



Judiciary Committee

Wednesday, March 30, 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: Wednesday, March 30, 2011 08:00 am

End Date and Time: Wednesday, March 30, 2011 09:45 am

Location: 404 HOB

Duration: 1.75 hrs

Consideration of the following bill(s):

CS/HB 75 Offense of Sexting by Criminal Justice Subcommittee, Abruzzo
CS/HB 563 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence by Criminal Justice Subcommittee, Jones
HB 7095 Controlled Substances by Health & Human Services Committee, Schenck
HB 7119 District Courts of Appeal by Civil Justice Subcommittee, Passidomo
HB 7121 Offers of Settlement by Civil Justice Subcommittee, Soto
HB 7131 Seat Requirements by Criminal Justice Subcommittee, Campbell
HB 7133 Failure to Assist Officers at Polls by Criminal Justice Subcommittee, Pilon
HB 7137 County-operated Boot Camp Programs by Criminal Justice Subcommittee, Julien
HB 7141 Adulterated Syrup by Criminal Justice Subcommittee, Campbell
HB 7143 Public Health by Criminal Justice Subcommittee, Porth

NOTICE FINALIZED on 03/28/2011 16:14 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 75 Offense of Sexting
SPONSOR(S): Criminal Justice Subcommittee; Abruzzo
TIED BILLS: None IDEN./SIM. BILLS: SB 888

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, 11 Y, 0 N, As CS, Cunningham, Cunningham. Row 2: 2) Judiciary Committee, Cunningham, Havlicak, RH.

SUMMARY ANALYSIS

The act of electronically sending sexually explicit messages or photos of oneself is generally referred to as "sexting." There are no statutes that specifically address sexting. Under current law, a person who "sexts" another could be charged with one of the various statutes that prohibit the creation, possession, and transmission of child pornography.

In recent years, there have been increasing accounts of minors engaging in sexting. In 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after he sent a nude photograph of his then 16-year old girlfriend to his girlfriend's friends and family. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

The bill creates an un-numbered section of statute relating to the offense of sexting. It specifies that a minor commits sexting if he or she knowingly:

- (a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of himself or herself which depicts nudity and is harmful to minors; or
(b) Possesses a photograph or video that was transmitted or distributed by another minor as described in paragraph (a).

The bill provides the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.
- A minor commits a 2nd degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine, for a violation that occurs after being found to have committed a noncriminal sexting offense.
- A minor commits a 1st degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine, for a violation that occurs after being found to have committed a 2nd degree misdemeanor sexting offense.
- A minor commits a 3rd degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a violation that occurs after being found to have committed a 1st degree misdemeanor sexting offense.

On March 2, 2011, the Criminal Justice Impact Conference determined that SB 888, which contains provisions substantially similar to this bill, would have an insignificant prison bed impact on the Department of Corrections. The bill also creates new misdemeanor offenses which could impact local jails.

The bill is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Child Pornography Laws

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of child pornography. A summary of these laws follows:

Sexual Performance by a Child

Section 827.071(5), F.S., makes it a 3rd degree felony¹ for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct² by a child. The statute specifies that each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials

Section 847.011(1)(a), F.S., makes it a 1st degree misdemeanor³ for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute; or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute; specified obscene items, including pictures, photographs, and images. It is a 3rd degree felony if the obscene item used depicts a minor⁴ engaged in any act or conduct that is harmful to minors.⁵

Section 847.011(2), F.S., makes it a 2nd degree misdemeanor⁶ for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell such items. It is a 3rd degree felony if the obscene item used depicts a minor engaged in any act or conduct that is harmful to minors.

The statute specifies that every prohibited act, thing, or transaction constitutes a separate offense.⁷

Protection of Minors

Section 847.0133, F.S., makes it a 3rd degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene⁸ material to a minor.⁹ The term "material" includes pictures, photographs, and images.

¹ A 3rd degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

² The term "sexual conduct" is defined as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute sexual conduct. See s. 827.071(1), F.S.

³ A 1st degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ The term "minor" is defined as "any person under the age of 18 years." s. 847.001, F.S.

⁵ Section 847.011(1)(c), F.S. The term "harmful to minors" is defined by s. 847.001, F.S., as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

⁶ A 2nd degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁷ Section 847.011(5), F.S.

⁸ Section 847.001, F.S., defines the term "obscene" as the status of material which:

Computer Pornography

Section 847.0135, F.S., makes it a 3rd degree felony for a person to:

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct¹⁰ with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography

Section 847.0137(2), F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography¹¹ to another person commits a 3rd degree felony.

Transmission of Material Harmful to Minors

Section 847.0138, F.S., specifies that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor commits a 3rd degree felony.

Both minors and adults can be charged with any of the above-described offenses. None of the above-described offenses specifically require that the offense be committed by a minor, and with the exception of s. 847.0138, F.S., none of the above-described offenses require that a prohibited image, photograph, etc., be sent or possessed by a minor.

Sexting

The act of electronically sending sexually explicit messages or photos of oneself is generally referred to as sexting. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20% of teens (ages 13-19) and 33% of young adults (ages 20-26) had sent nude or semi-nude photographs of themselves electronically.¹² Additionally, 39% of teens and 59% of young adults had sent sexually explicit text messages.¹³

There are no statutes that specifically address sexting. Under current law, a person who "sexts" another could be charged with one of the above-described offenses, depending on the nature of the image sexted and the age of the person to whom the image was sent. Additionally, a person who receives and possesses an image that is the result of sexting could be charged with one of the above-described offenses, depending on the nature of the image sexted. For example, in 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after

-
- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
 - Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
 - Taken as a whole, lacks serious literary, artistic, political, or scientific value.

A mother's breastfeeding of her baby is not under any circumstance "obscene."

⁹ Section 847.001, F.S., defines the term "minor" as any person under the age of 18 years.

¹⁰ Section 847.001(16), F.S., defines the term "sexual conduct" as "actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed."

¹¹ Section 847.001, F.S., defines the term "child pornography" as any image depicting a minor engaged in sexual conduct. The statute also defines the term "sexual conduct." See footnote 2.

¹² "Sex and Tech: Results from a survey of teens and young adults." The National Campaign to Prevent Teen and Unplanned Pregnancy. December 10, 2008.

¹³ *Id.*

he sent a nude photograph of his then 16-year old girlfriend to his girlfriend's friends and family after an argument. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

Similarly, in other jurisdictions, law enforcement officers and district attorneys have begun prosecuting teens who sext under laws generally reserved for those who produce, distribute, or possess child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with "provocative" images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a 5-week after school program and probation.¹⁴ Similar incidents have occurred in Massachusetts, Ohio, and Iowa.¹⁵

As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors. In 2009, Vermont and Utah passed laws that downgraded the penalties for minors and first-time sexting perpetrators.¹⁶

Effect of the Bill

The bill creates an un-numbered section of statute relating to the offense of sexting. It specifies that a minor commits sexting if he or she knowingly:

- (a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of himself or herself which depicts nudity¹⁷ and is harmful to minors;¹⁸ or
- (b) Possesses a photograph or video that was transmitted or distributed by another minor as described in paragraph (a).

The bill provides the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.
- A minor commits a 2nd degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine, for a violation that occurs after being found to have committed a noncriminal sexting offense.¹⁹
- A minor commits a 1st degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine, for a violation that occurs after being found to have committed a 2nd degree misdemeanor sexting offense.²⁰
- A minor commits a 3rd degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a violation that occurs after being found to have committed a 1st degree misdemeanor sexting offense.²¹

¹⁴ Amanda Lenhart, *Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging*, Pew Research Ctr., 3 (Dec. 15, 2009),

http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited Jan. 24, 2011).

¹⁵ *Id.* See also, Vicki Mabrey and David Perozzi, 'Sexting': Should Child Pornography Laws Apply?, ABC NEWS (Apr. 1, 2010), available at <http://abcnews.go.com/Nightline/philip-alpert-sexting-teen-child-porn/story?id=10252790> (last visited Jan. 24, 2011)

¹⁶ Lenhart, *supra* note 14, at 3.

¹⁷ Section 847.001(9), F.S., defines the term "nudity" as "the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute 'nudity,' irrespective of whether or not the nipple is covered during or incidental to feeding."

¹⁸ See footnote 5 for the definition of "harmful to minors."

¹⁹ See ss. 775.082 and 775.083, F.S.

²⁰ *Id.*

²¹ See ss. 775.082, 775.083, and s. 775.084, F.S.

The bill defines the term "found to have committed" as "a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld."

The bill specifies that the transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed by the minor within the same 24-hour period. The bill also provides that the possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if such photographs or videos were transmitted or distributed by the minor in the same 24-hour period.

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for a violation of any law of the state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement,²² and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute relating to sexting; prohibited acts; penalties.

Section 2. This bill takes effect October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive fiscal impact to the state in that it subjects minors who commit the offense of sexting to fines ranging from \$60 to \$5,000, depending on the number of times the minor has committed the offense.

2. Expenditures:

On March 2, 2011, the Criminal Justice Impact Conference determined that SB 888, which contains provisions substantially similar to this bill, would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates new misdemeanor offenses which could impact local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²² Section 847.001(17), F.S., defines the term "sexual excitement" as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Florida Department of Law Enforcement (FDLE), because the bill makes a minor's first sexting offense a noncriminal violation, such minor will not have an FDLE record. Such records would only be possessed at the local level, or possibly at the Department of Juvenile Justice (DJJ). If a minor commits sexting offenses in multiple jurisdictions, prosecutors may be unaware of a previous noncriminal violation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 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:

- Specifies that a minor commits the offense of sexting if he or she knowingly uses a computer, or other device capable of electronic data transmission or distribution, to transmit or distribute *to another minor* any photograph or video of himself or herself which depicts nudity, *as defined in s. 847.001(9)*, and is harmful to minors, *as defined in s. 847.001(6)*.
- Specifies that a noncriminal sexting offense is punishable by 8 hours of community service or, if ordered by the court, a \$60 fine.
- Defines the term "found to have committed."

This analysis is drafted to the Committee Substitute.

1 A bill to be entitled

2 An act relating to the offense of sexting; providing that
 3 a minor commits the offense of sexting if he or she
 4 knowingly uses a computer, or any other device capable of
 5 electronic data transmission or distribution, to transmit
 6 or distribute to another minor any photograph or video of
 7 himself or herself which depicts nudity and is harmful to
 8 minors or possesses such photograph or video; providing
 9 noncriminal and criminal penalties; providing that the
 10 transmission, distribution, or possession of multiple
 11 photographs or videos is a single offense if the
 12 transmission occurs within a 24-hour period; providing
 13 that the act does not prohibit prosecution of a minor for
 14 conduct relating to material that includes the depiction
 15 of sexual conduct or sexual excitement or for stalking;
 16 defining the term "found to have committed"; providing an
 17 effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Sexting; prohibited acts; penalties.-

22 (1) A minor commits the offense of sexting if he or she
 23 knowingly:

24 (a) Uses a computer, or any other device capable of
 25 electronic data transmission or distribution, to transmit or
 26 distribute to another minor any photograph or video of himself
 27 or herself which depicts nudity, as defined in s. 847.001(9),

28 Florida Statutes, and is harmful to minors, as defined in s.
 29 847.001(6), Florida Statutes.

30 (b) Possesses a photograph or video that was transmitted
 31 or distributed by another minor as described in paragraph (a).

32 (2)(a) The transmission or distribution of multiple
 33 photographs or videos is a single offense if the photographs or
 34 videos were transmitted or distributed within the same 24-hour
 35 period.

36 (b) The possession of multiple photographs or videos that
 37 were transmitted or distributed by a minor is a single offense
 38 if the photographs or videos were transmitted or distributed by
 39 the minor in the same 24-hour period.

40 (3) A minor who violates subsection (1):

41 (a) Commits a noncriminal violation for a first violation,
 42 punishable by 8 hours of community service or, if ordered by the
 43 court in lieu of community service, a \$60 fine. The court may
 44 also order the minor to participate in suitable training or
 45 instruction in lieu of, or in addition to, community service or
 46 a fine.

47 (b) Commits a misdemeanor of the second degree for a
 48 violation that occurs after being found to have committed a
 49 noncriminal violation for sexting, punishable as provided in s.
 50 775.082 or s. 775.083, Florida Statutes.

51 (c) Commits a misdemeanor of the first degree for a
 52 violation that occurs after being found to have committed a
 53 misdemeanor of the second degree for sexting, punishable as
 54 provided in s. 775.082 or s. 775.083, Florida Statutes.

55 (d) Commits a felony of the third degree for a violation
 56 that occurs after being found to have committed a misdemeanor of
 57 the first degree for sexting, punishable as provided in s.
 58 775.082, s. 775.083, or s. 775.084, Florida Statutes.

59 (4) This section does not prohibit the prosecution of a
 60 minor for a violation of any law of this state if the photograph
 61 or video that depicts nudity also includes the depiction of
 62 sexual conduct or sexual excitement, and does not prohibit the
 63 prosecution of a minor for stalking under s. 784.048, Florida
 64 Statutes.

65 (5) As used in this section, the term "found to have
 66 committed" means a determination of guilt that is the result of
 67 a plea or trial, or a finding of delinquency that is the result
 68 of a plea or an adjudicatory hearing, regardless of whether
 69 adjudication is withheld.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 75 (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(s) Abruzzo offered the following:

Amendment (with title amendment)

Remove lines 26-39 and insert:

6 distribute to another minor any photograph or video of any
7 person which depicts nudity, as defined in s. 847.001(9),
8 Florida Statutes, and is harmful to minors, as defined in s.
9 847.001(6), Florida Statutes. The transmission or distribution
10 of multiple photographs or videos is a single offense if the
11 photographs or videos were transmitted or distributed within the
12 same 24-hour period.

15 -----
16 **T I T L E A M E N D M E N T**

Remove lines 6-11 and insert:

18 or distribute to another minor any photograph or video of any
19 person which depicts nudity and is harmful to minors; providing

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 75 (2011)

Amendment No. 1

20 | noncriminal and criminal penalties; providing that the
21 | transmission or distribution of multiple photographs or videos
22 | is a single offense if the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 563 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence

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

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Williams	Cunningham
2) Judiciary Committee		Williams <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Sections 741.30 and 784.046, F.S., currently provide the following in relation to the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence:

- Within 24 hours after service of process of a protective injunction upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the petitioner's residence;
- Within 24 hours after the sheriff receives a certified copy of the protective injunction, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE); and
- Within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified, the sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE.

CS/HB 563 amends ss. 741.30 and 784.046, F.S., to require the Florida Association of Court Clerks and Comptrollers (association), subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Notice must be made within 12 hours after the sheriff or other law enforcement officer has served the injunction upon the respondent. Such notification must include the date, time, and location in which the protective injunction was served.

