

Judiciary Committee

Thursday, March 24, 2011

8:00 AM

404 HOB

Meeting Packet

**Dean Cannon
Speaker**

**William Snyder
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, March 24, 2011 08:00 am
End Date and Time: Thursday, March 24, 2011 11:00 am
Location: 404 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 3 Assault or Battery of a Law Enforcement Officer by Criminal Justice Subcommittee, Nehr
CS/HB 39 Controlled Substances by Criminal Justice Subcommittee, Adkins, Rouson
CS/HB 517 Firearms by Criminal Justice Subcommittee, Dorworth
CS/HB 647 Protection of Volunteers by Civil Justice Subcommittee, McBurney
HB 951 Recording of Real Property Documents by Albritton
HB 7113 Supreme Court by Civil Justice Subcommittee, Metz
HB 7115 Judicial Census Commissions by Civil Justice Subcommittee, Bernard
HB 7117 Sheriffs by Civil Justice Subcommittee, Passidomo
HB 7119 District Courts of Appeal by Civil Justice Subcommittee, Passidomo
HB 7121 Offers of Settlement by Civil Justice Subcommittee, Soto
HB 7123 Declaratory Judgment Actions by Civil Justice Subcommittee, Stafford
HB 7125 Veteran's Guardianship by Civil Justice Subcommittee, Bernard

Workshop on Corrections and Public-Private Partnerships

NOTICE FINALIZED on 03/22/2011 16:15 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 3 Assault or Battery of a Law Enforcement Officer

SPONSOR(S): Criminal Justice Subcommittee; Nehr and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Krol	Cunningham
2) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

In May 2008, Governor Charlie Crist signed an Executive Order establishing the Florida Law Enforcement Officer (LEO) Alert. This alert was created in response to the increasing number of law enforcement officers in the state who were killed or injured in the line of duty; in some of these cases, the offender used a vehicle to flee in an attempt to escape. The LEO Alert is issued when an offender kills or seriously injures a law enforcement officer and a detailed description of the offender's vehicle or means of escape is available to broadcast to the public using highway Dynamic Message Signs and other highway advisory methods.

CS/HB 3 creates s. 784.071, F.S., establishing a "blue alert." A blue alert is issued at the request of an authorized person at a law enforcement agency if a law enforcement officer has been killed, suffered serious bodily injury, has been assaulted with a deadly weapon, or is missing while in the line of duty under circumstances evidencing concern for the officer. The bill specifies other conditions that must be met before the alert can be issued.

The bill requires the Florida Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation to activate the Emergency Alert System and issue a blue alert.

The bill provides that the blue alert will be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state's highways.

The bill provides an effective date of October 1, 2011 and is estimated to have no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In May 2008, Governor Charlie Crist signed an Executive Order establishing the Florida Law Enforcement Officer (LEO) Alert.¹ The LEO Alert was created in response to the increasing number of law enforcement officers in the state who were killed or injured in the line of duty; in some of these cases, the offender used a vehicle to flee in an attempt to escape.²

The Executive Order directed the Florida Department of Transportation (FDOT) and the Department of Highway Safety and Motor Vehicles' Florida Highway Patrol (FHP) to coordinate with the Florida Department of Law Enforcement (FDLE) to immediately broadcast important information about an offender who has killed or critically injured a law enforcement officer.³ The information is broadcast through FDOT's highway Dynamic Message Signs and other highway advisory methods alerting the public to report information about the offender to the investigating law enforcement agency (investigating agency), thereby increasing the chances of apprehension.⁴

The coordination between the agencies created the Florida LEO ALERT Plan Policy. This policy outlines the criteria needed to activate an LEO Alert and the steps each agency must take in the alert activation process. Before an LEO Alert can be activated, the policy specifies that the following criteria must be met:

- 1) The offender killed or critically injured a law enforcement officer.
- 2) The investigating agency determines that the offender poses a serious public risk.
- 3) A detailed description of the offender's vehicle or other means of escape is available for broadcast.
- 4) The activation must be recommended by the investigating agency.⁵

The policy also establishes the LEO Alert activation process, which occurs in the following order:

- 1) The investigating agency calls FDLE's Florida Fusion Center (FFC) located in Tallahassee. The FFC is manned 24 hours a day, seven days a week.
- 2) FDLE works with the investigating agency to offer assistance, ensures the activation criteria have been met, and determines if the alert will be displayed regionally or statewide.
- 3) FDLE works with the investigating agency to prepare information for public release, including suspect and/or suspect vehicle information, as well as agency contact information.
- 4) FDLE contacts FHP's Orlando Regional Communications Center (ORCC) to send the LEO Alert. ORCC relays that information to other regional communication centers where the activation is to take place.
- 5) FDLE contacts FDOT's Orlando Regional Transportation Management Center to develop the message content using the FDOT-approved template which includes vehicle information, tag number and other identifiers.

¹ Office of the Governor, Executive Order Number 08-81.

² FDLE 2011 Analysis of HB 3.

³ *Id.*

⁴ The Florida LEO ALERT Plan Policy. Updated 4/29/08. On file with Criminal Justice Subcommittee staff.

⁵ *Id.*

- 6) FDOT displays the message until the offender is captured or for a maximum of six hours. The alert is displayed on dynamic highway message signs on all requested highways unless a traffic emergency occurs which requires a motorist safety message to be displayed. FDOT also records an LEO Alert message on the My Florida 511 System⁶ when the LEO Alert is activated.
- 7) Once FDLE is notified that the offender has been captured, FDLE contacts the appropriate parties to cancel the alert. FHP then notifies its other offices of the cancellation.⁷

The LEO Alert Policy Plan requires each activation to be reviewed by a committee of state agency partners and law enforcement representatives to ensure that criteria and goals are met and that each activation took place in a timely fashion.⁸

Effect of the Bill

CS/HB 3 creates a "blue alert." At the request of an authorized person at a law enforcement agency, the Florida Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation will activate the Emergency Alert System and issue a blue alert if all of the following conditions are met:

- A law enforcement officer has been killed, has suffered serious bodily injury, or has been assaulted with a deadly weapon; or a law enforcement officer is missing while in the line of duty under circumstances evidencing concern for the officer's safety.
- The suspect has fled the scene of the offense.
- The investigating agency determines that the suspect poses an imminent threat to the public or other law enforcement officers.
- A detailed description of the suspect's vehicle, or other means of escape, or license plate of the suspect's vehicle is available for broadcast.
- Dissemination of available information to the public may help avert further harm or assist in the apprehension of the suspect; and
- If the law enforcement officer is missing, there is sufficient information available relating to the officer's last known location and physical description, and the description of any vehicle involved, including the license plate number or other identifying information, to be broadcast to the public and other law enforcement agencies, which could assist in locating the missing officer.

The bill requires the blue alert to be immediately disseminated to the public through the Emergency Alert System by broadcasting the alert on television, radio, and the Dynamic Message Signs that are located along the state's highways.

The bill also provides that it is not a violation of this section to display traffic emergency information on a highway message sign in lieu of displaying blue alert information.

⁶ The My Florida 511 System is a free telephone service provided by FDOT that allows the public to access information on traffic congestion, construction, crashes, and serve or unusual weather conditions effecting traffic.

⁷ *Supra* the Florida LEO ALERT Plan Policy. The same activation steps are used if there is revised vehicle information or a broadcast area is changed.

⁸ *Id.*

B. SECTION DIRECTORY:

Section 1. Creates 784.071, F.S., relating to assault or battery on a law enforcement officer; missing while in line of duty; blue alert.

Section 2. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Highway Safety and Motor Vehicles and FDLE report that the bill will have no fiscal impact as the Law Enforcement Officer Alert Plan has been in existence since May 2008.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It appears the bill would have no fiscal impact on local governments as the Law Enforcement Officer Alert Plan has been in existence since May 2008.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁹ The Department of Highway and Motor Vehicles 2011 Analysis of HB 3 and FDLE 2011 Analysis of HB 3.
STORAGE NAME: h0003b.JDC.DOCX
DATE: 3/22/2011

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The strike-all amendment:

- Requires the Florida Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation to activate the Emergency Alert System and issue a blue alert.
- Modifies the conditions for which a blue alert may be issued by adding provisions for law enforcement officers missing in the line of duty under circumstances evidencing concern for the officer's safety.
- Provides that the blue alert will be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state's highways.
- Specifies that it is not a violation of this section to display traffic emergency information on a highway message sign in lieu of displaying blue alert information.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to assault or battery of a law enforcement officer; creating s. 784.071, F.S.; requiring the Department of Law Enforcement to issue a blue alert if a law enforcement officer has been killed, suffered serious bodily injury, or been assaulted and the suspect has fled the scene, or if a law enforcement officer is missing while in the line of duty; requiring that the blue alert be disseminated on the emergency alert system through television, radio, and highway signs; providing that emergency traffic information may take precedence over blue alert information; providing an effective date.

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

Section 1. Section 784.071, Florida Statutes, is created to read:

784.071 Assault or battery on a law enforcement officer; missing while in line of duty; blue alert.-

(1) At the request of an authorized person employed at a law enforcement agency, the Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation, shall activate the emergency alert system and issue a blue alert if all of the following conditions are met:

(a)1. A law enforcement officer has been killed, has suffered serious bodily injury, or has been assaulted with a deadly weapon; or

29 2. A law enforcement officer is missing while in the line
 30 of duty under circumstances evidencing concern for the law
 31 enforcement officer's safety;

32 (b) The suspect has fled the scene of the offense;

33 (c) The law enforcement agency investigating the offense
 34 determines that the suspect poses an imminent threat to the
 35 public or to other law enforcement officers;

36 (d) A detailed description of the suspect's vehicle, or
 37 other means of escape, or the license plate of the suspect's
 38 vehicle is available for broadcasting;

39 (e) Dissemination of available information to the public
 40 may help avert further harm or assist in the apprehension of the
 41 suspect; and

42 (f) If the law enforcement officer is missing, there is
 43 sufficient information available relating to the officer's last
 44 known location and physical description, and the description of
 45 any vehicle involved, including the license plate number or
 46 other identifying information, to be broadcast to the public and
 47 other law enforcement agencies, which could assist in locating
 48 the missing law enforcement officer.

49 (2) (a) The blue alert shall be immediately disseminated to
 50 the public through the emergency alert system by broadcasting
 51 the alert on television, radio, and the dynamic message signs
 52 that are located along the state's highways.

53 (b) If a traffic emergency arises requiring that
 54 information pertaining to the traffic emergency be displayed on
 55 a highway message sign in lieu of the blue alert information,
 56 the agency responsible for displaying information on the highway

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2011

57 | message sign is not in violation of this section.


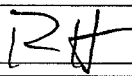
58 | Section 2. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 39 Controlled Substances

SPONSOR(S): Criminal Justice Subcommittee, Adkins, Rouson and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 204

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 4 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 2 N	McAuliffe	Jones Darity
3) Judiciary Committee		Williams 	Havlicak 

SUMMARY ANALYSIS

Synthetic cannabinoids are chemically engineered substances containing one or more synthetic compounds that behave similarly to the primary psychoactive constituent of marijuana. The compound most commonly found in these products is the chemical JWH-018. In recent years, synthetic cannabinoids often referred to as "K2" or "Spice," have begun to be used as recreational drugs. Florida does not currently regulate the sale, purchase, possession, or manufacture of synthetic cannabinoids.

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.

CS/HB 39 adds the following synthetic cannabinoids and synthetic cannabinoid-mimicking compounds to Schedule I:

- 2-[(1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.
- 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl) indole, also known as JWH-200.

This will make possession of synthetic cannabinoids a third degree felony in conformity with other Schedule I hallucinogens. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The offense of purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

The United States Drug Enforcement Administration recently indicated its intent to temporarily place several synthetic cannabinoids into Schedule I of the federal controlled substance schedules. If a final order is issued, the manufacture, distribution, possession, importation, and exportation of synthetic cannabinoids would be a federal crime. Likewise, the effect of Florida scheduling is that arrests and prosecutions under Florida law may be made for possession, sale, manufacture, delivery, and purchase of these substances.

The Criminal Justice Impact Conference met March 2, 2011 and determined this bill will have an insignificant fiscal impact on state prison beds.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Synthetic cannabinoids: Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances, similar to tetrahydrocannabinol (THC)—the active ingredient in marijuana—that, when smoked or ingested, can produce a high similar to marijuana.¹ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.²

The active compounds found in Spice and K2 include the synthetic cannabinoids JWH-018 (developed in a Clemson University lab by researcher John W. Huffman, PhD.), JWH-073, HU-210 and/or CP 47,497.³ It is believed that manufacturers used Huffman’s research in order to reproduce chemicals to produce these synthetic cannabinoids and market them for commercial distribution.

Substance Abuse: In recent years, synthetic cannabinoids have begun to be used as recreational drugs. The most common route of administration of synthetic cannabinoids is by smoking, using a pipe, water pipe, or rolling the drug-spiked plant material in cigarette papers. The primary abusers of synthetic cannabinoids are youth, who purchase these substances from internet websites, gas stations, convenient stores, tobacco shops and head shops.⁴

The United States Drug Enforcement Administration (DEA) stated that “products containing these THC-like synthetic cannabinoids are marketed as ‘legal’ alternatives to marijuana and are being sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores.”⁵ Further, “a number of the products and synthetic cannabinoids appear to originate from foreign sources and are manufactured in the absence of quality controls and devoid of regulatory oversight.”⁶ “The marketing of products that contain one or more of these synthetic cannabinoids is geared towards teens and young adults. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis tests will not typically detect the presence of these synthetic cannabinoids.”⁷

The DEA stated abuse of synthetic cannabinoids or products containing these substances “has been characterized by both acute and long term public health and safety problems.”⁸

- Synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. The DEA has been made aware that smoking synthetic cannabinoids for the purpose of achieving intoxication

¹ “Synthetic Cannabinoids (K2),” National Conference of State Legislatures, updated November 23, 2010 (<http://www.ncsl.org/?tabid=21398>) (last accessed on January 18, 2011).

² “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last accessed on January 25, 2011).

³ “Comprehensive Drug Information on Spice and K2 (Synthetic Cannabinoids),” Hunterdon Drug Awareness Program, (<http://www.hdap.org/spice.html>) (last accessed on January 18, 2011).

⁴ “Drugs and Chemicals of Concern,” U.S. Dept. of Justice Drug Enforcement Administration, Office of Diversion Control, November 2010. (http://www.dea.gov/diversion_control/drugs_concern/spice/spice_jwh018.htm) (last accessed on January 18, 2011).

⁵ “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last accessed on January 25, 2011).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

and experiencing the psychoactive effects is identified as a reason for emergency room visits and calls to poison control centers.⁹

- Health warnings have been issued by numerous state public health departments and poison control centers describing the adverse health effects associated with synthetic cannabinoids and their related products including agitation, anxiety, vomiting, tachycardia, elevated blood pressure, seizures, hallucinations and non-responsiveness. Case reports describe psychotic episodes, withdrawal, and dependence associated with use of synthetic cannabinoids, similar to syndromes observed in cannabis abuse. Emergency room physicians have reported admissions connected to the abuse of synthetic cannabinoids. Additionally, when responding to incidents involving individuals who have reportedly smoked synthetic cannabinoids, first responders report that these individuals suffer from intense hallucinations. Detailed chemical analysis by the DEA and other investigators has found synthetic cannabinoids spiked on plant material in products marketed to the general public. The risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoid(s) spiked on the plant material.¹⁰

Marilyn Huestis, Chief of Chemistry and Drug Metabolism at the National Institute on Drug Abuse, stated during an interview conducted by The Washington Post, that "these different, synthetic compounds are up to 100 times more potent than THC and have not been tested on humans. When people take it, they don't know how much they're taking or what it is they're taking."¹¹

Drug schedules: Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.

The distinguishing factors between the different drug schedules are the "potential for abuse"¹² of the substance contained therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.¹³ Cannabis and heroin are examples of Schedule I drugs.

Florida law: Currently, synthetic cannabinoids are not listed in any of the controlled substances schedules in ch.893, F.S. As such, Florida does not currently regulate the sale, purchase, or possession of synthetic cannabinoids.¹⁴

Other State Actions: According to the National Conference of State Legislatures, as of January 11, 2011, the following 11 state legislatures passed laws banning synthetic cannabinoids:

- In 2010, Alabama passed HB 697, which prohibits persons from possessing synthetic cannabinoids. The offense is punishable as a misdemeanor if the possession was for personal use, and a felony if the possession was for non-personal use.¹⁵
- In 2010, Georgia passed HB 1309, which prohibits the purchase, possession, manufacture, distribution, or sale of synthetic cannabinoids. These offenses are all punishable as felonies.¹⁶

⁹ *Id.*

¹⁰ *Id.*

¹¹ "The growing buzz on 'spice' -- the marijuana alternative," *The Washington Post*, July 10, 2010. (last accessed on January 18, 2011). (<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070903554.html?sid=ST2010071000029>)

¹² See s. 893.02(19), F.S.

¹³ See s. 893.03, F.S.

¹⁴ The Polk County Sheriff's Office recently arrested several retailers who sold synthetic cannabinoids for violating Florida's imitation controlled substance statute, s. 817.564, F.S. Curtis, Henry Pierson, "Imitation marijuana: More than dozen arrested in Polk County for selling 'legal weed'," *Orlando Sentinel*, November 18, 2010 (http://articles.orlandosentinel.com/2010-11-18/news/os-fake-pot-arrests-polk-county-20101118_1_synthetic-marijuana-small-gasoline-stations-legal-weed) (last accessed on January 18, 2011).

¹⁵ Ala. Code ss. 13A-12-212, 13A-12-213, 13A-5-6, 13A-5-7.

¹⁶ Ga. Code. Ann. ss. 16-13-25, 16-13-30.

- In 2010, Illinois passed HB 6459, which makes it a felony for a person to buy, sell, or possess synthetic cannabinoids.¹⁷
- In 2010, Kansas passed HB 2411, which prohibits the manufacture, distribution, cultivation, or possession of synthetic cannabinoids. Manufacture, distribution and cultivation offenses are all punishable as felonies and possession is punishable as a misdemeanor.¹⁸
- In 2010, Kentucky passed HB 265, which prohibits the trafficking, manufacture, and possession of synthetic cannabinoids. These offenses are punishable as misdemeanors.¹⁹
- In 2010, Louisiana passed HB 121, HB 173 and SB 37, which prohibits the manufacture, distribution, and possession of synthetic cannabinoids. These offenses are all punishable as felonies.²⁰
- In 2010, Michigan passed HB 6038, which prohibits the possession and use of synthetic cannabinoids. These offenses are punishable as misdemeanors. The bill also prohibited a person from manufacturing, delivering, or possessing with intent to deliver synthetic cannabinoids. These offenses are all punishable as felonies.²¹
- In 2010, Mississippi passed SB 2004, which prohibits a person from selling, bartering, transferring, manufacturing, distributing dispensing, and trafficking of synthetic cannabinoids. These offenses are punishable as felonies. The bill also prohibits a person from possessing synthetic cannabinoids. This offense is generally punishable as a felony.²²
- In 2010, Missouri passed HB 1472, which prohibits a person from distributing, delivering, manufacturing, or producing synthetic cannabinoids. These offenses are punishable as felonies. The bill also prohibits persons from possessing synthetic cannabinoids. The offense is punishable as a misdemeanor for possession of 35 grams or less, and a felony for possession of 35 grams or more.²³
- In 2010, Oklahoma passed HB 3241, which makes it a felony for a person to possess, purchase, distribute, dispense, transport with intent to distribute or dispense, possess with intent to manufacture, distribute, or dispense synthetic cannabinoids.²⁴
- In 2010, Tennessee passed SB 2982, which prohibits the manufacture, distribution, or possession of synthetic cannabinoids. These offenses are punishable as misdemeanors.²⁵

Federal Actions: On November 24, 2010, the DEA announced a Notice of Intent to Temporarily Control synthetic cannabinoids. The temporary control, which adds these substances to the list of Schedule I substances in the Federal Controlled Substances Act, will go into effect upon the issuance of a final order.²⁶ If the final order is issued, the manufacture, distribution, possession, importation, and exportation of synthetic cannabinoids will be punishable as felonies.²⁷

Effect of bill: CS/HB 39 amends s. 893.02, F.S., the definitions section of ch. 893, F.S., to define the term "homologue" as "a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain." The term "homologue" appears in the scheduling nomenclature of one of the substances scheduled by the bill.

¹⁷ **"Synthetic Marijuana, Illegal in Illinois."** <http://www.24-7pressrelease.com/press-release/synthetic-marijuana-illegal-in-illinois-191395.php> (last accessed on January 25, 2011). See also, 720 ILCS 570-204.

¹⁸ K.S.A. ss. 65-4105, 21-36a03, 21-36a05, 21-36a06.

¹⁹ KRS 218A.1426, 218A.1427, and 218A.1428.

²⁰ La. Rev. Stat. Ann. 40:964, 40:966, 40:989.2.

²¹ Michigan House of Representatives Legislative Analysis of HB 6038. <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/htm/2009-HLA-6038-3.htm> (last accessed January 25, 2011). Also see, MCL ss. 333.7212, 333.7403, 333.7404, and 333.7401.

²² Miss. Code Ann. ss. 41-29-113, 41-29-139.

²³ Mo. Ann. Stat. ss. 195.017, 195.202, 195.211

²⁴ Okla. State. Ann. tit. 63, s. 2-401, s. 2-402.

²⁵ Tenn. Code Ann. s.39-17-438.

²⁶ "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I," Federal Register, The Daily Journal of the United States Government, November 24, 2010 (<http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule>) (last accessed on January 25, 2011).

²⁷ 21 USC Sec. 841

The bill amends s. 893.03, F.S., to add the following synthetic cannabinoids or synthetic cannabinoid-mimicking compounds to Schedule I of Florida's controlled substance schedules:

- 2-[(1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.
- 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl) indole, also known as JWH-200

This will make possession of synthetic cannabinoids a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote.²⁸ This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart.²⁹ The purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.³⁰

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 893.02, F.S., relating to definitions.

Section 2: Amends s. 893.03, F.S., relating to standards and schedules.

