



Justice Appropriations Subcommittee

Monday, March 28, 2011
12:00 p.m. – 2:45 p.m.
Morris Hall

MEETING PACKET

Dean Cannon
Speaker

Richard Glorioso
Chair



The Florida House of Representatives

Justice Appropriations Subcommittee

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AGENDA

Monday, March 28, 2011
12:00 p.m. - 2:45 p.m.
Morris Hall (17 HOB)

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. **Consideration of the following proposed committee bill(s):**
 - CS/CS/HB 283 - Seaports by Criminal Justice Subcommittee, Transportation & Highway Safety Subcommittee, Young
 - CS/HB 513 - Missing Adults by Criminal Justice Subcommittee, Abruzzo
 - HB 997 - Juvenile Civil Citations by Pilon
- IV. Presentation on Private Health Services for Prisons
- V. Closing Remarks/Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 283 Seaports

SPONSOR(S): Criminal Justice Subcommittee; Transportation & Highway Safety Subcommittee; Young and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Johnson	Brown
2) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
3) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
4) Economic Affairs Committee			

SUMMARY ANALYSIS

In 2000, based on issues related to criminal activity in Florida's seaports, the Legislature created s. 311.12, F.S., containing statewide minimum seaport security standards. Following the September 11, 2001, terrorist attacks, Congress enacted federal seaport security requirements. The state security standards have been amended several times since enactment, and there are instances in which the state standards may conflict, be duplicative, or be redundant to federal standards. CS/CS/HB 283 makes the following changes to the state's seaport security laws; federal requirements and standards will remain in place:

- Repeals the statewide minimum seaport security standards.
- Provides seaports may implement security standards more stringent than the federal standards.
- Removes the authority for Florida Department of Law Enforcement (FDLE) to exempt all or part of a seaport from the state's seaport security requirements, if FDLE determines that it is not vulnerable to criminal activity or terrorism.
- Revises the requirements for seaports to update their security plans, consistent with federal requirements.
- Deletes FDLE's Access Eligibility Reporting System.
- Prohibits seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the Federal Transportation Worker Identification Credential (TWIC).
- Provides that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under certain circumstances.
- Removes the state criminal history screening and the state specific disqualifying offenses for working in a seaport.
- Removes the ability for the Office of Drug Control and FDLE to waive state-specific seaport security requirements.
- Repeals the Seaport Security Standards Advisory Council.

FDLE will see a decrease in revenue due to the removal of the requirements that FDLE operate the access eligibility reporting system and run state background checks on seaport workers. Seaports, port tenants, and port employees should see a reduction in costs due to the elimination of the state's seaport security requirements.

The bill also amends various seaport-related statutes to add Port Citrus to those sections' provisions.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0283e.JUAS.DOCX

DATE: 3/25/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's seaports represent an important component of the state's economic infrastructure. The Florida Ports Council estimates that waterborne international trade moving through Florida's seaports was valued at \$56.9 billion in 2009, which represented 55 percent of Florida's \$103 billion total international trade.¹ Because of the ports' importance to the economy of Florida, the level of security that protects against acts of terrorism, trafficking in illicit drugs, cargo theft, and money laundering operations is considered essential.

Security requirements for Florida's fourteen deepwater public ports² are regulated under ch. 311, F.S. Florida law requires public seaports to conform to statewide minimum security standards.³ Through inspections, the Florida Department of Law Enforcement (FDLE) has the primary responsibility for determining whether each seaport is in conformity with these standards.

For purposes of protection against acts of terrorism, Florida's deepwater ports are also regulated by federal law under the Maritime Transportation Security Act of 2002 (MTSA),⁴ the Security and Accountability of Every Port Act (SAFE Port Act)⁵, and the Code of Federal Regulations (CFR).⁶ In addition, provisions of international treaties such as the Safety of Life at Sea (SOLAS), which protects merchant ships, have been incorporated within the CFR in fulfillment of treaty obligations that affect seaport security at U.S. and foreign ports. Federal law requires seaports to comply with security plans which are reviewed and approved by the United States Coast Guard (USCG).

