923; s. 1, ch. 10077, 1925; ss. 1, chs. 11879, 12435, ss. 1-3, ch. 12436, 1927; CGL 4813, 4824, 4832; ss. 1, 2, ch. 17765, 1937; s. 1, ch. 19059, 1939; s. 1, ch. 29632, 1955; s. 1, ch. 57-814.

**26.27 Sixth Judicial Circuit.--**

SPRING TERMS.

Pasco County, first Tuesday in April.

Pinellas County, first Monday in May.

FALL TERMS.

Pasco County, first Tuesday in October.

Pinellas County, first Monday in December.

**History.**--ss. 1, 2, ch. 4062, 1891; RS 1371; s. 6, ch. 5121, 1903; GS 1810; s. 7, ch. 6173, 1911; s. 1, ch. 6975, 1915; RGS 3047; ss. 1, chs. 9162, 9277, 1923; CGL 4814.

**26.28 Seventh Judicial Circuit.--**

SPRING TERMS.

Flagler County, third Monday in May.

Putnam County, second Monday in March.

St. Johns County, second Monday in May.

Volusia County, second Monday in April.

FALL TERMS.

Flagler County, second Monday in December.

Putnam County, second Monday in October.

St. Johns County, second Monday in November.

Volusia County, third Monday in October.

**History.**--s. 1, ch. 3939, 1889; RS 1372; s. 7, ch. 5121, 1903; GS 1811; s. 8, ch. 6173, 1911; ss. 1-3, ch. 6462, s. 19, ch. 6511, 1913; s. 2, ch. 6901, 1915; ss. 2, 3, ch. 7348, s. 2, ch. 7351, 1917; s. 1, ch. 7846, s. 2, ch. 7847, 1919; RGS 3045, 3048, 3049; s. 2, ch. 8486, s. 1, ch. 8487, 1921; ss. 1, chs. 9282, 9343, 1923; s. 2, ch. 10080, 1925; s. 1, ch. 12434, ss. 2, 4, ch. 12437, s. 1, ch. 12438, 1927; CGL 4815, 4833; s. 1, ch. 15913, 1933; s. 1, ch. 17766, 1937; s. 1, ch. 75-163.

**26.29 Eighth Judicial Circuit.--**

SPRING TERMS.

Alachua County, second Monday in April.

Baker County, second Monday in January.

Bradford County, second Monday in May.

Gilchrist County, first Monday in March.

Levy County, second Monday in March.

Union County, fourth Monday in May.

FALL TERMS.

Alachua County, second Monday in October.

Baker County, second Monday in July.

Bradford County, second Monday in November.

Gilchrist County, first Tuesday after the first Monday in September.

Levy County, second Monday in September.

Union County, fourth Monday in November.

**History.**--s. 8, ch. 5121, 1903; GS 1812; s. 9, ch. 6173, 1911; ss. 1-3, ch. 6462, 1913; ss. 1, 2, ch. 6901, 1915; s. 1, ch. 7846, ss. 1, 2, ch. 7945, 1919; RGS 3049; s. 2, ch. 8486, s. 25, ch. 8516, 1921; s. 1, ch. 9343, 1923; ss. 1, 2, ch. 10080, s. 18, ch. 11371, 1925; ss. 1, 2, ch. 12014, ss. 1-3, ch. 12438, s. 1, ch. 12439, 1927; CGL 4816, 4834; s. 1, ch. 14497, 1929; s. 1, ch. 14699, 1931; ss. 1-3, ch. 15914, 1933; ss. 1, 2, ch. 16849, 1935; ss. 1, 2, ch. 17767, 1937; s. 2, ch. 26977, 1951; s. 1, ch. 57-45.

**26.30 Ninth Judicial Circuit.**--Two regular terms of the circuit court in the Ninth Judicial Circuit shall be held in each of said counties to be known as the spring and fall terms. The terms of court for the Ninth Judicial Circuit shall begin on the following dates:

SPRING TERMS.

Orange County, first Monday in April.

Osceola County, third Monday in March.

FALL TERMS.

Orange County, third Monday in October.

Osceola County, third Monday in September.

**History.**--s. 10, ch. 6173, 1911; s. 19, ch. 6511, 1913; ss. 2, 4, ch. 7351, 1917; ss. 2, 4, ch. 7847, 1919; RGS 3048, 3055; ss. 1, chs. 8485, 8487, 1921; s. 2, ch. 9164, 1923; ss. 2, 3, ch. 10079, ss. 1, 2, ch. 10089, s. 22, ch. 10148, s. 22, ch. 10180, 1925; ss. 1, 2, ch. 11880, s. 1, ch. 11883, s. 1, ch. 11884, s. 1, ch. 12432, s. 3, ch. 12434, 1927; CGL 4825, 4829, 4831; s. 1, ch. 17768, 1937; s. 1, ch. 19080, 1939; s. 1, ch. 22056, 1943; s. 1, ch. 24165, 1947; s. 11, ch. 25035, s. 1, ch. 25439, 1949; s. 1, ch. 57-59; s. 4, ch. 67-195.

### **26.31 Tenth Judicial Circuit.--**

#### SPRING TERMS.

Hardee County, first Tuesday after the second Monday in February.

Highlands County, first Tuesday after the first Monday in April.

Polk County, first Tuesday after the second Monday in March.

#### FALL TERMS.

Hardee County, first Tuesday after the second Monday in September.

Highlands County, first Tuesday after the first Monday in November.

Polk County, first Tuesday after the second Monday in October.

**History.**--s. 11, ch. 6173, 1911; s. 1, ch. 6902, 1915; s. 2, ch. 7349, 1917; s. 1, ch. 7845, 1919; RGS 3051; ss. 1-3, ch. 8476, 1921; s. 3, ch. 10082, 1925; CGL 4818, 4827; ss. 1-3, ch. 17769, 1937.

### **26.32 Eleventh Judicial Circuit.--**

#### SPRING TERM.

Miami-Dade County, second Tuesday in May.

FALL TERM.

Miami-Dade County, second Tuesday in November.

**History.**--s. 12, ch. 6173, 1911; s. 1, ch. 6461, 1913; s. 3, ch. 7351, 1917; RGS 3052; s. 4, ch. 10084, 1925; CGL 4819, 4828; s. 1, ch. 26517, s. 3, ch. 26952, 1951; s. 9, ch. 2008-4.

**26.33 Twelfth Judicial Circuit.**--The terms of court for the Twelfth Judicial Circuit shall begin on the following dates:

SPRING TERMS.

DeSoto County, second Monday in January.

Manatee County, second Monday in January.

Sarasota County, third Monday in January.

FALL TERMS.

DeSoto County, second Monday in June.

Manatee County, second Monday in June.

Sarasota County, third Monday in June.

**History.**--s. 11, ch. 6173, 1911; ss. 1, chs. 6902, 6975, 1915; s. 2, ch. 7349, 1917; s. 3, ch. 7845, 1919; RGS 3047, 3051; ss. 1-3, ch. 8476, RGS 3047, 3051; ss. 2, 20, ch. 8515, 1921; s. 3, ch. 9162, s. 1, ch. 9277, s. 22, ch. 9360, s. 22, ch. 9362, 1923; ss. 1, 3, ch. 10082, 1925; ss. 1, 3, ch. 12440, 1927; CGL 4820, 4826, 4827, 4835; ss. 1, 2, ch. 17770, 1937; s. 1, ch. 21817, 1943; s. 1, ch. 61-211; s. 6, ch. 69-220.

**26.34 Thirteenth Judicial Circuit.**--

SPRING TERM.

Hillsborough County, first Tuesday in April.

FALL TERM.

Hillsborough County, first Tuesday in October.

**History.**--s. 7, ch. 6173, 1911; s. 3, ch. 6975, 1915; RGS 3053; CGL 4821; s. 1, ch. 16850, 1935.

**26.35 Fourteenth Judicial Circuit.--**

SPRING TERMS.

Bay County, fourth Monday in February.

Calhoun County, fourth Monday in April.

Gulf County, second Monday in February.

Holmes County, second Monday in April.

Jackson County, second Monday in May.

Washington County, fourth Monday in March.

FALL TERMS.

Bay County, fourth Monday in August.

Calhoun County, fourth Monday in September.

Gulf County, second Monday in August.

Holmes County, second Monday in October.

Jackson County, second Monday in November.

Washington County, fourth Monday in October.

**History.**--ss. 3, 4, ch. 6976, 1915; ss. 1, 2, ch. 7350, 1917; ss. 1, 4, ch. 7847, ss. 1, 2, ch. 7946, 1919; RGS 3050, 3054; s. 2, ch. 10076, s. 22, ch. 10132, 1925; ss. 3, 4, ch. 12441, 1927; CGL 4817, 4822, 4836; ss. 1, 2, ch. 17771, 1937; s. 1, ch. 21901, 1943.

**26.36 Fifteenth Judicial Circuit.**--The terms of court for the Fifteenth Judicial Circuit shall be as follows:

SPRING TERM.

Palm Beach County, first Monday in June.

FALL TERM.

Palm Beach County, first Monday in October.

WINTER TERM.

Palm Beach County, first Monday in February.

**History.**--s. 3, ch. 7351, 1917; RGS 3055; s. 1, ch. 10079, 1925; s. 1, ch. 11882, ss. 1-3, ch. 12433, 1927; CGL 4823, 4830; s. 1, ch. 25426, 1949; ss. 1, chs. 57-138, 57-1994; s. 1, ch. 63-435, s. 3, ch. 63-470.

**26.361 Sixteenth Judicial Circuit.**--

SPRING TERM.

Monroe County, third Monday in April.

FALL TERM.

Monroe County, third Monday in October.

**History.**--s. 4, ch. 26952, 1951.

**26.362 Seventeenth Judicial Circuit.**--The terms of court for the Seventeenth Judicial Circuit shall be as follows:

SPRING TERM.

Broward County, second Tuesday in March.

FALL TERM.

Broward County, second Tuesday in October.

**History.**--s. 4, ch. 63-470.

**26.363 Eighteenth Judicial Circuit.**--The regular spring and fall terms of the circuit court of the Eighteenth Judicial Circuit of the state shall be held semiannually at the times hereinafter specified, to wit:

SPRING TERMS.

Brevard County, fourth Monday in March.

Seminole County, third Monday in April.

FALL TERMS.

Brevard County, second Monday in October.

Seminole County, first Monday in November.

**History.**--s. 5, ch. 67-195; s. 2, ch. 80-399.

**26.364 Nineteenth Judicial Circuit.**--The regular spring and fall terms of the circuit court of the Nineteenth Judicial Circuit of the state shall be held semiannually at the times hereinafter specified, to wit:

SPRING TERMS.

Okeechobee County, second Tuesday in April.

St. Lucie County, second Tuesday in February.

Martin County, second Tuesday in June.

Indian River County, second Tuesday in March.



FALL TERMS.

Okeechobee County, second Tuesday in November.

St. Lucie County, second Tuesday in September.

Martin County, second Tuesday in January.

Indian River County, second Tuesday in October.

**History.**--s. 7, ch. 67-195.

**26.365 Twentieth Judicial Circuit.**--The terms of court for the Twentieth Judicial Circuit shall be as follows:

SPRING TERMS.

Charlotte County, third Monday in January.

Collier County, second Monday in January.

Glades County, fourth Monday in January.

Hendry County, third Monday in January.

Lee County, second Monday in January.

FALL TERMS.

Charlotte County, third Monday in June.

Collier County, second Monday in June.

Glades County, fourth Monday in June.