Section 3: Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 4: Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 5: Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

²⁸ Section 893.13(6)(a), F.S. Possession of less than 20 grams of cannabis is a first degree misdemeanor. s. 893.13(6)(b), F.S.

²⁹ Section 893.13(1)(a)2., F.S and s. 921.0022, F.S. Section 893.13, F.S. provides for enhanced penalties if the sale occurs within close proximity to certain locations such as a church or school.

³⁰ Section 893.13(2)(a)2., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would make it illegal to sell synthetic cannabinoids, which are currently sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. Therefore, the bill could have a negative fiscal impact on such entities.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met March 2, 2011, and determined this bill will have an insignificant fiscal impact on state prison beds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2011, the Criminal Justice Subcommittee adopted one amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment added the following synthetic cannabinoid to Schedule I of Florida's controlled substance schedules.

- 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole (JWH-200)

This analysis is drafted to the committee substitute.

1 A bill to be entitled

2 An act relating to controlled substances; amending s.
 3 893.02, F.S.; defining the term "homologue" for purposes
 4 of the Florida Comprehensive Drug Abuse Prevention and
 5 Control Act; amending s. 893.03, F.S.; including certain
 6 hallucinogenic substances on the list of controlled
 7 substances in Schedule I; reenacting ss. 893.13(1), (2),
 8 (4) and (5), 893.135(1)(1), and 921.0022(3)(b), (c), and
 9 (e), F.S., relating to prohibited acts and penalties
 10 regarding controlled substances and the offense severity
 11 chart of the Criminal Punishment Code, to incorporate the
 12 amendment to s. 893.03, F.S., in references thereto;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Present subsections (11) through (22) of
 18 section 893.02, Florida Statutes, are redesignated as
 19 subsections (12) through (23), respectively, and a new
 20 subsection (11) is added to that section, to read:

21 893.02 Definitions.—The following words and phrases as
 22 used in this chapter shall have the following meanings, unless
 23 the context otherwise requires:

24 (11) "Homologue" means a chemical compound in a series in
 25 which each compound differs by one or more alkyl functional
 26 groups on an alkyl side chain.

27 Section 2. Paragraph (c) of subsection (1) of section
 28 893.03, Florida Statutes, is amended to read:

29 893.03 Standards and schedules.—The substances enumerated
 30 in this section are controlled by this chapter. The controlled
 31 substances listed or to be listed in Schedules I, II, III, IV,
 32 and V are included by whatever official, common, usual,
 33 chemical, or trade name designated. The provisions of this
 34 section shall not be construed to include within any of the
 35 schedules contained in this section any excluded drugs listed
 36 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 37 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 38 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 39 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 40 Anabolic Steroid Products."

41 (1) SCHEDULE I.—A substance in Schedule I has a high
 42 potential for abuse and has no currently accepted medical use in
 43 treatment in the United States and in its use under medical
 44 supervision does not meet accepted safety standards. The
 45 following substances are controlled in Schedule I:

46 (c) Unless specifically excepted or unless listed in
 47 another schedule, any material, compound, mixture, or
 48 preparation which contains any quantity of the following
 49 hallucinogenic substances or which contains any of their salts,
 50 isomers, and salts of isomers, whenever the existence of such
 51 salts, isomers, and salts of isomers is possible within the
 52 specific chemical designation:

- 53 1. Alpha-ethyltryptamine.
- 54 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 55 methylaminorex).
- 56 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).

- 57 | 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 58 | 5. 4-Bromo-2, 5-dimethoxyphenethylamine.
- 59 | 6. Bufotenine.
- 60 | 7. Cannabis.
- 61 | 8. Cathinone.
- 62 | 9. Diethyltryptamine.
- 63 | 10. 2,5-Dimethoxyamphetamine.
- 64 | 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 65 | 12. Dimethyltryptamine.
- 66 | 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
- 67 | analog of phencyclidine).
- 68 | 14. N-Ethyl-3-piperidyl benzilate.
- 69 | 15. N-ethylamphetamine.
- 70 | 16. Fenethylamine.
- 71 | 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 72 | 18. Ibogaine.
- 73 | 19. Lysergic acid diethylamide (LSD).
- 74 | 20. Mescaline.
- 75 | 21. Methcathinone.
- 76 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 77 | 23. 4-methoxyamphetamine.
- 78 | 24. 4-methoxymethamphetamine.
- 79 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 80 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 81 | 27. 3,4-Methylenedioxyamphetamine.
- 82 | 28. N-Methyl-3-piperidyl benzilate.
- 83 | 29. N,N-dimethylamphetamine.
- 84 | 30. Parahexyl.

- 85 31. Peyote.
- 86 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
87 analog of phencyclidine).
- 88 33. Psilocybin.
- 89 34. Psilocyn.
- 90 35. Salvia divinorum, except for any drug product approved
91 by the United States Food and Drug Administration which contains
92 Salvia divinorum or its isomers, esters, ethers, salts, and
93 salts of isomers, esters, and ethers, whenever the existence of
94 such isomers, esters, ethers, and salts is possible within the
95 specific chemical designation.
- 96 36. Salvinorin A, except for any drug product approved by
97 the United States Food and Drug Administration which contains
98 Salvinorin A or its isomers, esters, ethers, salts, and salts of
99 isomers, esters, and ethers, whenever the existence of such
100 isomers, esters, ethers, and salts is possible within the
101 specific chemical designation.
- 102 37. Tetrahydrocannabinols.
- 103 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
104 (Thiophene analog of phencyclidine).
- 105 39. 3,4,5-Trimethoxyamphetamine.
- 106 40. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
107 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
108 homologue.
- 109 41. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
110 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
111 also known as HU-210.
- 112 42. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

113 43. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

114 44. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
 115 also known as JWH-200.

116 Section 3. For the purpose of incorporating the amendment
 117 made by this act to section 893.03, Florida Statutes, in
 118 references thereto, subsections (1), (2), (4), and (5) of
 119 section 893.13, Florida Statutes, are reenacted to read:

120 893.13 Prohibited acts; penalties.—

121 (1) (a) Except as authorized by this chapter and chapter
 122 499, it is unlawful for any person to sell, manufacture, or
 123 deliver, or possess with intent to sell, manufacture, or
 124 deliver, a controlled substance. Any person who violates this
 125 provision with respect to:

126 1. A controlled substance named or described in s.
 127 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 128 commits a felony of the second degree, punishable as provided in
 129 s. 775.082, s. 775.083, or s. 775.084.

130 2. A controlled substance named or described in s.
 131 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 132 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 133 the third degree, punishable as provided in s. 775.082, s.
 134 775.083, or s. 775.084.

135 3. A controlled substance named or described in s.
 136 893.03(5) commits a misdemeanor of the first degree, punishable
 137 as provided in s. 775.082 or s. 775.083.

138 (b) Except as provided in this chapter, it is unlawful to
 139 sell or deliver in excess of 10 grams of any substance named or
 140 described in s. 893.03(1)(a) or (1)(b), or any combination

141 | thereof, or any mixture containing any such substance. Any
 142 | person who violates this paragraph commits a felony of the first
 143 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 144 | 775.084.

145 | (c) Except as authorized by this chapter, it is unlawful
 146 | for any person to sell, manufacture, or deliver, or possess with
 147 | intent to sell, manufacture, or deliver, a controlled substance
 148 | in, on, or within 1,000 feet of the real property comprising a
 149 | child care facility as defined in s. 402.302 or a public or
 150 | private elementary, middle, or secondary school between the
 151 | hours of 6 a.m. and 12 midnight, or at any time in, on, or
 152 | within 1,000 feet of real property comprising a state, county,
 153 | or municipal park, a community center, or a publicly owned
 154 | recreational facility. For the purposes of this paragraph, the
 155 | term "community center" means a facility operated by a nonprofit
 156 | community-based organization for the provision of recreational,
 157 | social, or educational services to the public. Any person who
 158 | violates this paragraph with respect to:

159 | 1. A controlled substance named or described in s.
 160 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 161 | commits a felony of the first degree, punishable as provided in
 162 | s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 163 | sentenced to a minimum term of imprisonment of 3 calendar years
 164 | unless the offense was committed within 1,000 feet of the real
 165 | property comprising a child care facility as defined in s.
 166 | 402.302.

167 | 2. A controlled substance named or described in s.
 168 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

169 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 170 the second degree, punishable as provided in s. 775.082, s.
 171 775.083, or s. 775.084.

172 3. Any other controlled substance, except as lawfully
 173 sold, manufactured, or delivered, must be sentenced to pay a
 174 \$500 fine and to serve 100 hours of public service in addition
 175 to any other penalty prescribed by law.

176
 177 This paragraph does not apply to a child care facility unless
 178 the owner or operator of the facility posts a sign that is not
 179 less than 2 square feet in size with a word legend identifying
 180 the facility as a licensed child care facility and that is
 181 posted on the property of the child care facility in a
 182 conspicuous place where the sign is reasonably visible to the
 183 public.

184 (d) Except as authorized by this chapter, it is unlawful
 185 for any person to sell, manufacture, or deliver, or possess with
 186 intent to sell, manufacture, or deliver, a controlled substance
 187 in, on, or within 1,000 feet of the real property comprising a
 188 public or private college, university, or other postsecondary
 189 educational institution. Any person who violates this paragraph
 190 with respect to:

191 1. A controlled substance named or described in s.
 192 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 193 commits a felony of the first degree, punishable as provided in
 194 s. 775.082, s. 775.083, or s. 775.084.

195 2. A controlled substance named or described in s.
 196 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

197 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 198 | the second degree, punishable as provided in s. 775.082, s.
 199 | 775.083, or s. 775.084.

200 | 3. Any other controlled substance, except as lawfully
 201 | sold, manufactured, or delivered, must be sentenced to pay a
 202 | \$500 fine and to serve 100 hours of public service in addition
 203 | to any other penalty prescribed by law.

204 | (e) Except as authorized by this chapter, it is unlawful
 205 | for any person to sell, manufacture, or deliver, or possess with
 206 | intent to sell, manufacture, or deliver, a controlled substance
 207 | not authorized by law in, on, or within 1,000 feet of a physical
 208 | place for worship at which a church or religious organization
 209 | regularly conducts religious services or within 1,000 feet of a
 210 | convenience business as defined in s. 812.171. Any person who
 211 | violates this paragraph with respect to:

212 | 1. A controlled substance named or described in s.
 213 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 214 | commits a felony of the first degree, punishable as provided in
 215 | s. 775.082, s. 775.083, or s. 775.084.

216 | 2. A controlled substance named or described in s.
 217 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 218 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 219 | the second degree, punishable as provided in s. 775.082, s.
 220 | 775.083, or s. 775.084.

221 | 3. Any other controlled substance, except as lawfully
 222 | sold, manufactured, or delivered, must be sentenced to pay a
 223 | \$500 fine and to serve 100 hours of public service in addition
 224 | to any other penalty prescribed by law.

225 (f) Except as authorized by this chapter, it is unlawful
 226 for any person to sell, manufacture, or deliver, or possess with
 227 intent to sell, manufacture, or deliver, a controlled substance
 228 in, on, or within 1,000 feet of the real property comprising a
 229 public housing facility at any time. For purposes of this
 230 section, the term "real property comprising a public housing
 231 facility" means real property, as defined in s. 421.03(12), of a
 232 public corporation created as a housing authority pursuant to
 233 part I of chapter 421. Any person who violates this paragraph
 234 with respect to:

235 1. A controlled substance named or described in s.
 236 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 237 commits a felony of the first degree, punishable as provided in
 238 s. 775.082, s. 775.083, or s. 775.084.

239 2. A controlled substance named or described in s.
 240 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 241 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 242 the second degree, punishable as provided in s. 775.082, s.
 243 775.083, or s. 775.084.

244 3. Any other controlled substance, except as lawfully
 245 sold, manufactured, or delivered, must be sentenced to pay a
 246 \$500 fine and to serve 100 hours of public service in addition
 247 to any other penalty prescribed by law.

248 (g) Except as authorized by this chapter, it is unlawful
 249 for any person to manufacture methamphetamine or phencyclidine,
 250 or possess any listed chemical as defined in s. 893.033 in
 251 violation of s. 893.149 and with intent to manufacture
 252 methamphetamine or phencyclidine. If any person violates this

253 paragraph and:

254 1. The commission or attempted commission of the crime
 255 occurs in a structure or conveyance where any child under 16
 256 years of age is present, the person commits a felony of the
 257 first degree, punishable as provided in s. 775.082, s. 775.083,
 258 or s. 775.084. In addition, the defendant must be sentenced to a
 259 minimum term of imprisonment of 5 calendar years.

260 2. The commission of the crime causes any child under 16
 261 years of age to suffer great bodily harm, the person commits a
 262 felony of the first degree, punishable as provided in s.
 263 775.082, s. 775.083, or s. 775.084. In addition, the defendant
 264 must be sentenced to a minimum term of imprisonment of 10
 265 calendar years.

266 (h) Except as authorized by this chapter, it is unlawful
 267 for any person to sell, manufacture, or deliver, or possess with
 268 intent to sell, manufacture, or deliver, a controlled substance
 269 in, on, or within 1,000 feet of the real property comprising an
 270 assisted living facility, as that term is used in chapter 429.
 271 Any person who violates this paragraph with respect to:

272 1. A controlled substance named or described in s.
 273 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 274 commits a felony of the first degree, punishable as provided in
 275 s. 775.082, s. 775.083, or s. 775.084.

276 2. A controlled substance named or described in s.
 277 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 278 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 279 the second degree, punishable as provided in s. 775.082, s.
 280 775.083, or s. 775.084.

281 (2) (a) Except as authorized by this chapter and chapter
 282 499, it is unlawful for any person to purchase, or possess with
 283 intent to purchase, a controlled substance. Any person who
 284 violates this provision with respect to:

285 1. A controlled substance named or described in s.
 286 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 287 commits a felony of the second degree, punishable as provided in
 288 s. 775.082, s. 775.083, or s. 775.084.

289 2. A controlled substance named or described in s.
 290 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 291 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 292 the third degree, punishable as provided in s. 775.082, s.
 293 775.083, or s. 775.084.

294 3. A controlled substance named or described in s.
 295 893.03(5) commits a misdemeanor of the first degree, punishable
 296 as provided in s. 775.082 or s. 775.083.

297 (b) Except as provided in this chapter, it is unlawful to
 298 purchase in excess of 10 grams of any substance named or
 299 described in s. 893.03(1)(a) or (1)(b), or any combination
 300 thereof, or any mixture containing any such substance. Any
 301 person who violates this paragraph commits a felony of the first
 302 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 303 775.084.

304 (4) Except as authorized by this chapter, it is unlawful
 305 for any person 18 years of age or older to deliver any
 306 controlled substance to a person under the age of 18 years, or
 307 to use or hire a person under the age of 18 years as an agent or
 308 employee in the sale or delivery of such a substance, or to use

309 | such person to assist in avoiding detection or apprehension for
 310 | a violation of this chapter. Any person who violates this
 311 | provision with respect to:

312 | (a) A controlled substance named or described in s.
 313 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 314 | commits a felony of the first degree, punishable as provided in
 315 | s. 775.082, s. 775.083, or s. 775.084.

316 | (b) A controlled substance named or described in s.
 317 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 318 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 319 | the second degree, punishable as provided in s. 775.082, s.
 320 | 775.083, or s. 775.084.

321 |
 322 | Imposition of sentence may not be suspended or deferred, nor
 323 | shall the person so convicted be placed on probation.

324 | (5) It is unlawful for any person to bring into this state
 325 | any controlled substance unless the possession of such
 326 | controlled substance is authorized by this chapter or unless
 327 | such person is licensed to do so by the appropriate federal
 328 | agency. Any person who violates this provision with respect to:

329 | (a) A controlled substance named or described in s.
 330 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 331 | commits a felony of the second degree, punishable as provided in
 332 | s. 775.082, s. 775.083, or s. 775.084.

333 | (b) A controlled substance named or described in s.
 334 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 335 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 336 | the third degree, punishable as provided in s. 775.082, s.

337 775.083, or s. 775.084.

338 (c) A controlled substance named or described in s.
 339 893.03(5) commits a misdemeanor of the first degree, punishable
 340 as provided in s. 775.082 or s. 775.083.

341 Section 4. For the purpose of incorporating the amendment
 342 made by this act to section 893.03, Florida Statutes, in
 343 references thereto, paragraph (1) of subsection (1) of section
 344 893.135, Florida Statutes, is reenacted to read:

345 893.135 Trafficking; mandatory sentences; suspension or
 346 reduction of sentences; conspiracy to engage in trafficking.—

347 (1) Except as authorized in this chapter or in chapter 499
 348 and notwithstanding the provisions of s. 893.13:

349 (1)1. Any person who knowingly sells, purchases,
 350 manufactures, delivers, or brings into this state, or who is
 351 knowingly in actual or constructive possession of, 1 gram or
 352 more of lysergic acid diethylamide (LSD) as described in s.
 353 893.03(1)(c), or of any mixture containing lysergic acid
 354 diethylamide (LSD), commits a felony of the first degree, which
 355 felony shall be known as "trafficking in lysergic acid
 356 diethylamide (LSD)," punishable as provided in s. 775.082, s.
 357 775.083, or s. 775.084. If the quantity involved:

358 a. Is 1 gram or more, but less than 5 grams, such person
 359 shall be sentenced to a mandatory minimum term of imprisonment
 360 of 3 years, and the defendant shall be ordered to pay a fine of
 361 \$50,000.

362 b. Is 5 grams or more, but less than 7 grams, such person
 363 shall be sentenced to a mandatory minimum term of imprisonment
 364 of 7 years, and the defendant shall be ordered to pay a fine of

365 | \$100,000.

366 | c. Is 7 grams or more, such person shall be sentenced to a
367 | mandatory minimum term of imprisonment of 15 calendar years and
368 | pay a fine of \$500,000.

369 | 2. Any person who knowingly manufactures or brings into
370 | this state 7 grams or more of lysergic acid diethylamide (LSD)
371 | as described in s. 893.03(1)(c), or any mixture containing
372 | lysergic acid diethylamide (LSD), and who knows that the
373 | probable result of such manufacture or importation would be the
374 | death of any person commits capital manufacture or importation
375 | of lysergic acid diethylamide (LSD), a capital felony punishable
376 | as provided in ss. 775.082 and 921.142. Any person sentenced for
377 | a capital felony under this paragraph shall also be sentenced to
378 | pay the maximum fine provided under subparagraph 1.

379 | Section 5. For the purpose of incorporating the amendment
380 | made by this act to section 893.03, Florida Statutes, in
381 | references thereto, paragraphs (b), (c), and (e) of subsection
382 | (3) of section 921.0022, Florida Statutes, are reenacted to
383 | read:

384 | 921.0022 Criminal Punishment Code; offense severity
385 | ranking chart.—

386 | (3) OFFENSE SEVERITY RANKING CHART

387 | (b) LEVEL 2

388 |

Florida	Felony	
Statute	Degree	Description

389 |

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390	379.2431(1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
391	379.2431(1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
392	403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
393	517.07	3rd	Registration of securities and furnishing of prospectus required.
394	590.28(1)	3rd	Intentional burning of lands.
395	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
396	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other

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397			public service.
398	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
399	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
400	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
401	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
402	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
403	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
404	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.

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405	817.52(3)	3rd	Failure to redeliver hired vehicle.
406	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
407	817.60(5)	3rd	Dealing in credit cards of another.
408	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
409	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
410	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
411	831.01	3rd	Forgery.
412	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
413	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
414	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.

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415	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
416	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
417	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
418	843.08	3rd	Falsely impersonating an officer.
419	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
420	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
421	(c)	LEVEL 3	
422	Florida	Felony	
423	Statute	Degree	Description
424	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.

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425	316.066 (4) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
426	316.193(2) (b)	3rd	Felony DUI, 3rd conviction.
427	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
428	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
429	319.33(1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
430	319.33(1) (c)	3rd	Procure or pass title on stolen vehicle.
431	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
432	327.35(2) (b)	3rd	Felony BUI.
433	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.

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434	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
435	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
436	379.2431(1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
437	379.2431(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
438	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
439	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

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440	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
441	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
442	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
443	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
444	697.08	3rd	Equity skimming.
445	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
446	796.05(1)	3rd	Live on earnings of a prostitute.
447	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
448	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.

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449	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
450	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
451	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
452	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
453	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
454	817.233	3rd	Burning to defraud insurer.
455	817.234(8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
456	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
	817.236	3rd	Filing a false motor vehicle insurance

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457			application.
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
458			
	817.413(2)	3rd	Sale of used goods as new.
459			
	817.505(4)	3rd	Patient brokering.
460			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
461			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
462			
	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
463			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
464			
	843.19	3rd	Injure, disable, or kill police dog or horse.
465			

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466	860.15(3)	3rd	Overcharging for repairs and parts.
467	870.01(2)	3rd	Riot; inciting or encouraging.
468	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
469	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
470	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
471	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.

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- 472 893.13(7)(a)8. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
- 473 893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
- 474 893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.
- 475 893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.
- 476 893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
- 477 893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

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478	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
479	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
480	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
481	944.47(1)(a)1.- 2.	3rd	Introduce contraband to correctional facility.
482	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
483	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
484	(e) LEVEL 5		
485	Florida	Felony	
486	Statute	Degree	Description

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487	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
488	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
489	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
490	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
491	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
492	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
493	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
494	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
	624.401(4)(b)2.	2nd	Transacting insurance without a

			certificate or authority; premium collected \$20,000 or more but less than \$100,000.
495			
	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
496			
	790.01 (2)	3rd	Carrying a concealed firearm.
497			
	790.162	2nd	Threat to throw or discharge destructive device.
498			
	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
499			
	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
500			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
501			
	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
502			
	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
503			

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504	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
505	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
506	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
507	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
508	812.131(2)(b)	3rd	Robbery by sudden snatching.
509	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
510	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
511	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341(1),	3rd	Filing false financial statements,

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512	(2) (a) & (3) (a)		making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
513	817.568(2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
514	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
515	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
516	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
	827.071(5)	3rd	Possess any photographic material, motion picture, etc., which includes

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517			sexual conduct by a child.
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
518			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
519			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
520			
	847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
521			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
522			
	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
523			
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
524			

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- 525 893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
- 526 893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
- 527 893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
- 893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4.