The bill also requires the association to apply for any available grants to fund the development of the automated process.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions

Current law provides the following in relation to the service of injunctions for protection against domestic violence,¹ repeat violence, sexual violence, or dating violence²:

- Within 24 hours after service of process of a protective injunction upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the petitioner's residence;
- Within 24 hours after the sheriff receives a certified copy of the protective injunction, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE); and
- Within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified, the sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE.³

Victim Notification

Section 960.001, F.S., provides guidelines for the fair treatment of victims and witnesses involved in the criminal and juvenile justice systems. Victims have the right to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused.⁴

Victims⁵ of specific offenses⁶ must be notified within 4 hours by the chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility concerning:

- The release of an offender from incarceration in a county jail, municipal jail, juvenile detention facility, or residential commitment facility; and
- The release of an offender following sentencing, disposition, or furlough.⁷

In any case where an offender escapes from a state correctional institution, private correctional facility, county jail, juvenile detention facility, or residential commitment facility, the institution of confinement must immediately notify the state attorney of the jurisdiction where the criminal charge or petition for delinquency arose and the judge who imposed the sentence of incarceration.⁸ The state attorney must make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee.⁹

The Department of Corrections (department) is also required to notify within 30 days, and upon request, the state attorney, the victim, and the personal representative of the victim when an inmate

¹ Section 741.28, F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

² The terms "repeat violence," "sexual violence," and "dating violence" are defined in s. 784.046, F.S.

³ See ss. 741.30 and 784.046, F.S.

⁴ Section 960.001(1)(a), F.S.

⁵ Section 960.001, F.S., provides that notification can be requested by the victim or the appropriate next of kin of a victim or a designated contact of the victim.

⁶ These offenses include homicide, pursuant to ch. 782, F.S.; a sexual offense, pursuant to ch. 794, F.S.; an attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; and domestic violence, pursuant to s. 25.385, F.S.

⁷ Section 960.001(1)(f), F.S.

⁸ Section 960.001(1)(p), F.S.

⁹ *Id.*

has been approved for community work release.¹⁰ The department is also required to notify the victim six months before the release of an inmate from the department.¹¹ If an inmate is a sexual offender,¹² the department is required, if requested, to notify the victim of the offense, the victim's parent, legal guardian, or lawful representative if the victim is a minor, or the next of kin if the victim is a homicide victim, within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if the sexual offender is released earlier than anticipated.¹³

Effect of Proposed Changes

CS/HB 563 amends ss. 741.30 and 784.046, F.S., to require the Florida Association of Court Clerks and Comptrollers (association), subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Notice must be made within 12 hours after the sheriff or other law enforcement officer has served the injunction upon the respondent. Such notification must include the date, time, and location in which the protective injunction was served.

The bill also requires the association to apply for any available grants to fund the development of automated process.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations.

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:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁰ Section 944.605(6), F.S.

¹¹ Section 944.605(1), F.S.

¹² Section 944.606, F.S., "sexual offender" is defined as "a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection."

¹³ Section 944.606(3)(b), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The bill requires the association to develop an automated process so that a petitioner may request notification of service of an injunction for protection. However, the bill specifies that the association is only required to develop the automated process if it has available funding. The association must also apply for any available grants to fund the automated process.

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:

There are several statutes that provide public record exemptions for certain information concerning victims of domestic violence.¹⁴ As drafted, this bill does not create a public records exemption. Therefore, information a petitioner discloses pursuant to the bill may be public record.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment requires the Florida Association of Court Clerks and Comptrollers to:

- Subject to available funding, develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence.
- Apply for any available grants to fund the development of the automated process.

This analysis is drafted to the Committee Substitute.

¹⁴ These statutes include s. 39.908, F.S., (confidentiality of information received by department or domestic violence center); s. 97.0585, F.S., (public records exemption; information regarding voters and voter registration; confidentiality); s. 741.29, F.S., (domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting); s. 741.30, F.S., (domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement); s. 741.3165, F.S., (certain information exempt from disclosure); and s. 741.465, F.S., (public records exemption for the Address Confidentiality Program for Victims of Domestic Violence).

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A bill to be entitled
 An act relating to injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence; amending ss. 741.30 and 784.046, F.S.; subject to available funding, directing the Florida Association of Court Clerks and Comptrollers to develop an automated process by which a petitioner for an injunction for protection may request notification of service of the injunction or notice of other court actions related to the injunction; requiring that notice be given to the petitioner within a specified time; providing for the content of the notice; requiring the Florida Association of Court Clerks and Comptrollers to apply for grants to fund the automated process; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a

29 certified copy of the injunction for service to the sheriff with
 30 jurisdiction over the residence of the petitioner. The
 31 injunction must be served in accordance with this subsection.

32 2. Within 24 hours after service of process of an
 33 injunction for protection against domestic violence upon a
 34 respondent, the law enforcement officer must forward the written
 35 proof of service of process to the sheriff with jurisdiction
 36 over the residence of the petitioner.

37 3. Within 24 hours after the sheriff receives a certified
 38 copy of the injunction for protection against domestic violence,
 39 the sheriff must make information relating to the injunction
 40 available to other law enforcement agencies by electronically
 41 transmitting such information to the department.

42 4. Within 24 hours after the sheriff or other law
 43 enforcement officer has made service upon the respondent and the
 44 sheriff has been so notified, the sheriff must make information
 45 relating to the service available to other law enforcement
 46 agencies by electronically transmitting such information to the
 47 department.

48 5. Subject to available funding, the Florida Association
 49 of Court Clerks and Comptrollers shall develop an automated
 50 process by which a petitioner may request notification of
 51 service of the injunction for protection against domestic
 52 violence and other court actions related to the injunction for
 53 protection. The automated notice shall be made within 12 hours
 54 after the sheriff or other law enforcement officer serves the
 55 injunction upon the respondent. The notification must include,
 56 at a minimum, the date, time, and location where the injunction

57 for protection against domestic violence was served. The Florida
 58 Association of Court Clerks and Comptrollers shall apply for any
 59 available grants to fund the development of the automated
 60 process.

61 ~~6.5.~~ Within 24 hours after an injunction for protection
 62 against domestic violence is vacated, terminated, or otherwise
 63 rendered no longer effective by ruling of the court, the clerk
 64 of the court must notify the sheriff receiving original
 65 notification of the injunction as provided in subparagraph 2.
 66 That agency shall, within 24 hours after receiving such
 67 notification from the clerk of the court, notify the department
 68 of such action of the court.

69 Section 2. Paragraph (c) of subsection (8) of section
 70 784.046, Florida Statutes, is amended to read:

71 784.046 Action by victim of repeat violence, sexual
 72 violence, or dating violence for protective injunction; dating
 73 violence investigations, notice to victims, and reporting;
 74 pretrial release violations.—

75 (8)

76 (c)1. Within 24 hours after the court issues an injunction
 77 for protection against repeat violence, sexual violence, or
 78 dating violence or changes or vacates an injunction for
 79 protection against repeat violence, sexual violence, or dating
 80 violence, the clerk of the court must forward a copy of the
 81 injunction to the sheriff with jurisdiction over the residence
 82 of the petitioner.

83 2. Within 24 hours after service of process of an
 84 injunction for protection against repeat violence, sexual

85 | violence, or dating violence upon a respondent, the law
 86 | enforcement officer must forward the written proof of service of
 87 | process to the sheriff with jurisdiction over the residence of
 88 | the petitioner.

89 | 3. Within 24 hours after the sheriff receives a certified
 90 | copy of the injunction for protection against repeat violence,
 91 | sexual violence, or dating violence, the sheriff must make
 92 | information relating to the injunction available to other law
 93 | enforcement agencies by electronically transmitting such
 94 | information to the department.

95 | 4. Within 24 hours after the sheriff or other law
 96 | enforcement officer has made service upon the respondent and the
 97 | sheriff has been so notified, the sheriff must make information
 98 | relating to the service available to other law enforcement
 99 | agencies by electronically transmitting such information to the
 100 | department.

101 | 5. Subject to available funding, the Florida Association
 102 | of Court Clerks and Comptrollers shall develop an automated
 103 | process by which a petitioner may request notification of
 104 | service of the injunction for protection against repeat
 105 | violence, sexual violence, or dating violence and other court
 106 | actions related to the injunction for protection. The automated
 107 | notice shall be made within 12 hours after the sheriff or other
 108 | law enforcement officer serves the injunction upon the
 109 | respondent. The notification must include, at a minimum, the
 110 | date, time, and location where the injunction for protection
 111 | against repeat violence, sexual violence, or dating violence was
 112 | served. The Florida Association of Court Clerks and Comptrollers

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113 | shall apply for any available grants to fund the development of
 114 | the automated process.

115 | ~~6.5.~~ Within 24 hours after an injunction for protection
 116 | against repeat violence, sexual violence, or dating violence is
 117 | lifted, terminated, or otherwise rendered no longer effective by
 118 | ruling of the court, the clerk of the court must notify the
 119 | sheriff or local law enforcement agency receiving original
 120 | notification of the injunction as provided in subparagraph 2.
 121 | That agency shall, within 24 hours after receiving such
 122 | notification from the clerk of the court, notify the department
 123 | of such action of the court.

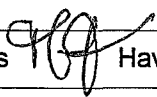
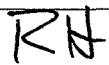
124 | Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7095 PCB HHSC 11-03 Controlled Substances

SPONSOR(S): Health & Human Services Committee, Schenck

TIED BILLS: None IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee	13 Y, 5 N	Calamas	Gormley
1) Judiciary Committee		Thomas 	Havlicak 

SUMMARY ANALYSIS

The bill bans dispensing of controlled substances by a physician and makes such dispensing a third degree felony and grounds for licensure discipline. All dispensing physicians are required to return existing inventories of controlled substances to the wholesale distributors from which the controlled substances were purchased within 10 days of the enactment of the bill, or turn in all inventories to law enforcement to be destroyed. Wholesale distributors are required to buy back the controlled substances at the practitioner's purchase price.

The bill directs the Department of Health (DOH) to declare a public health emergency on the third day after enactment of the law. Upon the declaration of a public health emergency, the Department of Law Enforcement (FDLE) and local law enforcement are authorized to secure, on-site, all unreturned inventories of controlled substances 24 hours per day until the dispensing physician is able to return the controlled substances to the wholesale distributor. The bill provides that any remaining inventory becomes contraband on the tenth day following enactment of the law, and requires law enforcement to seize the inventory and destroy it pursuant to applicable law. The bill sunsets these provisions on January 1, 2013.

The bill repeals current laws related to the establishment, management and operation of pain-management clinics.

The bill adds criminal provisions related to theft of controlled substances and burglary of a structure or conveyance with the intent to steal controlled substances. The bill also requires a pharmacist, a pharmacy intern or an employee of a pharmacy to report the obtaining or attempting to obtain controlled substances by fraudulent methods or misrepresentations and the discovery of a theft or loss of controlled substance to law enforcement. Failure to report these activities is a second degree misdemeanor.

The bill appropriates \$1.5 million in non-recurring General Revenue funds to defray the cost to law enforcement to secure controlled substance inventories during the quarantine period.

The bill appears to have a significant negative fiscal impact on local government. (See Fiscal Comments).

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Controlled Substances

Controlled substances are drugs with potential for abuse. 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. The distinguishing factors between the different drug schedules are the "potential for abuse"¹ of the substance contained therein and whether there is a currently accepted medical use for the substance. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States.² Heroin, peyote, and cannabis are examples of Schedule I drugs. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Prescription Drug Abuse

Most people who take prescription medications take them responsibly; however, the nonmedical use or abuse of prescription drugs remains a serious public health concern in the United States. Certain prescription drugs – opioid substances, central nervous system depressants, and stimulants – when abused can alter the brain's activity and lead to dependence and possible addiction. According to research by the National Institute on Drug Abuse³, the three most abused classes of prescription drugs are:

- Opioids, used to treat pain. Examples include codeine (Schedules II, III, V), oxycodone (OxyContin, Percocet – Schedule II), and morphine (Kadian, Avinza -Schedule II);
- Central nervous system depressants, used to treat anxiety and sleep disorders. Examples include barbiturates (Mebaral, Nembutal) and benzodiazepines (Valium, Xanax) (all in Schedule IV); and
- Stimulants, used to treat ADHD, narcolepsy, and obesity. Examples include dextroamphetamine (Dexedrine, Adderall) and methylphenidate (Ritalin, Concerta) (all in Schedule II).

The Substance Abuse and Mental Health Services Administration (SAMHSA) sponsors an annual national survey on drug use and health. The most recent survey⁴ indicates there are 6.9 million (2.8 percent) persons aged 12 or older who used prescription-type psychotherapeutic drugs non-medically in 2007. Of these, 5.2 million persons used pain relievers, a number similar to the number of persons aged 12 or older reported to be using pain relievers non-medically in 2006.⁵

Of those 6.9 million people who used prescription-type psychotherapeutic drugs non-medically in the 12-month period, 56.5 percent reported they received the drug from a friend or relative for free, 8.9 percent

¹ See s. 893.02(19), F.S.

² See s. 893.03, F.S.

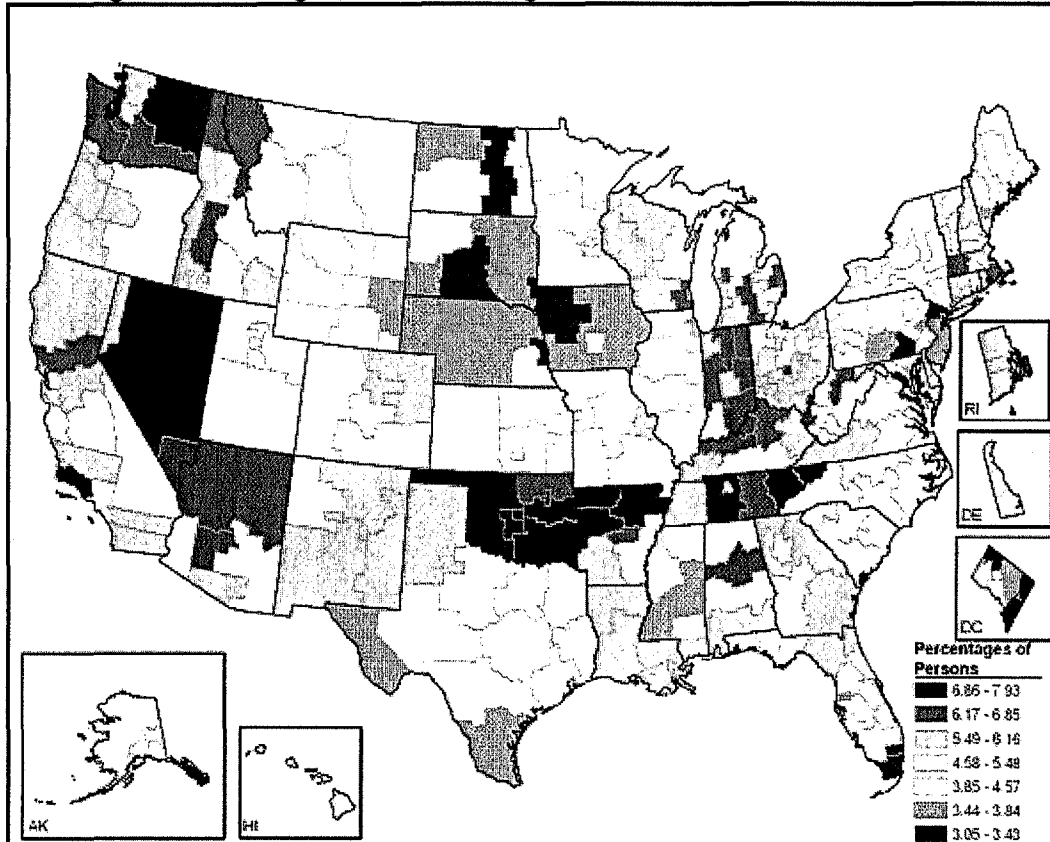
³ See <http://www.nida.nih.gov/drugpages/prescription.html> (last visited March 28, 2011).