Hendry County, third Monday in June.

Lee County, second Monday in June.

**History.**--s. 7, ch. 69-220.

**26.37 Judge to attend first day of term.**--Each judge of a circuit court is required, unless prevented by sickness or other providential causes, to attend on the first day of each term of the circuit court required by law to be held, and upon failure to do so, shall be subject to a deduction of \$100 from his or her salary for each and every such default.

**History.**--s. 1, ch. 252, 1849; RS 1377; GS 1817; RGS 3062; CGL 4843; s. 110, ch. 95-147.

**26.38 Judge to state reason for nonattendance.**--Whenever any judge as aforesaid shall make default as aforesaid in consequence of sickness or providential interposition, it shall be the duty of such judge to state the reasons of such failure, in writing, over his or her official signature, to be handed to the clerk of the court, who shall enter the same at length on the records of the court.

**History.**--s. 2, ch. 252, 1849; RS 1378; GS 1818; RGS 3063; CGL 4844; s. 111, ch. 95-147.

**26.39 Penalty for nonattendance of judge.**--Whenever such default shall occur, the clerk of the court (unless such judge shall file his or her reasons for such default as hereinbefore provided) shall certify the fact, under his or her official signature and seal, to the Chief Financial Officer of the state, who shall deduct from the warrants, thereafter to be issued in favor of the judge making such default, the sum of \$100 as aforesaid for every such default.

**History.**--s. 3, ch. 252, 1849; RS 1379; GS 1819; RGS 3064; CGL 4845; s. 112, ch. 95-147; s. 78, ch. 2003-261.

**26.40 Adjournment of court upon nonattendance.**--Whenever any judge shall not attend on the first day of any term, the court shall stand adjourned until 12 o'clock on the second day; and if said judge shall not then attend, the clerk at that time shall continue all causes, and adjourn the court to such time as the judge may appoint, or to the next regular term, by law established.

**History.**--s. 3, Nov. 23, 1828; RS 1380; GS 1820; RGS 3065; CGL 4846.

**26.42 Calling docket at end of term.**--The judge, at each term of the court, after other business of the term shall have been disposed of, shall call over all the

causes standing upon the dockets, and make such orders and entries therein as shall be found necessary in relation thereto.

**History.**--s. 19, Nov. 23, 1828; RS 1343; GS 1778; RGS 3002; CGL 4736.

**26.49 Executive officer of circuit court.**--The sheriff of the county shall be the executive officer of the circuit court of the county.

**History.**--s. 14, ch. 4, 1845; RS 1396; GS 1841; RGS 3086; CGL 4869.

**28.08 Place of residence.**--The clerk of the circuit court, or a deputy, shall reside at the county seat or within 2 miles thereof.

**History.**--s. 1, ch. 1851, 1871; RS 1386; GS 1827; RGS 3072; CGL 4853.

**35.10 Regular terms.**--The district court of appeal shall hold two regular terms each year at its headquarters, commencing respectively on the second Tuesday in January and July. The court may adjourn from time to time as may be deemed necessary for the dispatch of business.

**History.**--s. 1, ch. 57-248.

**35.27 Compensation of marshal.**--The compensation of the said marshal shall be as provided by law.

**History.**--s. 1, ch. 57-248.

**744.103 Guardians of incapacitated world war veterans.**--The provisions of this law shall extend to incapacitated world war veterans, provided for in <sup>1</sup>chapters 293 and 294 or any amendment or revision of them. The provisions of this law are cumulative to those chapters. Any conflict between <sup>1</sup>chapters 293 and 294, or any amendment or revision of them, and this law shall be resolved by giving effect to those chapters.

**History.**--s. 1, ch. 74-106; s. 2, ch. 75-222; s. 1, ch. 77-174; s. 6, ch. 89-96.

<sup>1</sup>**Note.**--The sections comprising former chapters 293 and 294, except for former s. 293.16, were either repealed or transferred to part VIII of chapter 744 by ch. 84-62; s. 293.16 was transferred and renumbered as s. 394.4672.

**Note.**--Created from former s. 744.05.



## **Background Screening Draft Bill – February 2, 2010**

**Section 1:** Amends s. 435.02, F.S., relating to definitions.

- Adds definition of “employment” and “vulnerable person.”
  - “Vulnerable adult in need of services” means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm. Section 415.102(27), F.S.
- Adds “municipality” to definition of “licensing agency.”

**Section 2:** Amends s. 435.03, F.S., relating to Level 1 screening.

- Adds various disqualifying offenses. Deletes reference to certain felonies in ch. 784 since the new list includes all felonies under ch. 784.
- Deletes specific provisions in this section relating to nursing homes (and related health care facilities), assisted care communities, developmental disability centers, mental health treatment facilities. These provisions are duplicative of the related authorizing statute for each type of facility.
- Moves provision for acts of domestic violence to new subsection (3).

**Section 3:** Amends s. 435.04, F.S., relating to Level 2 screening.

- Requires all fingerprints to be submitted electronically by July 1, 2012.
- Adds various disqualifying offenses. Deletes reference to certain felonies in ch. 784 since the new list includes all felonies under ch. 784.
- Moves provision for acts of domestic violence to new subsection (3).
- Provides for the retention of fingerprints as authorized by law.
- Provides that retained fingerprints may be reviewed by FDLE to determine if persons screened pursuant to ch. 435 are subsequently arrested in Florida.
- Provides that FDLE will notify the appropriate agency if a retained print shows a subsequent arrest.
- Provides for the collection of retention costs from the agencies.

- Deletes specific provisions relating to the Department of Juvenile Justice (they are being moved to s. 985.644 in section 9 of the bill).
- Deletes specific provisions in this section relating to nursing homes (and related health care facilities) and assisted care communities. These provisions are duplicative of the related authorizing statute for each type of facility.
- Deletes provisions in subsection (5) related to certain attestations by employees and employers and moves them to section 4 of the bill.

**Section 4:** Amends s. 435.05, F.S., relating to requirements for covered employees and employers.

- Deletes provisions allowing employees to work pending the results of the background screening.
- Inserts provisions relating to certain attestations made by employees and employers that were deleted in section 3 of the bill.

**Section 5:** Amends s. 435.06, F.S., relating to exclusion from employment.

- Prohibits an employer from hiring or otherwise allowing persons contact with vulnerable persons until the favorable conclusion of background screening or the granting of an exemption.

**Section 6:** Amends s. 435.07, F.S., relating to the granting of exemptions for disqualification.

- Requires the agency head to approve any exemption granted by the agency.
- Provides that an exemption may not be given for a disqualifying felony until at least 3 years following the completion of all sanctions for that felony.
- Removes a reference to exemptions for disqualifying acts of domestic violence. These will be treated as other disqualifying offenses, depending on whether it is a felony or a misdemeanor.
- Provides for the granting of conditional exemptions.
- Provides for the revocation of exemptions.
- Provides that an exemption may not be given to a person designated as a sexual predator or who is subject to registration as a sexual offender.

**Section 7:** Amends s. 943.05, F.S., relating to the Criminal Justice Information Program at FDLE.

- Authorizes agencies to request the retention of fingerprints.
- Authorizes FDLE to participate in a federal retention program, should one be created.

**Section 8:** Amends s. 943.053, F.S., relating to dissemination of criminal justice information by FDLE.

- Makes technical changes.

**Section 9:** Amends s. 985.644, F.S., relating to the Dept. of Juvenile Justice background screening.

- Inserts provisions deleted in ch. 435 that are specific to DJJ.
- Rewrites existing provisions to conform.

**Section 10:** Provides an effective date of July 1, 2010.



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1 A bill to be entitled  
 2 An act relating to criminal background screening; amending  
 3 s. 435.02, F.S.; amending s. 435.03, F.S.; amending s.  
 4 435.04, F.S.; amending s. 435.05, F.S.; amending s.  
 5 435.06, F.S.; amending s. 435.07, F.S.; amending s.  
 6 943.05, F.S.; amending s. 943.053, F.S.; amending s.  
 7 985.644, F.S.; providing an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10  
 11 Section 1. Section 435.02, Florida Statutes, is amended to  
 12 read:

13 435.02 Definitions.—For the purposes of this chapter:

14 (1) "Employee" means any person required by law to be  
 15 screened pursuant to the provisions of this chapter.

16 (2) "Employer" means any person or entity required by law  
 17 to conduct screening of employees pursuant to this chapter.

18 (3) "Employment" means any activity or service sought to  
 19 be performed by an employee that is of a nature that requires  
 20 the employee to be subject to screening under this chapter,  
 21 including, but not limited to, becoming an employee, owner,  
 22 operator, volunteer, licensee, or contract vendor.

23 (4) "Licensing agency" means any state, municipality, or  
 24 county agency that ~~which~~ grants licenses or registration  
 25 permitting the operation of an employer or is itself an  
 26 employer. When there is no state licensing agency or the  
 27 municipal or county licensing agency chooses not to conduct  
 28 employment screening, "licensing agency" means the Department of

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29 Children and Family Services.

30 (5) "Vulnerable person" means a child or a vulnerable  
 31 adult as defined in s. 415.102.

32 Section 2. Section 435.03, Florida Statutes, is amended to  
 33 read:

34 435.03 Level 1 screening standards.—

35 (1) All employees required by law to be screened pursuant  
 36 to this section must ~~shall be required to~~ undergo background  
 37 screening as a condition of employment and continued employment  
 38 that includes. ~~For the purposes of this subsection, level 1~~  
 39 ~~screenings shall include,~~ but need not be limited to, employment  
 40 history checks and statewide criminal correspondence checks  
 41 through the Florida Department of Law Enforcement, and may  
 42 include local criminal records checks through local law  
 43 enforcement agencies.

44 (2) Any person required by law to be screened pursuant to  
 45 this section ~~for whom employment screening is required by~~  
 46 ~~statute~~ must not have been found guilty of, regardless of  
 47 adjudication, or entered a plea of nolo contendere or guilty to,  
 48 any offense prohibited under any of the following provisions of  
 49 the Florida Statutes or under any similar statute of another  
 50 jurisdiction:

51 (a) Section 393.135, relating to sexual misconduct with  
 52 certain developmentally disabled clients and reporting of such  
 53 sexual misconduct.

54 (b) Section 394.4593, relating to sexual misconduct with  
 55 certain mental health patients and reporting of such sexual  
 56 misconduct.

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- 57           (c) Section 415.111, relating to abuse, neglect, or
- 58 exploitation of a vulnerable adult.
- 59           (d) Section 782.04, relating to murder.
- 60           (e) Section 782.07, relating to manslaughter, aggravated
- 61 manslaughter of an elderly person or disabled adult, or
- 62 aggravated manslaughter of a child.
- 63           (f) Section 782.071, relating to vehicular homicide.
- 64           (g) Section 782.09, relating to killing of an unborn quick
- 65 child by injury to the mother.
- 66           (h) Chapter 784, relating to assault, battery, and culpable
- 67 negligence, if the offense was a felony.
- 68           (i)~~(h)~~ Section 784.011, relating to assault, if the victim
- 69 of the offense was a minor.
- 70           ~~(i) Section 784.021, relating to aggravated assault.~~
- 71           (j) Section 784.03, relating to battery, if the victim of
- 72 the offense was a minor.
- 73           ~~(k) Section 784.045, relating to aggravated battery.~~
- 74           (k)~~(l)~~ Section 787.01, relating to kidnapping.
- 75           (l)~~(m)~~ Section 787.02, relating to false imprisonment.
- 76           (m) Section 787.025, relating to luring or enticing a
- 77 child.
- 78           (n) Section 794.011, relating to sexual battery.
- 79           (o) Former s. 794.041, relating to prohibited acts of
- 80 persons in familial or custodial authority.
- 81           (p) Section 794.05, relating to unlawful sexual activity
- 82 with certain minors.
- 83           (q)~~(p)~~ Chapter 796, relating to prostitution.
- 84           (r)~~(q)~~ Section 798.02, relating to lewd and lascivious

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85 | behavior.