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528 drugs) within 1,000 feet of public
housing facility.

893.13(4)(b) 2nd Deliver to minor cannabis (or other s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) drugs).

529 893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing of
controlled substance.

530

531 Section 6. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 39 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary

2 Representative Adkins offered the following:

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

5 Between lines 115 and 116, insert:

6 Section 3. Subsection (6) of section 893.13, Florida
7 Statutes, is amended to read:

8 893.13 Prohibited acts; penalties.—

9 (6) (a) It is unlawful for any person to be in actual or
10 constructive possession of a controlled substance unless such
11 controlled substance was lawfully obtained from a practitioner
12 or pursuant to a valid prescription or order of a practitioner
13 while acting in the course of his or her professional practice
14 or to be in actual or constructive possession of a controlled
15 substance except as otherwise authorized by this chapter. Any
16 person who violates this provision commits a felony of the third
17 degree, punishable as provided in s. 775.082, s. 775.083, or s.
18 775.084.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 39 (2011)

Amendment No. 1

19 (b) If the offense is the possession of not more than 20
20 grams of cannabis, as defined in this chapter, or 3 grams or
21 less of a controlled substance described in s. 893.03(1)(c)40.-
22 44., the person commits a misdemeanor of the first degree,
23 punishable as provided in s. 775.082 or s. 775.083. For the
24 purposes of this subsection, "cannabis" does not include the
25 resin extracted from the plants of the genus *Cannabis*, or any
26 compound manufacture, salt, derivative, mixture, or preparation
27 of such resin and a controlled substance described in s.
28 893.03(1)(c)40.-44. does not include the substance in a powdered
29 form.

30 (c) Except as provided in this chapter, it is unlawful to
31 possess in excess of 10 grams of any substance named or
32 described in s. 893.03(1)(a) or (1)(b), or any combination
33 thereof, or any mixture containing any such substance. Any
34 person who violates this paragraph commits a felony of the first
35 degree, punishable as provided in s. 775.082, s. 775.083, or s.
36 775.084.

37 (d) Notwithstanding any provision to the contrary of the
38 laws of this state relating to arrest, a law enforcement officer
39 may arrest without warrant any person who the officer has
40 probable cause to believe is violating the provisions of this
41 chapter relating to possession of cannabis.

42
43
44
45 -----
46 **T I T L E A M E N D M E N T**

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 39 (2011)

Amendment No. 1

47 Remove line 7 and insert:
48 substances in Schedule I; amending s. 893.13, F.S.;
49 providing that it is a misdemeanor of the first degree to be
50 in possession of not more than a specified amount of certain
51 hallucinogenic substances; providing an exception for the
52 powdered form of such substances; reenacting ss. 893.13(1),
53 (2),

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 517 Firearms

SPONSOR(S): Criminal Justice Subcommittee; Dorworth and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N, As CS	Cunningham	Cunningham
2) Judiciary Committee		Cunningham	Havlicak RN

SUMMARY ANALYSIS

Generally, it is a crime for a person to openly carry on or about his or her person any firearm or electric weapon or device. It is also a crime for a person to carry a concealed weapon or firearm unless such person has a concealed weapon or firearm license.

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services (DACs) to issue licenses to carry concealed weapons or concealed firearms to qualified applicants. Persons seeking a concealed weapons or firearms license must meet certain requirements and provide specified information and documents to DACs. In FY 2009-2010, DACs received 167,240 new concealed licensure applications and 91,963 requests for concealed licensure renewal.

CS/HB 517 amends the concealed weapons license law to allow a concealed weapon or firearm license-holder to carry a weapon or firearm openly in addition to carrying it in a concealed manner.

The bill specifies that a concealed weapon or firearm license does not authorize a person to *openly carry* or carry a concealed weapon or firearm into one of the prohibited locations set forth in s. 790.06(12), F.S. The bill also adds a provision to s. 790.06(12), F.S., specifying that concealed weapon or firearm license-holders are not prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

The bill specifies that a person who carries a weapon or firearm into one of the prohibited locations set forth in s. 790.06(12), F.S., or who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a 2nd degree misdemeanor if they do so *knowingly* and willfully.

CS/HB 517 repeals s. 790.28, F.S., which limits Florida residents to the purchase of rifles and shotguns in contiguous states. As a result, Florida residents will be permitted to purchase rifles and shotguns in any state (not just contiguous states) so long as:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.

The bill does not appear to have a fiscal impact and is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Carrying of Concealed Weapons / Firearms - General Prohibition

Section 790.01, F.S., makes it a 1st degree misdemeanor¹ for a person to carry a concealed weapon² or electric weapon or device³ on or about his or her person. Carrying a concealed firearm⁴ without proper licensure is a 3rd degree felony^{5,6}. The statute specifies that it is not a crime for a person to carry, for purposes of lawful self-defense, any of the following in a concealed manner:

- A self-defense chemical spray.
- A nonlethal stun gun or dart-firing stun gun⁷ or other nonlethal electric weapon or device that is designed solely for defensive purposes.⁸

The statute also specifies that its prohibitions do not apply to persons licensed to carry a concealed weapon or a concealed firearm pursuant to s. 790.06, F.S.⁹

Open Carrying of Weapons / Firearms - General Prohibition

Section 790.053, F.S., makes it a 2nd degree misdemeanor¹⁰ for a person to openly carry on or about his or her person any firearm or electric weapon or device. There is no exception for persons who have concealed firearm permits; however, the statute does specify that it is not a crime for a person to openly carry, for purposes of lawful self-defense:

- A self-defense chemical spray.
- A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹¹

Certain persons under particular circumstances are exempt from the open carry of weapons limitations in s. 790.053, F.S., and the concealed firearm carry licensure requirements in s. 790.06, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;

¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

² Section 790.001(3)(a), F.S., defines the term "concealed weapon" as any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person. The weapons listed in this definition require licensure to carry them in a concealed manner.

³ Section 790.001(14), F.S., defines the term "electric weapon or device" as any device which, through the application or use of electrical current, is designed, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

⁴ Section 790.001(6), F.S., defines the term "firearm" as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. Section 790.001(2), F.S., defines the term, "concealed firearm" as any firearm which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person.

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁶ Section 790.01(2), F.S.

⁷ Section 790.001(15), F.S., defines the term "dart-firing stun gun" as any device having one or more darts that are capable of delivering an electrical current.

⁸ Section 790.01(4), F.S.

⁹ Section 790.01(3), F.S.

¹⁰ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹¹ Section 790.053(2), F.S.

- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida Highway Patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and the capital collateral regional counsel, while actually carrying out official duties.¹²

Concealed Weapons Licensure

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to issue licenses to carry concealed weapons or concealed firearms to qualified applicants.¹³ The statute defines concealed weapons or concealed firearms as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but not a machine gun^{14, 15}.

According to the FY 2009-2010 statistics, DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.¹⁶

Section 790.06(4), F.S., specifies that in order to obtain a concealed weapons license, a person must complete, under oath, and submit to DACS, an application that includes:

¹² Section 790.25(3), F.S.

¹³ Section 790.06(1), F.S.

¹⁴ Section 790.001(9), F.S., defines the term "machine gun" as any firearm which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

¹⁵ *Id.*

¹⁶ Concealed Weapon or Firearm License Reports, Applications and Dispositions by County, July 01, 2009 – June 30, 2010. (http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf) (last accessed March 14, 2011.)

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with the criteria contained in ss. 790.06(2) and (3), F.S.;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal penalties; and
- A statement that the applicant desires a concealed weapon or firearm license as a means of lawful self-defense.

Section 790.06(5), F.S., also required the applicant to submit to DACS the following:

- A nonrefundable license fee not to exceed \$85 (if the applicant has not previously been issued a statewide license) or \$70 (for renewal of a statewide license);
- A full set of fingerprints administered by a law enforcement agency;
- Documented proof of completion of a firearms safety and training course; and
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days.

Section 790.06(2), F.S. requires DACS to issue a license to carry a concealed weapon or firearm, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It is presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm by completing a specified firearms safety and training course;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;

- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹⁷

DACS must revoke a concealed weapons or firearms license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.¹⁸

DACS must, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a concealed weapons or firearms license or the processing of an application for such license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under s. 790.06, F.S., until final disposition of the case.¹⁹ DACS must suspend a concealed weapons or firearms license or the processing of an application for such license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.²⁰

In addition, DACS is required to suspend or revoke a concealed license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of another state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of another state.²¹

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.²² Failure to have proper documentation and display it upon demand is a noncriminal violation punishable by a penalty of \$25, payable to the clerk of the court.²³

¹⁷ Section 790.06(3), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 790.06(10), F.S.

²² Section 790.06(1), F.S.

²³ *Id.*

Section 790.06(12), F.S., specifies that a concealed weapon or firearm license does not authorize a person to carry a concealed weapon or firearm into:

- Any place of nuisance as defined in s. 823.05, F.S.;
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any school administration building;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any elementary or secondary school facility;
- Any career center;
- Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- Inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Any place where the carrying of firearms is prohibited by federal law.

Any person who willfully carries a concealed weapon or firearm into any of the above-listed locations commits a 2nd degree misdemeanor.²⁴

Firearms in Vehicles

Section 790.25(5), F.S., permits a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. The same is true for a legal long gun, without the need for secure encasement, when it is carried in the private conveyance for a lawful purpose.²⁵

“Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access.²⁶ The term “readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.²⁷

In 2008, s. 790.251, F.S., was created.²⁸ The statute addressed the lawful possession of firearms in vehicles within the parking lots of businesses, and was commonly known as the “Guns at Work” law. The law was challenged quickly after its passage.²⁹ Although the court recognized the Legislature’s authority to protect a worker who had a concealed carry license and kept a firearm in a vehicle at work

²⁴ Section 790.06(12), F.S.

²⁵ Section 790.25(5), F.S.

²⁶ Section 790.001(17), F.S.

²⁷ Section 790.001(16), F.S.

²⁸ Ch. 2008-7, L.O.F.

²⁹ *Florida Retail Federation v. Attorney General*, 576 F.Supp.2d 1281 (N.D.Fla. 2008).

from employment discrimination, the court found a problem, based upon the statutory definitions of employer and employee, in the application of the law to customers.³⁰

Because of the wording of the definitions, a business, which happened to employ a person with a concealed weapon license who kept a firearm secured in his or her vehicle in the parking lot at work, would have been prohibited from expelling a customer who had a firearm in his or her car. A business without such an employee would have been free to expel such a customer. The court found that there was no rational basis for treating two similarly situated businesses differently just because one happened to employ someone with a concealed weapons license.³¹ Therefore, the state was enjoined from enforcing the part of the law that applied to customers.³²

Florida Residents Purchasing Shotguns and Rifles in Other States

In 1968, the Federal Gun Control Act (GCA) was enacted.³³ Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector³⁴ to sell or deliver any firearm³⁵ to any person who the licensee knew or has reasonable cause to believe did not reside in the state in which the licensee's place of business was located.³⁶ The GCA specified that this prohibition did not apply to the sale or delivery of a rifle³⁷ or shotgun³⁸ to a resident of a state contiguous to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permits such sale or delivery by law;
- The sale fully complies with the legal conditions of sale in both such contiguous states; and
- The purchaser and the licensee have, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that take place at a location other than at the licensee's premises.³⁹

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located.⁴⁰ Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Pub. L. No. 90-618 (codified at 18 U.S.C. §§ 921-928).

³⁴ The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be "licensed," an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18 U.S.C. § 921.

³⁵ 18 U.S.C. § 921 defines the term "firearm" as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

³⁶ 18 U.S.C. § 922(b)(3) (1968).

³⁷ 18 U.S.C. § 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

³⁸ 18 U.S.C. § 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

³⁹ 18 U.S.C. § 922(b)(3) (1968).

⁴⁰ *See, e.g.,* O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.⁴¹ FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.⁴²

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. Florida has not revised or repealed its statute.

Effect of the Bill

Open and Concealed Carrying of Weapons and Firearms

CS/HB 517 provides that a person who holds a valid concealed weapon or firearm license, issued by DACS under s. 790.06, F.S., may carry such weapon or firearm openly. The current definitions, limitations, and requirements of the concealed carry license law are not otherwise amended by the bill except to authorize DACS to administer a concealed license applicant's fingerprints.

The bill amends s. 790.06(12), F.S., to specify that a concealed weapon or firearm license does not authorize a person to *openly carry* or carry a concealed weapon or firearm into one of the prohibited locations set forth in s. 790.06(12), F.S.

The bill also adds provisions to s. 790.06(12), F.S. specifying that:

- Concealed weapon or firearm license-holders are not prohibited from carrying or storing a firearm in a vehicle for lawful purposes.
- The subsection does not modify the terms or conditions of s. 790.251(7), F.S.

The bill specifies that a person who carries a weapon or firearm into one of the prohibited locations set forth in s. 790.06(12), F.S., or who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a 2nd degree misdemeanor if they do so *knowingly* and *willfully*.

Florida Residents Purchasing Shotguns and Rifles in Other States

CS/HB 517 repeals s. 790.28, F.S., which limits Florida residents to the purchase of rifles and shotguns in contiguous states. As a result, Florida residents will be permitted to purchase rifles and shotguns in any state (not just contiguous states) so long as:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.

Section 790.065(1), F.S., requires licensed importers, manufacturers, and dealers, prior to selling a firearm to a person, to verify with the Florida Department of Law Enforcement (FDLE) that a person attempting to purchase the firearm is eligible to do so. The bill amends s. 790.065(1), F.S., to provide that the subsection does not apply to the purchase, trade, or transfer of rifles or shotguns by a resident of Florida when the resident makes such purchase, trade, or transfer from a licensed importer, licensed manufacturer, or licensed dealer in another state. Licensed importers, manufacturers, and dealers in

⁴¹ Pub. L. No. 99-308.

⁴² 18 U.S.C. §922(b)(3) (1986). Federal-licensed firearms dealers, importers and manufacturers are required by the Federal Government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring a firearm.

other states who sell a rifle or shotgun to a Florida resident will still be required, pursuant to federal law, to ensure that the purchase complies with Florida law, but will not be required to verify with FDLE to verify that the Florida resident is eligible to purchase a firearm.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 2. Repeals s. 790.28, F.S., relating to purchase of rifles and shotguns in contiguous states.

Section 3. Amends s. 790.065, F.S., relating to sale and delivery of firearms.

Section 4. The bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Criminal Justice Subcommittee adopted two amendments to the bill and reported the bill favorably as a Committee Substitute. The first amendment removed language that allowed concealed weapon and permit holders to carry a weapon or firearm into an elementary or secondary school facility or administration building, a career center, or a college or university facility. The second amendment conformed language relating to the sale of rifles and shotguns in other states to federal law.

This analysis is drafted to the Committee Substitute.

1 A bill to be entitled
 2 An act relating to firearms; amending s. 790.06, F.S.;
 3 providing that a person in compliance with the terms of a
 4 concealed carry license may carry openly notwithstanding
 5 specified provisions; allowing the Division of Licensing
 6 of the Department of Agriculture and Consumer Services to
 7 take fingerprints from concealed carry license applicants;
 8 providing that a person may not openly carry a weapon or
 9 firearm or carry a concealed weapon or firearm into
 10 specified locations; providing that concealed carry
 11 licenses shall not be prohibited from carrying or storing
 12 a firearm in a vehicle for lawful purposes; providing that
 13 a provision limiting the scope of a license to carry a
 14 concealed weapon or firearm does not modify certain
 15 exceptions to prohibited acts with respect to a person's
 16 right to keep and bear arms in motor vehicles for certain
 17 purposes; repealing s. 790.28, F.S., relating to the
 18 purchase of rifles and shotguns in contiguous states;
 19 amending s. 790.065, F.S.; providing that specified
 20 provisions do not apply to certain firearms transactions
 21 by a resident of this state; providing an effective date.

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

24
 25 Section 1. Subsection (1), paragraph (c) of subsection
 26 (5), and subsection (12) of section 790.06, Florida Statutes,
 27 are amended to read:

28 790.06 License to carry concealed weapon or firearm.—

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29 (1) The Department of Agriculture and Consumer Services is
 30 authorized to issue licenses to carry concealed weapons or
 31 concealed firearms to persons qualified as provided in this
 32 section. Each such license must bear a color photograph of the
 33 licensee. For the purposes of this section, concealed weapons or
 34 concealed firearms are defined as a handgun, electronic weapon
 35 or device, tear gas gun, knife, or billie, but the term does not
 36 include a machine gun as defined in s. 790.001(9). Such licenses
 37 shall be valid throughout the state for a period of 7 years from
 38 the date of issuance. Any person in compliance with the terms of
 39 such license may carry a concealed weapon or concealed firearm
 40 notwithstanding ~~the provisions of s. 790.01~~ or may carry openly
 41 notwithstanding s. 790.053. The licensee must carry the license,
 42 together with valid identification, at all times in which the
 43 licensee is in actual possession of a concealed weapon or
 44 firearm and must display both the license and proper
 45 identification upon demand by a law enforcement officer. A
 46 violation ~~Violations of the provisions~~ of this subsection shall
 47 constitute a noncriminal violation with a penalty of \$25,
 48 payable to the clerk of the court.

49 (5) The applicant shall submit to the Department of
 50 Agriculture and Consumer Services:

51 (c) A full set of fingerprints of the applicant
 52 administered by a law enforcement agency or the Division of
 53 Licensing of the Department of Agriculture and Consumer
 54 Services.

55 (12) (a) ~~A~~ No license issued under ~~pursuant to~~ this section
 56 does not shall authorize any person to openly carry a weapon or

57 | firearm or carry a concealed weapon or firearm into:

58 | 1. Any place of nuisance as defined in s. 823.05;

59 | 2. Any police, sheriff, or highway patrol station;

60 | 3. Any detention facility, prison, or jail;

61 | 4. Any courthouse;

62 | 5. Any courtroom, except that nothing in this section

63 | would preclude a judge from carrying a concealed weapon or

64 | determining who will carry a concealed weapon in his or her

65 | courtroom;

66 | 6. Any polling place;

67 | 7. Any meeting of the governing body of a county, public

68 | school district, municipality, or special district;

69 | 8. Any meeting of the Legislature or a committee thereof;

70 | 9. Any school, college, or professional athletic event not

71 | related to firearms;

72 | 10. Any elementary or secondary school facility or

73 | administration building;

74 | 11. Any career center;

75 | 12. Any portion of an establishment licensed to dispense

76 | alcoholic beverages for consumption on the premises, which

77 | portion of the establishment is primarily devoted to such

78 | purpose; ~~any elementary or secondary school facility; any career~~

79 | ~~center;~~

80 | 13. Any college or university facility unless the licensee

81 | is a registered student, employee, or faculty member of such

82 | college or university and the weapon is a stun gun or nonlethal

83 | electric weapon or device designed solely for defensive purposes

84 | and the weapon does not fire a dart or projectile;

85 14. The inside of the passenger terminal and sterile area
 86 of any airport, provided that no person shall be prohibited from
 87 carrying any legal firearm into the terminal, which firearm is
 88 encased for shipment for purposes of checking such firearm as
 89 baggage to be lawfully transported on any aircraft; or

90 15. Any place where the carrying of firearms is prohibited
 91 by federal law.

92 (b) A person licensed under this section shall not be
 93 prohibited from carrying or storing a firearm in a vehicle for
 94 lawful purposes.

95 (c) This subsection does not modify the terms or
 96 conditions of s. 790.251(7).

97 (d) Any person who knowingly and willfully violates any
 98 provision of this subsection commits a misdemeanor of the second
 99 degree, punishable as provided in s. 775.082 or s. 775.083.

100 Section 2. Section 790.28, Florida Statutes, is repealed.

101 Section 3. Subsection (1) of section 790.065, Florida
 102 Statutes, is amended to read:

103 790.065 Sale and delivery of firearms.—

104 (1) (a) A licensed importer, licensed manufacturer, or
 105 licensed dealer may not sell or deliver from her or his
 106 inventory at her or his licensed premises any firearm to another
 107 person, other than a licensed importer, licensed manufacturer,
 108 licensed dealer, or licensed collector, until she or he has:

109 1.(a) Obtained a completed form from the potential buyer
 110 or transferee, which form shall have been promulgated by the
 111 Department of Law Enforcement and provided by the licensed
 112 importer, licensed manufacturer, or licensed dealer, which shall

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113 | include the name, date of birth, gender, race, and social
 114 | security number or other identification number of such potential
 115 | buyer or transferee and has inspected proper identification
 116 | including an identification containing a photograph of the
 117 | potential buyer or transferee.

118 | 2.~~(b)~~ Collected a fee from the potential buyer for
 119 | processing the criminal history check of the potential buyer.
 120 | The fee shall be established by the Department of Law
 121 | Enforcement and may not exceed \$8 per transaction. The
 122 | Department of Law Enforcement may reduce, or suspend collection
 123 | of, the fee to reflect payment received from the Federal
 124 | Government applied to the cost of maintaining the criminal
 125 | history check system established by this section as a means of
 126 | facilitating or supplementing the National Instant Criminal
 127 | Background Check System. The Department of Law Enforcement
 128 | shall, by rule, establish procedures for the fees to be
 129 | transmitted by the licensee to the Department of Law
 130 | Enforcement. All such fees shall be deposited into the
 131 | Department of Law Enforcement Operating Trust Fund, but shall be
 132 | segregated from all other funds deposited into such trust fund
 133 | and must be accounted for separately. Such segregated funds must
 134 | not be used for any purpose other than the operation of the
 135 | criminal history checks required by this section. The Department
 136 | of Law Enforcement, each year prior to February 1, shall make a
 137 | full accounting of all receipts and expenditures of such funds
 138 | to the President of the Senate, the Speaker of the House of
 139 | Representatives, the majority and minority leaders of each house
 140 | of the Legislature, and the chairs of the appropriations

141 committees of each house of the Legislature. In the event that
 142 the cumulative amount of funds collected exceeds the cumulative
 143 amount of expenditures by more than \$2.5 million, excess funds
 144 may be used for the purpose of purchasing soft body armor for
 145 law enforcement officers.