⁴ 2007 National Survey on Drug Use and Health, U.S. Substance Abuse and Mental Health Services Administration, see <http://oas.samhsa.gov/NSDUH/2k9NSDUH/2k9ResultsP.pdf> (last visited March 28, 2011).

⁵ *Id.*

bought the drugs from a friend or family member, 18.1 percent reported they obtained the drug through just one doctor, only 4.1 percent got the pain relievers from a drug dealer or other stranger, and only 0.5 percent reported buying the drug on the Internet. Among those who reported getting the pain reliever from a friend or relative for free, 81.0 percent reported in a follow-up question that the friend or relative had obtained the drugs from just one doctor, while only 1.8 percent reported that the friend or relative had bought the drug from a drug dealer or other stranger.⁶ According to the Drug Abuse Warning Network (DAWN), approximately 516,000 emergency department visits in 2009 involved analgesics, including both prescription and over-the-counter pain medications; 416,450 involved opiates and opioids.⁷

Figure C3.3 Nonmedical Use of Pain Relievers in Past Year among Persons Aged 12 or Older, by Substate Region: Percentages, Annual Averages Based on 2006, 2007, and 2008 NSDUHs.



Source: Substance Abuse and Mental Health Services Administration, Office of Applied Studies (August 2010), National Survey on Drug Use and Health, 2006-2008 (last viewed February 23, 2011), see <http://oas.samsha.gov/substate2k10/SecC.htm#FigC3.3>

As the preceding map shows, national data indicate that the percent of the population using prescription pain relievers for nonmedical purposes in the past year ranged from a low of 3.1 percent in the areas of the District of Columbia and parts of Maryland and New Jersey to a high of 7.9 percent in parts of Oklahoma. In Florida, for example, Palm Beach County measured between 3.85 and 4.57 percent; Broward, Miami-Dade and Monroe Counties measured between 3.05 and 3.43 percent; and Escambia, Okaloosa, Santa Rosa and Walton Counties combined measured between 4.58 and 5.48 percent.⁸

The abuse of prescription drugs is becoming more prevalent and more deadly than the abuse of illicit drugs, such as heroin, cocaine, and methamphetamine. The Florida Medical Examiners Commission reports on drug-related deaths in Florida, and specifically tracks deaths caused by the abuse of prescription drugs. According to the Commission, prescription drugs are found in deceased persons in lethal amounts more often than illicit drugs. The most recent report, examining drug-related deaths for the

⁶ *Id.*

⁷ National Estimates of Drug-Related Emergency Department Visits 2004-2009, see <https://dawninfo.samsha.gov/data/default.asp?met=All> (last visited March 28, 2011).

⁸ Substance Abuse and Mental Health Services Administration, Office of Applied Studies, National Survey on Drug Use and Health, 2006, 2007, and 2008. See <http://oas.samsha.gov/substate2k10/statefiles/FL.htm> (last visited March 28, 2011).

first six months of 2010, found 1,268 deaths caused by prescription drugs.⁹ The rate of deaths caused by prescription drugs during the first six months of 2010 averaged 7 fatalities per day.¹⁰

In 2009, the State Attorney for the 17th Judicial Circuit (Broward County) empanelled a grand jury to consider the proliferation of pain clinics in Broward County and their effect on the community, and to make recommendations on what can be done to protect the public from the dangers of pain clinics. The grand jury interim report found that physicians in pain clinics dispense controlled substances directly to patients, rather than the patient going to a pharmacy to fill the prescription. Among other things, the grand jury recommended the state prohibit dispensing prescription drugs in pain clinics.¹¹ The grand jury noted that the typical 30 day "cocktail" of controlled substances prescribed by a physician at a pill mill consists of:

- 150 to 240 30-milligram Roxicodone pills;
- 90 to 100 10-milligram Percocet pills;
- 300 50 milligram tablets of Soma, a muscle relaxer; and
- 2 milligram pills of Xanax, an anti-anxiety medication.¹²

Florida is widely viewed as a major source of prescription drugs for people from other states. According to the Drug Enforcement Administration (DEA), of the top 50 practitioners dispensing oxycodone in the United States during the period of October 2008 to March 2009, all but 1 physician were located in Florida.¹³ The top 49 practitioners dispensing oxycodone in the United States were concentrated in nine counties.¹⁴ Broward County contains half of the top dispensing practitioners, who were responsible for 55.4 percent of total units of oxycodone dispensed in the country during this time period.¹⁵ In Florida, 9,201,731 dose units of oxycodone were dispensed during one six month time period.¹⁶ The following tables illustrate the amount of oxycodone being dispensed by physicians in central and south Florida during a recent six month time period, by county and zip code:¹⁷

County	Units Oxycodone
Broward	5,233,785
Palm Beach	2,368,430
Miami-Dade	646,500
Pinellas	192,400
Hillsborough	184,330
Lake	169,200
Seminole	164,686
Orange	133,600

Zip Code	Units Oxycodone
33309	1,014,800
33334	666,700
33311	660,900
33009	526,100
33313	500,900
33445	500,700
33407	469,400
33162	420,200
33324	384,385
33421	380,400
33312	347,700
33417	308,230

Zip Code	Units Oxycodone
33020	281,500
33444	239,500
33179	226,300
33463	187,700
33308	176,600
33021	176,000
33487	166,700
33023	141,700
33301	120,400
33323	118,400
33432	117,800
33325	114,700

⁹ *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2010 Interim Report, Medical Examiners Commission, FDLE, December 2010, at <http://www.fdle.state.fl.us/Content/getdoc/8a59bd00-c38d-4be1-ac06-715a273b552e/MEC-2010-Interim-Report.aspx> (last visited March 28, 2011).

¹⁰ *Id.*

¹¹ *The Proliferation of Pain Clinics in South Florida*, Interim Report of the Broward County Grand Jury, Circuit Court of the Seventeenth Judicial Circuit, November 19, 2009.

¹² *Id.*

¹³ Automation of Reports and Consolidated Orders System (ARCOS) data for Oct. 2008 to March 2009 provided by the U.S. DEA through the Broward County Sheriff's Office, September 2009.

¹⁴ *Id.*

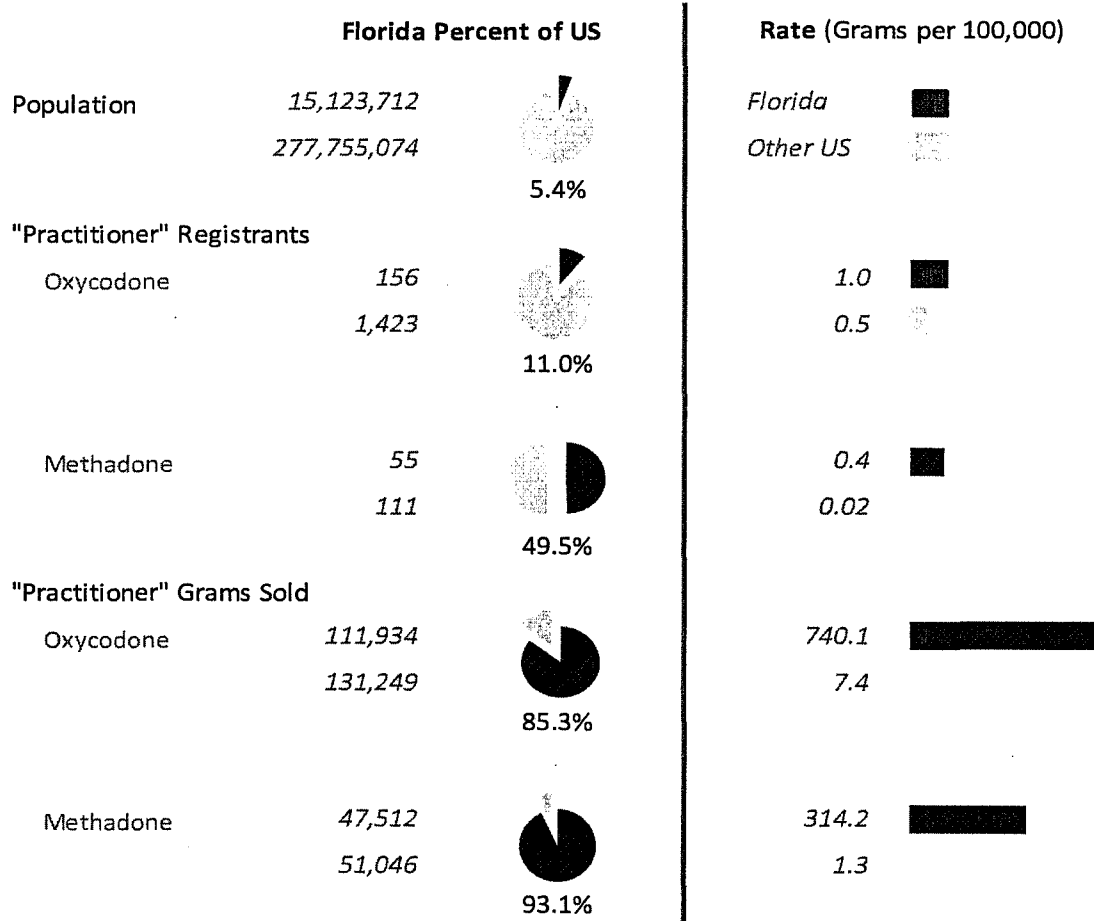
¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

The following chart reports the dispensing of oxycodone and methadone by physicians in Florida compared to physicians in the rest of the country. The population of Florida accounts for less than 6 percent of the total population of the United States, but Florida has 11 percent of the physicians who dispense oxycodone, and almost 50 percent of the physicians who dispense methadone in the U.S. Physicians in Florida dispense more than 85 percent of the oxycodone dispensed by physicians in the U.S., and over 93 percent of the methadone dispensed by physicians in the U.S.¹⁸

Controlled Drug Dispensing by Practitioners

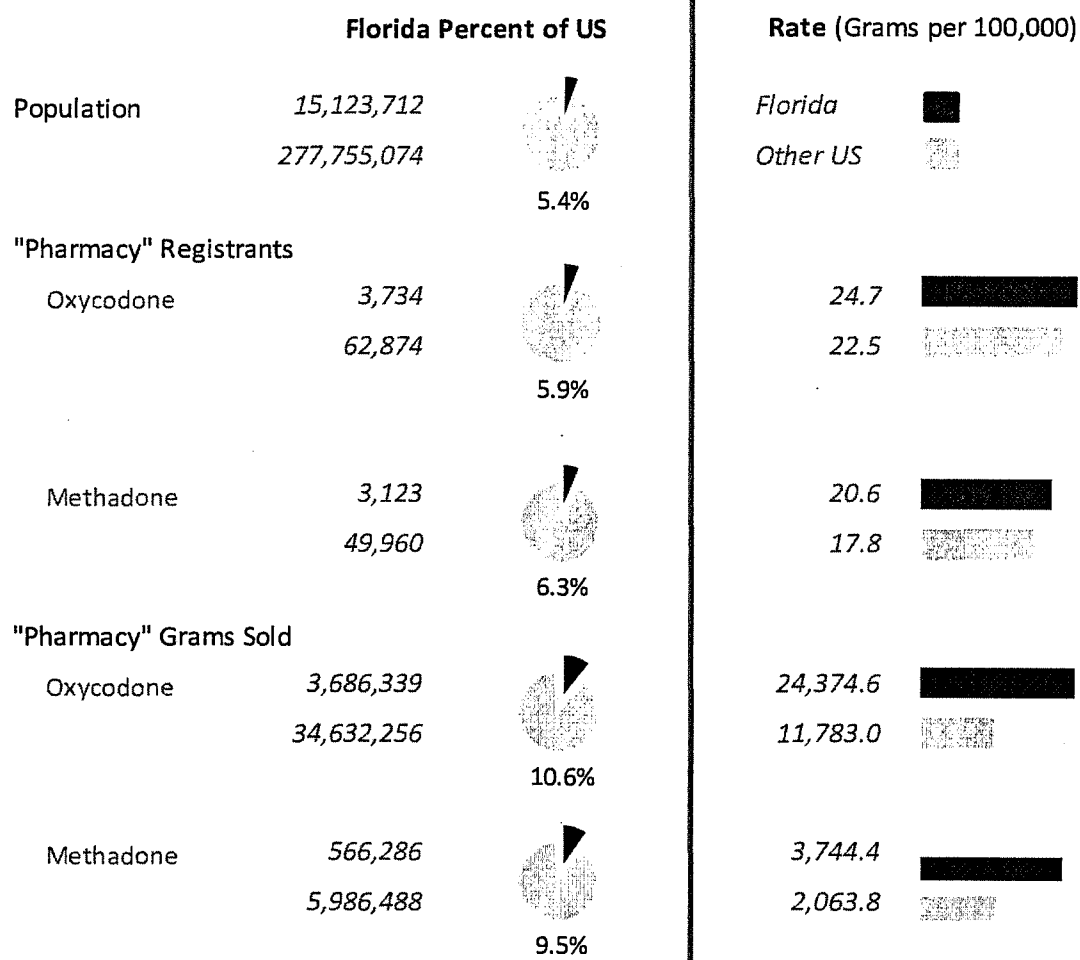


The chart below illustrates how much oxycodone and methadone is dispensed by pharmacies in Florida compared to pharmacies in the rest of the country. The population of Florida accounts for less than 6 percent of the total population of the United States. Florida pharmacies dispense more than 10 percent of the oxycodone and nearly 10 percent of the methadone dispensed in the U.S. by pharmacies.¹⁹

¹⁸ U.S. Department of Justice, Drug Enforcement Agency, Automation of Reports and Consolidated Orders System, 2006.

¹⁹ *Id.*

Controlled Drug Dispensing by Pharmacies



Controlled Substance Distribution and Dispensing Regulation

Manufacturers and Distributors

The manufacture and distribution of controlled substance prescription drugs in Florida are regulated under ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, and ch. 499, F.S. The federal government also regulates controlled substance prescription drugs through the U.S Controlled Substance Act.

Part I of Chapter 499, F.S., requires DOH to regulate drugs, devices, and cosmetics. A significant majority of the regulations relate to the distribution of prescription drugs into and within Florida. In particular, the regulations require licensure of various entities in the distribution chain, such as prescription drug manufacturers and prescription drug wholesale distributors. In total, Florida has 20 distinct permits for these entities.