Florida's Minimum Seaport Security Standards

In 1999 and 2000, three events contributed to the development of a seaport security framework for Florida:

First, the presiding officers of the Legislature formed a task force that examined, among other things, the issue of money laundering related to illicit drug trafficking.⁷ The task force found that Florida was attractive to drug traffickers due to a number of factors including Florida's strategic position near drug source countries and numerous international airports and deep water seaports.⁸ The task force provided a number of recommendations including designating a state agency responsible for seaport and airport security and described the then current seaport security situation by saying:

"Customs considers poor seaport security a major reason for drug smuggling. Unlike airports, there is no viable system of federal regulations mandating specific security standards for seaports and marine terminals. Fairly new regulations govern security for large passenger vessels and cruise ship terminals.

¹ Florida Department of Transportation and Florida Ports Council, "Florida Seaport Fast Facts," October 1, 2011. Available at: <http://www.flaports.org/Assets/10-1-10%20FastFacts%20Seaports%20nl%20revised%5B1%5D.pdf> (March 10, 2011).

² These ports are listed in s. 311.09(1), F.S., and include the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina. The ports of Fort Pierce and Port St. Joe are currently exempted from annual inspection under the provisions of s. 311.12, F.S., based on a finding that these seaports are considered inactive for purposes of the statute.

³ Section 311.12, F.S.

⁴ Public Law (P.L.) 107-295, 116 Stat. 2064 (2002).

⁵ P.L. 109-347, 120 Stat. 1884 (2006).

⁶ Principally 33 CFR, Parts 101 – 106 as they relate to various aspects of vessel and port security.

⁷ Legislative Task Force on Illicit Money Laundering, "Money Laundering in Florida: Report of the Legislative Task Force", November 1999.

⁸ Ibid, p. 18.

There are however, no corresponding federal regulations for sea cargo vessels and seaport and marine terminals.”⁹

Second, the Governor’s Office of Drug Control¹⁰ commissioned a Statewide Security Assessment of Florida Seaports. The report, which came to be known as the Camber Report,¹¹ concluded that there was no supervisory agency with oversight of the seaports of the state, no federal or state security standards that governed the seaports’ operation, and only limited background checks were conducted on employees at the docks, thus allowing convicted felons, some with arrests for drug-related charges, to work at the seaports.

The report recommended the creation of a State Seaport Authority to regulate all seaports in the state, creation of minimum security standards for all seaports, and the creation and implementation of a security plan by the operators of each seaport.

Third, the Fifteenth Statewide Grand Jury conducted an analysis of Florida’s drug control efforts. The Statewide Grand Jury supported the conclusions and recommendations of the Camber Report and highlighted the need for background screening due to testimony they received that “some dock workers carry firearms and that intimidation by dock workers is used as a method of avoiding detection of illegal drug activity.”¹² The report cited efforts to impede law enforcement officers at the Miami seaport including simple harassment, blocking law enforcement vehicles with cargo containers, and even dropping a cargo container on a law enforcement vehicle occupied by police canine. Testimony revealed that as many as 60 percent of the Port of Miami dock workers had felony arrests, half of which were drug related charges.¹³

In response, the 2000 Legislature passed CS/CS/CS/SB 1258.¹⁴ This legislation provided additional regulations for money laundering and created s. 311.12, F.S., relating to seaport security. In creating s. 311.12, F.S., the Legislature introduced regulation of seaports that benefited from public financing and provided for:

- Development and implementation of a statewide seaport security plan including minimum standards for seaport security that address the prevention of criminal activity and money laundering;
- Development of individual seaport security plans at each of the public ports;
- Establishment of a fingerprint-based criminal history check of current employees and future applicants for employment at Florida’s seaports; and
- Directed FDLE to annually conduct no less than one unannounced inspection at each of the public ports and report its findings to the Governor, the President of the Senate, the Speaker of the House, and the chief administrator of each seaport inspected.

Section 311.12, F.S., was amended during the 2001 Legislative Session to incorporate, by reference, the seaport security standards proposed in the Camber Report.¹⁵ These standards form the basis for FDLE’s current seaport security inspection program. The statewide minimum security standards proposed in the Camber Report include prescriptive regulations on ID badges, access gates and gate houses, designated parking, fencing, lighting, signage, locks and keys, law enforcement presence, cargo processing, storage of loose cargo, high value cargo, and cruise operations security.