86 |     ~~(s)(r)~~ Chapter 800, relating to lewdness and indecent  
87 | exposure.

88 |     ~~(t)(s)~~ Section 806.01, relating to arson.

89 |     (u) Section 810.02, relating to burglary.

90 |     (v) Section 810.14, relating to voyeurism, if the offense  
91 | is a felony.

92 |     (w) Section 810.145, relating to video voyeurism, if the  
93 | offense is a felony.

94 |     ~~(x)(t)~~ Chapter 812, relating to theft, robbery, and  
95 | related crimes, if the offense was a felony.

96 |     (y) Section 817.034, relating to the Florida Communications  
97 | Fraud Act, if the offense is a felony.

98 |     ~~(z)~~(u) Section 817.563, relating to fraudulent sale of  
99 | controlled substances, only if the offense was a felony.

100 |     (aa) Section 817.568, relating to criminal use of personal  
101 | identification information.

102 |     (bb) Section 817.60, relating to obtaining a credit card  
103 | through fraudulent means.

104 |     (cc) Section 817.61, relating to fraudulent use of credit  
105 | cards, if the offense is a felony.

106 |     ~~(dd)(v)~~ Section 825.102, relating to abuse, aggravated  
107 | abuse, or neglect of an elderly person or disabled adult.

108 |     ~~(ee)(w)~~ Section 825.1025, relating to lewd or lascivious  
109 | offenses committed upon or in the presence of an elderly person  
110 | or disabled adult.

111 |     ~~(ff)(\*)~~ Section 825.103, relating to exploitation of an  
112 | elderly person or disabled adult, if the offense was a felony.

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113 (gg)~~(y)~~ Section 826.04, relating to incest.  
 114 (hh)~~(z)~~ Section 827.03, relating to child abuse,  
 115 aggravated child abuse, or neglect of a child.  
 116 (ii)~~(aa)~~ Section 827.04, relating to contributing to the  
 117 delinquency or dependency of a child.  
 118 (jj)~~(bb)~~ Former s. 827.05, relating to negligent treatment  
 119 of children.  
 120 (kk)~~(ee)~~ Section 827.071, relating to sexual performance  
 121 by a child.  
 122 (ll) Section 831.01, relating to forgery.  
 123 (mm) Section 831.02, relating to uttering forged  
 124 instruments.  
 125 (nn) Section 831.07, relating to forging bank bills,  
 126 checks, drafts, or promissory notes.  
 127 (oo) Section 831.09, relating to uttering forged bills,  
 128 checks, drafts, or notes.  
 129 (pp)~~(dd)~~ Chapter 847, relating to obscene literature.  
 130 (qq)~~(ee)~~ Chapter 893, relating to drug abuse prevention  
 131 and control, only if the offense was a felony or if any other  
 132 person involved in the offense was a minor.  
 133 (rr)~~(ff)~~ Section 916.1075, relating to sexual misconduct  
 134 with certain forensic clients and reporting of such sexual  
 135 misconduct.  
 136 (3) The security background investigations under this  
 137 section must ensure that no persons subject to the provisions of  
 138 this section have been found guilty of, regardless of  
 139 adjudication, or entered a plea of nolo contendere or guilty to,  
 140 any offense that constitutes domestic violence as defined in s.

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141 741.28, whether such act was committed in Florida or in another  
 142 jurisdiction.

143 ~~(3) Standards must also ensure that the person:~~

144 ~~(a) For employees and employers licensed or registered~~  
 145 ~~pursuant to chapter 400 or chapter 429, and for employees and~~  
 146 ~~employers of developmental disabilities centers as defined in s.~~  
 147 ~~393.063, intermediate care facilities for the developmentally~~  
 148 ~~disabled as defined in s. 400.960, and mental health treatment~~  
 149 ~~facilities as defined in s. 394.455, meets the requirements of~~  
 150 ~~this chapter.~~

151 ~~(b) Has not committed an act that constitutes domestic~~  
 152 ~~violence as defined in s. 741.28.~~

153 Section 3. Section 435.04, Florida Statutes, is amended to  
 154 read:

155 435.04 Level 2 screening standards.--

156 (1) All employees required by law to be screened pursuant  
 157 to this section must ~~in positions designated by law as positions~~  
 158 ~~of trust or responsibility shall be required to~~ undergo security  
 159 background investigations as a condition of employment and  
 160 continued employment that includes. ~~For the purposes of this~~  
 161 ~~subsection, security background investigations shall include,~~  
 162 but need not be limited to, fingerprinting for all purposes and  
 163 checks pursuant to this section ~~in this subsection,~~ statewide  
 164 criminal and juvenile records checks through the Florida  
 165 Department of Law Enforcement, and federal criminal records  
 166 checks through the Federal Bureau of Investigation, and may  
 167 include local criminal records checks through local law  
 168 enforcement agencies. Fingerprints submitted pursuant to this

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169 section on or after July 1, 2012, must be submitted using a  
 170 Federal Bureau of Investigation authorized electronic  
 171 fingerprint submission format as required by rule of the Florida  
 172 Department of Law Enforcement.

173 (2) The security background investigations under this  
 174 section must ensure that no persons subject to the provisions of  
 175 this section have been found guilty of, regardless of  
 176 adjudication, or entered a plea of nolo contendere or guilty to,  
 177 any offense prohibited under any of the following provisions of  
 178 the Florida Statutes or under any similar statute of another  
 179 jurisdiction:

180 (a) Section 393.135, relating to sexual misconduct with  
 181 certain developmentally disabled clients and reporting of such  
 182 sexual misconduct.

183 (b) Section 394.4593, relating to sexual misconduct with  
 184 certain mental health patients and reporting of such sexual  
 185 misconduct.

186 (c) Section 409.920, relating to Medicaid provider fraud.

187 (d) Section 409.9201, relating to Medicaid fraud.

188 (e)~~(e)~~ Section 415.111, relating to adult abuse, neglect,  
 189 or exploitation of aged persons or disabled adults.

190 (f)~~(d)~~ Section 782.04, relating to murder.

191 (g)~~(e)~~ Section 782.07, relating to manslaughter,  
 192 aggravated manslaughter of an elderly person or disabled adult,  
 193 or aggravated manslaughter of a child.

194 (h)~~(f)~~ Section 782.071, relating to vehicular homicide.

195 (i)~~(g)~~ Section 782.09, relating to killing of an unborn  
 196 quick child by injury to the mother.

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197 | (j) Chapter 784, relating to assault, battery, and culpable  
 198 | negligence, if the offense was a felony.

199 | ~~(k)(h) Section 784.011, relating to assault, if the victim~~  
 200 | ~~of the offense was a minor.~~

201 | ~~(i) Section 784.021, relating to aggravated assault.~~

202 | (l)(j) Section 784.03, relating to battery, if the victim  
 203 | of the offense was a minor.

204 | ~~(k) Section 784.045, relating to aggravated battery.~~

205 | ~~(l) Section 784.075, relating to battery on a detention or~~  
 206 | ~~commitment facility staff.~~

207 | (m) Section 787.01, relating to kidnapping.

208 | (n) Section 787.02, relating to false imprisonment.

209 | (o) Section 787.025, relating to luring or enticing a  
 210 | child.

211 | (p)(e) Section 787.04(2), relating to taking, enticing, or  
 212 | removing a child beyond the state limits with criminal intent  
 213 | pending custody proceedings.

214 | (q)(p) Section 787.04(3), relating to carrying a child  
 215 | beyond the state lines with criminal intent to avoid producing a  
 216 | child at a custody hearing or delivering the child to the  
 217 | designated person.

218 | (r)(q) Section 790.115(1), relating to exhibiting firearms  
 219 | or weapons within 1,000 feet of a school.

220 | (s)(r) Section 790.115(2)(b), relating to possessing an  
 221 | electric weapon or device, destructive device, or other weapon  
 222 | on school property.

223 | (t)(s) Section 794.011, relating to sexual battery.

224 | (u)(t) Former s. 794.041, relating to prohibited acts of



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225 persons in familial or custodial authority.  
 226 (v) Section 794.05, relating to unlawful sexual activity  
 227 with certain minors.  
 228 (w)~~(u)~~ Chapter 796, relating to prostitution.  
 229 (x)~~(v)~~ Section 798.02, relating to lewd and lascivious  
 230 behavior.  
 231 (y)~~(w)~~ Chapter 800, relating to lewdness and indecent  
 232 exposure.  
 233 (z)~~(x)~~ Section 806.01, relating to arson.  
 234 (aa) Section 810.02, relating to burglary.  
 235 (bb) Section 810.14, relating to voyeurism, if the offense  
 236 is a felony.  
 237 (cc) Section 810.145, relating to video voyeurism, if the  
 238 offense is a felony.  
 239 (dd)~~(y)~~ Chapter 812, relating to theft, robbery, and  
 240 related crimes, if the offense is a felony.  
 241 (ee) Section 817.034, relating to the Florida  
 242 Communications Fraud Act, if the offense is a felony.  
 243 (ff) Section 817.234, relating to insurance fraud.  
 244 (gg) Section 817.505, relating to patient brokering.  
 245 (hh)~~(z)~~ Section 817.563, relating to fraudulent sale of  
 246 controlled substances, only if the offense was a felony.  
 247 (ii) Section 817.568, relating to criminal use of personal  
 248 identification information.  
 249 (jj) Section 817.60, relating to obtaining a credit card  
 250 through fraudulent means.  
 251 (kk) Section 817.61, relating to fraudulent use of credit  
 252 cards, if the offense was a felony.

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253           ~~(ll)~~~~(aa)~~ Section 825.102, relating to abuse, aggravated  
 254 abuse, or neglect of an elderly person or disabled adult.  
 255           ~~(mm)~~~~(bb)~~ Section 825.1025, relating to lewd or lascivious  
 256 offenses committed upon or in the presence of an elderly person  
 257 or disabled adult.  
 258           ~~(nn)~~~~(ee)~~ Section 825.103, relating to exploitation of an  
 259 elderly person or disabled adult, if the offense was a felony.  
 260           ~~(oo)~~~~(dd)~~ Section 826.04, relating to incest.  
 261           ~~(pp)~~~~(ee)~~ Section 827.03, relating to child abuse,  
 262 aggravated child abuse, or neglect of a child.  
 263           ~~(qq)~~~~(ff)~~ Section 827.04, relating to contributing to the  
 264 delinquency or dependency of a child.  
 265           ~~(rr)~~~~(gg)~~ Former s. 827.05, relating to negligent treatment  
 266 of children.  
 267           ~~(ss)~~~~(hh)~~ Section 827.071, relating to sexual performance  
 268 by a child.  
 269           ~~(tt)~~ Section 831.01, relating to forgery.  
 270           ~~(uu)~~ Section 831.02, relating to uttering forged  
 271 instruments.  
 272           ~~(vv)~~ Section 831.07, relating to forging bank bills,  
 273 checks, drafts, or promissory notes.  
 274           ~~(ww)~~ Section 831.09, relating to uttering forged bills,  
 275 checks, drafts, or notes.  
 276           ~~(xx)~~ Section 831.30, relating to fraud in obtaining  
 277 medicinal drugs.  
 278           ~~(yy)~~ Section 831.31, relating to counterfeit controlled  
 279 substances, if the offense was a felony.  
 280           ~~(zz)~~~~(ii)~~ Section 843.01, relating to resisting arrest with

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281 | violence.