146 3.~~(e)~~ Requested, by means of a toll-free telephone call,
 147 the Department of Law Enforcement to conduct a check of the
 148 information as reported and reflected in the Florida Crime
 149 Information Center and National Crime Information Center systems
 150 as of the date of the request.

151 4.~~(d)~~ Received a unique approval number for that inquiry
 152 from the Department of Law Enforcement, and recorded the date
 153 and such number on the consent form.

154 (b) However, if the person purchasing, or receiving
 155 delivery of, the firearm is a holder of a valid concealed
 156 weapons or firearms license pursuant to the provisions of s.
 157 790.06 or holds an active certification from the Criminal
 158 Justice Standards and Training Commission as a "law enforcement
 159 officer," a "correctional officer," or a "correctional probation
 160 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or
 161 (9), ~~the provisions of this subsection~~ does ~~de~~ not apply.

162 (c) This subsection does not apply to the purchase, trade,
 163 or transfer of a rifle or shotgun by a resident of this state
 164 when the resident makes such purchase, trade, or transfer from a
 165 licensed importer, licensed manufacturer, or licensed dealer in
 166 another state.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 517 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative(s) Dorworth offered the following:

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

5 Remove lines 40-41 and insert:
6 notwithstanding ~~the provisions of s. 790.01~~ or may openly carry
7 a handgun, as defined in s. 790.0655, notwithstanding s.
8 790.053. The licensee must carry the license,

9
10
11 -----
12 **T I T L E A M E N D M E N T**

13 Remove line 4 and insert:
14 concealed carry license may openly carry a a handgun
15 notwithstanding

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 647 Protection of Volunteers
SPONSOR(S): Civil Justice Subcommittee; McBurney
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 930

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Billmeier	Bond
2) Judiciary Committee		Billmeier <i>LMB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The Florida Volunteer Protection Act provides that any person who volunteers to perform any service for any nonprofit organization without compensation is not civilly liable for any act or omission in certain situations. It is unclear whether compensation from an outside source, such as from an employer who might continue to pay an employee who does volunteer work for a nonprofit organization, affects liability protection.

This bill provides that a person who volunteers for a nonprofit organization and is not paid by the nonprofit organization, regardless of whether the person is receiving compensation from another source, has the same protections as any other volunteer.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - The Florida Volunteer Protection Act

Section 768.1355, F.S., is titled the Florida Volunteer Protection Act (the "Act"). The Act provides that any person who volunteers to perform any service for any nonprofit organization¹ without compensation is considered an agent of the nonprofit organization when acting within the scope of any official duties. The volunteer is not civilly liable for any act or omission which results in personal injury or property damage if:

- The volunteer was acting in good faith within the scope of any official duties;
- The volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct of the volunteer in the performance of such duties.²

If a volunteer is determined not to be liable pursuant to the Act, the nonprofit organization for which the volunteer was performing services when the damages were caused is liable for the damages to the same extent as the nonprofit organization would have been liable if the liability limitation under the Act had not been provided.³

The Act provides that "compensation" does not include a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.⁴ The Act does not address situations where a person is being paid by an outside entity but performing volunteer services for the nonprofit organization without pay.

A court has explained the purpose of the Act:

The legislature's clear intent is not to immunize volunteers from liability, but rather to shift liability from the volunteer to the non-profit organization only where the volunteer is exercising reasonable care and meets the other statutory criteria. See § 768.1355(2). Equally, the legislature determined that non-profit organizations should not be the guarantors of the conduct of their volunteers where the volunteer fails to exercise reasonable care.⁵

Effect of the Bill

This bill amends the Act to provide that a person who volunteers for a nonprofit organization without pay from the nonprofit organization, regardless of whether the person is receiving compensation from another source, is an agent of the nonprofit organization while acting in the scope of the official duties performed as a volunteer. This bill further provides that such person, and the entity that is paying the person, has the same protections as any other volunteer under the Act.

¹For purposes of this act, the term "nonprofit organization" means any organization which is exempt from taxation pursuant to 26 U.S.C. s. 501, or any federal, state, or local governmental entity.

² See s. 768.1355(1), F.S.

³ See s. 768.1355(2), F.S.

⁴ See s. 768.1355(1)(b)2., F.S.

⁵ *Campbell v. Kessler*, 848 So. 2d 369, 371 (Fla. 4th DCA 2003).

Therefore, this bill provides that persons that provide volunteer services without receiving compensation from any source are treated the same as persons who perform volunteer services for a nonprofit organization but are being paid by another entity.

This bill provides an effective date of July 1, 2011, and applies to causes of action arising on or after that date.

B. SECTION DIRECTORY:

Section 1 amends s. 768.1355, F.S., relating to the Florida Volunteer Protection Act.

Section 2 provides an effective date of July 1, 2011, and applies to causes of action arising on or after that 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:

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/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered this bill on March 14, 2011, and adopted one amendment. The amendment provides that the bill is effective July 1, 2011, and applies to causes of action accruing on or after that date. The bill, as amended, was reported favorably as a committee substitute.

This analysis is drafted to the committee substitute.

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29 (a) Such person was acting in good faith within the scope
 30 of any official duties performed under such volunteer service
 31 and such person was acting as an ordinary reasonably prudent
 32 person would have acted under the same or similar circumstances;
 33 and

34 (b) The injury or damage was not caused by any wanton or
 35 willful misconduct on the part of such person in the performance
 36 of such duties.

37 1. For purposes of this act, the term "nonprofit
 38 organization" means any organization which is exempt from
 39 taxation pursuant to 26 U.S.C. s. 501, or any federal, state, or
 40 local governmental entity.

41 2. For purposes of this act, the term "compensation" does
 42 not include a stipend as provided by the Domestic Service
 43 Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other
 44 financial assistance, valued at less than two-thirds of the
 45 federal hourly minimum wage standard, paid to a person who would
 46 otherwise be financially unable to provide the volunteer
 47 service.

48 Section 2. This act shall take effect July 1, 2011, and
 49 shall apply to causes of action accruing on or after that date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 647 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative(s) McBurney offered the following:

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

5 Remove line 26 and insert:

6 source that provides compensation, if the volunteer is not
7 acting as an agent of the source, shall incur no civil liability
8

9
10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 9-10 and insert:

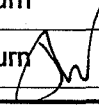
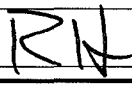
13 providing an exception; providing for application of the act;
14 providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Recording of Real Property Documents

SPONSOR(S): Albritton

TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Woodburn	Bond
2) Judiciary Committee		Woodburn 	Havlicak 

SUMMARY ANALYSIS

Instruments affecting title to real property are recorded in the public records in order to provide a public record of the chain of title to the property, together with a record of encumbrances against the title.

Prior law only allowed original papers, properly signed, to be presented for recording. Recently, state law was amended to allow for electronic recording of real property instruments. However, several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2007 adoption of the Uniform Real Property Electronic Recording Act. Others began accepting electronic documents for recording before rules contemplated in the Act were formally adopted.

The bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. This bill provides that all such recorded documents are deemed to provide constructive notice of ownership and encumbrances. The bill also clarifies that changes made by the bill do not alter the duty of a clerk or county recorder to comply with the Uniform Real Property Electronic Recording Act or rules adopted by the Department of State pursuant to that act.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Record of Conveyance of Real Estate

Chapter 965, F.S., provides that a record of a conveyance of real property, a mortgage of real property, or any other related document affecting title to real property, is valid when recorded with the clerk of the court (or county recorder) in the county in which the real property lies. Prior law required that a person present for recording an original signed paper documenting the transfer or encumbrance. With the advent of technology, clerk's offices began to accept electronic recordings.

Uniform Electronic Transaction Act and Uniform Real Property Electronic Recording Act

In 2000, the Legislature adopted the Uniform Electronic Transaction Act (UETA).¹ This act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed the UETA allowed the electronic creation, submission, and recording of electronic documents affecting real property.

Some county recorders began accepting electronic recordings based on the authority facially granted under the UETA. As such, a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling the UETA alone did not authorize the recording of electronic documents affecting title to real property. That disagreement, and the natural conservative nature of most real estate professionals, resulted in a limitation on the use and acceptability of electronic documents in real estate transactions.

To address this problem, NCCUSL promulgated a separate uniform law to address these perceived shortcomings. A variation of the NCCUSL uniform law was adopted by the Legislature in 2007 and is referred to as the Uniform Real Property Electronic Recording Act (URPERA).²

The adoption of the URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded pursuant to UETA. The URPERA requires the Department of State, by rule, to prescribe standards to implement the act in consultation with the Electronic Recording Advisory Committee.³ URPERA also provides that any county recorder who elects to receive, index, store, archive, and transmit electronic documents to do so in compliance with standards established by rules adopted by the Department of State.⁴

Before the Department of State could begin establishing rules, several county recorders began accepting electronic recordings and, as a result, discovered significant cost and labor savings. Rule 1B-31 of the Florida Administrative Code implements the URPERA and provides guidelines for accepting electronic documents.

Effect of the Bill

The bill creates s. 695.28, F.S., to retroactively and prospectively ratify the validity of all electronic documents affecting title to real property submitted to and accepted by a clerk of court or county recorder for recordation, notwithstanding possible technical defects.

¹ See s. 668.50, F.S.

² See s. 695.27, F.S.

³ Section 695.27(5)(a), F.S. This section creates the Electronic Recording Advisory Committee. It also requires the Florida Association of Court Clerks and Comptrollers to provide administrative support to the Department of State and the committee at no charge. The committee is composed of nine members who serve one year terms.

⁴ Section 695.27(4)(b), F.S.

The bill provides that all documents, previously or hereafter accepted by a clerk of court or county recorder for recordation electronically, whether under the UETA or the URPERA, are deemed to be validly recorded and provide notice to all persons notwithstanding that:

- Such documents may have been received and recorded before the formal adoption of rules by the Department of State; or
- Defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure to electronically record documents that may have been in effect at the time the electronic documents were submitted for recording.

The bill also provides that the newly created s. 695.28, F.S., does not alter the duty of the clerk or recorder to comply with the URPERA or rules adopted by the Department of State pursuant to that act.

B. SECTION DIRECTORY:

Section 1 creates s. 695.28, F.S., regarding validity of recorded electronic documents.

Section 2 provides that the act is intended to clarify and applies prospectively and retroactively.

Section 3 provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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:

This bill provides that it is intended to be clarifying and remedial and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the Constitution.⁵ As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.⁶

The Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.⁷

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁵ See *State Department of Transportation v. Knowles*, 402 So.2d 1155 (Fla. 1981).

⁶ See *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d. 494 (Fla. 1999).

⁷ *Lowry v. Parole and Probation Commission*, 473 So.2d 1248, 1250 (Fla. 1985)(internal citations omitted).

1 A bill to be entitled
 2 An act relating to the recording of real property
 3 documents; creating s. 695.28, F.S.; establishing that
 4 certain electronic documents accepted for recordation are
 5 validly recorded; providing legislative intent; providing
 6 for prospective and retroactive application; providing an
 7 effective date.

8

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

10

11 Section 1. Section 695.28, Florida Statutes, is created to
 12 read:

13

695.28 Validity of recorded electronic documents.—

14

(1) A document that is otherwise entitled to be recorded
 15 and that was or is submitted to the clerk of the court or county
 16 recorder by electronic means and accepted for recordation is
 17 deemed validly recorded and provides notice to all persons
 18 notwithstanding:

19

(a) That the document was received and accepted for
 20 recordation before the Department of State adopted standards
 21 implementing s. 695.27; or

22

(b) Any defects in, deviations from, or the inability to
 23 demonstrate strict compliance with any statute, rule, or
 24 procedure to submit or record an electronic document in effect
 25 at the time the electronic document was submitted for recording.

26

(2) This section does not alter the duty of the clerk or
 27 recorder to comply with s. 695.27 or rules adopted pursuant to
 28 that section.

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29 | Section 2. This act is intended to clarify existing law
30 | and applies prospectively and retroactively.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7113 PCB CVJS 11-10 Supreme Court
SPONSOR(S): Civil Justice Subcommittee; Metz
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	10 Y, 4 N	Johnson	Bond
1) Judiciary Committee		Johnson <i>JS</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

This bill repeals outdated statutes relating to the Florida Supreme Court. Statutes that are repealed are:

- Section 25.151, F.S., which provides that “[n]o justice of the Supreme Court of Florida drawing retirement compensation as provided by any law shall engage in the practice of law.”
- Section 25.191, F.S., which provides that the “Supreme Court shall appoint a Clerk of the Supreme Court who shall hold office during the pleasure of the court.”
- Section 25.211, F.S., which provides that the “clerk shall have an office in the Supreme Court Building.”
- Section 25.231, F.S., which provides that the “Clerk shall perform such duties as may be directed by the court.”
- Section 25.371, F.S., which provides that “[w]hen a rule is adopted by the Supreme Court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.”

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Retired Justices

This bill repeals s. 25.151, F.S., which prohibits a retired justice from engaging in the practice of law.¹ This provision has been in the Florida Statutes since 1957.²

Florida Supreme Court justices are subject to mandatory retirement from the court on or after their 70th birthday.³ Furthermore, the justices are subject to merit retention votes upon the next general election following his or her appointment and every six years thereafter.⁴

Since 2000, there have been six justices to leave the Supreme Court:⁵ in 2003, Justice Shaw could not run again; in 2002, Justice Harding retired and returned to private practice; in 2009, Justices Wells and Anstead faced mandatory retirement; and in 2008, Justices Cantero and Bell resigned and returned to private practice.⁶

Eliminating this statutory prohibition of retired justices engaging in the practice of law will allow justices to retire from the Supreme Court and draw retirement while practicing law.

Clerk of the Supreme Court

This bill repeals sections 25.191, 25.211, and 25.231, F.S. These statutes require the appointment of a Clerk of the Supreme Court; require the clerk have an office in the Supreme Court Building; and require that the clerk perform duties as directed by the court.

These provisions have been in the Florida Statutes since 1957.⁷ Each statutory provision provides a mandate relating to the clerk and the inner mechanics and workings of the Supreme Court.

This bill will not remove the ability for the Supreme Court to have a clerk; it merely removes the statutory mandate to do so.⁸ Similarly, the clerk's office and duties are not changed through this bill, which only removes the statutory requirement for the office to be located in the Supreme Court Building⁹ and the clerk's duties¹⁰ to be provided by the court.

Rules of the Court

This bill repeals section 25.371, F.S., which provides that a rule of the Supreme Court concerning practice and procedure supersedes a contrary statutory provision. This provision has been in the Florida Statutes since 1957.¹¹ Article V, s. 2(a), Fla. Const., provides, "[t]he Supreme Court shall adopt rules for the practice and procedure in all courts." The Supreme Court of Florida has held that where the court has promulgated rules relating to practice and procedure, contrary statutes are

¹ For a list of all Florida Supreme Court justices, and the circumstances of their departure from the court, see "Dates of Service" link at <http://www.floridasupremecourt.org/justices/index.shtml> (hereinafter, "Dates of Service").

² Laws 1957, c. 57-274, § 1.

³ <http://www.floridasupremecourt.org/justices/merit.shtml>.

⁴ *Id.*

⁵ Dates of Service.

⁶ *Id.*

⁷ Laws 1957, c. 57-274, § 1.

⁸ Section 25.191, F.S.

⁹ Section 25.211, F.S.

¹⁰ Section 25.231, F.S.

¹¹ Laws 1957, c. 57-274, § 1.

unconstitutional to the extent of the conflict.¹² Repeal of this statutory provision will not remove the ability of the Supreme Court's power to promulgate rules of practice and procedure.

B. SECTION DIRECTORY:

Section 1 repeals s. 25.151, F.S., relating to a retired justice practicing law.

Section 2 repeals s. 25.191, F.S., requiring the Supreme Court appoint a clerk.

Section 3 repeals s. 25.211, F.S., relating to the clerk's office.

Section 4 repeals s. 25.231, F.S., relating to the clerk's duties.

Section 5 repeals s. 25.371, F.S., relates to the court's rulemaking power.

Section 6 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have any impact on state revenues.

2. Expenditures:

This bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local revenues.

2. Expenditures:

This bill does not appear to have any impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have any impact on the private sector.

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.

¹² See e.g. *Massey v. David*, 976 So. 2d 931, 937 (Fla. 2008).

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7115 PCB CVJS 11-11 Judicial Census Commissions

SPONSOR(S): Civil Justice Subcommittee, Bernard

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
1) Judiciary Committee		Billmeier <i>LMB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

This bill repeals the statutory provision related to the judicial census commissions. The commissions may be created by the Legislature to determine the population of a judicial circuit. Until 1973, the Florida Constitution provided for one circuit judge for every 50,000 people in a judicial circuit. The statute related to judicial census commissions is no longer needed because the Constitution has been amended to provide for different method of determining the number of circuit judges.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 26.011, F.S., provides that the Legislature may, from time to time, create a commission to determine the population of a judicial circuit. This "judicial census commission" may report to the Governor and the Governor may, by proclamation, announce the population of a circuit.

A judicial census commission was once useful because prior versions of the Florida Constitution provided for 1 circuit judge for every 50,000 people. For example, article V, section 6 of the 1968 Constitution provided:

(2) Circuit Judges. The legislature shall provide for one circuit judge in each circuit for each fifty thousand inhabitants or major fraction thereof according to the last census authorized by law. In circuits having more than one judge the legislature may designate the place of residence of any such additional judge or judges.

This provision was removed from the Constitution effective in 1973¹ and replaced with the current system where the Supreme Court certifies the need for additional judges to the Legislature prior to each legislative session.²

This bill repeals s. 26.011, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 26.011, F.S., relating to census commissions.

Section 2 provides an effective date of July 1, 2011.

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.

¹ SJR 52-D (1971), adopted in 1972 and effective January 1, 1973.

² Article V, s. 9, Fla. Const.

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/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 7115

2011

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A bill to be entitled
An act relating to judicial census commissions; repealing
s. 26.011, F.S., relating to judicial census commissions;
providing an effective date.

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

Section 1. Section 26.011, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7117 PCB CVJS 11-12 Sheriffs
SPONSOR(S): Civil Justice Subcommittee, Passidomo
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
1) Judiciary Committee		Billmeier <i>LMB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Current law designates the sheriff as the executive officer of the circuit and county courts. This bill repeals those provisions of law. The sheriff is required to attend sessions of court pursuant to a different statutory provision so this repeal will not change the requirements that sheriffs provide security in courtrooms. Other duties which might be provided by an executive officer are provided by the Office of State Courts Administrator.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 26.49, F.S., provides that the sheriff is the executive officer of the circuit court of the county. Section 34.07, F.S., provides that the sheriff is the executive officer of the county court. Section 30.15, F.S., provides for duties of the sheriffs, including attending all terms of the circuit court and county court held in their counties.

This bill repeals s. 26.49, F.S., and amends s. 34.07, F.S., to remove the requirement that the sheriff serve as the executive officer of the circuit and county courts. The Florida Rules of Judicial Administration provide for state court administrator to perform administrative functions for the courts. Section 30.15, F.S., provides that the sheriff will attend all terms of court so the sheriffs can continue providing security for the circuit and county courts. Florida law does not provide for other duties of the sheriff as executive officer of the circuit courts.

B. SECTION DIRECTORY:

Section 1 repeals s. 26.49, F.S., relating to the sheriff as executive officer of the courts.

Section 2 amends s. 34.07, F.S., relating to the sheriff as executive officer of the county court.

Section 3 provides an effective date of July 1, 2011.

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 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/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered this bill on March 21, 2011, and adopted an amendment. The amendment removed provisions of law requiring the sheriff to act as executive officer of the county courts. The bill was reported favorably. This analysis reflects the committee substitute.

HB7117

2011

1 A bill to be entitled
 2 An act relating to sheriffs; repealing s. 26.49, F.S.,
 3 relating to the county sheriff serving as the executive
 4 officer of the county court; amending s. 34.07, F.S.;
 5 providing that a sheriff serve and execute all civil and
 6 criminal processes; removing a provision requiring a
 7 sheriff to perform duties of executive officer of the
 8 county court; providing an effective date.

9

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

11

12 Section 1. Section 26.49, Florida Statutes, is repealed.

13 Section 2. Section 34.07, Florida Statutes, is amended to
 14 read:

15 34.07 Sheriff to serve and execute all civil and criminal
 16 processes ~~be executive officer.~~—The sheriff of the county shall
 17 serve and execute all civil and criminal processes of the county
 18 ~~said court and do and perform all duties in and about said~~
 19 ~~court, which are required to be performed by an executive~~
 20 ~~officer.~~

21 Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7119 PCB CVJS 11-13 District Courts of Appeal

SPONSOR(S): Civil Justice Subcommittee, Passidomo

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
1) Judiciary Committee		Billmeier	LMB Havlicak RH

SUMMARY ANALYSIS

Current law provides that three judges on a district court of appeal shall consider each case and that the concurrence of a majority shall be necessary to a decision. The Florida Constitution provides that three judges on a district court shall consider each case and the concurrence of two shall be necessary to a decision. The statute restates the constitutional provision. This bill repeals the redundant statute.

Current law provides that the duties of the clerk of the district court of appeal shall be as prescribed by the rules of court while the Constitution provides that the clerk shall perform such duties as the court directs. This bill repeals an unnecessary statute.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 35.13, F.S., provides that three judges on a district court of appeal shall consider each case and that the concurrence of a majority shall be necessary to a decision. Article V, s. 4(a), Fla. Const., provides that three judges on a district court shall consider each case and the concurrence of two shall be necessary to a decision. Section 35.13, F.S., restates the constitutional provision. This bill repeals the redundant statute.

Section 35.25, F.S., provides that the duties of the clerk of the district court of appeal shall be as prescribed by the rules of court. Article V, s. 4(c), Fla. Const., provides that the clerk shall perform such duties as the court directs. This bill repeals an unnecessary statute.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.13, F.S., relating to a quorum of a district court of appeal.