Among many other provisions, the chapter provides for:

- Criminal prohibitions against the distribution of contraband and misbranded prescription drugs.
- Regulation of the advertising and labeling of drugs, devices, and cosmetics.
- Establishment of permits for manufacturing and distributing drugs, devices, and cosmetics.
- Regulation of the wholesale distribution of prescription drugs, which includes pedigree papers.
- Regulation of the provision of drug samples.
- Establishment of the Cancer Drug Donation Program.

- Establishment of numerous enforcement avenues for the Department of Health, including seizure and condemnation of drugs, devices, and cosmetics.

Many of these regulations have been significantly strengthened in recent years, including:

- A significantly stronger wholesale distributor permit, requiring, among other items, a posting of a bond and extensive background information for various employees of the wholesale distributor.²⁰
- More thorough documentation of the distribution of prescription drugs, including broader application of the pedigree paper to most wholesale distributions.²¹
- Enhanced criminal penalties for, among other things, distribution of contraband prescription drugs.²²
- Stronger departmental enforcement authority to protect the prescription drug supply chain.²³

The table below lists all permit types for entities involved in the manufacture, distribution and dispensing of controlled substances in the state of Florida, as regulated by Chapter 499, F.S., and the number of licenses or permits issued by DOH for each permit type. The last column includes the number of complaints received by DOH for each license or permit type since July 1, 2009.

Ch. 499, F.S., Permit Types	Licenses/ Permittees/ Registrants	Complaints
Prescription Drug Manufacturer	106	15
Non-resident Prescription Drug Manufacturer	800	20
Prescription Drug Repackager	29	6
Prescription Drug Wholesale Distributor	131	31
Out-of-State Prescription Drug Wholesale Distributor	254	28
Retail Pharmacy Drug Wholesale Distributor	73	15
Prescription Drug Wholesale Distributor - Broker Only	4	1

Pharmacies

Chapter 465, F.S., requires DOH and the Board of Pharmacy to regulate the practice of pharmacy. Community pharmacies²⁴ are required to obtain a permit from the Board of Pharmacy. Pharmacy applicants are required to submit to a national criminal background check for each person having an ownership interest of 5 percent or more in the pharmacy, and for each person who manages or oversees the operation of the pharmacy, including officers and members of the board of directors. The board is required to deny the application if any person affiliated with the pharmacy has ever been convicted of a pharmacy-related crime, or of health care fraud, or has been terminated for cause by any state Medicaid program or the federal Medicare program. The board is also required to deny the application if the applicant or affiliated person has ever dispensed a drug when the pharmacist knew or had reason to believe the prescription was not based on a valid physician-patient relationship.²⁵

²⁰ See s. 499.01(2)(d), F.S. (requiring \$100,000 bond or other means of equivalent security) and s. 499.012(8) and (9), F.S. (requiring, e.g., place of residence for past 7 years, fingerprints, photograph taken within 30 days, and name, address, occupation, and date and place of birth of each member of the person's immediate family who is 18 years of age or older).

²¹ See s. 499.01212, F.S. ("Each person who is engaged in the wholesale distribution of a prescription drug must, prior to or simultaneous with each wholesale distribution, provide a pedigree paper to the person who receives the drug.").

²² See s. 499.0051(6), F.S. (imposing a second degree felony for "a person who is knowingly in actual or constructive possession of any amount of contraband prescription drugs, who knowingly sells or delivers, or who possesses with intent to sell or deliver any amount of contraband prescription drugs").

²³ See s. 499.065, F.S. (authorizing the department to immediately close a wholesale facility if it constitutes an imminent danger to public health).

²⁴ Chapter 465, F.S., distinguishes community pharmacies from institutional pharmacies, or pharmacies located in nursing homes or hospitals which dispense medications to patients for use within the institutions. Section 465.019, F.S.

²⁵ Section 465.022, F.S. A valid practitioner-patient relationship includes a documented patient evaluation, medical history, physical examination, and any other requirement established by the practitioner's practice act or rule.

The board is required to adopt rules for the operation of pharmacies, and DOH inspects pharmacies annually to ensure compliance. Permittees are subject to disciplinary action, including fines and permit revocation or suspension, for violations of law and rule. Grounds include violation of federal and state controlled substance laws, various criminal convictions, and dispensing drugs when the pharmacist knew or had reason to believe the prescription was not based on a valid physician-patient relationship.²⁶

Pharmacists

Pharmacists are required to obtain a license from the Board of Pharmacy. Section 465.007, F.S., provides that pharmacist applicants must receive a degree from an accredited school of pharmacy, complete an internship program, and pass an examination. The board is required to adopt rules for the standard of pharmacy practice, and pharmacists are subject to disciplinary action, including fines and license revocation or suspension, for violations of law and rule. Grounds include violation of federal and state controlled substance laws, failing to report to DOH a physician who the pharmacist knows has violated his or her practice act, and dispensing drugs when the pharmacist knew or had reason to believe the prescription was not based on a valid physician-patient relationship.²⁷

Section 893.04, F.S., authorizes a pharmacist, in good faith and in the course of professional practice to dispense controlled substances upon a written or oral prescription. An oral prescription must be promptly reduced to writing by the pharmacist. The written prescription must be dated and signed by the prescribing practitioner on the date issued. The face of the prescription or written record for the controlled substance must include:

- The full name and address of the person for whom the controlled substance is dispensed;
- The full name and address of the prescribing practitioner and the prescriber's federal controlled substance registry number;
- The name of the controlled substance prescribed and the strength, quantity, and directions for the use thereof;
- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filed; and
- The initials of the pharmacist filling the prescription and the date filled.

Section 893.04(1)(d), F.S., requires the pharmacy in which a prescription for controlled substances is filled to retain the prescription on file for a period of 2 years. The original container in which a controlled substance is dispensed must bear a label with the following information:

- The name and address of the pharmacy from which the controlled substance was dispensed;
- The date on which the prescription for the controlled substance was filled;
- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled;
- The name of the prescribing practitioner;
- The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed;
- The directions for the use of the controlled substance prescribed in the prescription; and
- A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

Chapter 893, F.S., imposes other limitations on controlled substance prescriptions. A prescription for a Schedule II controlled substance may be dispensed only upon a written prescription of a practitioner, except in an emergency situation, as defined by rule of the department. No prescription for a Schedule II

²⁶ Section 465.023, F.S.

²⁷ Section 465.016, F.S.

controlled substance may be refilled.²⁸ No prescription for a controlled substance listed in Schedules III, IV, or V may be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.²⁹ A pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of a prescribed medication, except for those listed in Schedule II.³⁰

In addition to these requirements for dispensing controlled substances, pharmacies must comply with regulations that apply to all dispensing. A pharmacy cannot dispense a medication if the prescription is not based on a "valid practitioner-patient relationship." Such a relationship includes "a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed".³¹ DOH rules apply this standard to controlled substances.³² The following criteria shall cause a pharmacist to question whether a prescription was issued for a legitimate medical purpose:

- Frequent loss of controlled substance medications,
- Only controlled substance medications are prescribed for a patient,
- One person presents controlled substance prescriptions with different patient names,
- Same or similar controlled substance medication is prescribed by two or more prescribers at same time,
- Patient always pays cash and always insists on brand name product.

If any of those criteria are met, the pharmacy must copy the patient's photo identification for its records, and confirm the prescription with the physician. DOH inspects pharmacies at least once a year to ensure compliance with statutory and regulatory requirements.³³

Physicians

Section 893.05, F.S., allows a practitioner, in good faith and in the course of professional practice only, to prescribe, administer, dispense, mix, or otherwise prepare a controlled substance. "Practitioner" means a licensed medical physician, a licensed dentist, a licensed veterinarian, a licensed osteopathic physician, a licensed naturopathic physician, or a licensed podiatrist, if such practitioner holds a valid federal controlled substance registry number.³⁴

Physician dispensing is regulated by the Board of Medicine and the Board of Osteopathic Medicine within the DOH. In order to dispense medications, rather than just prescribe them, physicians must register with the relevant board and pay a fee of \$100.³⁵ Physicians who only dispense complimentary medications, and who receive no direct or indirect payment or remuneration for the medications, are not required to register.³⁶

The Department must inspect any facility in which a physician dispenses medication, such as a physician office or medical clinic, with the same frequency as it inspects pharmacies, that is, at least once a year.³⁷ Dispensing physicians are required to comply with all state and federal laws and regulations applicable to pharmacists and pharmacies.³⁸ For example, a pharmacy is not permitted to dispense a drug if the prescription is not based on a valid practitioner-patient relationship, which requires a patient history and a physical examination adequate to establish the diagnosis. This requirement applies to dispensing physicians as well.

²⁸ Section 893.04(1)(f), F.S.

²⁹ Section 893.04(1)(g), F.S.

³⁰ See 21 C.F.R. 1306.11(d)(1), which provides that, in an emergency situation, a pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization of a prescribing practitioner if the quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period.

³¹ Section 465.023(1)(h), F.S.

³² Rule 64B16-27.831, F.A.C.

³³ Rule 64B16-28.101, F.A.C.

³⁴ Section 893.02, F.S.

³⁵ Section 465.0276(2)(a), F.S. and rule 64B8-3.006, F.A.C.

³⁶ Section 465.0276(5), F.S.

³⁷ Section 465.0276(3), F.S.

³⁸ Section 465.0276(20)(a), F.S.

There are 6,335 registered dispensing physicians in Florida, broken down by practitioner type in the table below.³⁹

Dispensing Physicians	Total
Podiatric Physician	132
Dentist	199
Medical Doctor	5116
Osteopathic Physician	888
Total	6335

The table below summarizes the number of complaints received by the Department about dispensing practitioners since 2006. The table also includes the number of disciplinary actions taken against dispensing practitioners during the same time period.⁴⁰

Dispensing Practitioners	2006-07	2007-08	2008-09	2009-10	2010-3/2011	Avg./Yr.
Complaints Received	59	37	59	117	71	68.6
Disciplinary Action Taken	5	12	2	9	20	9.6
Citations Issued (Minor Violations)	65	57	85	33	33	54.6
Complaints, s. 465.016(1)(s), F.S. ⁴¹	100	34	24	33	16	41.4
Disciplinary Action, s. 465.016(1)(s), F.S.	22	11	5	5	2	9

Currently, Florida law allows registered physicians to dispense any prescribed drug. Other states have varying degrees of regulation. Twenty-six states allow dispensing of controlled substances and require some form of dispensing license.⁴² Nineteen states allow dispensing but do not require any license.⁴³ One state allows dispensing but requires a license to dispense controlled substances.⁴⁴ Montana and Utah prohibit physician dispensing entirely, for all drugs.⁴⁵ Massachusetts and Texas limit controlled substance dispensing to a 72-hour supply in emergency situations, and impose other restrictions.⁴⁶

Pain-Management Clinics

In 2009 and 2010, the Legislature enacted laws to regulate pain-management clinics and physicians who practice in them.⁴⁷ Pain-management clinics are regulated by the practice acts for medical doctors and osteopathic physicians in s. 458.3265, F.S., and s. 459.0137, F.S. Pain clinics are defined as facilities or offices which advertise in any medium for any type of pain-management services or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications. A physician is primarily engaged in the treatment of pain by prescribing controlled substances if the majority of the patients seen on any day the facility is open are issued controlled substance prescriptions for the treatment of nonmalignant pain.⁴⁸

³⁹ Florida Department of Health, Presentation to the House Health and Human Services Committee, February 24, 2011, on file with the Committee.

⁴⁰ *Id.*

⁴¹ Section 465.016(1)(s), F.S., prohibits dispensing when a pharmacist has reason to believe a valid relationship does not exist between the patient and the physician. Dispensing practitioners are also subject to this requirement. The last two rows of the chart reflect complaints against physicians under this section.

⁴² Survey of Rules Governing Physician Dispensing Controlled Substances (CS) in All 50 States and the District of Columbia, created by Health and Human Services Committee staff, on file with the committee

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Chapter 2009-198, L.O.F.; ch. 2010-211, L.O.F.

⁴⁸ Section 458.3265(1)(a), F.S.

Pain clinics are required to register with DOH; however, the following entities are exempt from registration:

- Hospitals
- Clinics primarily providing surgical services
- Certain publicly held corporations
- Clinics affiliated with medical schools
- Clinics that do not use controlled substances
- Not-for-profit clinics

DOH is prohibited from registering an entity:

- Not owned by a physician;
- Whose Drug Enforcement Administration number has ever been revoked;
- Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction; or
- Who have been convicted of certain drug-related crimes in any jurisdiction.

Registered pain management clinics must have a designated physician who meets certain criteria to take responsibility for the clinic's activities. According to the Boards of Medicine and Osteopathic Medicine, as of the end of February 2011, 382 medical doctors and 64 doctors of osteopathic medicine registered as dispensing physicians for pain clinics in Florida.⁴⁹

All physicians practicing in pain clinics are prohibited from dispensing more than a 72-hour supply to a patient paying with cash, check or credit card. A violation is a third degree felony.⁵⁰ DOH and the relevant boards are required to adopt rules setting forth standards of practice for physicians practicing in pain clinics. Specifically, the rules must address:

- facility operations;
- physical operations;
- infection control requirements;
- health and safety requirements;
- quality assurance requirements;
- patient records;
- training requirements for all facility health care practitioners;
- inspections;
- data collection and reporting requirements; and
- the maximum number of controlled substance prescriptions that can be written by a physician in a clinic in one day.

Pain-management clinics are subject to annual inspection and are subject to registration revocation and fines of up to \$5,000 per day for violations. If a clinic's registration is revoked, its owners and operators may not apply for a new registration for 5 years. There are currently 860 pain-management clinics registered with the department.⁵¹

Pain-management clinics that did not meet the ownership requirements of either s. 458.3265, F.S., or s. 459.0137, F.S., which became effective on October 1, 2010, began receiving Notices of Intent to Administratively Revoke (ITAR) the Certificate of Registration, required for operation of a clinic, from the Department. The ITAR notified each non-compliant clinic of the intent of the Department to revoke the certificate due to the clinic's failure to meet the ownership requirements. As of the end of February 2011, the Department issued 236 ITARs. The following table illustrates the status of the ITARs:

⁴⁹ Florida Department of Health, Presentation to the House Health and Human Services Committee, February 24, 2011, on file with the Committee.

⁵⁰ A third degree felony is punishable by a term of imprisonment not exceeding 5 years (s. 775.082 (3)(d), F.S.) and a fine not exceeding \$5,000 (s. 775.083(1)(c), F.S.).

⁵¹ *Id.*

Status of Pain Clinics Considered for Revocation	Total
Pain clinics closed through Notice of Intent to Administratively Revoke (ITAR)	54
Pain clinics pending action after ITAR	72
Pain clinics in compliance after ITAR	110
Total ITARs	236

Of the 72 pain clinics that are awaiting further action after the ITAR was issued, 30 clinics requested a formal hearing regarding the Department's intent to revoke the certificate, 19 clinics defaulted, or otherwise did not answer the ITAR, and 23 cases are awaiting additional documentation from the clinic or a decision from the Department regarding revocation.