282 |        ~~(aaa)~~~~(jjj)~~ Section 843.025, relating to depriving a law  
283 | enforcement, correctional, or correctional probation officer  
284 | means of protection or communication.

285 |        ~~(bbb)~~~~(kk)~~ Section 843.12, relating to aiding in an escape.

286 |        ~~(ccc)~~~~(ll)~~ Section 843.13, relating to aiding in the escape  
287 | of juvenile inmates in correctional institutions.

288 |        ~~(ddd)~~~~(mm)~~ Chapter 847, relating to obscene literature.

289 |        ~~(eee)~~~~(nn)~~ Section 874.05(1), relating to encouraging or  
290 | recruiting another to join a criminal gang.

291 |        ~~(fff)~~~~(oo)~~ Chapter 893, relating to drug abuse prevention  
292 | and control, only if the offense was a felony or if any other  
293 | person involved in the offense was a minor.

294 |        ~~(ggg)~~~~(pp)~~ Section 916.1075, relating to sexual misconduct  
295 | with certain forensic clients and reporting of such sexual  
296 | misconduct.

297 |        ~~(hhh)~~~~(qq)~~ Section 944.35(3), relating to inflicting cruel  
298 | or inhuman treatment on an inmate resulting in great bodily  
299 | harm.

300 |        (iii) Section 944.40, relating to escape.

301 |        ~~(jjj)~~~~(rr)~~ Section 944.46, relating to harboring,  
302 | concealing, or aiding an escaped prisoner.

303 |        ~~(kkk)~~~~(ss)~~ Section 944.47, relating to introduction of  
304 | contraband into a correctional facility.

305 |        ~~(lll)~~~~(tt)~~ Section 985.701, relating to sexual misconduct  
306 | in juvenile justice programs.

307 |        ~~(mmm)~~~~(uu)~~ Section 985.711, relating to contraband  
308 | introduced into detention facilities.

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309       (3) The security background investigations under this  
 310 section must ensure that no persons subject to the provisions of  
 311 this section have been found guilty of, regardless of  
 312 adjudication, or entered a plea of nolo contendere or guilty to,  
 313 any offense that constitutes domestic violence as defined in s.  
 314 741.28, whether such act was committed in Florida or in another  
 315 jurisdiction.

316       (4) (a) Fingerprints processed as required by this section  
 317 may be retained by the Florida Department of Law Enforcement as  
 318 provided in s. 943.05 in a manner and for a period as provided  
 319 by rule of the Florida Department of Law Enforcement and entered  
 320 in the statewide automated fingerprint identification system  
 321 authorized by s. 943.05(2) (b). Such fingerprints shall  
 322 thereafter be available for all purposes and uses authorized for  
 323 arrest fingerprint cards entered in the statewide automated  
 324 fingerprint identification system pursuant to s. 943.051.

325       (b) Retained fingerprints may be continuously reviewed to  
 326 ensure that there have been no arrests or disqualifying events  
 327 involving employees. Any arrest record that is identified with  
 328 the retained fingerprints of a person required by law to be  
 329 screened pursuant to this section shall be promptly reported by  
 330 the Florida Department of Law Enforcement to the appropriate  
 331 licensing agency which shall promptly inform that person's  
 332 employer of the arrest record.

333       (c) [this paragraph is a placeholder subject to further  
 334 discussions and direction on this issue] The appropriate  
 335 licensing agency is responsible for collecting and paying any  
 336 fee related to fingerprints retained on its behalf to the

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337 Florida Department of Law Enforcement for costs resulting from  
 338 the fingerprint information retention services. The amount of  
 339 the annual fee and procedures for the submission and retention  
 340 of fingerprint information and for the dissemination of search  
 341 results shall be established by rule of the Florida Department  
 342 of Law Enforcement.

343 ~~(3) The security background investigations conducted under~~  
 344 ~~this section for employees of the Department of Juvenile Justice~~  
 345 ~~must ensure that no persons subject to the provisions of this~~  
 346 ~~section have been found guilty of, regardless of adjudication,~~  
 347 ~~or entered a plea of nolo contendere or guilty to, any offense~~  
 348 ~~prohibited under any of the following provisions of the Florida~~  
 349 ~~Statutes or under any similar statute of another jurisdiction:~~

350 ~~(a) Section 784.07, relating to assault or battery of law~~  
 351 ~~enforcement officers, firefighters, emergency medical care~~  
 352 ~~providers, public transit employees or agents, or other~~  
 353 ~~specified officers.~~

354 ~~(b) Section 810.02, relating to burglary, if the offense~~  
 355 ~~is a felony.~~

356 ~~(c) Section 944.40, relating to escape.~~

357  
 358 ~~The Department of Juvenile Justice may not remove a~~  
 359 ~~disqualification from employment or grant an exemption to any~~  
 360 ~~person who is disqualified under this section for any offense~~  
 361 ~~disposed of during the most recent 7-year period.~~

362 ~~(4) Standards must also ensure that the person:~~

363 ~~(a) For employees or employers licensed or registered~~  
 364 ~~pursuant to chapter 400 or chapter 429, does not have a~~

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365 ~~confirmed report of abuse, neglect, or exploitation as defined~~  
 366 ~~in s. 415.102(6), which has been uncontested or upheld under s.~~  
 367 ~~415.103.~~

368 ~~(b) Has not committed an act that constitutes domestic~~  
 369 ~~violence as defined in s. 741.30.~~

370 ~~(5) Under penalty of perjury, all employees in such~~  
 371 ~~positions of trust or responsibility shall attest to meeting the~~  
 372 ~~requirements for qualifying for employment and agreeing to~~  
 373 ~~inform the employer immediately if convicted of any of the~~  
 374 ~~disqualifying offenses while employed by the employer. Each~~  
 375 ~~employer of employees in such positions of trust or~~  
 376 ~~responsibilities which is licensed or registered by a state~~  
 377 ~~agency shall submit to the licensing agency annually or at the~~  
 378 ~~time of license renewal, under penalty of perjury, an affidavit~~  
 379 ~~of compliance with the provisions of this section.~~

380 Section 4. Section 435.05, Florida Statutes, is amended to  
 381 read:

382 435.05 Requirements for covered employees and employers.—  
 383 Except as otherwise provided by law, the following requirements  
 384 shall apply to covered employees and employers:

385 (1) (a) Every person required by law to be screened  
 386 pursuant to the provisions of this chapter must ~~employed in a~~  
 387 ~~position for which employment screening is required must, within~~  
 388 ~~5 working days after starting to work, submit to the employer a~~  
 389 complete set of information necessary to conduct a screening  
 390 under this chapter ~~section~~.

391 (b) For level 1 screening, the employer must submit the  
 392 information necessary for screening to the Florida Department of

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393 Law Enforcement within 5 working days after receiving it. The  
 394 Florida Department of Law Enforcement will conduct a search of  
 395 its records and will respond to the employer agency. The  
 396 employer will inform the employee whether screening has revealed  
 397 any disqualifying information.

398 (c) For level 2 screening, the employer or licensing  
 399 agency must submit the information necessary for screening to  
 400 the Florida Department of Law Enforcement within 5 working days  
 401 after receiving it. The Florida Department of Law Enforcement  
 402 will conduct a search of its criminal and juvenile records and  
 403 will request that the Federal Bureau of Investigation conduct a  
 404 search of its records for each employee for whom the request is  
 405 made. The Florida Department of Law Enforcement will respond to  
 406 the employer or licensing agency, and the employer or licensing  
 407 agency will inform the employee whether screening has revealed  
 408 disqualifying information.

409 (d) The person whose background is being checked must  
 410 supply any missing criminal or other necessary information upon  
 411 request to the requesting employer or licensing agency within 30  
 412 days ~~after the employer makes a~~ of receiving the request for the  
 413 information ~~or be subject to automatic disqualification.~~

414 (2) Every employee shall attest, subject to penalty of  
 415 perjury, to meeting the requirements for qualifying for  
 416 employment pursuant to this chapter and agreeing to inform the  
 417 employer immediately if arrested for any of the disqualifying  
 418 offenses while employed by the employer. ~~Unless otherwise~~  
 419 ~~prohibited by state or federal law, new employees may be placed~~  
 420 ~~on probationary status pending a determination of compliance~~

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421 ~~with minimum standards set forth in this chapter.~~

422 (3) Each employer that is licensed or registered with a  
 423 licensing agency and is required by law to conduct level 2  
 424 background screening must submit to the licensing agency ~~sign an~~  
 425 ~~affidavit~~ annually or at the time of license renewal, under  
 426 penalty of perjury, a signed affidavit attesting to compliance  
 427 with the provisions of this chapter ~~stating that all covered~~  
 428 ~~employees have been screened or are newly hired and are awaiting~~  
 429 ~~the results of the required screening checks.~~

430 Section 5. Section 435.06, Florida Statutes, is amended to  
 431 read:

432 435.06 Exclusion from employment.—

433 (1) When an employer or licensing agency has reasonable  
 434 cause to believe that grounds exist for the denial or  
 435 termination of employment of any employee as a result of  
 436 background screening, it shall notify the employee in writing,  
 437 stating the specific record that ~~which~~ indicates noncompliance  
 438 with the standards in this chapter ~~section~~. It shall be the  
 439 responsibility of the affected employee to contest his or her  
 440 disqualification or to request exemption from disqualification.  
 441 The only basis for contesting the disqualification shall be  
 442 proof of mistaken identity.

443 (2) (a) An employer may not hire, select, or otherwise  
 444 allow a person required by law to be screened pursuant to this  
 445 chapter contact with any vulnerable person until such time as  
 446 the screening process is completed and demonstrates the absence  
 447 of any grounds for the denial or termination of employment. If  
 448 the screening process shows any grounds for the denial or



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449 termination of employment, the employer may not hire, select, or  
 450 otherwise allow the person contact with any vulnerable person  
 451 unless the employee has been granted an exemption for the  
 452 disqualification by the licensing agency as provided under s.  
 453 435.07.

454 (b) If at any time, an employer becomes aware that an  
 455 employee required by law to be screened pursuant to this chapter  
 456 has been arrested for a disqualifying offense, the employer  
 457 shall remove the employee from contact with any vulnerable  
 458 person until such time as the favorable disposition of the  
 459 offense.

460 (c) The employer must either terminate the employment of  
 461 any of its personnel found to be in noncompliance with the  
 462 minimum standards of this chapter ~~for good moral character~~  
 463 ~~contained in this section~~ or place the employee in a position  
 464 for which background screening is not required unless the  
 465 employee is granted an exemption from disqualification pursuant  
 466 to s. 435.07.

467 (3) Any person who is required by law to undergo  
 468 ~~employment~~ screening pursuant to this chapter and who refuses to  
 469 cooperate in such screening or refuses to timely submit the  
 470 information necessary to complete the screening, including  
 471 fingerprints when required, shall be disqualified for employment  
 472 in such position or, if employed, shall be dismissed.

473 Section 6. Section 435.07, Florida Statutes, is amended to  
 474 read:

475 435.07 Exemptions from disqualification.—Unless otherwise  
 476 provided by law, the provisions of this section shall apply to

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477 exemptions from disqualification pursuant to this chapter.