Section 2 repeals s. 35.25, F.S., relating to the duties of the clerk of a district court of appeal.

Section 3 provides an effective date of July 1, 2011.

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 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/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 7119

2011

1 A bill to be entitled
 2 An act relating to district courts of appeal; repealing s.
 3 35.13, F.S., relating to the requirement that a district
 4 court sit in three judge panels and requiring a majority
 5 for a decision; repealing s. 35.25, F.S., relating to the
 6 requirement that the clerk of a district court perform the
 7 duties prescribed by rules of court; providing an
 8 effective date.

9

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

11

- 12 Section 1. Section 35.13, Florida Statutes, is repealed.
- 13 Section 2. Section 35.25, Florida Statutes, is repealed.
- 14 Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7121 PCB CVJS 11-14 Offers of Settlement

SPONSOR(S): Civil Justice Subcommittee, Soto

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
1) Judiciary Committee		Billmeier <i>LMB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Current law provides two different statutes regarding offers of settlement. This bill repeals the statute that only applies to causes of action accruing before October 1, 1990.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 45.061, F.S., provides for offers of settlements in civil actions. The statute provides for attorney fees, costs, expenses, expert witness fees, and other expenses to be assessed against a party that unreasonably rejects an offer of settlement. It was repealed for all causes of action that accrued after the effective date of the repeal, October 1, 1990.^{1,2} The Legislature enacted s. 768.79, F.S., and the Florida Supreme Court promulgated Florida Rule of Civil Procedure 1.442. The statute and rule provide a mechanism for parties to make offers of settlement and provide for sanctions for parties that unreasonably reject such offers.

Section 45.061, F.S., is obsolete by its own terms and in light of subsequent statutory changes and amendments to the rules of court. It is unlikely that there will be a need to apply the statute since the statutes of limitations for most causes of action have expired.

B. SECTION DIRECTORY:

Section 1 repeals s. 45.061, F.S., relating to offers of settlement.

Section 2 amends s. 44.102, F.S., relating to court-ordered mediation

Section 3 amends s. 766.209, F.S., relating to voluntary binding arbitration.

Section 4 provides an effective date of July 1, 2011.

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.

¹ Section 45.061(6), F.S.

² See *Timmons v. Coombs*, 608 So.2d 1 (Fla. 1992)("The legislature has now repealed section 45.061 with respect to causes of action accruing after October 1, 1990. Ch. 90-119, § 22, Laws of Fla. This leaves section 768.79 as the only statute on the subject for new causes of action").

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/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered the bill on March 21, 2011, and adopted an amendment to make conforming changes to other provisions of the statutes. This analysis reflected the committee substitute.

1 A bill to be entitled
 2 An act relating to offers of settlement; repealing s.
 3 45.061, F.S., relating to offers of settlement made before
 4 1990; amending ss. 44.102 and 766.209, F.S.; conforming
 5 cross-references; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Section 45.061, Florida Statutes, is repealed.

10 Section 2. Subsection (5) of section 44.102, Florida
 11 Statutes, is amended to read:

12 44.102 Court-ordered mediation.—

13 (5) (a) When an action is referred to mediation by court
 14 order, the time period ~~periods~~ for responding to an ~~offer of~~
 15 ~~settlement pursuant to s. 45.061, or to an offer or demand for~~
 16 judgment pursuant to s. 768.79, ~~respectively,~~ shall be tolled
 17 until:

- 18 1. An impasse has been declared by the mediator; or
- 19 2. The mediator has reported to the court that no
- 20 agreement was reached.

21 (b) Section ~~Sections 45.061 and 768.79~~ notwithstanding, an
 22 ~~offer of settlement or an offer or demand for judgment~~ may be
 23 made at any time after an impasse has been declared by the
 24 mediator, or the mediator has reported that no agreement was
 25 reached. An offer is deemed rejected as of commencement of
 26 trial.

27 Section 3. Subsection (2) of section 766.209, Florida
 28 Statutes, is amended to read:

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29 | 766.209 Effects of failure to offer or accept voluntary
30 | binding arbitration.—

31 | (2) If neither party requests or agrees to voluntary
32 | binding arbitration, the claim shall proceed to trial or to any
33 | available legal alternative such as offer of and demand for
34 | judgment under s. 768.79 ~~or offer of settlement under s. 45.061.~~

35 | Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 PCB CVJS 11-15 Declaratory Judgment Actions
SPONSOR(S): Civil Justice Subcommittee, Stafford
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
1) Judiciary Committee		Billmeier <i>LMB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Current law provides that the court may award costs in a declaratory judgment action. Another statute, applicable to all civil actions, provides that the prevailing party shall be awarded costs. The term "costs" does not include attorney's fees.

This bill repeals the specific statute relating to costs in a declaratory judgment action. Parties would still be awarded costs pursuant to the general statute.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 86, F.S., relates to declaratory judgment actions. Section 86.081, F.S., provides that the court may award costs in declaratory judgment actions as are equitable. Section 57.041(1), F.S., provides that "the party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment." While s. 86.081, F.S., provides that the court may award costs as are equitable,¹ s. 57.041, F.S., makes an award of costs mandatory.² A court explained:

Under section 57.041, the recovery of costs is generally available to any "party recovering judgment." This general provision may be displaced by context-specific statutory costs provisions. For example, in declaratory judgment proceedings, section 86.081, Florida Statutes (2005), provides that "[t]he court may award costs as are equitable." And in dissolution cases, section 61.16, Florida Statutes (2005), provides that "a reasonable amount" may be awarded for the costs of a party "after considering the financial resources of both parties." Although the standard for the award of costs may - based on specific statutory provisions - vary from the general standard set forth in section 57.041, it is universally true that costs are at issue when a lawsuit is brought.³

This bill repeals s. 86.081, F.S. Recovery of costs would therefore be governed under the general provisions of s. 57.041, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 86.081, F.S., relating to costs in declaratory judgment actions.

Section 2 provides an effective date of July 1, 2011.

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.

¹ See *Davis v. Davis*, 301 So.2d 154 (Fla. 3d DCA 1974).

² See *Hendry Tractor Company v. Fernandez*, 432 So.2d 1315, 1316 (Fla. 1983).

³ *First Protective Insurance Company v. Featherston*, 978 So.2d 881, 884 (Fla. 2d DCA 2008).

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/ COMMITTEE SUBSTITUTE CHANGES

None.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7125 PCB CVJS 11-16 Veteran's Guardianship

SPONSOR(S): Civil Justice Subcommittee, Bernard

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
1) Judiciary Committee		Billmeier <i>LMB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

This bill repeals an obsolete provision of the guardianship statute. The statutory provision relates to statutory construction of Veteran's Guardianship Act and contains statutory references which have been repealed. The same rules of statutory construction are contained in the Veteran's Guardianship Act without the reference to repealed statutes.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Part VIII of ch. 744, F.S., is Florida's "Veteran's Guardianship Law."¹ Section 744.602(2), provides:

The application of this part is limited to veterans and other persons who are entitled to receive benefits from the United States Department of Veterans Affairs. This part is not intended to replace the general law relating to guardianship except insofar as this part is inconsistent with the general law relating to guardianship; in which event, this part and the general law relating to guardianship shall be read together, with any conflict between this part and the general law of guardianship to be resolved by giving effect to this part.

Section 744.103, F.S., provides:

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

This bill repeals s. 744.103, F.S., which is obsolete because chapters 293 and 294, F.S., were repealed or transferred to ch. 744, F.S.² Section 744.103, F.S., references repealed chapters of the Florida Statutes. The statutory construction provisions in s. 744.103, F.S., are also contained in s. 744.602(2), F.S.

The effect of this bill is to repeal an obsolete statutory section. This bill does not change the law relating to veteran's guardianship.

B. SECTION DIRECTORY:

Section 1 repeals s. 744.103, F.S., relating to guardians of incapacitated world war veterans.

Section 2 provides an effective date of July 1, 2011.

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.

¹ Section 744.602(1), F.S.

² Chapter 84-62, L.O.F.

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/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 7125

2011

1
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9

A bill to be entitled
An act relating to veteran's guardianship; repealing s.
744.103, F.S., relating to guardians of incapacitated
world war veterans; providing an effective date.

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

Section 1. Section 744.103, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

Public-Private Partnerships in Corrections:

*based on Corrections 2.0: A Proposal to Create a Continuum of
Care in Corrections through Public-Private Partnerships*



March 24, 2011

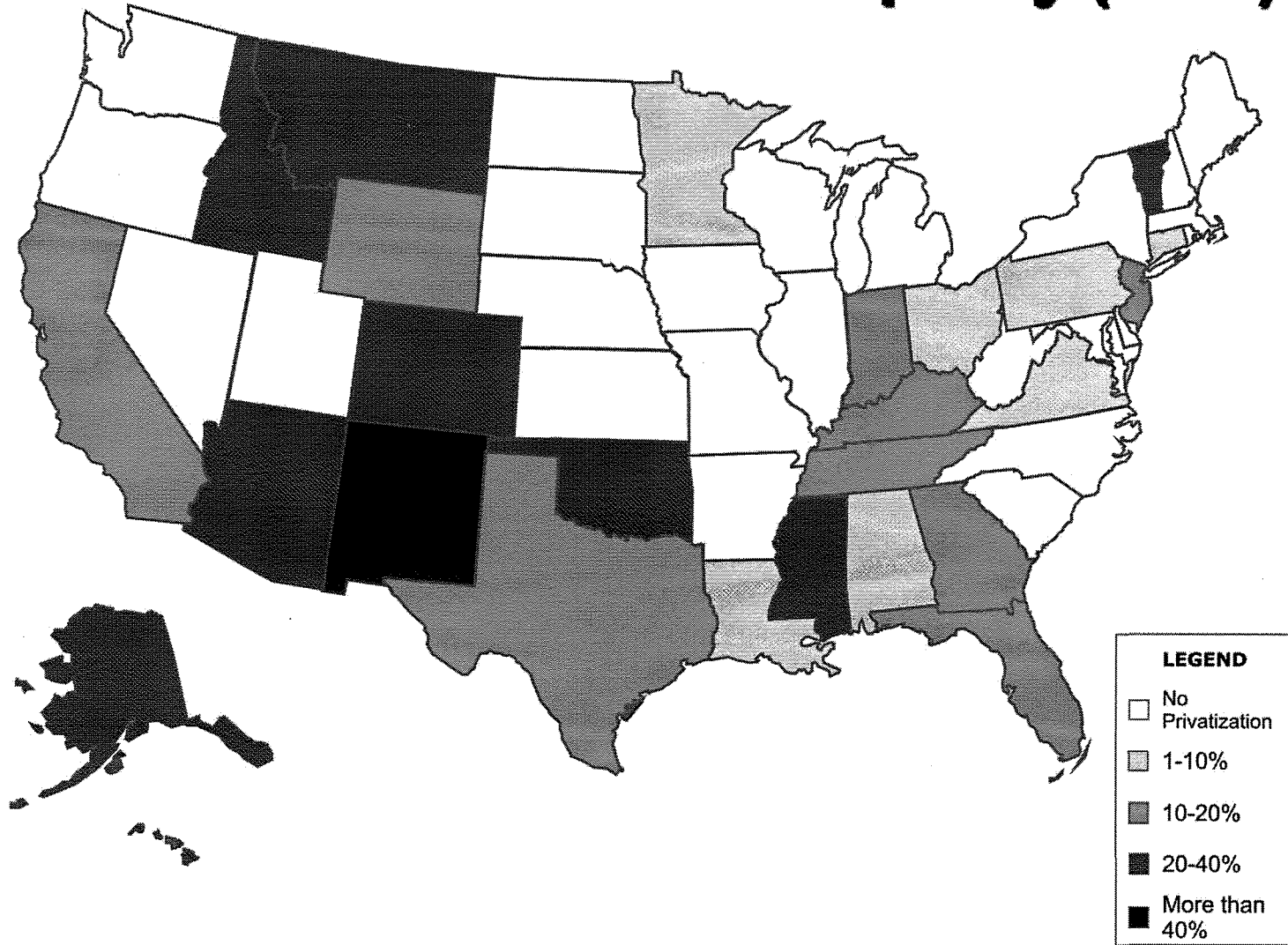
*Presented to the House Judiciary Committee:
Rep. Snyder, Chair
Rep. McBurney, Vice-Chair*

Corrections PPP Overview:

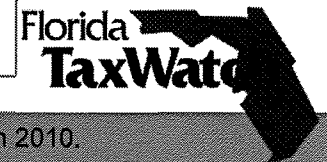
- Used by federal, state and local authorities since the 1980s.
- Significant growth since 2000:
 - b/n 2000-05, the number of PPP prisons & community corrections facilities rose 51%, from 264 in 2000 to 415 in 2005. (USDOJ)
 - 2000-2009 increase in total population: 43% Federal / 12% State
 - 2000-2009 increase in PPP beds: 120% Federal / 32% State

Year	Total Federal Prison Population	Federal Population in Private Facilities	% Federal Population in Private Facilities	Total State Prison Population	State Population in Private Facilities	% State Population in Private Facilities
2000	145,416	15,524	10.7%	1,245,845	71,845	5.8%
2001	156,993	19,251	12.3%	1,247,039	72,577	5.8%
2002	163,528	20,274	12.4%	1,276,616	73,638	5.8%
2003	173,059	21,865	12.6%	1,295,542	73,842	5.7%
2004	180,328	24,768	13.7%	1,316,772	73,860	5.6%
2005	187,618	27,046	14.4%	1,340,311	80,894	6.0%
2006	193,046	27,726	14.4%	1,376,899	85,971	6.2%
2007	199,618	31,310	15.7%	1,398,627	92,632	6.6%
2008	201,280	33,162	16.5%	1,408,479	96,320	6.8%
2009	208,118	34,087	16.4%	1,405,622	95,249	6.8%

Corrections PPP Overview: State Use of PPP Prison Capacity (2010)



Source: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2009 Report*, adjusted for contracts announced in 2010.

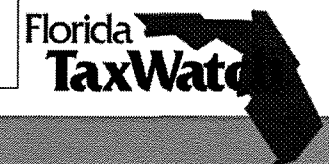
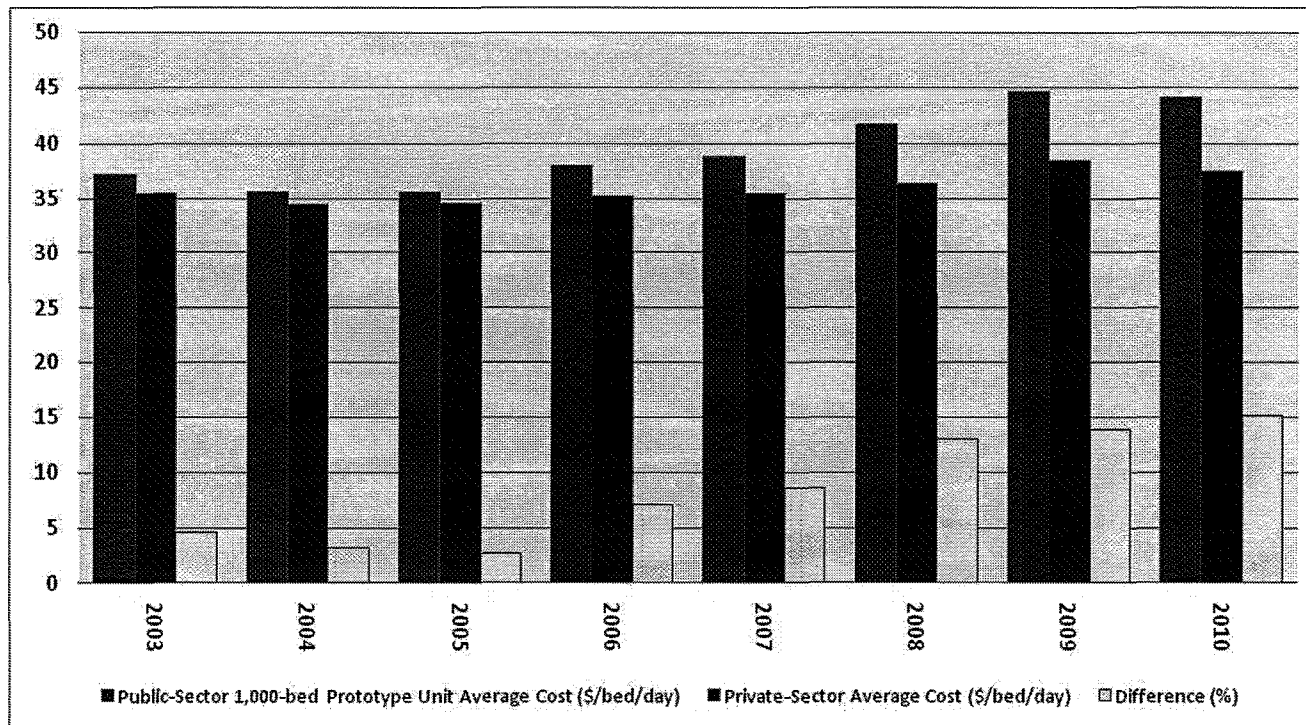


Corrections PPP Overview: Where are States Using Corrections PPPs?

- *Correctional facility operations*
 - Operating contracts for existing state facilities
 - Contracted beds in privately owned/operated prisons (in-state and out-of-state)
 - Accelerated delivery of “greenfield” (new-build) facilities; public debt avoidance; capital and operational savings
- *Healthcare*
 - Correctional system medical, dental, mental health services
- *Substance abuse and treatment programs*
- *Educational/vocational programs*
- *Probation and parole services*
- *Food services*
- *Facility maintenance, transportation*

Cost Savings through Corrections PPPs: Texas

- Avg. per-diems in state-run prisons have ranged between 7-26% higher than the average costs of private facility operation since 1997 (15% avg).
- Comparator prison analysis: since 2003, per diems in privately-operated prisons have ranged between 3-15% lower than those in a comparable state-run facility (1,000-bed prototype).



Source: Texas Legislative Budget Board, *Criminal Justice Uniform Cost Report*, various editions.

Cost Savings through Corrections PPPs: 2010 Florida PPP Cost Comparison

- Under current Florida law, privatization of prison operations cannot be approved without a minimum cost savings of 7%.
- 2010 Florida DMS procurement—four state prisons:
 - DMS team set benchmark per diem based on costs at comparable state facilities—bid threshold set at 7% below
 - Winning bids: cost savings range between 14-27%

Facility	# of Beds	Comparable State Per Diem Cost	Private Operator Per Diem Cost	% Cost Savings	Annual Cost Savings	3-Year Cost Savings
Bay Correctional Facility	985	\$57.52	\$48.05	16%	\$3,404,702	\$10,214,105
Gadsden Correctional Facility	1,520	\$54.85	\$45.97	16%	\$4,926,624	\$14,779,872
Graceville Correctional Facility	1,884	\$47.02	\$34.37	27%	\$8,698,899	\$26,096,697
Moore Haven Correctional Facility	985	\$56.19	\$48.36	14%	\$2,815,081	\$8,445,242
TOTAL					\$19,845,306	\$59,535,917

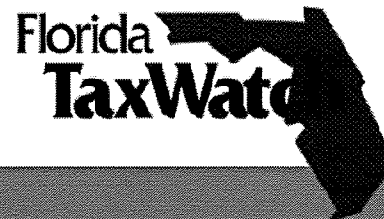
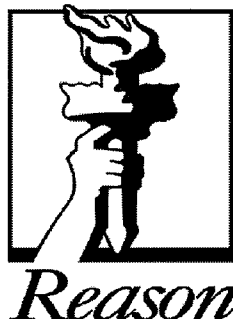
Source: Florida Department of Management Services

Several Layers of Accountability in Corrections PPPs

- **Contractual requirements**
 - contracts specify operating standards, accreditation mandates, and other aspects of service delivery deemed critical by public sector
 - compliance with accreditation standards (e.g., American Correctional Assn, National Comm. on Correctional Healthcare, etc.)
- **Government contract monitoring**
 - corrections PPPs typically utilize on-site, government contract monitors
- **Policymakers**
 - elected officials exert control through lawmaking, budgeting, rulemaking, legislative hearings and oversight, etc.
- **Internal audits**
 - Private partners have a vested financial interest in ensuring proper performance; use internal auditing and review teams, contract compliance reviews, etc to ensure performance and quality controls
- **Shareholders**
 - companies' ability to attract investors and obtain credit is predicated on their overall business viability through their delivery of quality services

Corrections 2.0: Creating a Continuum of Care in Corrections through PPPs

- Corrections 2.0 Proposal—Continuum of Care through PPPs
 - *Written by Leonard Gilroy, AICP, Director of Government Reform at the Reason Foundation & Co-sponsored by Florida TaxWatch*
 - Central focus on *rehabilitation & successful re-entry to society*
 - Coordinated delivery of most or all correctional services within a region
 - Contract designed to hold providers accountable for reducing recidivism; achieving high performance in offender outcomes
 - Rehab/programs customized to each inmate and follow the inmate across continuum—designed to ensure inmates are in the *right place* at the *right time* for the *right programs*



Focusing PPPs on What Works in Offender Rehabilitation

Kevin A. Wright, WA State University, *Journal of Offender Rehabilitation* (April 2010):

- *leverage the power of PPPs and performance-based contracts to improve rehabilitation & increase use of proven methods of reducing recidivism and successfully reintegrating offenders back into society.*
- *“Private prisons [present] the unique opportunity for innovation in corrections through the use of contracts that emphasize principles of effective intervention and programs that work.”*
- *“...the privatization of prisons can serve as the vehicle that the rehabilitation effort has searched for in its revivification [...] In essence, it appears that private prisons and the rehabilitative ideal would be the perfect marriage for corrections.”*

Proposed Model: Corrections Continuum of Care PPPs

- Would bundle the delivery of most or all correctional services within an entire DOC region through PPPs.
- Pilot implementation in 1-2 DOC regions, partnering with different operators (teams) in each to maximize competition, mitigate risks.
- 10-year, performance-based contract—contractual responsibility for demonstrably reducing recidivism over the contract.
- DOC would issue an “invitation to negotiate” asking respondents to submit their qualifications and a 10-year conceptual plan for implementation.
- Proposals would be evaluated based on:
 - Maximizing the use of state resources;
 - Cost savings;
 - Increases/decreases in the number and operation of existing facilities; and
 - Implementing best practices in care, service delivery and programming.
- Would require statutory authority for DOC/state to implement regionalized, continuum of care PPPs.
- Could exclude or limit the private sector operation of maximum security prisons/units; other sensitive facilities

Potential Benefits of Continuum of Care PPPs in Corrections

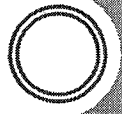
- **Cost Savings**
 - Though typical savings through PPPs exceed 10%, COC PPPs would be more complex—savings between 7-10% are more realistic
- **Lower Recidivism and Improved Performance**
 - More coherent, individualized rehabilitation plans that follow inmates
 - Contractual focus on improved outcomes and reduced recidivism
- **Improved Tracking and Management of Offenders**
 - PPPs would include state-of-the-art tracking systems and databases to follow offenders throughout the continuum.
 - inherent flexibility to move personnel and facilities around in a nimble way to adapt and tailor an individual's changing rehabilitation needs.
- **“Bundling” for Better Value**
 - Governments maturing in their use of privatization; finding greater economies of scale, cost savings and/or value for money through bundling several—or even all—services in a given agency or agency subdivision into a PPP initiative, rather than treating individual services or functions separately.