The next table specifies the number of complaints filed against pain clinics from January 2010 to the end of February 2011 for practicing without a license:

Complaint Source	Complaints
	Jan 2010 – February 2011
Consumer	2
Other Registrant	3
Other State Agency	2
Internally Generated	119
Anonymous	3
TOTAL	129

According to DOH, the overwhelming majority of complaints came from within the Department. These complaints were generated during the initial inspection process.

Current law imposes several requirements on physician practice in pain clinics, and provides licensure and criminal penalties for violations. Physicians are prohibited from practicing medicine in an unregistered pain clinic, which is a third degree felony.⁵² A physician must perform a physical examination of a patient on the same day that a controlled substance prescription drug is dispensed to a patient. If a physician prescribes or dispenses a controlled substance in an amount greater than a 72-hour supply, the physician must document in the patient's medical record the reason for prescribing or dispensing that amount.

A physician practicing in a pain-management clinic is responsible for maintaining control and security over his or her prescription pad blanks. The physician is also required to comply with the counterfeit-resistant prescription pad requirement pursuant to statute and rule. Lastly, a designated physician for a pain-management clinic must notify the applicable board within ten days of terminating his or her employment with the pain-management clinic for which he or she is designated as required by statute and rule.

During the Special Legislative Session held in November 2010, the Legislature overrode the gubernatorial veto of HB 1565, which passed in the 2010 Regular Legislative Session.⁵³ The changes to the Administrative Procedures Act (ch. 120, F.S.) made by HB 1565 will affect the implementation of proposed rules by the Board of Medicine on standards of practice for medical doctors practicing in pain management

⁵² Sections 458.327 and 459.013, F.S.

⁵³ Chapter 2010-279, L.O.F. The law requires state agencies to determine the impact of proposed agency rules on small businesses. If the rules will have an adverse impact on small businesses or increase regulatory costs in the aggregate in the amount of \$200,000 in the first year of enactment, an agency must prepare a statement of estimated regulatory cost (SERC). The SERC must determine whether the rules will financially impact small businesses by \$1,000,000.00 or more over the first five years of enactment. If the economic analysis concludes that the rules meet or exceed the threshold, the rules must be presented to the Speaker of the House of Representatives and the President of the Senate and cannot be finalized until ratified by the Legislature.

clinics.⁵⁴ The Board of Osteopathic Medicine Standards of Practice for osteopathic physicians practicing in pain management clinics are in effect now and are not impacted by the new legislation.⁵⁵

The last table combines the number of licenses, permits or registrations issued by the Department to dispensing practitioners, community pharmacies and pain clinics to dispense controlled substances in Florida with complaint and disciplinary information:

Dispensing of Controlled Substances by Location					
Locations	Licenses/ Permittees/ Registrants	Complaints	Probable Cause Found	Discipline	Appeals July 2009 to Date
Dispensing Practitioners	6335	188	40	29	1
Community Pharmacies	4632	460	61	56	0
Pain Clinics	860	173	11	2	0

Access to Records without Subpoena or Consent

In Florida, patients have a constitutional right to privacy under Article I, Section 23 of the State Constitution and judicial decisions. Although Florida courts have recognized patients' right to secure the confidentiality of their health information, including medical records, as a right to privacy, that right must be balanced with and yields to any compelling state interest. Several statutes authorize the release of patient records without consent of the person to whom they pertain.

Section 893.07, F.S., requires any person who dispenses controlled substances to make and maintain records, including prescription records, relating to the receipt and disposition of the controlled substances. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing; the correct name and address of the person to whom or for whose use, or the owner and species of animal for which, sold, administered, or dispensed; and kind and quantity of controlled substances sold, administered, or dispensed.⁵⁶ This statute further provides that the records are to be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances.⁵⁷

Effect of Proposed Changes

The bill prohibits physician dispensing of controlled substances in Schedules II, III, IV and V and makes such dispensing a third degree felony and grounds for disciplinary action against a physician or osteopathic physician. Such actions include license restriction, suspension, revocation and probation, or fines, letters of reprimand, remedial education, or corrective action.

⁵⁴ Proposed Rule 64B8-9.0131, F.A.C., related to standards of practice for medical doctors practicing in pain clinics, is pending legislative ratification. Proposed Rule 64B8-9.0134, F.A.C., related to the maximum number of prescriptions for medical doctors practicing in registered pain management clinics, may require ratification when rulemaking is complete and the rule is filed for adoption. Rulemaking & Regulation Subcommittee, Legislative Ratification Request Log, February 28, 2011.

⁵⁵ Rule 64B15-14.0051, F.A.C. and Rule 64B15-14.0052, F.A.C.

⁵⁶ Section 893.07(3), F.S.

⁵⁷ Section 893.07(4), F.S.

The bill requires wholesale distributors of controlled substances to submit a weekly electronic report of its distributions of controlled substances listed in Schedules II, III, IV, and V within the state of Florida. The bill specifies the information to be included in the reports.

The bill adds new criminal penalties, and clarifies existing violations.

- The bill makes it a first degree misdemeanor for a pharmacist, pharmacy intern, or other employee working for or at a pharmacy to fail to report to the county sheriff, within 24 hours, an individual obtaining or attempting to obtain a controlled substance through fraudulent methods or representations. The bill defines what constitutes a sufficient report to include a copy of the prescription and information identifying the prescriber and patient.
- The bill amends the burglary statute, adding burglary of a structure or conveyance with the intent to steal controlled substances, making that a second degree felony.⁵⁸ The bill allows for separate judgments and sentences for applicable possession of a controlled substance offense or trafficking in a controlled substance offense when all offenses include the same amount of a controlled substance.
- The bill makes theft of any amount of a controlled substance grand theft in the third degree, punishable as a third degree felony.⁵⁹ The bill allows for separate judgments and sentences are allowed for possession of a controlled substance or trafficking in a controlled substance if all offenses include the same amount of controlled substance.
- The bill requires all thefts or loss of controlled substances to be reported to the sheriff of the county where the theft or loss occurred within 48 hours of discovery of the theft or loss. Failure to report the theft or loss of a controlled substance listed in schedule III, IV, or V within 48 hours of discovery of the theft or loss is a second degree misdemeanor.⁶⁰ Failure to report the theft or loss of a controlled substance listed in schedule II within 48 hours of discovery of the theft or loss is a first degree misdemeanor.

The bill requires all physicians, within ten days of the effective date of the bill, to return all undispensed controlled substances purchased under each physician's Drug Enforcement Administration (DEA) number to the wholesale distributor from which the controlled substances were purchased or turn in all undispensed controlled substances to law enforcement and abandon the medication. The bill establishes a buy-back program which requires wholesale distributors to purchase the remaining controlled substance inventory of each physician at the original purchase price. Each wholesale distributor must report to DOH, by August 1, 2011, regarding each inventory buy-back processed by the wholesale distributor. The report must include information on the returning entity, the returned drugs, the practitioner, and the date.

The bill directs DOH, immediately on the enactment date of the bill, to declare a public health emergency regarding controlled substance prescription drugs in the state of Florida pursuant to s. 381.00315, F.S. Section 381.00315, F.S., authorizes the State Health Officer (the State Surgeon General) to declare a public health emergency, which is the "occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters." In the event of a declared emergency, the State Health Officer may take actions that are necessary to protect the public health, and any order she issues is immediately enforceable by law enforcement officers under s. 381.0012, F.S. The bill requires DOH, the Attorney General, FDLE, and local law enforcement to take the following actions upon the declaration of the public health emergency:

⁵⁸ A second degree felony is punishable by a term of imprisonment not exceeding 15 years (s. 775.082(3)(c), F.S.) and a fine not exceeding \$10,000 (s. 775.083(1)(b), F.S.).

⁵⁹ A third degree felony is punishable by a term of imprisonment not exceeding 5 years (s. 775.082(3)(d), F.S.) and a fine not exceeding \$5,000 (s. 775.083(1)(c), F.S.).

⁶⁰ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days (s. 775.082(4)(b), F.S.) and a fine not exceeding \$500 (s. 775.083(1)(e), F.S.).

- DOH must identify, within 2 days of the declaration, the dispensing practitioners who purchased more than an average of 2,000 unit doses of controlled substances per month in the six months preceding the declaration of the public health emergency.
- DOH must identify the dispensing practitioners within the group originally identified those who pose the greatest public health risk based on the following factors:
 - the risk of non-compliance with the buy-back program or forfeiture to law enforcement;
 - the amount of controlled substance purchased;
 - the type of medical practice; and
 - any other factor determined by the State Health Officer.
- The Attorney General shall coordinate with federal law enforcement agencies to accomplish the provisions of the act.
- The FDLE shall coordinate all efforts of local law enforcement to accomplish the provisions of the act.
- The FDLE shall, on the third day following enactment of the act, enter the business premises of the dispensing practitioners determined to be the greatest risk to public health by DOH and quarantine the inventory of controlled substances on site.
- FDLE or local law enforcement shall provide 24 hour a day security of the quarantined inventory through the tenth day following enactment of the law to ensure compliance with the buy-back program.

The bill deems any remaining controlled substance inventory contraband under s. 893.12, F.S., on the 11th day after enactment, and requires law enforcement to seize and destroy it pursuant to the procedures of that section. An appropriation of \$1.5 million in non-recurring funds is appropriated to defray the cost to FDLE and local law enforcement agencies of securing controlled substance inventories during the quarantine period.

The bill repeals the public health emergency section on January 1, 2013.

The bill repeals controlled substance regulation laws enacted in 2009 and 2010. Specifically, the bill eliminates:

- Regulation of pain-management clinics as business establishments under s. 456.037, F.S.;
- Registration requirements for pain-management clinics under s. 458.3265, F.S., and s. 459.0137, F.S., including:
 - criminal penalties for operating an unregistered pain-management clinic;
 - criminal penalties for prescribing or dispensing in an unregistered pain-management clinic;
 - physician licensure penalties for failing to comply with various requirements for registration of or practice in pain-management clinics;
 - physician licensure penalties for violations by designated physicians;
 - physician ownership requirement for pain-management clinics; and
 - access to pain-management clinic patient records without patient consent
- The Program Implementation and Oversight Task Force, created by Chapter 2009-198, Laws of Florida. The purpose of the Task Force is to monitor the implementation of the electronic prescription drug monitoring program, to ensure the privacy of the information submitted to the drug monitoring database, and to ensure the appropriate use of the database by the medical professionals and members of law enforcement with access to it. The database is being repealed by HB 7097, and the Task Force is no longer necessary.

The bill provides for an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.037, F.S., relating to business establishments; requirements for active status licenses; delinquency; discipline; applicability.

- Section 2:** Amends s. 456.057, F.S., relating to ownership and control of patient records; report or copies of records to be furnished.
- Section 3:** Repeals s. 458.3265, F.S., relating to pain-management clinics.
- Section 4:** Amends s. 458.327, F.S., relating to penalty for violations.
- Section 5:** Amends s. 458.331, F.S., relating to grounds for disciplinary action; action by the board and department.
- Section 6:** Repeals s. 459.0137, F.S., relating to pain-management clinics.
- Section 7:** Amends s. 459.013, F.S., relating to penalty for violations.
- Section 8:** Amends s. 459.015, F.S., relating to grounds for disciplinary action; action by the board and department.
- Section 9:** Amends s. 465.015, F.S., relating to violations and penalties.
- Section 10:** Amends s. 465.0276, F.S., relating to dispensing practitioner.
- Section 11:** Amends s. 499.005, F.S., relating to prohibited acts.
- Section 12:** Amends s. 499.0121, F.S., relating to storage and handling of prescription drugs; recordkeeping.
- Section 13:** Amends s. 499.05, F.S., relating to rules.
- Section 14:** Amends s. 810.02, F.S., relating to burglary.
- Section 15:** Amends s. 812.014, F.S., relating to theft.
- Section 16:** Amends s. 893.07, F.S., relating to records.
- Section 17:** Repeals s. 2 of Chapter 2009-198, Laws of Florida, relating to the Program Implementation and Oversight Task Force.
- Section 18:** Creates an unnumbered section of law, relating to a Buy-Back Program; public health emergency; repeal.
- Section 19:** Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The elimination of all regulations governing the establishment and operation of pain-management clinics will eliminate pain clinic registration and inspection fees.

2. Expenditures:

SEE FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

SEE FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits physicians from dispensing controlled substances. This will negatively impact the revenue income of those physicians who previously dispensed controlled substances and the clinics which employ them. Future controlled substance dispensing business formerly done by physicians will shift to pharmacies.

The bill requires wholesale distributors of controlled substances to purchase undispensed physician inventories of controlled substances within ten days of enactment. If the controlled substances bought back by the distributors are eligible for resale, the distributors may resell the drugs, which may mitigate losses. If inventory is tainted or expired, or is not sellable for another reason, the distributor will realize a negative economic impact.

D. FISCAL COMMENTS:

The bill requires FDLE and local law enforcement to secure quarantined inventory on-site from the third day after enactment through the 10th day after enactment, and thereafter seize the inventory. The bill makes an appropriation of \$1.5 million in non-recurring funds from the General Revenue Fund to FDLE to reimburse local law enforcement agencies for these activities, and provides for proration if the requests for reimbursement exceed the appropriation amount.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(d) of Article VII of the Florida Constitution prohibits the Legislature from binding any county or municipality by any general law requiring it to spend funds or take actions requiring expenditures, with certain exceptions. While the bill requires counties or municipalities to take specific short-term law enforcement actions that may result in the expenditure of funds, the bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

In addition, the bill makes an appropriation of \$1.5 million in non-recurring funds from the General Revenue Fund to FDLE to reimburse local law enforcement agencies for these activities. These funds would place the local mandate analysis in one of the mandate exceptions under Sec. 18(a), Art. VII - providing an exception for instances in which the Legislature appropriates funds sufficient to fund the expenditure.

2. Other:

The bill may implicate Section 12 of Article I of the Florida Constitution and the Fourth Amendment to the U.S. Constitution. These sections protect citizens from unreasonable searches and seizures by government. It may be argued that the seizure of inventories of controlled substances that remain with physicians after the ten-day buyback period violate these provisions. However, the bill does provide for the buy back of the inventories from the wholesaler.