478 (1) The agency head of the appropriate licensing agency  
 479 may grant to any employee otherwise disqualified from employment  
 480 an exemption from disqualification for:

481 (a) Felonies for which at least three years have elapsed  
 482 since the applicant for the exemption has completed or been  
 483 lawfully released from confinement, supervision, or sanction for  
 484 the disqualifying felony, including but not limited to, any  
 485 incarceration, parole, probation, payment of fines, or  
 486 restitution ~~committed more than 3 years prior to the date of~~  
 487 ~~disqualification;~~

488 (b) Misdemeanors prohibited under any of the Florida  
 489 Statutes cited in this chapter or under similar statutes of  
 490 other jurisdictions;

491 (c) Offenses that were felonies when committed but are now  
 492 misdemeanors; or

493 (d) Findings of delinquency; ~~or~~

494 ~~(e) Commissions of acts of domestic violence as defined in~~  
 495 ~~s. 741.30.~~

496  
 497 For the purposes of this subsection, the term "felonies" means  
 498 both felonies prohibited under any of the Florida Statutes cited  
 499 in this chapter or under similar statutes of other  
 500 jurisdictions.

501 (2) Persons employed by treatment providers who treat  
 502 adolescents 13 years of age and older who are disqualified from  
 503 employment solely because of crimes under s. 817.563, s. 893.13,  
 504 or s. 893.147 may be exempted from disqualification from

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505 employment pursuant to this chapter section without application  
 506 of the 3-year waiting period in paragraph (1)(a).

507 (3) (a) In order for the head of a licensing agency  
 508 ~~department~~ to grant an exemption to any employee, the employee  
 509 must demonstrate by clear and convincing evidence that the  
 510 employee should not be disqualified from employment. Employees  
 511 seeking an exemption have the burden of setting forth clear and  
 512 convincing ~~sufficient~~ evidence of rehabilitation, including, but  
 513 not limited to, the circumstances surrounding the criminal  
 514 incident for which an exemption is sought, the time period that  
 515 has elapsed since the incident, the nature of the harm caused to  
 516 the victim, and the history of the employee since the incident,  
 517 or any other evidence or circumstances indicating that the  
 518 employee will not present a danger if employment or continued  
 519 employment is allowed.

520 (b) **[This subsection will need to be expanded in order to**  
 521 **give proper criteria to the agencies]** The agency head of a  
 522 licensing agency may grant an exemption under this section that  
 523 contains such conditions as are determined reasonably necessary  
 524 to ensure protection of vulnerable persons.

525 (c) **[This subsection will need to be expanded in order to**  
 526 **give proper criteria to the agencies]** The agency head of a  
 527 licensing agency is authorized to, and must, revoke an exemption  
 528 if it is determined that the person has not met any conditions  
 529 placed on the exemption or is no longer qualified under the  
 530 screening provisions of this chapter.

531 (d) The decision of the agency head of a licensing agency  
 532 ~~department~~ regarding an exemption may be contested through the

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533 hearing procedures set forth in chapter 120.

534 (4) (a) Disqualification from employment under this chapter  
 535 ~~subsection (1)~~ may not be removed from, nor may an exemption be  
 536 granted to, any personnel who is found guilty of, regardless of  
 537 adjudication, or who has entered a plea of nolo contendere or  
 538 guilty to, any felony covered by s. 435.03 solely by reason of  
 539 any pardon, executive clemency, or restoration of civil rights.

540 (b) Disqualification from employment under this chapter may  
 541 not be removed from, nor may an exemption be granted to, any  
 542 person who has been designated as a sexual predator pursuant to  
 543 s. 775.21 or who is subject to registration as a sexual offender  
 544 pursuant to s. 943.0435 or s. 944.607.

545 (5) Exemptions granted by one licensing agency shall be  
 546 considered by subsequent licensing agencies, but are not binding  
 547 on the subsequent licensing agency.

548 Section 7. Paragraphs (g) and (h) of subsection (2) of  
 549 section 943.05, Florida Statutes, are amended, and subsection  
 550 (4) is added to that section, to read:

551 943.05 Criminal Justice Information Program; duties; crime  
 552 reports.—

553 (2) The program shall:

554 (g) Upon official written request from the agency  
 555 executive director or secretary or from his or her designee, or  
 556 from qualified entities participating in the volunteer and  
 557 employee criminal history screening system under s. 943.0542, or  
 558 as otherwise required ~~As authorized by law~~, retain fingerprints  
 559 submitted by criminal and noncriminal justice agencies to the  
 560 department for a criminal history background screening in a

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561 manner provided by rule and enter the fingerprints in the  
 562 statewide automated fingerprint identification system authorized  
 563 by paragraph (b). Such fingerprints shall thereafter be  
 564 available for all purposes and uses authorized for arrest  
 565 fingerprint cards entered into the statewide automated  
 566 fingerprint identification system pursuant to s. 943.051.

567 (h)1. For such agencies that officially request retention  
 568 of fingerprints or for which retention is otherwise required ~~As~~  
 569 ~~authorized~~ by law, search all arrest fingerprint submissions  
 570 ~~cards~~ received under s. 943.051 against the fingerprints  
 571 retained in the statewide automated fingerprint identification  
 572 system under paragraph (g). Any arrest record that is identified  
 573 with the retained fingerprints of a person subject to background  
 574 screening as provided in paragraph (g) shall be reported to the  
 575 appropriate agency.

576 2. ~~To Agencies may~~ participate in this search process,  
 577 agencies or qualified entities must notify each person  
 578 fingerprinted that his or her fingerprints will be retained, pay  
 579 ~~by payment of~~ an annual fee to the department, and inform ~~by~~  
 580 ~~informing~~ the department of any change in the affiliation,  
 581 employment, or contractual status or place of affiliation,  
 582 employment, or contracting of each person ~~the persons~~ whose  
 583 fingerprints are retained under paragraph (g). The department  
 584 shall adopt a rule setting the amount of the annual fee to be  
 585 imposed upon each participating agency or qualified entity for  
 586 performing these searches and establishing the procedures for  
 587 the retention of fingerprints and the dissemination of search  
 588 results. The fee may be borne by the agency, qualified entity,

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589 or person subject to fingerprint retention or as otherwise  
 590 provided by law. Fees may be waived or reduced by the executive  
 591 director for good cause shown. Consistent with the recognition  
 592 of criminal justice agencies expressed in s. 943.053(3), these  
 593 services will be provided to criminal justice agencies for  
 594 criminal justice purposes free of charge.

595 (4) Upon notification that a federal fingerprint retention  
 596 program is in effect, and provided that the department is funded  
 597 and equipped to participate in such a program, the department  
 598 shall, when a state and national criminal history record check  
 599 and retention of submitted prints are authorized or required by  
 600 law, retain the fingerprints as provided in paragraphs (2)(g)  
 601 and (h) and advise the Federal Bureau of Investigation to retain  
 602 the fingerprints at the national level for searching against  
 603 arrest fingerprint submissions received at the national level.

604 Section 8. Subsections (6) and (11) of section 943.053,  
 605 Florida Statutes, are amended to read:

606 943.053 Dissemination of criminal justice information;  
 607 fees.—

608 (6) Notwithstanding any other provision of law, the  
 609 department shall provide to the Florida Department of Revenue  
 610 ~~Child Support Enforcement~~ access to Florida criminal records  
 611 which are not exempt from disclosure under chapter 119, and to  
 612 such information as may be lawfully available from other states  
 613 via the National Law Enforcement Telecommunications System, for  
 614 the purpose of locating subjects who owe or potentially owe  
 615 support, as defined in s. 409.2554, or to whom such obligation  
 616 is owed pursuant to Title IV-D of the Social Security Act. Such

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617 information may be provided to child support enforcement  
 618 authorities in other states for these specific purposes.

619 (11) A criminal justice agency that is authorized under  
 620 federal rules or law to conduct a criminal history background  
 621 check on an agency employee who is not certified by the Criminal  
 622 Justice Standards and Training Commission under s. 943.12 may  
 623 submit to the department the fingerprints of the noncertified  
 624 employee to obtain state and national criminal history  
 625 information. ~~Effective January 15, 2007,~~ The fingerprints  
 626 submitted shall be retained and entered in the statewide  
 627 automated fingerprint identification system authorized by s.  
 628 943.05 and shall be available for all purposes and uses  
 629 authorized for arrest fingerprint cards entered in the statewide  
 630 automated fingerprint identification system pursuant to s.  
 631 943.051. The department shall search all arrest fingerprint  
 632 cards received pursuant to s. 943.051 against the fingerprints  
 633 retained in the statewide automated fingerprint identification  
 634 system pursuant to this section. In addition to all purposes and  
 635 uses authorized for arrest fingerprint cards for which submitted  
 636 fingerprints may be used, any arrest record that is identified  
 637 with the retained employee fingerprints must be reported to the  
 638 submitting employing agency.

639 Section 9. Section 985.644, Florida Statutes, is amended  
 640 to read:

641 985.644 Departmental contracting powers; personnel  
 642 standards and screening.—

643 (1) The department ~~of Juvenile Justice or the Department~~  
 644 ~~of Children and Family Services, as appropriate,~~ may contract

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645 with the Federal Government, other state departments and  
 646 agencies, county and municipal governments and agencies, public  
 647 and private agencies, and private individuals and corporations  
 648 in carrying out the purposes of, and the responsibilities  
 649 established in, this chapter.

650 ~~(a) When the department of Juvenile Justice or the~~  
 651 ~~Department of Children and Family Services contracts with a~~  
 652 ~~provider for any program for children, all personnel, including~~  
 653 ~~owners, operators, employees, and volunteers, in the facility~~  
 654 ~~must be of good moral character.~~ Each contract entered into by  
 655 the either department for services delivered on an appointment  
 656 or intermittent basis by a provider that does not have regular  
 657 custodial responsibility for children and each contract with a  
 658 school for before or aftercare services must ensure that the all  
 659 owners, operators, and ~~all~~ personnel who have direct contact  
 660 with children are subject to level 2 background screening  
 661 pursuant to ch. 435 ~~of good moral character.~~

662 (c) A volunteer who assists the department or any program  
 663 for children on an intermittent basis for less than 40 hours per  
 664 month need not be screened if the volunteer is under direct and  
 665 constant supervision by persons who meet the screening  
 666 requirements.

667 ~~(b) The department of Juvenile Justice and the Department~~  
 668 ~~of Children and Family Services shall require employment~~  
 669 ~~screening pursuant to chapter 435, using the level 2 standards~~  
 670 ~~set forth in that chapter for personnel in programs for children~~  
 671 ~~or youths.~~

672 ~~(c) The Department of Juvenile Justice or the Department~~



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673 ~~of Children and Family Services may grant exemptions from~~  
 674 ~~disqualification from working with children as provided in s.~~  
 675 ~~435.07.~~

676 (2) ~~The department may contract with the Federal~~  
 677 ~~Government, other state departments and agencies, county and~~  
 678 ~~municipal governments and agencies, public and private agencies,~~  
 679 ~~and private individuals and corporations in carrying out the~~  
 680 ~~purposes and the responsibilities of the delinquency services~~  
 681 ~~and programs of the department.~~

682 ~~(3)~~ The department shall adopt a rule pursuant to chapter  
 683 120 establishing a procedure to provide notice of policy changes  
 684 that affect contracted delinquency services and programs. A  
 685 policy is defined as an operational requirement that applies to  
 686 only the specified contracted delinquency service or program.  
 687 The procedure shall include:

- 688 (a) Public notice of policy development.
- 689 (b) Opportunity for public comment on the proposed policy.
- 690 (c) Assessment for fiscal impact upon the department and  
 691 providers.
- 692 (d) The department's response to comments received.