⁹ Ibid, p. 46.

¹⁰ The Governor’s Office recently eliminated the Office of Drug Control.

¹¹ Camber Corporation for the Office of Drug Control, Executive Office of the Governor, “Statewide Security Assessment of Florida Seaports,” September 2000.

¹² Fifteenth Statewide Grand Jury Report, “An Analysis of Florida’s Drug Control Efforts,” December 14, 2000.

¹³ Ibid.

¹⁴ Ch. 2000-360, Laws of Florida (L.O.F.).

¹⁵ Ch. 2001-112, L.O.F.

Post-9/11 Federal Seaport Security Standards

Prior to 9/11, there was no comprehensive federal law relating to seaport security. The MTSA was enacted in November 2002¹⁶ and the USCG subsequently adopted regulations to implement the provisions of MTSA.¹⁷ The MTSA laid out the federal structure for defending U.S. ports against acts of terrorism. In passing MTSA, Congress set forth direction for anti-terrorism activities but also recognized in its finding that crime on ports in the late 1990's including drug smuggling, illegal car smuggling, fraud, and cargo theft had been a problem. In laying out a maritime security framework, MTSA established a requirement for development and implementation of national and area maritime transportation security plans, vessel and facility security plans, and a transportation security card along with requirements to conduct vulnerability assessments for port facilities and vessels and establish a process to assess foreign ports, from which vessels depart on voyages to the United States.

Title 33 CFR provides for review and approval of Facility Security Plans¹⁸ by the Captain of the Port responsible for each seaport area. The USCG also acknowledged Presidential Executive Order 13132 regarding the principle of Federalism and preemption of state law in drafting MTSA rules.¹⁹ Under this provision, Florida has the right to exercise authority over its public seaports that are also regulated by federal authority when there is no conflict between state and federal regulations.²⁰

Port Access Identification Credentials

The Florida Legislature has continued to introduce improvements to Florida's seaport security policy. The Legislature addressed the issue of a uniform port access credential during the 2003 session. The transportation industry expressed a desire for a single access credential that could be used statewide to facilitate seaport access. As a result, a Florida Uniform Port Access Credential (FUPAC) was provided for in s. 311.125, F.S. Section 311.125, F.S., required that each port subject to statewide minimum security standards in Chapter 311, F.S., use FUPAC by July 1, 2004. No FUPAC cards were ever issued and this section was repealed in 2009.

At the same time, the federal government attempted to develop its own credential known as the Transportation Worker Identification Credential (TWIC). FUPAC cards were not issued because state officials were working with TSA to consolidate the FUPAC and TWIC into one port access card. In lieu of a FUPAC, individual ports conducted national and state criminal background checks on each applicant who required access to port facilities. The same disqualifying offenses that would prevent an applicant from being issued a FUPAC also disqualified the applicant from receiving a port specific credential; creating a de facto FUPAC.

The federal TWIC is being deployed in two phases. Phase I, the current deployment, provides for the issuance of credentials to be used as photo identification cards only. Phase II, which has been delayed indefinitely due to contract issues with federal vendors, would provide for fully interactive usage of the card, including biometric reader capabilities. There is no known target date for full implementation of the biometric capability. On March 27, 2009, the U.S. Coast Guard, Department of Homeland Security, released an Advanced Notice of Proposed Rulemaking to discuss "... preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities...for use of electronic readers designed to work with [TWIC] as an access control measure."²¹

¹⁶ The Maritime Transportation Security Act of 2002 (P.L. 107-295 of November 25, 2002).

¹⁷ MTSA is implemented by Title 33 CFR, Parts 101-106 which are administered by the USCG.

¹⁸ Title 33 CFR, Subpart 101.105 defines a facility as any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. A seaport may be considered a facility by itself or in the case of large seaports may include multiple facilities within the port boundaries.

¹⁹ Federal Register, Vol. 68, No. 204, Wednesday, October 22, 2003, p. 60468.

²⁰ Presidential Executive Order 13132, "Federalism," August 4, 1999.

²¹ Federal Register, Vol. 74, No. 58, March 27, 2009, at page 13360.