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to DOH to implement and enforce the wholesale distributor reporting requirements created by s. 499.0121(14), F.S. The bill provides specific guidance to DOH for drafting the rules necessary to implement the reporting requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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29 | a controlled substance; providing criminal penalties;
30 | providing requirements for reports; amending s. 465.0276,
31 | F.S.; prohibiting registered dispensing practitioners from
32 | dispensing certain controlled substances; providing an
33 | exception; repealing a 72-hour supply limit on dispensing
34 | certain controlled substances to certain patients in
35 | registered pain-management clinics; providing an exception
36 | for dispensing controlled substances in the health care
37 | system of the Department of Corrections; amending s.
38 | 499.005, F.S.; prohibiting distribution of certain
39 | controlled substances by specified practitioners; amending
40 | s. 499.0121, F.S.; providing reporting requirements for
41 | wholesale distributors of certain controlled substances;
42 | amending s. 499.05, F.S.; authorizing rulemaking
43 | concerning specified controlled substance wholesale
44 | distributor reporting requirements; amending s. 810.02,
45 | F.S.; authorizing separate judgments and sentences for
46 | burglary with the intent to commit theft of a controlled
47 | substance under specified provisions and for any
48 | applicable possession of controlled substance offense
49 | under specified provisions in certain circumstances;
50 | amending s. 812.014, F.S.; authorizing separate judgments
51 | and sentences for theft of a controlled substance under
52 | specified provisions and for any applicable possession of
53 | controlled substance offense under specified provisions in
54 | certain circumstances; amending s. 893.07, F.S.; providing
55 | that law enforcement officers are not required to obtain a
56 | subpoena, court order, or search warrant in order to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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57 obtain access to or copies of specified controlled
 58 substance inventory records; requiring reporting discovery
 59 of the theft or loss of controlled substances to the
 60 sheriff within a specified period; providing criminal
 61 penalties; repealing s. 2 of chapter 2009-198, Laws of
 62 Florida, relating to Program Implementation and Oversight
 63 Task Force in the Executive Office of the Governor
 64 concerning the electronic system established for the
 65 prescription drug monitoring program; providing a buyback
 66 program for undispensed controlled substance inventory
 67 held by specified licensed physicians; requiring reports
 68 of program; providing for a declaration of a public health
 69 emergency; requiring certain actions relating to
 70 dispensing practitioners identified as posing the greatest
 71 threat to public health; providing an appropriation;
 72 providing for future repeal of program provisions;
 73 providing an effective date.

74
 75 Be It Enacted by the Legislature of the State of Florida:

76
 77 Section 1. Subsection (5) of section 456.037, Florida
 78 Statutes, is amended to read:

79 456.037 Business establishments; requirements for active
 80 status licenses; delinquency; discipline; applicability.—

81 (5) This section applies to any business establishment
 82 registered, permitted, or licensed by the department to do
 83 business. Business establishments include, but are not limited
 84 to, dental laboratories, electrology facilities, massage

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85 | establishments, and pharmacies, ~~and pain-management clinics~~
 86 | ~~required to be registered under s. 458.3265 or s. 459.0137.~~

87 | Section 2. Subsection (9) of section 456.057, Florida
 88 | Statutes, is amended to read:

89 | 456.057 Ownership and control of patient records; report
 90 | or copies of records to be furnished.—

91 | (9)(a)1. The department may obtain patient records
 92 | pursuant to a subpoena without written authorization from the
 93 | patient if the department and the probable cause panel of the
 94 | appropriate board, if any, find reasonable cause to believe that
 95 | a health care practitioner has excessively or inappropriately
 96 | prescribed any controlled substance specified in chapter 893 in
 97 | violation of this chapter or any professional practice act or
 98 | that a health care practitioner has practiced his or her
 99 | profession below that level of care, skill, and treatment
 100 | required as defined by this chapter or any professional practice
 101 | act and also find that appropriate, reasonable attempts were
 102 | made to obtain a patient release. ~~Notwithstanding the foregoing,~~
 103 | ~~the department need not attempt to obtain a patient release when~~
 104 | ~~investigating an offense involving the inappropriate~~
 105 | ~~prescribing, overprescribing, or diversion of controlled~~
 106 | ~~substances and the offense involves a pain-management clinic.~~
 107 | ~~The department may obtain patient records without patient~~
 108 | ~~authorization or subpoena from any pain-management clinic~~
 109 | ~~required to be licensed if the department has probable cause to~~
 110 | ~~believe that a violation of any provision of s. 458.3265 or s.~~
 111 | ~~459.0137 is occurring or has occurred and reasonably believes~~
 112 | ~~that obtaining such authorization is not feasible due to the~~

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113 ~~volume of the dispensing and prescribing activity involving~~
 114 ~~controlled substances and that obtaining patient authorization~~
 115 ~~or the issuance of a subpoena would jeopardize the~~
 116 ~~investigation.~~

117 2. The department may obtain patient records and insurance
 118 information pursuant to a subpoena without written authorization
 119 from the patient if the department and the probable cause panel
 120 of the appropriate board, if any, find reasonable cause to
 121 believe that a health care practitioner has provided inadequate
 122 medical care based on termination of insurance and also find
 123 that appropriate, reasonable attempts were made to obtain a
 124 patient release.

125 3. The department may obtain patient records, billing
 126 records, insurance information, provider contracts, and all
 127 attachments thereto pursuant to a subpoena without written
 128 authorization from the patient if the department and probable
 129 cause panel of the appropriate board, if any, find reasonable
 130 cause to believe that a health care practitioner has submitted a
 131 claim, statement, or bill using a billing code that would result
 132 in payment greater in amount than would be paid using a billing
 133 code that accurately describes the services performed, requested
 134 payment for services that were not performed by that health care
 135 practitioner, used information derived from a written report of
 136 an automobile accident generated pursuant to chapter 316 to
 137 solicit or obtain patients personally or through an agent
 138 regardless of whether the information is derived directly from
 139 the report or a summary of that report or from another person,
 140 solicited patients fraudulently, received a kickback as defined

141 | in s. 456.054, violated the patient brokering provisions of s.
 142 | 817.505, or presented or caused to be presented a false or
 143 | fraudulent insurance claim within the meaning of s.
 144 | 817.234(1)(a), and also find that, within the meaning of s.
 145 | 817.234(1)(a), patient authorization cannot be obtained because
 146 | the patient cannot be located or is deceased, incapacitated, or
 147 | suspected of being a participant in the fraud or scheme, and if
 148 | the subpoena is issued for specific and relevant records.

149 | 4. Notwithstanding subparagraphs 1.-3., when the
 150 | department investigates a professional liability claim or
 151 | undertakes action pursuant to s. 456.049 or s. 627.912, the
 152 | department may obtain patient records pursuant to a subpoena
 153 | without written authorization from the patient if the patient
 154 | refuses to cooperate or if the department attempts to obtain a
 155 | patient release and the failure to obtain the patient records
 156 | would be detrimental to the investigation.

157 | Section 3. Section 458.3265, Florida Statutes, is
 158 | repealed.

159 | Section 4. Section 458.327, Florida Statutes, is amended
 160 | to read:

161 | 458.327 Penalty for violations.—

162 | (1) Each of the following acts constitutes a felony of the
 163 | third degree, punishable as provided in s. 775.082, s. 775.083,
 164 | or s. 775.084:

165 | (a) The practice of medicine or an attempt to practice
 166 | medicine without a license to practice in Florida.

167 | (b) The use or attempted use of a license which is
 168 | suspended or revoked to practice medicine.

169 (c) Attempting to obtain or obtaining a license to
 170 practice medicine by knowing misrepresentation.

171 (d) Attempting to obtain or obtaining a position as a
 172 medical practitioner or medical resident in a clinic or hospital
 173 through knowing misrepresentation of education, training, or
 174 experience.

175 (e) Dispensing a controlled substance listed in Schedule
 176 II, Schedule III, Schedule IV, or Schedule V in violation of s.
 177 465.0276. ~~Knowingly operating, owning, or managing a~~
 178 ~~nonregistered pain-management clinic that is required to be~~
 179 ~~registered with the Department of Health pursuant to s.~~
 180 ~~458.3265(1).~~

181 (2) Each of the following acts constitutes a misdemeanor
 182 of the first degree, punishable as provided in s. 775.082 or s.
 183 775.083:

184 (a) Knowingly concealing information relating to
 185 violations of this chapter.

186 (b) Making any willfully false oath or affirmation
 187 whenever an oath or affirmation is required by this chapter.

188 (c) Referring any patient, for health care goods or
 189 services, to a partnership, firm, corporation, or other business
 190 entity in which the physician or the physician's employer has an
 191 equity interest of 10 percent or more unless, prior to such
 192 referral, the physician notifies the patient of his or her
 193 financial interest and of the patient's right to obtain such
 194 goods or services at the location of the patient's choice. This
 195 section does not apply to the following types of equity
 196 interest:

197 | 1. The ownership of registered securities issued by a
 198 | publicly held corporation or the ownership of securities issued
 199 | by a publicly held corporation, the shares of which are traded
 200 | on a national exchange or the over-the-counter market;

201 | 2. A physician's own practice, whether he or she is a sole
 202 | practitioner or part of a group, when the health care good or
 203 | service is prescribed or provided solely for the physician's own
 204 | patients and is provided or performed by the physician or under
 205 | the physician's supervision; or

206 | 3. An interest in real property resulting in a landlord-
 207 | tenant relationship between the physician and the entity in
 208 | which the equity interest is held, unless the rent is
 209 | determined, in whole or in part, by the business volume or
 210 | profitability of the tenant or is otherwise unrelated to fair
 211 | market value.

212 | (d) Leading the public to believe that one is licensed as
 213 | a medical doctor, or is engaged in the licensed practice of
 214 | medicine, without holding a valid, active license.

215 | (e) Practicing medicine or attempting to practice medicine
 216 | with an inactive or delinquent license.

217 | ~~(f) Knowingly prescribing or dispensing, or causing to be~~
 218 | ~~prescribed or dispensed, controlled substances in a~~
 219 | ~~nonregistered pain-management clinic that is required to be~~
 220 | ~~registered with the Department of Health pursuant to s.~~
 221 | ~~458.3265(1).~~

222 | Section 5. Paragraphs (oo), (pp), and (qq) of subsection
 223 | (1) of section 458.331, Florida Statutes, are amended to read:

224 | 458.331 Grounds for disciplinary action; action by the

225 board and department.—

226 (1) The following acts constitute grounds for denial of a
 227 license or disciplinary action, as specified in s. 456.072(2):

228 (oo) Dispensing a controlled substance listed in Schedule
 229 II, Schedule III, Schedule IV, or Schedule V in violation of s.
 230 465.0276. Applicable to a licensee who serves as the designated
 231 physician of a pain-management clinic as defined in s. 458.3265
 232 or s. 459.0137:

233 1. ~~Registering a pain-management clinic through~~
 234 ~~misrepresentation or fraud;~~

235 2. ~~Procuring, or attempting to procure, the registration~~
 236 ~~of a pain-management clinic for any other person by making or~~
 237 ~~causing to be made, any false representation;~~

238 3. ~~Failing to comply with any requirement of chapter 499,~~
 239 ~~the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the~~
 240 ~~Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,~~
 241 ~~the Drug Abuse Prevention and Control Act; or chapter 893, the~~
 242 ~~Florida Comprehensive Drug Abuse Prevention and Control Act;~~

243 4. ~~Being convicted or found guilty of, regardless of~~
 244 ~~adjudication to, a felony or any other crime involving moral~~
 245 ~~turpitude, fraud, dishonesty, or deceit in any jurisdiction of~~
 246 ~~the courts of this state, of any other state, or of the United~~
 247 ~~States;~~

248 5. ~~Being convicted of, or disciplined by a regulatory~~
 249 ~~agency of the Federal Government or a regulatory agency of~~
 250 ~~another state for, any offense that would constitute a violation~~
 251 ~~of this chapter;~~

252 6. ~~Being convicted of, or entering a plea of guilty or~~

253 ~~nolo contendere to, regardless of adjudication, a crime in any~~
 254 ~~jurisdiction of the courts of this state, of any other state, or~~
 255 ~~of the United States which relates to the practice of, or the~~
 256 ~~ability to practice, a licensed health care profession;~~

257 ~~7. Being convicted of, or entering a plea of guilty or~~
 258 ~~nolo contendere to, regardless of adjudication, a crime in any~~
 259 ~~jurisdiction of the courts of this state, of any other state, or~~
 260 ~~of the United States which relates to health care fraud;~~

261 ~~8. Dispensing any medicinal drug based upon a~~
 262 ~~communication that purports to be a prescription as defined in~~
 263 ~~s. 465.003(14) or s. 893.02 if the dispensing practitioner knows~~
 264 ~~or has reason to believe that the purported prescription is not~~
 265 ~~based upon a valid practitioner-patient relationship; or~~

266 ~~9. Failing to timely notify the board of the date of his~~
 267 ~~or her termination from a pain-management clinic as required by~~
 268 ~~s. 458.3265(2).~~

269 ~~(pp) Failing to timely notify the department of the theft~~
 270 ~~of prescription blanks from a pain-management clinic or a breach~~
 271 ~~of other methods for prescribing within 24 hours as required by~~
 272 ~~s. 458.3265(2).~~

273 ~~(qq) Promoting or advertising through any communication~~
 274 ~~media the use, sale, or dispensing of any controlled substance~~
 275 ~~appearing on any schedule in chapter 893.~~

276 Section 6. Section 459.0137, Florida Statutes, is
 277 repealed.

278 Section 7. Paragraph (e) of subsection (1) and paragraph
 279 (d) of subsection (2) of section 459.013, Florida Statutes, are
 280 amended to read:

281 459.013 Penalty for violations.—

282 (1) Each of the following acts constitutes a felony of the
 283 third degree, punishable as provided in s. 775.082, s. 775.083,
 284 or s. 775.084:

285 (e) Dispensing a controlled substance listed in Schedule
 286 II, Schedule III, Schedule IV, or Schedule V in violation of s.
 287 465.0276. Knowingly operating, owning, or managing a
 288 nonregistered pain-management clinic that is required to be
 289 registered with the Department of Health pursuant to s.
 290 459.0137(1).