Continuum of Care PPPs: Florida Case Study

- Estimated annual cost savings through continuum of care PPP approach (conservative estimate @ 7-10%):
 - FDOC Region I: \$41.8M - \$59.7M
 - FDOC Region IV: \$29.3M - \$41.9M
 - Both regions: \$71.1M - \$101.6M

	FDOC Region I	FDOC Region IV	Combined FDOC Regions I & IV
Number of Correctional Facilities	37	34	71
Inmate Population (October 2010)	32,960	21,028	53,988
Inmate Population held in Privately Operated Facilities	4,905	2,829	7,734
% of Inmate Population held in Privately Operated Facilities	14.9%	13.5%	14.3%
Estimated Annual Correctional Facilities Cost	\$545,572,731	\$367,795,601	\$913,368,331
Offenders under Community Supervision	36,366	37,958	74,324
Estimated Annual Community Corrections Cost	\$51,700,601	\$51,735,165	\$103,435,766
Total Estimated Annual Cost	\$597,273,332	\$419,530,765	\$1,016,804,097
Estimated Continuum of Care PPP Cost Savings (7%)	\$41,809,133	\$29,367,154	\$71,176,287
Estimated Continuum of Care PPP Cost Savings (10%)	\$59,727,333	\$41,953,077	\$101,680,410
Total Estimated 10-Year Cost	\$5,972,733,317	\$4,195,307,654	\$10,168,040,971
Estimated 10-Year Continuum of Care PPP Cost Savings (7%)	\$418,091,332	\$293,671,536	\$711,762,868
Estimated 10-Year Continuum of Care PPP Cost Savings (10%)	\$597,273,332	\$419,530,765	\$1,016,804,097

THANK YOU





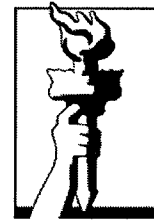
Corrections 2.0: A Proposal to Create a Continuum of Care in Corrections through Public-Private Partnerships

by Leonard C. Gilroy and Adrian T. Moore, Ph.D.



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Part 1

Introduction

State fiscal crises are driving change in correctional systems. In recent years, states like Texas, Rhode Island and California have begun transformational shifts in corrections—applying strategies like the expansion of residential and community-based treatment and diversion programs, the adoption of sentencing reforms, and the increased use of out-of-state privately operated prisons—to help address some major challenges, including the need to reduce expenditures amid budget pressures, the need to target chronically high recidivism rates, and the need to avoid major capital expenditures on new prisons and other facilities. In short, fiscal crises are presenting an opportunity for state policymakers and corrections administrators to “think outside the box” in transforming and right-sizing correctional systems.

Current government correctional systems can be characterized as a fragmented collection of facilities and services—including prisons, halfway houses, probation systems, home monitoring, programming and rehabilitation—and offenders move between these facilities and services with little continuity of knowledge of their particular history and rehabilitation progress, leading to little accountability and poor results for the successful return of these individuals to society. Further, the facilities and services that comprise current systems are usually the legacy of policy decisions made years—even decades—ago and may not comport with the facility and service mix needed to improve performance of the system today and into the future. Given the disjointed nature of the current system, it should come as no surprise that recidivism is a persistent challenge, with offenders in most states more likely to return to prison than remain in free society upon release.

Corrections needs a new paradigm. This paper outlines a concept designed to target recidivism and drive cost reduction via a bold, new approach: a continuum of care through public-private partnerships (PPPs). PPPs are simply government contracts with private sector prison operators or service vendors to provide a range of correctional services—from financing, building and operating prisons to delivering a range of inmate services (e.g., health care, food, rehabilitation services) and administrative/operational support functions (e.g., facility maintenance, transportation and information technology).

PPPs provide an effective, cost-saving alternative for governments seeking to improve outcomes while taking pressure off their corrections budgets. While not a panacea, their expanded use through an integrated, continuum of care approach could play a major role in lowering costs and improving service delivery and system performance.

Part 2

Toward a New Model in Corrections

In the current correctional system, services designed to reduce recidivism are poorly coordinated across an inmate's entire experience with the justice system. Identifying solutions that might work for an inmate may begin as early as during the trial, but that information does not pass on into evaluations conducted once an inmate enters a secure facility. Likewise, what programs the inmate may participate in while serving his sentence are typically not coordinated with those in pre-release facilities and certainly not with post-release supervision.

Applying a *continuum of care* approach within a state correctional system would solve this challenge and maximize programming's effects on recidivism. It would coordinate and link evaluations, programs and resources for an inmate across all facilities and levels of care. So once an inmate is evaluated and a programming plan is established, all information about the success or failure of his programs, modifications and the resources for the programs he participates in follow the inmate to whatever facility or level of care he goes to, until he leaves the justice system. This accomplishes several things:

- Coordinating programs over the entire span of time the inmate is in the justice system maximizes the effect of the care and programming he receives. Piecemeal programming dramatically reduces the effect. When programming works in concert with previous care and moves deliberately through a succession of goals, the results can be dramatically improved.
- Successful programming requires continuous evaluation and modification when necessary. But typically each time an inmate moves to a new facility or to a new level of care, the process begins all over again, or he is plugged into what programs exist there with little regard to his needs or his previous programming plan. Preventing these disruptions and even sudden changes in programming is crucial to success, and continuum of care is the proper tool to manage that.
- A continuum of care approach would use resources much more effectively. First, resources are customized to each inmate and follow the inmate rather than him being top loaded into generic, facility-based programs regardless of his changing needs. Second, spending a lot of resources on uneven, uncoordinated programming for an inmate across various facilities and levels of care delivers a poor return on expenditures—the results fail to justify the high costs of programming. Coordination across a continuum of care would maximize the value of every tax dollar spent.

- By using only those programs that serve the goal, the continuum of care uses fewer facilities, resulting in better use of resources. Typical programming plans are based on available facilities and services targeting general inmate needs, rather than individual inmates' specific, evaluated needs. Better planning and programming through a continuum of care would place inmates in the right facilities at the right time, targeting the specific programming they need to get the maximum effect. Ideally this allows various specialized programming to be concentrated rather than dispersed across facilities, and inmates to be allocated accordingly to get the best effect from the programming and the most efficient use of resources.

The current correctional system structure is antithetical to the continuum of care approach because the various aspects of incarceration are not designed to coordinate with each other. Programming is developed independent of facility management or funding. Inmates are moved without regard for programming needs. Pre- and post-release facilities and services are also separately managed and funded, and have their own goals and priorities that do not include coordinating with or following through on programming begun during incarceration. While inmate programs attempt to reform inmate behavior, the fragmented structure of the current system presents a significant obstacle to achieving that goal.

However, public-private partnerships (PPPs) could provide integrated facilities and services for an organized continuum of care. A PPP that included all levels of care for, say, a region of a state—including post-release services—would give the private manager the flexibility and the incentives to provide a thorough continuum of care, coordinating programming and management decisions to optimize outcomes. The private partner or partners could consolidate and reorganize facilities and programs to ensure inmates are always in *the right place at the right time for the right programs*, continuously evaluating, modifying and coordinating programming as appropriate. Further, contract incentives based on programming success and even recidivism rates would align the common goals of the general public and private partners to reforming more offenders, as described in the following section.

Part 3

Corrections 2.0: A Proposal to Create a Continuum of Care in Corrections through Public-Private Partnerships

A. The Proposed Model: PPPs for a Corrections Continuum of Care

States are already making extensive use of competition in corrections, though on a piecemeal, unintegrated basis. Over 20 states house inmates in privately operated correctional facilities, either in state or out of state (see map in Appendix A). Private involvement in community corrections—such as operating low-security work-release or halfway-house facilities—is a long-standing tradition in the United States. Many states have outsourced some or all of the provision of correctional health care, food, transportation and other services essential to successful system operation. In addition, state governments have traditionally let contracts with for-profit and nonprofit providers for services that include substance abuse counseling, assessment and treatment of sexual offenders, and vocational training and placement.

The next evolution in correctional PPPs will involve putting these pieces together in a more integrated fashion to develop a continuum of care in corrections and reorient the system toward performance and value per dollar spent. Rather than operating individual facilities and programs independently, a continuum of care PPP would provide the delivery of most or all correctional services within an entire state department of corrections (DOC) region, including:

- the operation of prisons, community corrections facilities, halfway houses, work camps and similar facilities;
- the operation of reception/intake centers;
- probation and parole services;
- substance abuse treatment, education, rehabilitation, vocational and other programming for offenders;
- correctional medical, behavioral health and dental care; and
- building maintenance, custodial, transportation and other internal correctional system services.

To initiate a continuum of care PPP, a state DOC would issue an “invitation to negotiate” asking potential private partners to submit their qualifications and a 10-year conceptual plan to provide an integrated continuum of care within a DOC region (or regions). Proposals would be evaluated based on the respondent’s ability to maximize the use of state resources, deliver cost savings, increase or decrease the number and operation of existing facilities as necessary, and implement best practices in correctional care, service delivery and programming. The PPP could also be designed to exclude or limit the private sector operation of certain maximum security prisons or units (e.g., death row) or other sensitive facilities for which policymakers may prefer ongoing public sector operation. The PPP could also give the DOC the flexibility to further subdivide regions into smaller districts if necessary to enhance the likelihood of competition and ultimate success for the continuum of care model.

A viable structure for a region-level continuum of care PPP would be a 10-year, performance-based contract designed not only to ensure a high quality of care in adherence with nationally recognized standards (e.g., accreditation of facilities, health care, etc.), but to also place a contractual responsibility on the private operator for demonstrably reducing recidivism in the region over time. Driving change in any system can take years, but a 10-year contract timeframe provides a reasonable window within which targeted recidivism rate reductions could be achieved by the private operator and validated by the state. However, the contract should also facilitate the ability for the state and its private partner to periodically amend terms based on changing conditions, lessons learned or unanticipated needs that may arise early during contract implementation.

It is important to note that any one individual corrections management company will not offer every single service that would be required under a continuum of care PPP. Rather, the global experience in PPPs in transportation and social infrastructure shows that companies typically partner with other firms to provide specialized services not available in-house, adopting a team approach by bidding together as one consortium for a PPP procurement.

To move forward, policymakers would need to grant statutory authority for a DOC to undertake the necessary internal reorganization and implement regionalized, continuum of care PPPs. Depending on the state, number and character of DOC regions and other regional considerations, policymakers may find it advantageous to consider using this approach in multiple regions in a pilot implementation, partnering with different operators in each to maximize competition and mitigate implementation risks from the DOC’s vantage point. Piloting the continuum of care PPP model in one or two regions would keep the implementation limited and manageable in scope while still applying it at a scale large enough for private operators to realize significant economies of scale in service delivery. Further, state DOC officials would have the flexibility to modify implementation as needed to improve the model midstream, incorporating lessons and best practices learned from a comparative analysis of multiple vendors’ performance and outcomes.

Though no state has yet adopted a continuum of care PPP model for correctional systems, there is certainly precedent in other states for large-scale adoption of correctional PPPs. For example, New Mexico contracted out 45% of its correctional system under the administration of former Gov. Gary Johnson, and a 2003 study by the Rio Grande Foundation surveyed prison expenditures in 46

states and found that public sector facilities in New Mexico were spending \$9,660 dollars per prisoner per year less than peer states that had no privately operated correctional facilities.¹ As former Gov. Johnson explained in a 2010 Reason.tv interview:²

[i]n New Mexico we had over 600 prisoners housed out of state, we were under a federal court order—federal consent decree—regarding our prisons and how they should be run. I ended up—as a result of a legislature that was not wanting to address this issue—ended up privatizing over half of the state's prisons. Comparing apples to apples, the private side produced the same goods and services for two-thirds the price. To me that was good government.

B. Benefits of the Continuum of Care PPP Approach

Adopting a continuum of care PPP model in corrections offers a wide range of potential benefits to the state and taxpayers, including lower costs, reduced recidivism, improved system performance and better value through service integration.

1. Cost Savings through PPPs

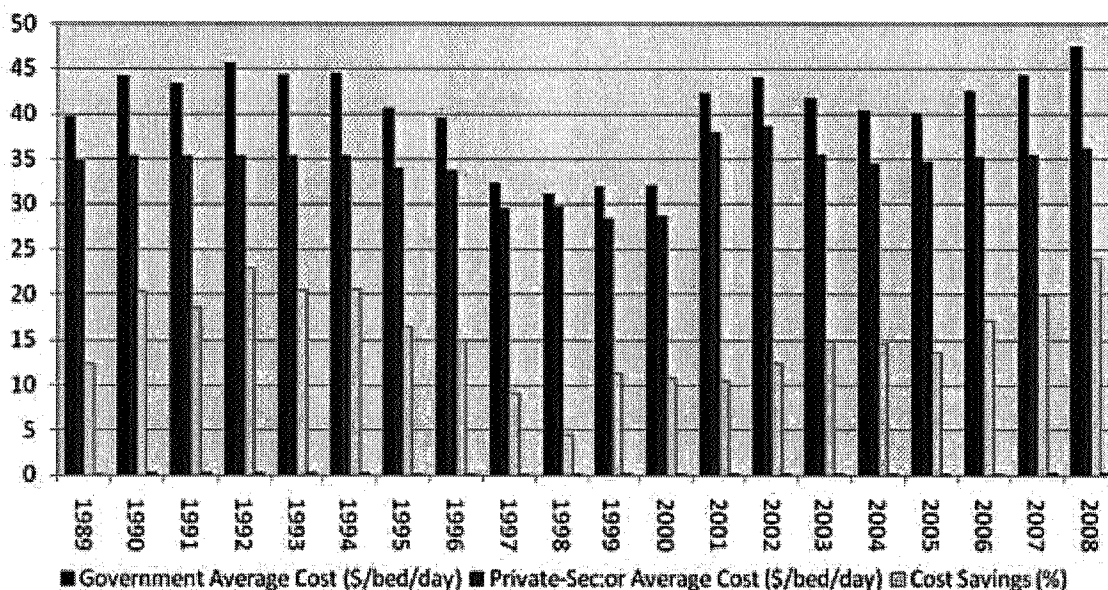
There is abundant academic and government research demonstrating that private corrections providers can operate correctional facilities at a lower cost than government-run facilities. The best long-term trend data comes from the Texas Legislative Budget Board's biannual cost comparison study of public and private sector prison operations, which shows that cost savings in PPP prisons have averaged 15% annually between 1989 and 2008 (ranging between 4% and 24%).³ As shown in Figure 1, the average daily cost of operation in privately operated prisons has never exceeded the comparable costs in government-run prisons since 1989. In 2008, operating costs per inmate per day in public and private sector prisons were \$47.50 and \$36.10, respectively, representing a savings of 24%.⁴ It is noteworthy that Texas spent about the same per inmate, on average, in both public and private facilities in 1989 as it does today, despite inflation and escalating costs.

Other notable research on cost savings through correctional PPPs include:

- A 2002 Reason Foundation study reviewed 28 academic and government studies on corrections PPPs and found that private corrections companies saved up to 23% in daily operating costs over comparable government-run systems.⁵ The studies reviewed support a conservative estimate that private facilities offer cost savings of between 10% and 15% over their public sector counterparts.
- A 2009 Avondale Partners survey of 30 state correctional agencies found that in states currently using private sector services, the average daily savings for partnership prisons was 28%.⁶
- A December 2008 Vanderbilt University study found that states that contracted with private corrections companies significantly reduced their overall prison expenditures compared to states that did not.⁷ According to researcher James Blumstein, “The

fundamental conclusion is that, over that six-year period, states that had some of their prisoners in privately owned or operated prisons experienced lower rates of growth in the cost of housing their public prisoners—savings in addition to direct cost savings from using the private sector.” In addition to saving money at privately operated prisons, the study found that public facilities that remain under state operation also had reduced costs, a likely result of competition.

Figure 1: State of Texas Cost Comparison Data: Private v. Government Prison Provision



Source: 1989-2003 data: Texas Criminal Justice Policy Council. 2004-2008 data: Texas Legislative Budget Board, *Criminal Justice Uniform Cost Report*, various editions.

Given that the initial transition of a state DOC region to a continuum of care PPP model would involve complex integration and operational issues, cost savings through PPPs would likely start small and increase incrementally over time as the model is refined and unanticipated transition issues are resolved. A typical scenario might involve cost savings of 0% to 2% in the early years of the contract, ramping up to a 5% to 15% cost savings level by year 10. States can define their targeted level of cost savings up front, inviting private bidders to compete to lower costs beyond a minimum threshold. Further, contracts would be established on a fixed-price basis, ensuring long-term predictability in fiscal planning for the state.

2. Lower Recidivism and Improved Performance

Current state correctional systems are under stress and will be increasingly pressured to safely reintegrate growing numbers of offenders back into society on tighter budgets. Further, the fragmented nature of the typical state corrections system presents a significant barrier to lowering recidivism, as discussed in the previous section of this report.

Expanding private involvement in providing services to inmates throughout incarceration and after release can bring a new wave of innovation, as private correctional management companies have a well-established track record in providing effective rehabilitation, education and post-release programs aimed at reintegrating inmates into the community and reducing recidivism rates.

Shifting to a continuum of care PPP model and contracting for recidivism reduction would facilitate the development of more coherent, individualized rehabilitation plans that follow offenders as they move throughout the system, from reception center to prison to home. The private operator would be required to tailor rehabilitation programs to the individual and would be contractually accountable for ensuring high performance in tracking and working with offenders to successfully move them through the corrections cycle and back to society.

Further, under the continuum of care PPP model, the contract would be structured with an explicit focus on reducing recidivism. The United Kingdom can serve as a model in this regard, as it has shifted from a predominantly public system to one in which both public and private sector providers deliver community corrections services. Notably, it relies on performance-based contracts with public and private providers alike that tie payments to precise benchmarks and outcome-based measures of recidivism and public safety. So far, the use of PPPs in community corrections is having a positive effect on rates of recidivism in the U.K.; one recent study found that the recidivism rate had decreased 10.7%, from 43.7% of total offenders released in 2000 to 39% in 2006.⁸

In the proposed PPP model, a contractual mandate to reduce recidivism would drive companies to innovate in areas like drug and alcohol rehabilitation therapy, behavioral programs, and educational and vocational training. These programs not only make the prisons themselves safer but also save even more taxpayer dollars by lowering crime rates, judicial costs and further incarceration—and the private sector is often faster to embrace innovations in evidence-based service delivery methods. Overall, contracting with recidivism reduction as a central aim would properly align private sector economic incentives with public sector performance goals.

While reducing recidivism, PPPs can also improve system efficiency by controlling legal liabilities, reducing use of overtime, managing to prevent injuries and workers' compensation liabilities, and improving labor productivity. Moreover, as the aforementioned Vanderbilt University study suggests, private sector competition drives efficiency in the public sector corrections marketplace, because government facilities are pressured to become more efficient and to provide better services to compete with private corrections management companies. In other words, introducing privatization creates a competitive "tension in the system" that acts as a rising tide to improve the performance of both the public and private sector.

Outside of the corrections sector, a recent Florida legislative study on the operation of its three state psychiatric hospitals—including the privately operated South Florida State Hospital—provides strong evidence suggesting that large-scale privatization can drive both cost savings and improved *public sector* service delivery. In February 2010, the Florida Legislature's Office of Program Policy

Analysis and Government Accountability (OPPAGA) issued a report showing that SFSH's per bed costs were 6% to 14% lower than two state-run facilities and that the quality of care was similar. Because of better utilization SFSH was 39% to 48% less costly per person served than the two state-run facilities, even though the public facilities have significant economies of scale, with 46% to 83% more beds. The disparities in cost and quality had previously been larger but Florida's state-run hospitals have improved considerably since competition was introduced via the SFSH partnership in 1998. Indeed, introducing privatization seems to have had a positive effect on costs and quality of care throughout the state system, and similar results would be expected through continuum of care PPPs in corrections.

3. Improved Tracking and Management of Offenders

One of the major benefits of a continuum of care PPP model is the inherent flexibility to move personnel and facilities around in a nimble way that improves system efficiency, while also giving the private partner the ability to quickly adapt and tailor an individual's rehabilitation needs based on changing circumstances. It is difficult for many state corrections agencies to operate in this fashion, given inflexibility in personnel rules and operating policies and procedures.

Private partners would be required to implement and maintain state-of-the-art tracking systems and a comprehensive electronic database to follow offenders throughout the continuum, from intake to prison to post-release rehabilitation and reintegration into the community. This system would track an inmate's progression throughout the continuum of care, ensuring a continuity of knowledge and tracking the provider's success in rehabilitating and reintegrating offenders post-release.

Further, because their contracts are tied to performance, private operators would ensure that rehabilitation, educational, vocational and substance abuse programs are provided throughout the continuum of care within a region, thus maximizing the use of resources and enhancing the likelihood of successfully reintegrating offenders into the community and reducing recidivism rates.