693 ~~(4) When the department contracts with a provider for any~~  
 694 ~~delinquency service or program, all personnel, including all~~  
 695 ~~owners, operators, employees, and volunteers in the facility or~~  
 696 ~~providing the service or program shall be of good moral~~  
 697 ~~character. A volunteer who assists on an intermittent basis for~~  
 698 ~~less than 40 hours per month is not required to be screened if~~  
 699 ~~the volunteer is under direct and constant supervision by~~  
 700 ~~persons who meet the screening requirements.~~

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701 (3)-(5)(a) All employees of the department and all personnel  
 702 of contract providers for any program for children, including  
 703 all owners, operators, employees, and volunteers, must complete  
 704 ~~For any person employed by the department, or by a provider~~  
 705 ~~under contract with the department, in delinquency facilities,~~  
 706 ~~services, or programs, the department shall require:~~

707 1. A level 2 employment screening pursuant to chapter 435  
 708 prior to employment. The security background investigations  
 709 conducted under this section must ensure that, in addition to  
 710 the disqualifying offenses listed in s. 435.04, no persons  
 711 subject to the provisions of this section have been found guilty  
 712 of, regardless of adjudication, or entered a plea of nolo  
 713 contendere or guilty to, any offense prohibited under any of the  
 714 following provisions of the Florida Statutes or under any  
 715 similar statute of another jurisdiction:

716 a. Section 784.07, relating to assault or battery of law  
 717 enforcement officers, firefighters, emergency medical care  
 718 providers, public transit employees or agents, or other  
 719 specified officers.

720 b. Any other felonies or first degree misdemeanors as  
 721 determined by the department, by rule adopted pursuant to ch.  
 722 120, to be reasonably related to the protection of children.

723 2. A federal criminal records check by the Federal Bureau  
 724 of Investigation every 5 years following the date of the  
 725 person's employment.

726 (b) Except for law enforcement, correctional, and  
 727 correctional probation officers, to whom s. 943.13(5) applies,  
 728 the department shall electronically submit to the Department of

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729 Law Enforcement:

730 1. Fingerprint information obtained during the employment  
731 screening required by subparagraph (a)1.

732 2. ~~Beginning on December 15, 2005,~~ Fingerprint information  
733 for all persons employed by the department, or by a provider  
734 under contract with the department, in delinquency facilities,  
735 services, or programs if such fingerprint information has not  
736 previously been electronically submitted to the Department of  
737 Law Enforcement under this paragraph.

738 (c) All fingerprint information electronically submitted  
739 to the Department of Law Enforcement under paragraph (b) shall  
740 be retained by the Department of Law Enforcement and entered  
741 into the statewide automated fingerprint identification system  
742 authorized by s. 943.05(2)(b). Thereafter, such fingerprint  
743 information shall be available for all purposes and uses  
744 authorized for arrest fingerprint information entered into the  
745 statewide automated fingerprint identification system pursuant  
746 to s. 943.051 until the fingerprint information is removed  
747 pursuant to paragraph (e). The Department of Law Enforcement  
748 shall search all arrest fingerprint information received  
749 pursuant to s. 943.051 against the fingerprint information  
750 entered into the statewide automated fingerprint system pursuant  
751 to this subsection. Any arrest records identified as a result of  
752 the search shall be reported to the department in the manner and  
753 timeframe established by the Department of Law Enforcement by  
754 rule.

755 (d) The department shall pay an annual fee to the  
756 Department of Law Enforcement for its costs resulting from the

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757 fingerprint information retention services required by this  
 758 subsection. The amount of the annual fee and procedures for the  
 759 submission and retention of fingerprint information and for the  
 760 dissemination of search results shall be established by the  
 761 Department of Law Enforcement by a rule that is applicable to  
 762 the department individually pursuant to this subsection or that  
 763 is applicable to the department and other employing agencies  
 764 pursuant to rulemaking authority otherwise provided by law.

765 (e) The department shall notify the Department of Law  
 766 Enforcement when a person whose fingerprint information is  
 767 retained by the Department of Law Enforcement under this  
 768 subsection is no longer employed by the department, or by a  
 769 provider under contract with the department, in a delinquency  
 770 facility, service, or program. This notice shall be provided by  
 771 the department to the Department of Law Enforcement no later  
 772 than 6 months after the date of the change in the person's  
 773 employment status. Fingerprint information for persons  
 774 identified by the department in the notice shall be removed from  
 775 the statewide automated fingerprint system.

776 (6) The department may grant exemptions from  
 777 disqualification from working with children as provided in s.  
 778 435.07.

779 Section 10. This act shall take effect July 1, 2010.



## Summary of Proposed Language from the Agency for Health Care Administration

The Agency for Health Care has submitted the attached bill draft proposing necessary changes to their statutes necessary to conform to the Draft Council PCB on Background Screening. The majority of these changes are technical in nature. They also propose changing all Level 1 screening to Level 2 screening. The proposal:

Amends s. 408.806, F.S., to:

- Provide that applicants for facilities licensure must provide an affidavit stating that all persons subject to background screening have been screened and qualified.

Amends s. 408.809, F.S., to

- Require a level 2 background screening person seeking employment or contracting who may be required to provide personal care or service to clients;
- Grandfathers persons who are employed or contracts with a licensee on or before June 30, 2010;
- Provide that the fingerprinting must be done electronically;
- Provide procedures for the background screening, exemptions, and employer notification;
- Provide an employee may have a 90 day break in service without being required to be rescreened;
- Remove redundant language to conform to the draft PCB.

Amends the individual facilities licensing statutes to make all required background screenings Level 2.

The following facilities licensing statutes are amended:

- Mental Health Providers
- Nursing Homes
- Home Health Agencies
- Homemaker, Sitter, Companion Agencies
- Nurse Registries
- Hospice
- Homes for Special Services
- Transitional Living Facilities
- Prescribed Pediatric Extended Care Centers
- Home Medical Equipment
- Intermediate Care Facilities for Developmentally Disabled Persons
- Health Care Service Pools
- Health Care Clinics
- Assisted Living Facilities
- Adult Family Care Homes
- Adult Day Care Centers
- Owners or principals of certain Medicaid providers that currently are not required to have background screenings (hospital, nursing home, hospice, assisted living facility).

## Uniform licensing

New subparagraph (g) of s. 408.806(1) is created to read:

(g) An affidavit, under penalty of perjury, stating that all persons subject to background screening as required by this part, authorizing statutes, of applicable rules, have been screened and qualified.

408.809 Background screening; prohibited offenses.--

(1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who shall be considered an employee for the purposes of conducting screening under chapter 435:

(a) The licensee, if an individual.

(b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.

(c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.

(d) Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.

(e) As required by authorizing statutes, any person seeking employment or contracting with a licensee or provider who is expected to, or whose responsibilities may require them to provide personal care or service to clients, have access to client living areas, or have access to personal property or funds of clients. However, a person who is employed or contracts with a licensee on or before June 30, 2010, is not required by law to submit to rescreening if that licensee has in its possession written evidence that the person has been screened and qualified according to standards specified in s. 435.03 or s. 435.04.

(2) Proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Agency for Persons with Disabilities, or the Department of Children and Family Services satisfies the requirements of this section, provided that such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency. Proof of compliance with the background screening requirements of the Department of Financial Services submitted within the previous 5 years for an applicant for a certificate of authority to operate a continuing care retirement community under chapter 651 satisfies the Department of Law Enforcement and Federal Bureau of Investigation portions of a level 2 background check.

(3) Completion of level 2 screening shall require the person subject to screening to furnish a full set of fingerprints and any other information necessary to enable a criminal background investigation to be conducted. The agency shall, upon request from any licensee required by or authorized by law to screen its personnel, applicants or contractors, electronically submit requests to the Department of Law Enforcement in accordance with 943.0525. The results of the criminal history records check shall be returned to the agency. Screening results shall be reviewed by the agency with respect to the offenses specified in 435.04 and maintained in a database. The qualifying or disqualifying status of the person named in the request will be posted on a secure website accessible to all licensees.

~~A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal~~

Bureau of Investigation. A standard license may be granted to the licensee upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening that confirms that all standards have been met or upon the granting of an exemption from disqualification by the agency as set forth in chapter 435.

(4) In the event that a person subject to screening under this section has a potentially disqualifying offense and the dispositional information is missing from the criminal record, the Agency shall notify the person directly to request the missing information. Missing information must be obtained and supplied to the Agency within 30 days of the request. Failure to supply missing information within 30 days will result in automatic disqualification.

(5) Upon change of employment a person who received level 2 screening and determined qualified as required by this section and who have not been unemployed for more than 90 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening, shall not be required to be rescreened.

(6) The costs associated with obtaining the required screening must be borne either by the provider, licensee or the person subject to screening. Providers and licensees may reimburse persons for these costs. The agency shall establish a schedule of fees to cover the costs of screening. The Department of Law Enforcement shall charge the agency for a screening a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3).

(7)(a) As provided in Chapter 435, the agency may grant an exemption from disqualification to a person who is subject to this section and who has not received a professional license or certification from the Department of Health.

(b) As provided in Chapter 435, the appropriate regulatory board within the Department of Health, or that department itself when there is no board, may grant an exemption from disqualification to a person contractor who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department.

(8) The agency and the Department of Health shall have authority to adopt rules pursuant to implement this section and authorizing statutes requiring background screening.

(5) Effective October 1, 2009, in addition to the offenses listed in ss. 435.03 and s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any of the following offenses or any similar offense of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

(b) This chapter, if the offense was a felony.

(c) Section 409.920, relating to Medicaid provider fraud, if the offense was a felony.

(d) Section 409.9201, relating to Medicaid fraud, if the offense was a felony.

(e) Section 741.28, relating to domestic violence.

(f) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

(g) Section 810.02, relating to burglary.



- ~~(h) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.~~
- ~~(i) Section 817.234, relating to false and fraudulent insurance claims.~~
- ~~(j) Section 817.505, relating to patient brokering.~~
- ~~(k) Section 817.568, relating to criminal use of personal identification information.~~
- ~~(l) Section 817.60, relating to obtaining a credit card through fraudulent means.~~
- ~~(m) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.~~
- ~~(n) Section 831.01, relating to forgery.~~
- ~~(o) Section 831.02, relating to uttering forged instruments.~~
- ~~(p) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.~~
- ~~(q) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.~~
- ~~(r) Section 831.30, relating to fraud in obtaining medicinal drugs.~~
- ~~(s) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.~~

~~A person who serves as a controlling interest of or is employed by a licensee on September 30, 2009, is not required by law to submit to rescreening if that licensee has in its possession written evidence that the person has been screened and qualified according to the standards specified in s. 435.03 or s. 435.04. However, if such person has a disqualifying offense listed in this section, he or she may apply for an exemption from the appropriate licensing agency before September 30, 2009, and if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption for offenses listed in this section. Exemptions from disqualification may be granted pursuant to s. 435.07.~~

~~(9) (6) The attestations required under chapter 435 ss. 435.04(5) and 435.05(3) must be submitted at the time of license renewal, notwithstanding the provisions of chapter 435 ss. 435.04(5) and 435.05(3) which require annual submission of an affidavit of compliance with background screening requirements.~~

~~(10) There is no monetary or unemployment liability on the part of, and no cause of action for damages arising against an employer that, upon notice of a disqualifying offense listed under chapter 435 or this section, terminates the person against whom the report was issued, whether or not the person has filed for an exemption with the Department of Health or the Agency for Health Care Administration.~~

#### **Mental health providers: RTF/ RTC/ CSU**

394.4572 Screening of mental health personnel.--

(1)(a) The department and the Agency for Health Care Administration shall require employment screening for mental health personnel using the standards for level 2 screening set forth in chapter 435. "Mental health personnel" includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with unmarried patients under the age of 18 years. For purposes of this chapter, employment screening of mental health personnel shall also include, but is not limited to, employment screening as provided under chapter 435 and s. 408.809.