291 (2) Each of the following acts constitutes a misdemeanor
 292 of the first degree, punishable as provided in s. 775.082 or s.
 293 775.083:

294 ~~(d) Knowingly prescribing or dispensing, or causing to be~~
 295 ~~prescribed or dispensed, controlled substances in a~~
 296 ~~nonregistered pain-management clinic that is required to be~~
 297 ~~registered with the Department of Health pursuant to s.~~
 298 ~~459.0137(1).~~

299 Section 8. Paragraphs (qq), (rr), and (ss) of subsection
 300 (1) of section 459.015, Florida Statutes, are amended to read:

301 459.015 Grounds for disciplinary action; action by the
 302 board and department.—

303 (1) The following acts constitute grounds for denial of a
 304 license or disciplinary action, as specified in s. 456.072(2):

305 (qq) Dispensing a controlled substance listed in Schedule
 306 II, Schedule III, Schedule IV, or Schedule V in violation of s.
 307 465.0276. Applicable to a licensee who serves as the designated
 308 physician of a pain-management clinic as defined in s. 458.3265

309 ~~or s. 459.0137:~~

310 ~~1. Registering a pain-management clinic through~~
 311 ~~misrepresentation or fraud;~~

312 ~~2. Procuring, or attempting to procure, the registration~~
 313 ~~of a pain-management clinic for any other person by making or~~
 314 ~~causing to be made, any false representation;~~

315 ~~3. Failing to comply with any requirement of chapter 499,~~
 316 ~~the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the~~
 317 ~~Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,~~
 318 ~~the Drug Abuse Prevention and Control Act; or chapter 893, the~~
 319 ~~Florida Comprehensive Drug Abuse Prevention and Control Act;~~

320 ~~4. Being convicted or found guilty of, regardless of~~
 321 ~~adjudication to, a felony or any other crime involving moral~~
 322 ~~turpitude, fraud, dishonesty, or deceit in any jurisdiction of~~
 323 ~~the courts of this state, of any other state, or of the United~~
 324 ~~States;~~

325 ~~5. Being convicted of, or disciplined by a regulatory~~
 326 ~~agency of the Federal Government or a regulatory agency of~~
 327 ~~another state for, any offense that would constitute a violation~~
 328 ~~of this chapter;~~

329 ~~6. Being convicted of, or entering a plea of guilty or~~
 330 ~~nolo contendere to, regardless of adjudication, a crime in any~~
 331 ~~jurisdiction of the courts of this state, of any other state, or~~
 332 ~~of the United States which relates to the practice of, or the~~
 333 ~~ability to practice, a licensed health care profession;~~

334 ~~7. Being convicted of, or entering a plea of guilty or~~
 335 ~~nolo contendere to, regardless of adjudication, a crime in any~~
 336 ~~jurisdiction of the courts of this state, of any other state, or~~

337 | ~~of the United States which relates to health care fraud;~~
 338 | ~~8. Dispensing any medicinal drug based upon a~~
 339 | ~~communication that purports to be a prescription as defined in~~
 340 | ~~s. 465.003(14) or s. 893.02 if the dispensing practitioner knows~~
 341 | ~~or has reason to believe that the purported prescription is not~~
 342 | ~~based upon a valid practitioner-patient relationship; or~~
 343 | ~~9. Failing to timely notify the board of the date of his~~
 344 | ~~or her termination from a pain-management clinic as required by~~
 345 | ~~s. 459.0137(2).~~
 346 | ~~(rr) Failing to timely notify the department of the theft~~
 347 | ~~of prescription blanks from a pain-management clinic or a breach~~
 348 | ~~of other methods for prescribing within 24 hours as required by~~
 349 | ~~s. 459.0137(2).~~
 350 | ~~(ss) Promoting or advertising through any communication~~
 351 | ~~media the use, sale, or dispensing of any controlled substance~~
 352 | ~~appearing on any schedule in chapter 893.~~
 353 | Section 9. Subsections (3) and (4) of section 465.015,
 354 | Florida Statutes, are renumbered as subsections (4) and (5),
 355 | respectively, a new subsection (3) is added to that section, and
 356 | present subsection (4) of that section is amended, to read:
 357 | 465.015 Violations and penalties.-
 358 | (3) It is unlawful for any pharmacist, pharmacy intern, or
 359 | other person employed by or at a pharmacy to fail to report to
 360 | the sheriff of the county where the pharmacy is located within
 361 | 24 hours after learning of any instance in which a person
 362 | obtained or attempted to obtain a controlled substance, as
 363 | defined in s. 893.02, that the pharmacist, pharmacy intern, or
 364 | other person employed by or at the pharmacy knew or reasonably

365 | should have known was obtained or attempted to be obtained from
 366 | the pharmacy through fraudulent methods or representations. Any
 367 | pharmacist, pharmacy intern, or other person employed by or at a
 368 | pharmacy who fails to make such a report within 24 hours after
 369 | learning of the fraud or attempted fraud commits a misdemeanor
 370 | of the first degree, punishable as provided in s. 775.082 or s.
 371 | 775.083. A sufficient report of the fraudulent obtaining of
 372 | controlled substances under this subsection shall contain, at a
 373 | minimum, a copy of the prescription used or presented and a
 374 | narrative, including all information available to the pharmacy
 375 | concerning the transaction, such as the name and telephone
 376 | number of the prescribing physician; the name, description, and
 377 | any personal identification information pertaining to the person
 378 | who presented the prescription; and all other material
 379 | information, such as photographic or video surveillance of the
 380 | transaction.

381 | ~~(5)(4)~~ Any person who violates any provision of subsection
 382 | (1) or subsection (4) ~~(3)~~ commits a misdemeanor of the first
 383 | degree, punishable as provided in s. 775.082 or s. 775.083. Any
 384 | person who violates any provision of subsection (2) commits a
 385 | felony of the third degree, punishable as provided in s.
 386 | 775.082, s. 775.083, or s. 775.084. In any warrant, information,
 387 | or indictment, it shall not be necessary to negative any
 388 | exceptions, and the burden of any exception shall be upon the
 389 | defendant.

390 | Section 10. Paragraph (b) of subsection (1) of section
 391 | 465.0276, Florida Statutes, is amended to read:

392 | 465.0276 Dispensing practitioner.—

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393 (1)
 394 (b) A practitioner registered under this section may not
 395 dispense a controlled substance listed in Schedule II, Schedule
 396 III, Schedule IV, or Schedule V as provided in s. 893.03. A
 397 ~~practitioner registered under this section may not dispense more~~
 398 ~~than a 72-hour supply of a controlled substance listed in~~
 399 ~~Schedule II, Schedule III, Schedule IV, or Schedule V of s.~~
 400 ~~893.03 for any patient who pays for the medication by cash,~~
 401 ~~check, or credit card in a clinic registered under s. 458.3265~~
 402 ~~or s. 459.0137. A practitioner who violates this paragraph~~
 403 ~~commits a felony of the third degree, punishable as provided in~~
 404 ~~s. 775.082, s. 775.083, or s. 775.084. This paragraph does not~~
 405 ~~apply to:~~

406 ~~1. A practitioner who dispenses medication to a workers'~~
 407 ~~compensation patient pursuant to chapter 440.~~

408 ~~2. A practitioner who dispenses medication to an insured~~
 409 ~~patient who pays by cash, check, or credit card to cover any~~
 410 ~~applicable copayment or deductible.~~

411 1.3. The dispensing of complimentary packages of medicinal
 412 drugs to the practitioner's own patients in the regular course
 413 of her or his practice without the payment of a fee or
 414 remuneration of any kind, whether direct or indirect, as
 415 provided in subsection (5).

416 2. The dispensing of controlled substances in the health
 417 care system of the Department of Corrections.

418 Section 11. Subsection (30) is added to section 499.005,
 419 Florida Statutes, to read:

420 499.005 Prohibited acts.—It is unlawful for a person to

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421 perform or cause the performance of any of the following acts in
 422 this state:

423 (30) The distribution of a controlled substance in
 424 Schedule II, Schedule III, Schedule IV, or Schedule V as
 425 provided in s. 893.03 to, or under the Drug Enforcement
 426 Administration number of, any practitioner licensed under
 427 chapter 458, chapter 459, chapter 461, or chapter 466, including
 428 practitioners designated pursuant to s. 499.01(1)(t).

429 Section 12. Subsection (14) is added to section 499.0121,
 430 Florida Statutes, to read:

431 499.0121 Storage and handling of prescription drugs;
 432 recordkeeping.—The department shall adopt rules to implement
 433 this section as necessary to protect the public health, safety,
 434 and welfare. Such rules shall include, but not be limited to,
 435 requirements for the storage and handling of prescription drugs
 436 and for the establishment and maintenance of prescription drug
 437 distribution records.

438 (14) DISTRIBUTION REPORTING.—Each wholesale distributor
 439 shall submit a report of its distributions of controlled
 440 substances listed in Schedule II, Schedule III, Schedule IV, or
 441 Schedule V as provided in s. 893.03 to the department. The
 442 report shall be submitted weekly, in an electronic format
 443 specified by the department. The report shall contain the
 444 following information:

445 (a) The name and address of the entity to which the drugs
 446 are distributed.

447 (b) The Florida license, registration, or permit number
 448 and Drug Enforcement Administration number of the entity that
 449 ordered the drugs.

450 (c) The name and address of the entity rendering payment
 451 for the drugs, if different than that reported under paragraphs
 452 (a) and (b).

453 (d) The drug name, lot and batch number, and number of
 454 unit doses distributed.

455 (e) The date of sale.

456 Section 13. Paragraph (o) is added to subsection (1) of
 457 section 499.05, Florida Statutes, to read:

458 499.05 Rules.—

459 (1) The department shall adopt rules to implement and
 460 enforce this part with respect to:

461 (o) Wholesale distributor reporting requirements of s.
 462 499.0121(14).

463 Section 14. Paragraph (f) is added to subsection (3) of
 464 section 810.02, Florida Statutes, to read:

465 810.02 Burglary.—

466 (3) Burglary is a felony of the second degree, punishable
 467 as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the
 468 course of committing the offense, the offender does not make an
 469 assault or battery and is not and does not become armed with a
 470 dangerous weapon or explosive, and the offender enters or
 471 remains in a:

472 (f) Structure or conveyance when the offense intended to
 473 be committed therein is theft of a controlled substance as
 474 defined in s. 893.02. Notwithstanding any other law, separate

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475 judgments and sentences for burglary with the intent to commit
 476 theft of a controlled substance under this paragraph and for any
 477 applicable possession of controlled substance offense under s.
 478 893.13 or trafficking in controlled substance offense under s.
 479 893.135 may be imposed when all such offenses involve the same
 480 amount or amounts of a controlled substance.

481
 482 However, if the burglary is committed within a county that is
 483 subject to a state of emergency declared by the Governor under
 484 chapter 252 after the declaration of emergency is made and the
 485 perpetration of the burglary is facilitated by conditions
 486 arising from the emergency, the burglary is a felony of the
 487 first degree, punishable as provided in s. 775.082, s. 775.083,
 488 or s. 775.084. As used in this subsection, the term "conditions
 489 arising from the emergency" means civil unrest, power outages,
 490 curfews, voluntary or mandatory evacuations, or a reduction in
 491 the presence of or response time for first responders or
 492 homeland security personnel. A person arrested for committing a
 493 burglary within a county that is subject to such a state of
 494 emergency may not be released until the person appears before a
 495 committing magistrate at a first appearance hearing. For
 496 purposes of sentencing under chapter 921, a felony offense that
 497 is reclassified under this subsection is ranked one level above
 498 the ranking under s. 921.0022 or s. 921.0023 of the offense
 499 committed.

500 Section 15. Paragraph (c) of subsection (2) of section
 501 812.014, Florida Statutes, is amended to read:

502 812.014 Theft.—

503 (2)

504 (c) It is grand theft of the third degree and a felony of

505 the third degree, punishable as provided in s. 775.082, s.

506 775.083, or s. 775.084, if the property stolen is:

507 1. Valued at \$300 or more, but less than \$5,000.

508 2. Valued at \$5,000 or more, but less than \$10,000.

509 3. Valued at \$10,000 or more, but less than \$20,000.

510 4. A will, codicil, or other testamentary instrument.

511 5. A firearm.

512 6. A motor vehicle, except as provided in paragraph (a).

513 7. Any commercially farmed animal, including any animal of

514 the equine, bovine, or swine class, or other grazing animal, and

515 including aquaculture species raised at a certified aquaculture

516 facility. If the property stolen is aquaculture species raised

517 at a certified aquaculture facility, then a \$10,000 fine shall

518 be imposed.

519 8. Any fire extinguisher.

520 9. Any amount of citrus fruit consisting of 2,000 or more

521 individual pieces of fruit.

522 10. Taken from a designated construction site identified

523 by the posting of a sign as provided for in s. 810.09(2)(d).

524 11. Any stop sign.

525 12. Anhydrous ammonia.

526 13. Any amount of a controlled substance as defined in s.

527 893.02. Notwithstanding any other law, separate judgments and

528 sentences for theft of a controlled substance under this

529 subparagraph and for any applicable possession of controlled

530 substance offense under s. 893.13 or trafficking in controlled

531 substance offense under s. 893.135 may be imposed when all such
 532 offenses involve the same amount or amounts of a controlled
 533 substance.

534
 535 However, if the property is stolen within a county that is
 536 subject to a state of emergency declared by the Governor under
 537 chapter 252, the property is stolen after the declaration of
 538 emergency is made, and the perpetration of the theft is
 539 facilitated by conditions arising from the emergency, the
 540 offender commits a felony of the second degree, punishable as
 541 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 542 property is valued at \$5,000 or more, but less than \$10,000, as
 543 provided under subparagraph 2., or if the property is valued at
 544 \$10,000 or more, but less than \$20,000, as provided under
 545 subparagraph 3. As used in this paragraph, the term "conditions
 546 arising from the emergency" means civil unrest, power outages,
 547 curfews, voluntary or mandatory evacuations, or a reduction in
 548 the presence of or the response time for first responders or
 549 homeland security personnel. For purposes of sentencing under
 550 chapter 921, a felony offense that is reclassified under this
 551 paragraph is ranked one level above the ranking under s.
 552 921.0022 or s. 921.0023 of the offense committed.

553 Section 16. Subsections (4) and (5) of section 893.07,
 554 Florida Statutes, are amended to read:

555 893.07 Records.—

556 (4) Every inventory or record required by this chapter,
 557 including prescription records, shall be maintained:

558 (a) Separately from all other records of the registrant,

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or
(b) Alternatively, in the case of Schedule III, IV, or V controlled substances, in such form that information required by this chapter is readily retrievable from the ordinary business records of the registrant.

In either case, the records described in this subsection shall be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances. Law enforcement officers are not required to obtain a subpoena, court order, or search warrant in order to obtain access to or copies of such records.

(5) Each person described in subsection (1) shall:

(a) Maintain a record which shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft.

(b) In the event of the discovery of the theft or loss of controlled substances, report such theft or loss to the sheriff of that county within 48 hours after its discovery. A person who fails to report a theft or loss of a substance listed in s. 893.03(3), (4), or (5) within 48 hours after discovery as required in this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who fails to report a theft or loss of a substance listed in s. 893.03(2) within 48 hours after discovery as required in this paragraph commits a misdemeanor of the first degree,

587 punishable as provided in s. 775.082 or s. 775.083.

588 Section 17. Section 2 of chapter 2009-198, Laws of
 589 Florida, is repealed.

590 Section 18. (1) BUY-BACK PROGRAM.--Within 10 days after
 591 the effective date of this act, each physician licensed under
 592 chapter 458, chapter 459, chapter 461, or chapter 466, Florida
 593 Statutes, shall ensure that undispensed controlled substance
 594 inventory purchased under the physician's Drug Enforcement
 595 Administration number for dispensing is:

596 (a) Returned to the wholesale distributor, as defined in
 597 s. 499.003, Florida Statutes, which distributed them; or

598 (b) Turned in to local law enforcement agencies and
 599 abandoned.

600
 601 Wholesale distributors shall buy back undispensed controlled
 602 substance inventory at the purchase price paid by the physician,
 603 physician practice, clinic, or other paying entity. Each
 604 wholesale distributor shall submit a report of its activities
 605 under this section to the Department of Health by August 1,
 606 2011. The report shall include the following information:

- 607 1. The name and address of the returning entity.
 608 2. The Florida license, registration, or permit number and
 609 Drug Enforcement Administration number of the entity that
 610 originally ordered the drugs.
 611 3. The drug name and number of unit doses returned.
 612 4. The date of return.

613 (2) PUBLIC HEALTH EMERGENCY.--

614 (a) The Legislature finds that:

615 1. Prescription drug overdose has been declared a public
 616 health epidemic by the United States Centers for Disease Control
 617 and Prevention.