4. "Bundling" for Better Value

Shifting to a bundled, region-wide PPP approach may at first appear to be a daunting endeavor, and indeed the shift would be unprecedented in the United States. However, in reality the concept reflects an ongoing trend of governments increasingly maturing in their sophistication with privatization and finding greater economies of scale, cost savings and/or value for money through bundling several—or even all—services in a given agency or agency subdivision (e.g., facility management and maintenance) into a PPP initiative, rather than treat individual services or functions separately.

There are many notable examples outside the world of correctional PPPs. At the municipal level, three new cities have been established in metropolitan Atlanta since 2005 that have relied on private contractors to perform almost all city functions outside of police and fire services. On a smaller scale, the two Florida cities of Bonita Springs and Pembroke Pines have both privatized all

of their community development services (planning, zoning, permitting, code enforcement, etc.) since 2008, and Centennial, Colorado privatized its public works department that year.

States offer other examples. For instance, Virginia and Florida have both made major shifts from piecemeal Interstate and highway maintenance contracting toward bundled maintenance PPPs in recent decades. The Florida Department of Transportation currently has nearly three dozen “total asset management” contracts covering a broad spectrum of highway maintenance activities across all manner of geographies, e.g., specific Interstate segments, entire stretches of Interstate, entire FDOT districts, bundles of highway segments, toll roads, etc. For 28 of those contracts, FDOT estimates savings over in-house provision at 16%, and savings over traditional short-term maintenance contracting of 10%.⁹ It’s likely that the true savings are even higher. Those 28 bundled contracts would have been 980 discrete contracts had they been issued through traditional short-term maintenance contracting, and instead of the 348 invoices they process annually under the 28 contracts, the state would have processed over 11,000 annually under traditional contracting approaches.

Georgia has applied a similar model in corrections and secure-site facility maintenance. Georgia’s Department of Juvenile Justice (DJJ) began outsourcing facility maintenance at 30 of its 35 facilities in 2001, contracting with CGL Engineering Inc. for a comprehensive maintenance solution, marking the first successful state correctional system maintenance outsourcing to a private firm. The partnership was structured to provide a long-term maintenance solution without increasing the budget—in essence, the state was aiming to have the private partner tackle major corrective maintenance projects the state had been unable to address itself, all on the same maintenance budget that existed under state operation (i.e., doing more with the same resources).

To date, this partnership has generated significant improvement in facility conditions and resolved lingering maintenance needs, all while holding the budget flat. For the first six months of the contract, corrective maintenance work orders outnumbered preventive maintenance work orders as longstanding maintenance needs were addressed. After two full years of the contract, the equation had reversed: preventive maintenance work orders were almost double the corrective work orders. Significantly, the cost of preventive maintenance in the contract remained at year 2000 labor costs, the year before maintenance was outsourced. CGL also developed a computerized maintenance management system for all of the facilities as part of the initiative, dramatically improving budget and facility information management. Prior to this, the state did not collect this information.

This contract was viewed as such a success that policymakers subsequently decided to apply the same model beyond just DJJ, issuing a new contract covering maintenance at the 30 DJJ sites and an additional 18 secure-site facilities across two additional agencies—the Georgia Department of Corrections and the Georgia Bureau of Investigation. This multi-agency, multi-facility performance-based contracting approach is keeping maintenance budgets in check while helping the state tackle core facility maintenance challenges and do more with less.

The proposed continuum of care PPP model is similarly aimed at improving outcomes amid tightening budgets. States are already thinking big on PPPs in corrections—many state DOCs

already outsource healthcare, food, transportation and other services on an agency-wide or system-wide basis—so in effect, the proposed continuum of care PPP model can be viewed as an extension and integration of initiatives that many states are already doing on a more piecemeal basis.

C. Keys to Success

The continuum of care PPP model described in this section represents a new approach to corrections in the United States. However, because of the novel nature of the approach, ready-made templates for implementing continuum of care models do not yet exist and will require proper due diligence at every stage of program design and implementation. Some important keys to successful implementation include:

- ***Collaboration between the state DOC and the private sector:*** The collaborative development of a framework for the continuum care PPP between the state DOC and the private sector is a key to ultimate successful implementation of this innovative model. The state DOC should work collaboratively with the private sector to develop the continuum of care PPP framework, set measurable metrics and objectives, and craft a comprehensive implementation plan that combines private sector innovation and effective government oversight.
- ***Defining cost and performance metrics:*** Embracing continuum of care PPPs in corrections would be a major step forward in leveraging the private sector to effect systemic change in a state corrections agency and better performance at rehabilitating criminals. But to know what outcomes to contract for, the states will need a proper assessment of where they currently are and where they want to go.

Correctional systems in many states lack fundamental accountability and transparency. Because they lack a robust performance-based approach to measuring outcomes and results in the public sector, it is difficult—if not impossible—to get an accurate accounting of operational costs and performance at the individual facility level, much less across a system. This makes it difficult for state officials to answer even simple questions like, “how much does it cost to change a light bulb at State Prison X versus State Prison Y?”

The inability to answer these sorts of questions suggests that the officials and policymakers in charge of the corrections system may not have a clear sense of *what an efficient and effective prison even is*, given that what is not measured cannot be known. Without a clear sense of what the goal is, it is unsurprising that states are experiencing high recidivism rates.

For successful implementation of continuum of care PPPs, state DOC officials will need to undertake the proper upfront due diligence necessary to establish an accurate cost accounting at the facility level, evaluate how each facility is performing across a variety of service delivery metrics, and derive a clear and meaningful set of performance targets and desired outcomes that can be operationalized and incorporated into a PPP contract. Not only will this maximize a PPP’s likelihood of success, but this process would help

policymakers better distinguish between success and underperformance across all state facilities, whether operated by public or private entities.

- ***Using performance-based PPP contracts:*** Performance-based PPP contracts are a key means of capturing the broad range of service delivery goals that go beyond simple cost savings. The contractual mechanism in PPPs increases the incentive to produce high-quality work and ensure high performance. Indeed, the level of performance is firmly established in the contract. Generally, contracts should be performance-based (focusing on outputs or outcomes) and include quality control assurances. They allow governments to purchase results, not just process, rewarding the private firm only if specified quality and performance goals are met. This makes privatization even more dramatically a case of purchasing something fundamentally different from in-house services.

The power of a strong, performance-based contract should not be overlooked by public officials, who can incorporate quality assurances into service delivery—or incorporate quality controls into project delivery, in the case of new or expanded prison capacity built through PPPs—as ways of managing risk. Further, significant operational risks—perhaps most importantly, the risk of future service quality declines—can be minimized by incorporating financial penalties for underperformance into the contract. PPP contracts that involve building new correctional facilities should also transfer project delivery risks—including the risk of cost overruns and schedule slips—to the private partner, creating strong incentives for efficiency and performance in project delivery.

Because private corrections firms have to compete to win the right to manage a facility, they have a strong incentive to run efficient operations. They also have a greater incentive to meet quality standards for fear of losing their contract. These twin concerns give private firms the incentive to provide the same level or better of service and security that public prisons do while saving considerable taxpayer funds.

- ***Measuring and tracking performance:*** It is important to note that while the proposed continuum of care PPP model would change the DOC's role in a region's operation, it would not abdicate or eliminate it. Governments should never sign a PPP contract and walk away. Rather, a PPP is a *partnership* that outlines a framework and scope for the partners' roles on an ongoing basis. In a well-constructed PPP, the private partner's role is oriented toward innovation and delivering operational performance, while the public partner's role is oriented toward regulation, contract oversight and otherwise holding the private partner accountable for meeting the terms of the contract. This requires the public partner to develop and implement robust performance measurement and contract monitoring systems to ensure private sector compliance with contractual performance targets.
- ***Benchmarking performance across the entire system:*** The performance metrics delineated in the PPP contract have benefits that extend beyond the scope of the PPP contract itself. Not only can these performance metrics be used to evaluate the performance of a private operator in a region-level continuum of care PPP, but they can also be used to measure and

benchmark the performance of other regions. In time, this benchmarking and focus on managing for performance would likely lead to an overall improvement in the delivery of services by all regions system-wide—government-run and privately operated—contributing even further to the containment of overall costs throughout the corrections system.

Part 4

Continuum of Care PPP Example: Florida

As one of the largest state correctional systems, and one that already makes extensive use of PPPs in corrections, Florida provides a useful model for framing the cost savings benefits a state might realize through the use of correctional continuum of care PPPs.

With an inmate population of over 102,000 inmates, Florida has the third largest correctional system in the nation after California (174,000) and Texas (155,000).¹⁰ The state is responsible for overseeing the operation of 147 correctional facilities across four regions statewide that include prisons, work camps, treatment centers and work release centers. Of the state's 63 prison facilities, seven (or 11%) are currently operated under PPPs with private corrections management firms.¹¹ Additionally, the state is responsible for overseeing over 151,000 offenders under active community supervision.¹²

As a hypothetical model, of all of the Florida Department of Corrections (FDOC) regions, Regions I and IV would be logical choices to pilot a continuum of care PPP due to their already extensive use of privatization today. FDOC Region I, which covers the Florida panhandle, currently houses nearly 15% of its inmates in private prisons today, while FDOC Region IV, which covers south Florida, houses nearly 13.5% of its inmates in private prisons (see Table 1) and has partially privatized the delivery of correctional healthcare services.

Comparing private and governmental corrections services is sometimes more of an art than a science. Government agencies and private firms use different budgeting and accounting methods. Adjustments can help correct for many differences, but the result is a comparison of estimates, not specific expenditure data. Further, Florida and many other states often do not conduct activity-based costing at either the facility or regional level, requiring researchers to infer these costs using less direct means, as was the case here.

In order to provide the simplest and most direct estimates of current region-wide operating costs possible, we have chosen to rely on data from FDOC and the state budget to approximate the total annual operating costs for each FDOC region. As detailed in Appendix B, for each type of correctional facility within each FDOC region (e.g., prisons, reception centers, work camps, etc.), we multiplied the total population by the average per diem for that facility type (as reported in the fiscal year 2008–9 FDOC budget), aggregating them for a region-wide annual cost estimate for

correctional facilities. Similarly, for each category of community supervision within each FDOC region—probation, drug offender, community control, pre-trial intervention and post-prison release—we multiplied the total population by the average per diem for that type of supervision (using 2010 FDOC data), aggregating them for a region-wide annual cost estimate for community corrections. Adding the total regional correctional facility and community corrections costs together yields an estimated total annual cost of region operation. Total estimated annual costs for Regions I and IV were \$597.3 million and \$419.5 million, respectively (see Table 1).

With an estimate of the annual costs for Regions I and IV in hand, an estimate of potential cost savings through continuum of care PPPs became possible. As stated in the previous section, cost savings through correctional PPPs typically range from 5% to 15%. Given current Florida law requiring all private prison contracts to achieve a minimum 7% cost savings as a mandatory condition of approval, it was assumed that this would represent the minimum level of cost savings private corrections firms would be required to achieve in a continuum of care PPP.

However, given that a 7% cost savings level would be the minimum eligible bid, bidder competition would be expected to drive the actual contracted cost savings higher. Even though a 15% cost savings would be a realistic high-end estimate of savings based on current state experience (see discussion in previous section on cost savings through correctional PPPs in Texas and other states), we assumed a more conservative range of 7% to 10% cost savings for discussion purposes.

Table 1: Estimated 10-Year Continuum of Care PPP Cost Savings, FDOC Regions I & IV

	FDOC Region I	FDOC Region IV	Combined FDOC Regions I & IV
Number of Correctional Facilities	37	34	71
Inmate Population (October 2010)	32,960	21,028	53,988
Inmate Population held in Privately Operated Facilities	4,905	2,829	7,734
% of Inmate Population held in Privately Operated Facilities	14.9%	13.5%	14.3%
Estimated Annual Correctional Facilities Cost	\$545,572,731	\$367,795,601	\$913,368,331
Offenders under Community Supervision	36,366	37,958	74,324
Estimated Annual Community Corrections Cost	\$51,700,601	\$51,735,165	\$103,435,766
Total Estimated Annual Cost	\$597,273,332	\$419,530,765	\$1,016,804,097
Estimated Continuum of Care PPP Cost Savings (7%)	\$41,809,133	\$29,367,154	\$71,176,287
Estimated Continuum of Care PPP Cost Savings (10%)	\$59,727,333	\$41,953,077	\$101,680,410
Total Estimated 10-Year Cost	\$5,972,733,317	\$4,195,307,654	\$10,168,040,971
Estimated 10-Year Continuum of Care PPP Cost Savings (7%)	\$418,091,332	\$293,671,536	\$711,762,868
Estimated 10-Year Continuum of Care PPP Cost Savings (10%)	\$597,273,332	\$419,530,765	\$1,016,804,097

Sources: Number of Correctional Facilities: derived from Florida Department of Corrections, *Annual Statistics for Fiscal Year 2008-2009*, <http://www.dc.state.fl.us/pub/annual/0809/facil.html>, (accessed 12/16/2010). Inmate Population: Florida Department of Corrections, "End-of-Month Florida Prison Populations by Facility: October 2010," *Inmate Population by Facility for Fiscal Year 2010-2011*, <http://www.dc.state.fl.us/pub/pop/facility>, (accessed 12/16/2010). Offenders Under Community Supervision: Florida Department of Corrections, Bureau of Research and Data Analysis, *Florida's Community Supervision Population—Monthly Status Report (October 2010)*, pp. 5-8, <http://www.dc.state.fl.us/pub/spop/2010/10/1010.pdf>, (accessed 12/16/2010). Estimated Annual Correctional Facilities Cost & Estimated Annual Community Corrections Cost: Author's calculation (see Appendix B).

According to the analysis:

- For FDOC Region I, shifting to a continuum of care PPP model would be expected to reduce the annual costs of correctional facility operation and community corrections by \$41.8 million to \$59.7 million per year. Assuming an average annual 10% cost savings, a continuum of care PPP could potentially save the state \$597.3 million over a 10-year time frame.
- For FDOC Region IV, shifting to a continuum of care PPP model would be expected to reduce the annual costs of correctional facility operation and community corrections by \$29.4 million to \$41.9 million per year. Assuming an average annual 10% cost savings, a continuum of care PPP could potentially save the state \$419.5 million over a 10-year time frame.
- If applied in both Regions I and IV, shifting to a continuum of care PPP model would be expected to reduce the annual costs of correctional facility operation and community corrections by \$71.2 million to \$101.7 million per year. Assuming an average annual 10% cost savings, a continuum of care PPP could potentially save the state over \$1 billion over a 10-year time frame.

Potential savings could even be higher. The 10-year cost savings estimates are based on holding current annual costs constant each year, ignoring the likelihood of public sector cost inflation over a decade-long period. Also, an agency's budget normally does not include various central administrative and support expenses. For example, some state prison budgets do not include the cost of some medical services, legal services, risk management or personnel administration services, many of which are handled on a central accounting basis by other state agencies. Even within an agency budget, many costs may be borne by a central office that should actually be allocated to specific service units, facilities, etc. in a proper accounting scheme. To the extent that certain costs of correctional operation may fall outside of FDOC's agency budget, potential cost savings may be understated.

While a more thorough analysis of potential cost savings possible through continuum of care PPPs would require a full accounting of facility-level and service-level operating costs within each region, the estimates in this analysis suggest that implementing the proposed PPP model could lower the state corrections budget by \$419 million to over \$1 billion over a ten-year period, depending on whether officials chose to pursue PPPs in one region or both. Estimated cost savings of this magnitude—in addition to recidivism reduction and the other potential benefits of the proposed PPP model discussed in the previous section—offer a compelling reason for policymakers to consider embracing the approach.

Part 5

Conclusion

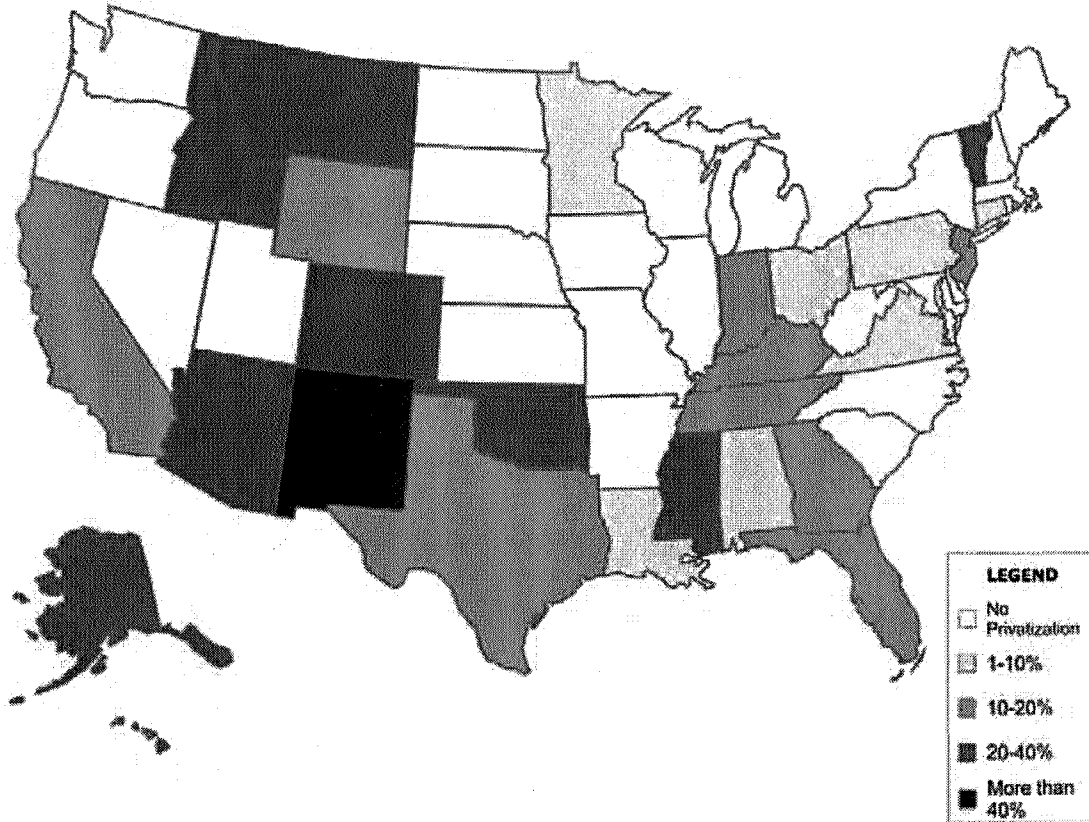
Since the introduction of corrections PPPs in the United States in the 1980s, governments at all levels have found that they can play a critical role in driving down corrections costs (5% to 15% on average, though sometimes far more), stretching limited tax dollars and improving the quality of prison services—and thus, of offender outcomes in terms of behavioral changes through rehabilitation. Expanding the use of PPPs to create a continuum of care in corrections—one that follows offenders from intake, through prisons and into post-release services—would create a more integrated and coordinated system of programming and management to provide as ideal a programming continuum as possible to optimize outcomes while lowering costs.

Given its current usage and experience with implementing correctional PPPs, Florida provides a useful example of the cost savings benefits a state might realize through the use of correctional continuum of care PPPs. As this analysis shows, shifting to a continuum of care PPP model in two regions of the state could reduce the annual costs of correctional facility operation and community corrections by \$71 million to \$102 million per year. Over a 10-year time frame, this adds up to approximately *\$1 billion in potential savings*.

In the current fiscal environment, the potential to achieve cost savings at this scale while improving offender outcomes should compel policymakers in Florida and other states to seriously consider adopting a continuum of care in corrections through PPPs. PPPs already have a long and successful track record at helping correctional agencies control costs, deliver high-quality inmate rehabilitation services, safely operate correctional institutions and—ultimately—curb recidivism and improve correctional outcomes. Extending the PPP model to create a continuum of care would better orient the system toward high performance and ensure that offenders are always in *the right place at the right time for the right programs* to maximize the likelihood of a successful return to society.

Appendix A

Figure A1: Estimated Correctional Privatization in the United States (2010)



Source: Author's calculation based on 2009 data from U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2009 Report, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf> (accessed December 27, 2010). 2009 state private prison population data were adjusted to reflect announcements of private prison activations and new private prison contracts in 2010 in the states of California, Florida, Georgia and Indiana.

Appendix B

Table B1: FDOC Region I: Estimated Annual Cost of Correctional Facilities

Facility Summary (1)	Total (1)	Population as of October 2010 (2)	Average Per Diem (3)	Estimated Annual Cost (4)
Correctional Institutions				
Apalachee CI (East & West Units)		1,925	\$42.31	\$29,728,064
Jefferson CI		1,118	\$42.31	\$17,265,442
Jackson CI		1,297	\$42.31	\$20,029,766
Calhoun CI		1,315	\$42.31	\$20,307,742
Century CI		1,429	\$42.31	\$22,068,261
Holmes CI		1,071	\$42.31	\$16,539,614
Walton CI		1,222	\$42.31	\$18,871,529
Gulf CI & Annex		2,837	\$42.31	\$43,812,217
Franklin CI		1,458	\$42.31	\$22,516,113
Okaloosa CI		954	\$42.31	\$14,732,765
Wakulla CI & Annex		2,899	\$42.31	\$44,769,692
Santa Rosa CI & Annex		2,644	\$42.31	\$40,831,689
Liberty CI & Quincy Annex		1,706	\$42.31	\$26,346,014
Total Correctional Institutions	13	21,875		\$337,818,906
Youth Custody				
Total Youth Custody	0	0	\$0.00	\$0
Reception Centers				
NWFRC - Main & Annex		2,012	\$85.94	\$63,112,617
Total Reception Centers	1	2,012		\$63,112,617
Work Camps, Boot Camps, Stand Alone Work/Forestry Camps, Treatment Centers				
River Junction WC		386	\$42.31	\$5,961,056
Liberty WC		271	\$42.31	\$4,185,094
Caryville WC		120	\$42.31	\$1,853,178
Graceville WC		275	\$42.31	\$4,246,866
Okaloosa WC		264	\$42.31	\$4,076,992
Holmes WC		314	\$42.31	\$4,849,149
Calhoun WC		280	\$42.31	\$4,324,082
Jackson WC		279	\$42.31	\$4,308,639
Century WC		239	\$42.31	\$3,690,913
Gulf Forestry Camp		280	\$42.31	\$4,324,082
Bay City WC		268	\$42.31	\$4,138,764
Walton WC		274	\$42.31	\$4,231,423
Wakulla WC		414	\$42.31	\$6,393,464
Berrydale Forestry Camp		123	\$42.31	\$1,899,507
Total Work Camps	14	3,787		\$58,483,209
Work Release Centers				
Panama WRC		67	\$30.80	\$753,214
Pensacola WRC		82	\$30.80	\$921,844
Tallahassee WRC		114	\$30.80	\$1,281,588

Table B1: FDOC Region I: Estimated Annual Cost of Correctional Facilities

Facility Summary (1)	Total (1)	Population as of October 2010 (2)	Average Per Diem (3)	Estimated Annual Cost (4)
SHISA House West		32	\$30.80	\$359,744
Total Work Release Centers	4	295		\$3,316,390
Road Prisons				
Tallahassee Road Prison		86	\$42.31	\$1,328,111
Total Road Prisons	1	86		\$1,328,111
Private Institutions				
Gadsden CI		1,503	\$45.53	\$24,977,530
Bay CF		974	\$45.53	\$16,186,370
Blackwater River CF		563	\$45.53	\$9,356,187
Graceville CF		1,865	\$45.53	\$30,993,409
Total Private Institutions	4	4,905		\$81,513,497
Region I Total	37	32,960		\$545,572,731

(1) Facility counts by facility type are drawn from Florida Department of Corrections, "Facilities," *Annual Statistics for Fiscal Year 2008-2009*, <http://www.dc.state.fl.us/pub/annual/0809/facil.html>, (accessed 12/16/2010).