(b) Students in the health care professions who are interning in a mental health facility licensed under chapter 395, where the primary purpose of the facility is not the treatment of minors, are exempt from the fingerprinting and screening requirements, provided they are under direct supervision in the actual physical presence of a licensed health care professional.

(c) Mental health personnel working in a facility licensed under chapter 395 who have less than 15 hours per week of direct contact with patients or who are health care professionals licensed by the Agency for Health Care Administration or a board thereunder are exempt from the fingerprinting and screening requirements, except for persons working in mental health facilities where the primary purpose of the facility is the treatment of minors.

(d) A volunteer who assists on an intermittent basis for less than 40 hours per month is exempt from the fingerprinting and screening requirements, provided the volunteer is under direct and constant supervision by persons who meet the screening requirements of paragraph (a).

(2) The department or the Agency for Health Care Administration may grant exemptions from disqualification as provided in s. 435.06.

~~(3) Prospective mental health personnel who have previously been fingerprinted or screened pursuant to this chapter, chapter 393, chapter 397, chapter 402, or chapter 409, or teachers who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for level 1 screening contained in chapter 435, shall not be required to be refingerprinted or rescreened in order to comply with any screening requirements of this part.~~

### **Nursing Homes**

400.215 Personnel screening requirement.--

(1) Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809 (1)(e) pursuant to as provided in chapter 435 and s. 408.809 for all employees or prospective employees of facilities licensed under this part who are expected to, or whose responsibilities may require them to:

~~(a) Provide personal care or services to residents;~~

~~(b) Have access to resident living areas; or~~

~~(c) Have access to resident funds or other personal property.~~

~~(2) Employers and employees shall comply with the requirements of s. 435.05.~~

~~(a) Notwithstanding the provisions of s. 435.05(1), facilities must have in their possession evidence that level 1 screening has been completed before allowing an employee to begin working with patients as provided in subsection (1). All information necessary for conducting background screening using level 1 standards as specified in s. 435.03 shall be submitted by the nursing facility to the agency. Results of the background screening shall be provided by the agency to the requesting nursing facility.~~

~~(b) Employees qualified under the provisions of paragraph (a) who have not maintained continuous residency within the state for the 5 years immediately preceding the date of request for background screening must complete level 2 screening, as provided in chapter 435. Such employees may work in a conditional status up to 180 days pending the receipt of written findings evidencing the completion of level 2 screening. Level 2 screening shall not be required of employees or prospective employees who attest in writing under penalty of perjury that they meet the residency requirement. Completion of level 2 screening shall require the employee or prospective employee to furnish to the nursing facility a full set of fingerprints to enable a criminal background investigation to be conducted. The nursing facility shall submit the completed fingerprint card to the agency. The agency shall establish a record of the request in the database provided for in paragraph (c) and forward the request to the Department of Law Enforcement, which is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results of the national criminal history records check shall be returned to the agency, which shall maintain the results in the database provided for in paragraph (c). The agency shall notify the administrator of the requesting nursing facility or the administrator of any other facility licensed under chapter 393, chapter 394, chapter 395, chapter 397, chapter 429, or this chapter, as requested by such facility, as to whether or not the employee has qualified under level 1 or level 2 screening. An employee or prospective employee who has qualified under level 2 screening and has maintained such continuous residency within the state shall not be required to complete a subsequent level 2 screening as a condition of employment at another facility.~~

~~(c) The agency shall establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening. The Department of Law Enforcement shall timely provide to the agency, electronically, the results of each statewide screening for incorporation into the database. The agency shall, upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, notify the administrator of the facility, agency, or program of the qualifying or disqualifying status of the employee or applicant named in the request.~~

~~(d) Applicants and employees shall be excluded from employment pursuant to s. 435.06.~~

~~(2) (3) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening shall be submitted to the agency. The agency shall establish a schedule of fees to cover the costs of level 1 and level 2 screening. Facilities may reimburse employees for these costs. The Department of Law Enforcement shall charge the agency for a level 1 or level 2 screening a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement will not be subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.~~

~~(b) As provided in s. 435.07, the appropriate regulatory board within the Department of Health, or that department itself when there is no board, may grant an exemption from disqualification to an employee or prospective employee who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department.~~

~~(5) Any provision of law to the contrary notwithstanding, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening, shall not be required to be rescreened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity which caused such screening to be performed.~~

~~(6) The agency and the Department of Health shall have authority to adopt rules pursuant to the Administrative Procedure Act to implement this section.~~

~~(7) All employees shall comply with the requirements of this section by October 1, 1998. No current employee of a nursing facility as of the effective date of this act shall be required to submit to rescreening if the nursing facility has in its possession written evidence that the person has been screened and qualified according to level 1 standards as specified in s. 435.03(1). Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement as specified in this section must provide to the employing nursing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1998, shall comply with the requirements of this section.~~

~~(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arising against an employer that, upon notice of a disqualifying offense listed under chapter 435 or an act of domestic violence, terminates the employee against whom the report was issued, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.~~

## **Home Health Agencies**

### **Homemaker, Sitter, Companion Agencies**

### **Nurse Registries**

**400.512 Screening of home health agency personnel; nurse registry personnel; and companions and homemakers.**-- Effective July 1, 2010, the agency shall require Level 2 background for personnel as required in 408.809(1)(e) pursuant to employment or contractor screening as provided in chapter 435 and 408.809, using the level 1 standards for screening set forth in that chapter, for home health agency personnel; persons referred for employment by nurse registries; and persons employed by companion or homemaker services registered under s. 400.509.

~~(1)(a) The Agency for Health Care Administration may, upon request, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07, except for health care practitioners licensed by the Department of Health or a regulatory board within that department.~~

~~(b) The appropriate regulatory board within the Department of Health, or that department itself when there is no board, may, upon request of the licensed health care practitioner, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.~~

~~(2) The administrator of each home health agency, the managing employee of each nurse registry, and the managing employee of each companion or homemaker service registered under s. 400.509 must sign an affidavit annually, under penalty of perjury, stating that all personnel hired or contracted with or registered on or after October 1, 2000, who enter the home of a patient or client in their service capacity have been screened.~~

~~(3) As a prerequisite to operating as a home health agency, nurse registry, or companion or homemaker service under s. 400.509, the administrator or managing employee, respectively, must submit to the agency his or her name and any other information necessary to conduct a complete screening according to this section. The agency shall submit the information to the Department of Law Enforcement for state processing. The agency shall review the record of the administrator or manager with respect to the offenses specified in this section and shall notify the owner of its findings. If disposition information is missing on a criminal record, the administrator or manager, upon request of the agency, must obtain and supply within 30 days the missing disposition information to the agency. Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information will result in automatic disqualification.~~

~~(4) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened by the Department of Law Enforcement. A home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 shall directly provide proof of compliance to another home health agency, nurse registry, or companion or homemaker service registered under s. 400.509. The recipient home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 may not accept any proof of compliance directly from the person who requires screening. Proof of compliance with the screening requirements of this section shall be provided upon request to the person screened by the home health agencies; nurse registries; or companion or homemaker services registered under s. 400.509.~~

~~(5) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse registry, or companion or homemaker service registered under s. 400.509, that, upon notice that the employee or contractor has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the employee or contractor, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 and whether or not the time for filing has expired.~~

~~(6) The costs of processing the statewide correspondence criminal records checks must be borne by the home health agency; the nurse registry; or the companion or homemaker service registered under s.~~

400.509, or by the person being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.

### **Hospice**

**400.6065 Background screening.**— Effective July 1, 2010, the agency shall require Level 2 background employment or contractor screening for personnel as required in 408.809(1)(e) pursuant to as provided in chapter 435 and 408.809, using the level 1 standards for screening set forth in that chapter, for hospice personnel.

### **Homes for Special Services**

Section X. Create a new subsection (4) in s. 400.801, and renumber subsequent subsections.

(4) Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809(1)(e) pursuant to chapter 435 and 408.809.

### **Transitional Living Facilities**

Section X. Create a new subsection (3) in s. 400.805, F.S., and renumber subsequent subsections.

(3) Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809(1)(e) pursuant to chapter 435 and 408.809.

### **PPECs**

Section X. Create a new section 400.9065, F.S., to read:

**400.9065 Background screening of personnel.**— Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809(1)(e) pursuant to chapter 435 and 408.809.

### **Home Medical Equipment**

Section X. Subsection (16) of s. 400.934, F.S., is amended to read:

(16) Establish procedures for maintaining a record of the employment history, including background screening as required by s. 400.953, part II of chapter 408, and chapter 435, of all home medical equipment provider personnel. A home medical equipment provider must require its personnel to submit an employment history to the home medical equipment provider and must verify the employment history for at least the previous 5 years, unless through diligent efforts such verification is not possible. There is no monetary liability on the part of, and no cause of action for damages arising against a former employer, a prospective employee, or a prospective independent contractor with a licensed home medical equipment provider, who reasonably and in good faith communicates his or her honest opinions about a former employee's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.

Section X. Section 400.934, F.S., is amended to read:

**400.953 Background screening of home medical equipment provider personnel.**—Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809(1)(e) pursuant to employment screening as provided in chapter 435 and 408.809, using the level 1 standards for screening set forth in that chapter, for home medical equipment provider personnel.

~~(1) The agency may grant exemptions from disqualification from employment under this section as provided in s. 435.07.~~

~~(2) The general manager of each home medical equipment provider must sign an affidavit annually, under penalty of perjury, stating that all home medical equipment provider personnel hired on or after July 1, 1999, who enter the home of a patient in the capacity of their employment have been screened and that its remaining personnel have worked for the home medical equipment provider continuously since before July 1, 1999.~~

~~(3) Proof of compliance with the screening requirements of s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s. 985.644 or this part must be accepted in lieu of the requirements of this section if the person has been continuously employed in the same type of occupation for which he or she is seeking employment without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened by the Department of Law Enforcement. An employer or contractor shall directly provide proof of compliance to another employer or contractor, and a potential employer or contractor may not accept any proof of compliance directly from the person requiring screening. Proof of compliance with the screening requirements of this section shall be provided, upon request, to the person screened by the home medical equipment provider.~~

~~(4) There is no monetary liability on the part of, and no cause of action for damages arising against, a licensed home medical equipment provider that, upon notice that an employee has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the employee, whether or not the employee has filed for an exemption with the agency and whether or not the time for filing has expired.~~

~~(5) The costs of processing the statewide correspondence criminal records checks must be borne by the home medical equipment provider or by the person being screened, at the discretion of the home medical equipment provider.~~

~~(6) Neither the agency nor the home medical equipment provider may use the criminal records or juvenile records of a person for any purpose other than determining whether that person meets minimum standards of good moral character for home medical equipment provider personnel.~~

~~(7)(a) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:~~

~~1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for paid employment a material fact used in making a determination as to the person's qualifications to be an employee under this section;~~

~~2. Operate or attempt to operate an entity licensed under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or~~

~~3. Use information from the criminal records obtained under this section for any purpose other than screening that person for employment as specified in this section, or release such information to any other person for any purpose other than screening for employment under this section.~~