618 2. Prescription drug abuse results in an average of 7
 619 deaths in this state each day.

620 3. Physicians in this state purchased over 85 percent of
 621 the oxycodone purchased by all practitioners in the United
 622 States in 2006.

623 4. Physicians in this state purchased over 93 percent of
 624 the methadone purchased by all practitioners in the United
 625 States in 2006.

626 5. Some physicians in this state dispense medically
 627 unjustifiable amounts of controlled substances to addicts and
 628 people who intend to illegally sell the drugs.

629 6. Physicians in this state who have purchased large
 630 quantities of controlled substances may have significant
 631 inventory on the effective date of this act.

632 7. On the effective date of this act, the only legal
 633 method for a dispensing practitioner to sell or otherwise
 634 transfer controlled substances purchased for dispensing is
 635 through the buy-back procedure or abandonment procedures of
 636 subsection (1).

637 8. It is likely that the same physicians who purchase and
 638 dispense medically unjustifiable amounts of drugs will not
 639 legally dispose of remaining inventory.

640 9. The actions of such dispensing practitioners may result
 641 in substantial injury to the public health.

642 (b) Immediately on the effective date of this act, the
 643 State Health Officer shall declare a public health emergency
 644 pursuant to s. 381.00315, Florida Statutes. Pursuant to that
 645 declaration, the Department of Health, the Attorney General, the
 646 Department of Law Enforcement, and local law enforcement
 647 agencies shall take the following actions:

648 1. Within 2 days after the effective date of this act, in
 649 consultation with wholesale distributors as defined in s.
 650 499.003, Florida Statutes, the Department of Health shall
 651 identify dispensing practitioners that purchased more than an
 652 average of 2,000 unit doses of controlled substances per month
 653 in the previous 6 months, and shall identify the dispensing
 654 practitioners in that group who pose the greatest threat to the
 655 public health based on an assessment of:

- 656 a. The risk of noncompliance with subsection (1).
- 657 b. Purchase amounts.
- 658 c. Manner of medical practice.
- 659 d. Any other factor set by the State Health Officer.

660
 661 The Attorney General shall consult and coordinate with federal
 662 law enforcement agencies. The Department of Law Enforcement
 663 shall coordinate the efforts of local law enforcement agencies.

664 2. On the 3rd day after the effective date of this act,
 665 the Department of Law Enforcement or local law enforcement
 666 agencies shall enter the business premises of the dispensing
 667 practitioners identified as posing the greatest threat to public
 668 health and quarantine the controlled substance inventory of such
 669 dispensing practitioners on site.

670 3. The Department of Law Enforcement or local law
 671 enforcement agencies shall ensure the security of such inventory
 672 24 hours a day through the 10th day after the effective date of
 673 this act or until the inventory is validly transferred pursuant
 674 to subsection (1), whichever is earlier.

675 4. On the 11th day after the effective date of this act,
 676 any remaining controlled substance purchased for dispensing by
 677 practitioners is deemed contraband under s. 893.12, Florida
 678 Statutes. The Department of Law Enforcement or local law
 679 enforcement agencies shall seize the inventory and comply with
 680 the provisions of s. 893.12, Florida Statutes, to destroy it.

681 (c) In order to implement the provisions of this section,
 682 the sum of \$1.5 million of nonrecurring funds from the General
 683 Revenue Fund is appropriated to the Department of Law
 684 Enforcement for the 2010-2011 fiscal year. The Department of Law
 685 Enforcement shall expend the appropriation by reimbursing local
 686 law enforcement agencies for the overtime-hour costs associated
 687 with securing the quarantined controlled substance inventory as
 688 provided in paragraph (b). All requests for reimbursement must
 689 be submitted to the Department of Law Enforcement by June 1,
 690 2011. If the requests for reimbursement exceed the amount
 691 appropriated, the reimbursements shall be prorated by the hours
 692 of overtime per requesting agency at a maximum of one law
 693 enforcement officer per quarantine site.

694 (3) This section is repealed January 1, 2013.

695 Section 19. This act shall take effect upon becoming a
 696 law.

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 <i>LMB</i>	Havlicak <i>RH</i>

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.

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2011

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

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

- Section 1. Section 35.13, Florida Statutes, is repealed.
- Section 2. Section 35.25, Florida Statutes, is repealed.
- 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>RN</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.

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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 7131 PCB CRJS 11-02 Seat Requirements

SPONSOR(S): Criminal Justice Subcommittee, Campbell

TIED BILLS: None IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	14 Y, 0 N	Williams	Cunningham
1) Judiciary Committee		Williams <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 448.05, F.S., makes it a second degree misdemeanor for certain employers to fail to provide a seat for specified employees during business hours.

Since 2000, the Florida Department of Law Enforcement reported that there have been no arrests associated with this section of statute.

The bill repeals s. 448.05, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 448.05, F.S., was created in 1899.¹ The statute provides the following

If any merchant, storekeeper, employer of male or female clerks, salespeople, cash boys or cash girls, or other assistants, in mercantile or other business pursuits, requiring such employees to stand or walk during their active duties, neglect to furnish at his or her own cost or expense suitable chairs, stools or sliding seats attached to the counters or walls, for the use of such employees when not engaged in their active work, and not required to be on their feet in the proper performance of their several duties; or refuse to permit their said employees to make reasonable use of said seats during business hours, for purposes of necessary rest, and when such use will not interfere with humane or reasonable requirements of their employment, he or she shall be guilty of a misdemeanor of the second degree.²

Section 448.05, F.S., has not been amended in a substantive way since its creation. It was amended in 1971³ to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a \$1,000 fine. In 1997,⁴ the statute was amended again to remove gender-specific references.

Since 2000, the Florida Department of Law Enforcement reported that there have been no arrests associated with this section of statute.

Effect of the Bill

The bill repeals s. 448.05, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 448.05, F.S., relating to seats to be furnished for employees in stores; penalty.

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.

¹ Section 1, ch. 4762, 1899; GS 3235; RGS 5068; CGL 7170.

² A second degree misdemeanor is punishable by up to 60 days imprisonment and a \$500 fine. Sections 775.082 and 775.083, F.S.

³ Section 376, Ch. 71-136, L.O.F.

⁴ Section 166, Ch. 97-103, L.O.F.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to seat requirements; repealing s. 448.05,
 3 F.S., relating to seats to be furnished for employees in
 4 stores and penalties; repealing provisions that require
 5 employers who require employees to stand or walk during
 6 their duties to provide seats for such employees when not
 7 engaged in their active work; repealing provisions that
 8 require employers to permit specified employees to use
 9 seats during business hours, for purposes of necessary
 10 rest, when such use will not interfere with requirements
 11 of employment; deleting a penalty; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 448.05, Florida Statutes, is repealed.
 17 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7133 PCB CRJS 11-03 Failure to Assist Officers at Polls

SPONSOR(S): Criminal Justice Subcommittee, Pilon

TIED BILLS: None IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 1 N	Williams	Cunningham
1) Judiciary Committee		Williams	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 104.101, F.S., makes it a first degree misdemeanor for a person summoned by a sheriff or deputy sheriff to fail or refuse to assist in maintaining the peace at the polls.

Since 2000, the Florida Department of Law Enforcement reported that there has been one arrest associated with this section of statute.

The bill repeals s. 104.101, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 104.101, F.S., was created in 1889.¹ The statute makes it a first degree misdemeanor² for any person summoned by the sheriff or deputy sheriff to fail or refuse to assist him or her in maintaining the peace at the polls.

Section 104.101, F.S., has not been amended in a substantive way since its creation. It was amended in 1971³ to update the associated penalty to a first degree misdemeanor from its original penalty. In 1995,⁴ the statute was amended to remove gender-specific references.

Since 2000, the Florida Department of Law Enforcement reported that there has been one arrest associated with this section of statute.

Effect of the Bill

The bill repeals s. 104.101, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 104.101, F.S., relating to failure to assist officers at polls.

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.

D. FISCAL COMMENTS:

¹ Section 27, ch. 3879, 1889; RS 181.

² A first degree misdemeanor is punishable by up to one year imprisonment and a \$1000 fine. Sections 775.082 and 775.083, F.S.

³ Section 29, ch. 71-136, L.O.F.

⁴ Section 619, ch. 95-147, L.O.F.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 7133

2011

1 A bill to be entitled
2 An act relating to failure to assist officers at polls;
3 repealing s. 104.101, F.S., which provides that a person
4 summoned by the sheriff or deputy sheriff who fails or
5 refuses to assist in maintaining the peace at the polls is
6 guilty of a first-degree misdemeanor; providing an
7 effective date.

8

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

10

11 Section 1. Section 104.101, Florida Statutes, is repealed.

12 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7137 PCB CRJS 11-05 County-operated Boot Camp Programs

SPONSOR(S): Criminal Justice Subcommittee, Julien

TIED BILLS: None IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

Section 958.046, F.S., authorizes courts to sentence a youthful offender to a county-operated youthful offender boot camp program in counties where such programs exist. The statute specifies that in county-operated youthful offender boot camp programs, juvenile offenders shall not be commingled with youthful offenders.

The Florida Association of Counties reports that they are unaware of any counties that operate such programs.

The bill repeals s. 958.046, F.S.

The bill does not appear to have a fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 958.046, F.S., authorizes courts to sentence a youthful offender to a county-operated youthful offender boot camp program in counties where such programs exist. The statute specifies that in county-operated youthful offender boot camp programs, juvenile offenders shall not be commingled with youthful offenders.

The Florida Association of Counties reports¹ that they are unaware of any counties that operate such programs.

Effect of the Bill

The bill repeals s. 958.046, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 958.046, F.S., relating to placement in county-operated boot camp programs for youthful offenders.

Section 2. The bill is effective 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 E-mail from Sarrah Carroll, Florida Association of Counties, dated March 14, 2011 (on file with Criminal Justice Subcommittee staff).

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

HB 7137

2011

1 A bill to be entitled
2 An act relating to county-operated boot camp programs;
3 repealing s. 958.046, F.S., relating to authorization for
4 placement of youthful offenders in county-operated boot
5 camp programs; providing an effective date.

6

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

8

9 Section 1. Section 958.046, Florida Statutes, is repealed.

10

 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7141 PCB CRJS 11-07 Adulterated Syrup

SPONSOR(S): Criminal Justice Subcommittee, Campbell

TIED BILLS: None IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	14 Y, 0 N	Krol	Cunningham
1) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

Section 865.07, F.S., makes it a second degree misdemeanor to sell or advertise for sale any adulterated or mixed syrups unless the percentage of such adulteration or mixture is clearly marked.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

The bill repeals s. 865.07, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current law provides protection to consumers against misbranding of food¹ in ch. 500, F.S. Section 500.11(1), F.S., provides that a food is misbranded if:

- Its labeling is false or misleading in any particular.
- It is offered for sale under the name of another food.
- It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated.
- Its container is so made, formed, or filled as to be misleading.
- In package form, unless it bears a label containing:
 - The name and place of business of the manufacturer, packer, or distributor;
 - An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under this subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

Section 500.12(1)(a)4., F.S., provides that a food permit² is not needed by any person who sells sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state.

However, the statute still requires that such bottles contain:

- A label listing the producer's name and street address,
- All added ingredients,
- The net weight or volume of product, and
- A statement that reads, "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

Any person who violates the above provisions may have his or her food permit suspended³ or revoked, in addition to a fine of up to \$5,000 imposed by the Department of Agriculture and Consumer Services.

Section 865.07, F.S., was created in 1903.⁴ The statute makes it a second degree misdemeanor⁵ for any person to sell, offer for sale, or advertise for sale any adulterated or mixed syrups whatever, unless the percentage of such adulteration or mixture and the name and post office address of the manufacturer is clearly stamped or labeled on the barrel, can, case, bottle, or other receptacle containing such syrup or mixture.

Section 865.07, F.S., defines "adulterated mixture" or "admixture," as "all mixtures of two or more ingredients differing in their nature and quality, such as sugarcane syrup, sorghum syrup, maple syrup, molasses, or glucose."

Section 865.07, F.S., has not been amended in a substantive way since its creation. It was amended in 1971⁶ to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a \$1,000 fine.

¹ Section 500.03(1)(l), F.S., defines "food" as "articles used for food or drink for human consumption; chewing gum; articles used for components of any such article; and articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims."

² See s. 500.12, F.S.

³ Section 500.12(4)(a), F.S.

⁴ Sections 1, 2, 3, ch. 5231, 1903; GS 3706; RGS 5657; CGL 7860.

⁵ A second degree misdemeanor is punishable by up to 60 days imprisonment and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁶ Section 1119, ch. 71-136, L.O.F.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

The Effect of the Bill

The bill repeals s. 865.07, F.S. Persons who sell or advertise for sale any adulterated or mixed syrups without the percentage of such adulteration or mixture clearly marked would likely still be able to be penalized pursuant to ss. 500.11 and 500.12, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 865.07, F.S., relating adulterated syrup.

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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 7141

2011

1 A bill to be entitled
2 An act relating to adulterated syrup; repealing s. 865.07,
3 F.S., relating to a prohibition on certain acts relating
4 to adulterated syrup unless specified information is
5 provided; providing an effective date.

6

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

8

9 Section 1. Section 865.07, Florida Statutes, is repealed.

10

 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7143 PCB CRJS 11-08 Public Health
SPONSOR(S): Criminal Justice Subcommittee, Porth
TIED BILLS: None IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	14 Y, 0 N	Krol	Cunningham
1) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

Section 381.009, F.S., makes it a second degree misdemeanor for a place of employment or place serving the public to charge for the use of any toilet which is required to be provided by the regulation of the Department of Health.

Since 2000, the Department of Law Enforcement reports that there have been no arrests associated with this section of statute.

The bill repeals s. 381.009, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 381.009, F.S., was created in 1974.¹ It provides that it is a second degree misdemeanor² for a place of employment or place serving the public to make a charge for the use of any toilet which is required to be provided by regulation of the Department of Health.

Section 381.009, F.S., has not been amended in a substantive way since its creation. It was amended in 1977³ to correct the title of the Department of Health. In 1991,⁴ the statute was renumbered.⁵ Later in 1997,⁶ it was amended again to correct the title of the Department of Health.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

Effect of the Bill

The bill repeals s. 381.009, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 381.009, F.S., relating to toilets required by department regulations; charge for use of prohibited.

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 Section 1, ch. 74-240, L.O.F.

² A second degree misdemeanor is punishable by a \$500 fine. Section 775.083, F.S.

³ Section 98, ch. 77-147, L.O.F.

⁴ Section 41, ch. 91-297, L.O.F.

⁵ Formerly s. 381.522. F.S.

⁶ Section 42, ch. 97-101, L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 7143

2011

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A bill to be entitled
An act relating to public health; repealing s. 381.009,
F.S., which prohibits places of employment or places
serving the public from charging for the use of any toilet
required to be provided under Department of Health
regulations and to which penalties apply; providing an
effective date.

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

- Section 1. Section 381.009, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2011.