(2) Inmate population counts drawn from Florida Department of Corrections, "End-of-Month Florida Prison Populations by Facility: October 2010," *Inmate Population by Facility for Fiscal Year 2010-2011*, <http://www.dc.state.fl.us/pub/pop/facility> (accessed 12/16/2010).

(3) Average per diem costs by facility type are drawn from Florida Department of Corrections, "Budget Summary," *Annual Statistics for Fiscal Year 2008-2009*, <http://www.dc.state.fl.us/pub/annual/0809/budget.html>, (accessed 12/16/2010).

(4) Estimated annual cost is calculated by multiplying actual October 2010 population counts by the average per diems (FY08-09) by facility type.

Table B2: Florida DOC Region I Community Corrections: Active Community Supervision Offender Population

Supervision Type	Total Annual Cost (FY2010-2011 Budget) (1)	Total Population (October 2010) (2)	Estimated Annual Cost Per Offender (3)	Region I Population (October 2010) (4)	Estimated Annual Cost for Region I (5)
Probation	\$125,678,002	109,692	\$1,146	25,993	\$29,781,099
Drug Offender	\$20,724,651	16,717	\$1,240	4,118	\$5,105,229
Community Control	\$33,595,479	10,636	\$3,159	2,886	\$9,115,885
Pre-Trial Intervention	\$4,430,182	9,331	\$475	1,920	\$911,580
Post-Prison Release	\$23,882,634	5,099	\$4,684	1,449	\$6,786,809
TOTAL	\$208,310,948	151,475	\$10,703	36,366	\$51,700,601

(1) Total annual cost by supervision type from FDOC enacted budget: Florida House of Representatives, Florida House Bill 5001 (Enrolled), Regular Session 2010, pp. 127-130,

http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=HB_5001_Enrolled.pdf&DocumentType=Bill&BillNumber=5001&Session=2010 (accessed December 20, 2010)."

(2) Total population counts by supervision type from Florida Department of Corrections, Bureau of Research and Data Analysis, Florida's Community Supervision Population: Monthly Status Report (October 2010), p.1, <http://www.dc.state.fl.us/pub/spop/2010/10/1010.pdf> (accessed December 20, 2010).

(3) Annual per-offender cost estimates are calculated by dividing Total Annual Cost (FY 2010-2011 Budget) by Total Population (October 2010) for each supervision type.

(4) Region I population counts by supervision type from Florida Department of Corrections, Bureau of Research and Data Analysis, Florida's Community Supervision Population: Monthly Status Report (October 2010), p.5, <http://www.dc.state.fl.us/pub/spop/2010/10/1010.pdf> (accessed December 20, 2010).

(5) Region I annual cost estimate is calculated by multiplying estimated annual cost per offender by the Region I actual October 2010 population by supervision type.

Table B3: FDOC Region IV: Estimated Annual Cost of Correctional Facilities

Facility Summary (1)	Total (1)	Population as of October 2010 (2)	Average Per Diem (3)	Estimated Annual Cost (4)
Correctional Institutions				
Everglades CI		1,636	\$42.31	\$25,264,993
Okeechobee CI		1,622	\$42.31	\$25,048,789
Glades CI		670	\$42.31	\$10,346,911
Homestead CI (Female)		670	\$69.30	\$16,947,315
Martin CI		1,293	\$42.31	\$19,967,993
Dade CI		1,574	\$42.31	\$24,307,518
Hardee CI		1,597	\$42.31	\$24,662,711
De Soto CI - Annex		1,453	\$42.31	\$22,438,897
Charlotte CI		963	\$42.31	\$14,871,753
Hendry CI		940	\$42.31	\$14,516,561
Total Correctional Institutions	10	12,418		\$198,373,441
Youth Custody				
Indian River CI		486	\$60.37	\$10,709,034
Total Youth Custody	1	486		\$10,709,034
Reception Centers				
So. Florida RC - Main & So. Units		1,466	\$85.94	\$45,985,635
Broward CI (Reception Center)		732	\$85.94	\$22,961,449
Total Reception Centers	2	2,198		\$68,947,084
Work Camps, Boot Camps, Stand Alone Work/Forestry Camps, Treatment Centers				
Martin WC		201	\$42.31	\$3,104,073
Glades WC		276	\$42.31	\$4,262,309
Sago Palm WC		223	\$42.31	\$3,443,822
Ft. Myers WC		117	\$42.31	\$1,806,849
De Soto WC		281	\$42.31	\$4,339,525
Hendry WC		257	\$42.31	\$3,968,890
Hardee WC		287	\$42.31	\$4,432,184
Total Work Camps	7	1,642		\$25,357,652
Work Release Centers				
Ft. Pierce WRC		81	\$30.80	\$910,602
Hollywood WRC		114	\$30.80	\$1,281,588
Atlantic WRC		42	\$30.80	\$472,164
Bradenton Transit Ctr (contract)		110	\$30.80	\$1,236,620
Pompano Transit Ctr (contract)		207	\$30.80	\$2,327,094
Bridges of Pompano (contract)		199	\$30.80	\$2,237,158
Miami North WRC		182	\$30.80	\$2,046,044
West Palm Beach WRC		141	\$30.80	\$1,585,122
Opa Locka WRC		132	\$30.80	\$1,483,944
Total Work Release Centers	9	1,208		\$13,580,336
Road Prisons				
Big Pine Key RP		62	\$42.31	\$957,475
Loxahatchee RP		89	\$42.31	\$1,374,440
Arcadia RP		96	\$42.31	\$1,482,542
Total Road Prisons	3	247		\$3,814,458
Private Institutions				
Moore Haven CF		979	\$45.53	\$16,269,463
South Bay CF		1850	\$45.53	\$30,744,133
Total Private Facilities	2	2,829		\$47,013,595
FDOC Region IV Total	34	21,028		\$367,795,601

(1) Facility counts by facility type are drawn from Florida Department of Corrections, "Facilities," Annual Statistics for Fiscal Year 2008-2009, <http://www.dc.state.fl.us/pub/annual/0809/facil.html>, (accessed 12/16/2010).

(2) Inmate population counts drawn from Florida Department of Corrections, "End-of-Month Florida Prison Populations by Facility: October 2010," Inmate Population by Facility for Fiscal Year 2010-2011, <http://www.dc.state.fl.us/pub/pop/facility> (accessed 12/16/2010).

(3) Average per diem costs by facility type are drawn from Florida Department of Corrections, "Budget Summary," Annual Statistics for Fiscal Year 2008-2009, <http://www.dc.state.fl.us/pub/annual/0809/budget.html>, (accessed 12/16/2010).

(4) Estimated annual cost is calculated by multiplying actual October 2010 population counts by the average per diems (FY08-09) by facility type.

Table B4: Florida DOC Region IV Community Corrections: Active Community Supervision Offender Population

Supervision Type	Total Annual Cost (FY2010-2011 Budget) (1)	Total Population (October 2010) (2)	Estimated Annual Cost Per Offender (3)	Region IV Population (October 2010) (4)	Estimated Annual Cost for Region IV (5)
Probation	\$125,678,002	109,692	\$1,146	28,884	\$33,093,420
Drug Offender	\$20,724,651	16,717	\$1,240	3,160	\$3,917,563
Community Control	\$33,595,479	10,636	\$3,159	2,235	\$7,059,599
Pre-Trial Intervention	\$4,430,182	9,331	\$475	2,273	\$1,079,177
Post-Prison Release	\$23,882,634	5,099	\$4,684	1,406	\$6,585,406
TOTAL	\$208,310,948	151,475	\$10,703	37,958	\$51,735,165

(1) Total annual cost by supervision type from FDOC enacted budget: Florida House of Representatives, Florida House Bill 5001 (Enrolled), Regular Session 2010, pp. 127-130,

http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=HB_5001_Enrolled.pdf&DocumentType=Bill&BillNumber=5001&Session=2010 (accessed December 20, 2010).

(2) Total population counts by supervision type from Florida Department of Corrections, Bureau of Research and Data Analysis, Florida's Community Supervision Population: Monthly Status Report (October 2010), p.1, <http://www.dc.state.fl.us/pub/spop/2010/10/1010.pdf> (accessed December 20, 2010).

(3) Annual per-offender cost estimates are calculated by dividing Total Annual Cost (FY 2010-2011 Budget) by Total Population (October 2010) for each supervision type.

(4) Region IV population counts by supervision type from Florida Department of Corrections, Bureau of Research and Data Analysis, Florida's Community Supervision Population: Monthly Status Report (October 2010), p.8, <http://www.dc.state.fl.us/pub/spop/2010/10/1010.pdf> (accessed December 20, 2010).

(5) Region IV annual cost estimate is calculated by multiplying estimated annual cost per offender by the Region IV actual October 2010 population by supervision type.

About the Authors

Leonard Gilroy, AICP is the director of government reform at Reason Foundation, a nonprofit think tank advancing free minds and free markets. Gilroy, a certified urban planner (AICP), researches privatization, government reform, transportation, infrastructure and urban policy issues. Gilroy has a diversified background in policy research and implementation, with particular emphases on public-private partnerships, competition, government efficiency, transparency, accountability and government performance. Gilroy has worked closely with legislators and elected officials in Texas, Arizona, Louisiana, New Jersey, Utah, Virginia, California and several other states in efforts to design and implement market-based policy approaches, improve government performance, enhance accountability in government programs and reduce government spending. He is currently serving as a member of Arizona's Commission on Privatization and Efficiency.

Gilroy is the editor of the well-respected privatization newsletter *Privatization Watch*, and is the editor of the widely read *Annual Privatization Report*, which examines trends and chronicles the experiences of local, state and federal governments in bringing competition to public services. His articles have been featured in such leading publications as *The Wall Street Journal*, *Los Angeles Times*, *New York Post*, *The Weekly Standard*, *Washington Times*, *Houston Chronicle*, *Atlanta Journal-Constitution*, *Arizona Republic*, *San Diego Union-Tribune*, *San Francisco Examiner*, *Philadelphia Inquirer* and *The Salt Lake Tribune*.

Adrian Moore, Ph.D., is vice president of research at Reason Foundation, a non-profit think tank advancing free minds and free markets. Moore oversees all of Reason's policy research and conducts his own research on topics such as privatization, government and regulatory reform, air quality, transportation and urban growth, prisons and utilities. Moore, who has testified before Congress on several occasions, regularly advises federal, state and local officials on ways to streamline government and reduce costs.

Moore is also co-author of *Curb Rights: A Foundation for Free Enterprise in Urban Transit*, published in 1997 by the Brookings Institution Press, as well as dozens of policy studies. His work has been published in the *Los Angeles Times*, *Boston Globe*, *Houston Chronicle*, *Atlanta Journal-Constitution*, *Orange County Register*, *The Independent Review*, *Economic Affairs*, *Public Policy and Management*, *Consumer Affairs* and numerous other publications.

In 2002, Moore was awarded a World Outsourcing Achievement Award by PricewaterhouseCoopers and Michael F. Corbett & Associates Ltd. for his work showing governments how to use public-private partnerships and the private sector to save taxpayer money and improve the efficiency of their agencies.

Prior to joining Reason, Moore served 10 years in the Army on active duty and reserves. As a noncommissioned officer he was accepted to Officers Candidate School and commissioned as an Infantry officer. He served in the United States and Germany and left the military as a Captain after commanding a Heavy Material Supply company.

Endnotes

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- ¹ Matthew Mitchell, *The Pros of Privately Housed Cons: New Evidence on the Cost Savings of Private Prisons*, (Albuquerque, NM: Rio Grande Foundation, 2003).
 - ² Reason.tv interview with Gary Johnson, “Gary Johnson’s Our America (Full-Length Version),” February 2010, available at <http://reason.tv/video/show/gary-johnson-full-interview>.
 - ³ Calculations in this section are based on an analysis of data prepared by the Texas Legislative Budget Board since 2004, which were formerly prepared by the Criminal Justice Policy Council for prior years. All data are available at: http://www.lbb.state.tx.us/PubSafety_CrimJustice/PubSafety_CrimJustice.htm.
 - ⁴ Texas Legislative Budget Board, *Criminal Justice Uniform Cost Report*, Fiscal Years 2006-2008, January 2009, http://www.lbb.state.tx.us/PubSafety_CrimJustice/PubSafety_CrimJustice.htm
 - ⁵ Geoffrey F. Segal and Adrian T. Moore, *Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services; Part II: Reviewing the Literature on Cost and Quality Comparisons* (Los Angeles, CA: Reason Foundation, 2002), <http://reason.org/files/50b944ab1f7d1cb15d8943c0c334df56.pdf>
 - ⁶ “Behind the Bars—An In-Depth View of the Corrections Industry,” Avondale Partners, LLC (March 2, 2009).
 - ⁷ James F. Blumstein, Mark A. Cohen and Suman Seth, “Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons,” (Nashville, TN: Vanderbilt University, 2007).
 - ⁸ Kate Mize, *Stopping the Revolving Door: Reform of Community Corrections in Wisconsin* (Madison, WI: Wisconsin Policy Research Institute, 2009), <http://www.wpri.org/Reports/Volume22/Vol22No5/Vol22No5.pdf>
 - ⁹ Shirley Ybarra, “Temporary Fix for Transportation Trust Fund: States should look to private sector for help building, maintaining infrastructure,” Reason Foundation, October 1, 2008, <http://reason.org/news/show/1003153.html>
 - ¹⁰ Florida population from Florida Department of Corrections, “End-of-Month Florida Prison Populations by Facility: October 2010,” Inmate Population by Facility for Fiscal Year 2010-2011, <http://www.dc.state.fl.us/pub/pop/facility>, (accessed 12/16/2010). California and Texas population data from American Correctional Association, 2009 Directory of Adult and Juvenile Correctional Departments, Institutions, Agencies, and Probation and Parole Authorities.
 - ¹¹ Florida Department of Corrections, Annual Statistics for Fiscal Year 2008-2009, <http://www.dc.state.fl.us/pub/annual/0809/facil.html>, (accessed 12/16/2010). The privately operated Blackwater River Correctional Facility in Milton, Florida was activated in October 2010 and has been added to the total facility count (146) referenced in this FDOC report.
 - ¹² Florida Department of Corrections, Bureau of Research and Data Analysis, Florida’s *Community Supervision Population—Monthly Status Report* (October 2010), p. 4, <http://www.dc.state.fl.us/pub/spop/2010/10/1010.pdf>, (accessed 12/16/2010).

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DEPARTMENT OF MANAGEMENT SERVICES




Private Prison Monitoring

March 24, 2011

House Judiciary Committee

DEPARTMENT OF MANAGEMENT SERVICES




Bureau of Private Prison Monitoring

Mission:
To promote program accountability and continuous improvement in private prison programs and services, in accordance with Chapter 957, F.S.

- Provide public safety to the citizens of Florida
- Ensure private contract will result in 7% cost savings over a public facility, as required by statute
- Provide effective oversight and management of private prison contracts
- Provide programs designed to reduce recidivism

DEPARTMENT OF MANAGEMENT SERVICES



History: Florida Prison Privatization

- **1991 – 1993: Department of Corrections**
 - 1991 - Legislature directed Department of Corrections to procure for the design, construction and operation of a correctional facility and achieve a savings of 10% below a public facility
 - During the 1993 Legislative session, the Correctional Privatization Commission (CPC) was created
 - 1995 - Gadsden Correctional Facility operational
 - Managed facilities: 1
 - Total private prison beds: 800

DEPARTMENT OF MANAGEMENT SERVICES

History: Florida Prison Privatization

- **1993 – 2004: Correctional Privatization Commission**
 - 1995 to 1997- Bay, Moore Haven, Lake City and South Bay
 - 1997 Polk and Pahokee were subleased to Department of Juvenile Justice
 - 1999- Transfer of oversight at the Gadsden CF to CPC
 - 2003 - Legislature tasked the CPC with an expansion of 1,086 beds
 - Effective July 1, 2004 the CPC dissolved
 - Oversight responsibility of the five (5) facilities was transferred to the Department of Management Services (DMS)
 - Managed facilities: 5
 - Total private prison beds: 4,304

DEPARTMENT OF MANAGEMENT SERVICES

History: Florida Prison Privatization

- **2004 – Present: Department of Management Services**
 - Private Prison Monitoring (PPM)
 - 2007 - Expansions at Bay, Gadsden, Lake City, Moore Haven and South Bay CFs
 - 2005 to 2009 - Design, construction and operation of a 1,500 adult male facility in Graceville + 384 bed expansion
 - 2008 - Design, construction and operation of a 2,000 bed adult male facility
 - Blackwater River CF opened October 5, 2010
 - Managed facilities: 7
 - Total private prison beds: 10,128

DEPARTMENT OF MANAGEMENT SERVICES

Operating Budget and Contract Funding

- **Total Managed facilities: 7**
 - Approximately 2,000 staff employed
- **Total private prison beds: 10,128**
 - Program 64% in Academic, Behavioral, Vocational and Substance Abuse

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Operating Budget and Contract Funding

- PPM's Operating Budget - DMS
 - 15 staff
 - Onsite contract monitors at each site
 - \$2.2 million operating budget
- Contract Funding - DC
 - FS § 957.15
 - PPM contract funding is appropriated to DC
 - FY 2010-11 \$159 million, FY 2011-12 \$170 million

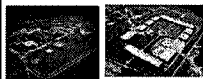

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Quick Facts

- Past three years-
 - \$7.5 million reverted to General Revenue
 - Vacancy deductions
 - Liquidated Damages
 - Onsite Contract monitor
- \$6.4 million in Inmate Welfare Trust Fund revenues

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Facility Comparison – Lowell/Gadsden

Lowell CI (Public)	Gadsden CF (Private)
Lowell CI Per Diem \$66.47 (\$54.85 used for procurement) (Inmate Capacity 2,794) <ul style="list-style-type: none">• Lowell Correctional Institution• Lowell Annex• Lowell Work Camp• Lowell Basic Training Unit• Levy Forestry Camp 	Gadsden CF Per Diem \$45.97 (Inmate Capacity 1,520) 

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Comparable Facility Per-diem Calculation

- DC sends information to the Auditor General
- Auditor General Certifies DC's per-diem cost
- DMS incorporates into procurement
- Private Prison Per-diem Workgroup, s. 957.07 (5)(a), F.S.

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Procurement and Contract per-diems

DC Facility (budget entry) + Auditor General Certified, DMS adjusted per-diem	DMS Facility and actual contract per-diem	DC	Lowell	\$54.85	16%
		DMS	Gadsden	\$45.97	
		DC	Brevard	\$67.54	10%
		DMS	Lake City	\$60.84	
		DC	New River	\$57.52	16%
		DMS	Bay	\$48.05	
		DC	Ochochobee	\$59.76	19%
		DMS	South Bay	\$48.16	
		DC	Wakulla	\$47.02	27%
		DMS	Graceville	\$34.37	
		DC	New River	\$56.19	14%
		DMS	Moore Haven	\$48.36	

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Recent Procurements

- Three of the four facilities changed operators:
 - **Bay** remained with Corrections Corporation of America (CCA)
 - **Gadsden (CCA)** → Management and Training Corporation
 - **Graceville** The GEO Group, Inc. (GEO) → CCA
 - **Moore Haven (GEO)** → CCA
- Reduced costs by \$1.5 million over FY 2009-10 rates
- Reduced pricing for multiple sites

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Contract Terms

- No medical caps
- Emergency response agreement between DC and Contractor
- 35 day vacancy deductions for Certified and non-certified staff
- More programming
- Inmate Services, video visiting, secure e-mail

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Contract Changes – Safety

- DC performs annual Unannounced Security Audits
- Since 2007
 - 61% decrease in total audit findings
 - 79% decrease in repeat audit findings
- State Law Enforcement Radio System (SLERS) subscriber
- DC providing regional emergency training with the Contractors

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Inmate Profiles and Transfer Agreements

- DC determines the inmate population at each private facility
- Population specifications are incorporated into procurement documents
- Transfer Agreements are signed between DMS, DC and the Private Prison contractor

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Monitoring Tool

- 300 indicators are examined
- Indicators are based on:
 - Contract Requirements
 - American Correctional Association Standards
 - Department of Corrections procedures
 - Chapter 33, F.A.C.
 - Various codes and requirements from local county health department, Fire Marshal, Department of Health, Department of Children and Families, Department of Education, and the Florida Department of Law Enforcement



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Contact

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