~~(b) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.~~

~~400.955 Procedures for screening of home medical equipment provider personnel.—~~

~~(1) A person employed by a home medical equipment provider shall, within 5 working days after starting to work, submit to the home medical equipment provider a complete set of information necessary to conduct a screening under this section. The person must sign an affidavit stating whether he or she meets the minimum standards for good moral character under this section. The home medical equipment provider shall submit the information to the Department of Law Enforcement for processing. If disposition information is missing on a criminal record, it is the responsibility of the person being screened to obtain and supply the missing information within 30 days. Failure to supply the missing information or to show reasonable efforts to obtain such information will result in automatic disqualification for employment.~~

~~(2) Home medical equipment provider personnel hired on or after July 1, 1999, must be placed on probationary status pending a determination of compliance with minimum standards for good moral character.~~

~~(3) The home medical equipment provider must automatically terminate the employment of any of its personnel found to be in noncompliance with the minimum standards for good moral character under this section, unless such person has obtained an exemption under s. 400.953(1).~~

**ICF-DD**

Section X. Section 400.964, F.S., is amended to read:

~~400.964 Personnel screening requirement.--~~

~~(1) Effective July 1, 2010, the agency shall require level 2 background screening for personnel as required in 408.809(1)(e) pursuant to as provided in chapter 435 and 408.809 for all employees or prospective employees of facilities licensed under this part who are expected to be, or whose responsibilities are such that they would be considered to be, a direct service provider.~~

~~(2) Employers and employees shall comply with the requirements of chapter 435.~~

~~(3) Applicants and employees shall be excluded from employment pursuant to s. 435.06.~~

~~(4) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening must be submitted to the agency as prescribed by the agency.~~

~~(5) Notwithstanding any other provision of law, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening are not required to be rescreened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity that caused such screening to be performed.~~

~~(6) The agency may adopt rules to administer this section.~~

~~(7) All employees must comply with the requirements of this section by October 1, 2000. A person employed by a facility licensed pursuant to this part as of the effective date of this act is not required to submit to rescreening if the facility has in its possession written evidence that the person has been screened and qualified according to level 1 standards as specified in s. 435.03. Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement must provide to the employing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1999, must comply with the requirements of this section.~~

~~(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arises against an employer that, upon notice of a disqualifying offense listed under chapter 435 or an act of domestic violence, terminates the employee, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.~~



### Health Care Service Pools

Subsection (3) of s. 400.980, F.S., is amended to read:

(3) ~~Effective July 1, 2010, Upon receipt of a completed, signed, and dated application, the agency shall require level 2 background screening for personnel as required in 408.809(1)(e) pursuant to, in accordance with the level 1 standards for screening set forth in chapter 435 and 408.809, of every individual who will have contact with patients.~~

### Health Care Clinics

#### 400.991 License requirements; background screenings; prohibitions.--

Section X. Subsection (5) of s. 400.991 is amended to read:

(5) Each applicant for licensure shall comply with the following requirements:

(a) As used in this subsection, the term "applicant" means individuals owning or controlling, directly or indirectly, 5 percent or more of an interest in a clinic; the medical or clinic director, or a similarly titled person who is responsible for the day-to-day operation of the licensed clinic; the financial officer or similarly titled individual who is responsible for the financial operation of the clinic; and licensed health care practitioners at the clinic.

(b) ~~Effective July 1, 2010 Upon receipt of a completed, signed, and dated application, the agency shall require background screening for applicants and personnel as required in 408.809(1)(e) pursuant to of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435 and 408.809. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of this paragraph. Applicants who own less than 10 percent of a health care clinic are not required to submit fingerprints under this section.~~

(c) Each applicant must submit to the agency, with the application, a description and explanation of any exclusions, permanent suspensions, or terminations of an applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interest under the Medicaid or Medicare programs may be accepted in lieu of this submission. The description and explanation may indicate whether such exclusions, suspensions, or terminations were voluntary or not voluntary on the part of the applicant.

(d) ~~A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, or a violation of insurance fraud under s. 817.234, within the past 5 years. If the applicant has been convicted of an offense prohibited under the level 2 standards or insurance fraud in any jurisdiction, the applicant must show that his or her civil rights have been restored prior to submitting an application.~~

## Assisted Living Facilities

Section X. Subsection (1) of s. 429.14, F.S., is amended to read:

429.14 Administrative penalties.--

(1) In addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee of an assisted living facility for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee of an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809, or for the actions of any facility employee:

(a) An intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(b) The determination by the agency that the owner lacks the financial ability to provide continuing adequate care to residents.

(c) Misappropriation or conversion of the property of a resident of the facility.

(d) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of a facility resident.

(e) A citation of any of the following deficiencies as specified in s. 429.19:

1. One or more cited class I deficiencies.

2. Three or more cited class II deficiencies.

3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.

~~(f) Failure to comply with the A determination that a person subject to level 2 background screening under s. 408.809 does not meet the screening standards of this part, Chapter 435, or Part II of Chapter 408. of s. 435.04 or that the facility is retaining an employee subject to level 1 background screening standards under s. 429.174 who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.~~

~~(g) A determination that an employee, volunteer, administrator, or owner, or person who otherwise has access to the residents of a facility does not meet the criteria specified in s. 435.03(2), and the owner or administrator has not taken action to remove the person. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the person is granted an exemption.~~

(h) Violation of a moratorium.

(i) Failure of the license applicant, the licensee during relicensure, or a licensee that holds a provisional license to meet the minimum license requirements of this part, or related rules, at the time of license application or renewal.

(j) An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the local authority having jurisdiction or the State Fire Marshal.

(k) Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter or chapter 400.

(l) Any act constituting a ground upon which application for a license may be denied.

Section X. Section 429.174 is amended to read:

429.174 Background screening; exemptions.-- ~~The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, on all employees hired on or~~

after October 1, 1998, who perform personal services as defined in s. 429.02(16). The agency may exempt an individual from employment disqualification as set forth in chapter 435. Such persons shall be considered as having met this requirement if:

(1) Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

~~(1) Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.~~

~~(2) The person required to be screened has been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service which exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old is provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided by the employer retaining documentation of the screening to the person screened.~~

~~(3) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.~~

### **Adult Family Care Homes**

#### **429.67 Licensure.--**

Subsection (4) of s. 429.67, F.S., is amended to read:

(4) Effective July 1, 2010 Upon receipt of a completed license application or license renewal, and the fee, the agency shall require Level 2 initiate a level 1 background screening for personnel as required in 408.809(1)(e) including as provided under chapter 435 on the adult family-care home provider, the designated relief person, and all adult household members pursuant to chapter 435 and s. 408.809, and all staff members.

~~(a) Proof of compliance with level 1 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection. Such proof must be accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.~~

~~(b) The person required to be screened must have been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service that exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old~~

~~must be provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.~~

Section X. Section 429.69, F.S., is amended to read:

429.69 Denial, revocation, and suspension of a license.--In addition to the requirements of part II of chapter 408, the agency may deny, suspend, and revoke a license for any of the following reasons:

- (1) ~~Failure to comply with the of any of the persons required to undergo background screening standards of this part, part II of chapter 408, or chapter 435 under s. 429.67 to meet the level 1 screening standards of s. 435.03, unless an exemption from disqualification has been provided by the agency.~~
- (2) Failure to correct cited fire code violations that threaten the health, safety, or welfare of residents.

### **Adult Day Care Centers**

Section X. Subsection (2) of s. 429.911, F.S., is amended to read:

429.911 Denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.--

(2) Each of the following actions by the owner of an adult day care center or by its operator or employee is a ground for action by the agency against the owner of the center or its operator or employee:

- (a) An intentional or negligent act materially affecting the health or safety of center participants.
- (b) A violation of this part or of any standard or rule under this part or part II of chapter 408.
- (c) ~~A Failure to comply with the of persons subject to level 2 background screening standards of this part, part II of chapter 408, or chapter 435. under s. 408.809 to meet the screening standards of s. 435.04, or the retention by the center of an employee subject to level 1 background screening standards under s. 429.174 who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.~~
- (d) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of center participants.
- (e) Multiple or repeated violations of this part or of any standard or rule adopted under this part or part II of chapter 408.

Section X. Section 429.919, F.S., is amended to read:

**429.919 Background screening.**-- ~~The owner or administrator of an adult day care center must conduct level 1 background screening as set forth in chapter 435 on all employees hired on or after October 1, 1998, who provide basic services or supportive and optional services to the participants. Such persons satisfy this requirement if:~~

- (1) ~~Effective July 1, 2010, the agency shall require Level 2 background screening for personnel as required in 408.809(1)(e) pursuant to chapter 435 and s. 408.809. Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.~~

~~(2) The person required to be screened has been continuously employed, without a breach in service that exceeds 180 days, in the same type of occupation for which the person is seeking employment and provides proof of compliance with the level 1 screening requirement which is no more than 2 years old. Proof of compliance must be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.~~

~~(3) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under chapter 400 or this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.~~

## **Medicaid Providers**

409.907(8)(a) Each provider, or each principal of the provider if the provider is a corporation, partnership, association, or other entity, seeking to participate in the Medicaid program must submit a complete set of his or her fingerprints to the agency for the purpose of conducting a criminal history record check. Principals of the provider include any officer, director, billing agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider. However, a director of a not-for-profit corporation or organization is not a principal for purposes of a background investigation as required by this section if the director: serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration from the not-for-profit corporation or organization for his or her service on the board of directors, has no financial interest in the not-for-profit corporation or organization, and has no family members with a financial interest in the not-for-profit corporation or organization; and if the director submits an affidavit, under penalty of perjury, to this effect to the agency and the not-for-profit corporation or organization submits an affidavit, under penalty of perjury, to this effect to the agency as part of the corporation's or organization's Medicaid provider agreement application. Notwithstanding the above, the agency may require a background check for any person reasonably suspected by the agency to have been convicted of a crime. This subsection shall not apply to:

~~1. A hospital licensed under chapter 395;~~

~~2. A nursing home licensed under chapter 400;~~

~~3. A hospice licensed under chapter 400;~~

~~4. An assisted living facility licensed under chapter 429;~~

~~5. A unit of local government, except that requirements of this subsection apply to nongovernmental providers and entities when contracting with the local government to provide Medicaid services. The actual cost of the state and national criminal history record checks must be borne by the nongovernmental provider or entity; or~~

~~6. Any business that derives more than 50 percent of its revenue from the sale of goods to the final consumer, and the business or its controlling parent either is required to file a form 10-K or other similar statement with the Securities and Exchange Commission or has a net worth of \$50 million or more.~~

(b) ~~Background screening shall be conducted in accordance with chapter 435 and s. 408.809. The agency shall submit the fingerprints to the Department of Law Enforcement. The department shall conduct a state criminal background investigation and forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The cost of the state and national criminal record check shall be borne by the provider.~~

~~(c) The agency may permit a provider to participate in the Medicaid program pending the results of the criminal record check. However, such permission is fully revocable if the record check reveals any crime-related history as provided in subsection (10).~~

~~(c) (d) Proof of compliance with the requirements of level 2 screening under s. 435.04 conducted within 12 months prior to the date that the Medicaid provider application is submitted to the agency shall fulfill the requirements of this subsection. Proof of compliance with the requirements of level 1 screening under s. 435.03 conducted within 12 months prior to the date that the Medicaid provider application is submitted to the agency shall meet the requirement that the Department of Law Enforcement conduct a state criminal history record check.~~