Criminal History Checks

The 2000 legislation established the requirement for a fingerprint-based criminal history check of current employees and future applicants for employment at Florida's seaports. This law was further amended in 2001 to disqualify persons who have been convicted of certain offenses within the previous seven years from gaining initial employment within or regular access to a seaport or port restricted access area. Current disqualifying offenses relate to terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use of weapons or firearms.

After the enactment of the MTSA, seaport employees and other persons seeking unescorted access to Florida's seaport were required to obtain a TWIC. The TWIC requires the applicant to be fingerprinted and a background check to be performed by the FBI prior to its issuance.

A 2010 assessment of seaport security in Florida noted that Florida is believed to be the only state that requires both a federal and a state background check.²²

Seaport Access Eligibility Reporting System

In 2009, the Florida Legislature appropriated \$1 million in federal stimulus funding to FDLE to develop the Seaport Eligibility System (SES) required by Chapter 2009-171, L.O.F. The SES went live on July 12, 2010, and now allows seaports to share the results of a criminal history check and the current status of state eligibility for access to secure and restricted areas of each port. FDLE asserts that the use of the SES has substantially reduced the costs to seaport workers by eliminating duplicative criminal history fees for workers that apply for access at more than one port. Previously, the applicants had to undergo separate background checks for access to each of the ports. The system also allows for retention of fingerprints and arrest notifications to the ports, therefore, eliminating the need for annual state criminal history checks.²³

According to FDLE, there are approximately 36,865 port workers enrolled in the Seaport Eligibility System, and of those, approximately 24,486 are TWIC holders. The remaining 12,379 workers do not have a TWIC and are not subject to a federal background check under MTSA rules.²⁴

TranSystems Report

In February 2010, TranSystems issued a Florida Seaport Security Assessment which was prepared for the Florida Office of Drug Control. Some of the recommendations that the report provided were:

- Transfer the sole responsibility for security standards, plans, practices, and audits to the U.S. Coast Guard.
- Re-task FDLE with the responsibility to develop port-specific threat intelligence for use by seaport security directors and eliminate FDLE's compliance inspection responsibilities.
- Modify the membership, meeting, and report requirements for the Seaport Security Standards Advisory Committee.
- Eliminate prescribed security standards and incorporate performance and risk-based security standards.
- Eliminate the state criminal background checks for those requesting access to restricted areas within the seaport if they have undergone the FBI-conducted background check and been issued a TWIC.
- Authorize seaports to issue a port-specific identification badge for a specific port and stipulate that it will be used in conjunction with the federal TWIC.
- Eliminate the requirement for on-site sworn law enforcement presence at the ports.²⁵

²² TranSystems Corporation for the Office of Drug Control, Executive Office of the Governor, "TranSystems Florida Seaport Security Assessment 2010". February 2010. Available at: http://www.fdle.state.fl.us/Content/getdoc/2902b533-5d31-4876-9ad6-1cb2a01a2c65/100409_Florida_Seaports_SecurityAssessment_Report.aspx

²³ Florida Department of Law Enforcement, "Frequently Asked Questions: Seaport Security." January 2011.

²⁴ Correspondence with FDLE, March 8, 2011.

²⁵ *TranSystems Florida Seaport Security Assessment 2010*, Contract No. 10-DS-20-14-00-22-087, Prepared for: Florida Office of Drug Control, February 2010.

Following the issuance of the report, the Office of Drug Control responded that “the study echoed many of the same unfounded grievances concerning security inspections the ports have voiced since 2001, but failed to provide any recommended improvements to seaport security,” and that the study was strongly biased toward the ports without balancing security needs. The letter points out that the study recommends that security responsibility be transferred to the Coast Guard using the less stringent federal standards. The letter argues that complying with the standards in state law “has caused no discernable economic hardship for the ports, nor is there any substantial evidence that conforming to s. 311.12 has caused a loss of business to non-Florida seaports. . . .FDLE reports that seaports have seen significant decreases in cargo theft and pilfering.”²⁶

Differences between Federal and State Standards

There are some differences between the federal security standards and the existing state security standards. First, the state standards contain some specific requirements such as minimum lighting standards and fence height and require seaports to employ sworn law enforcement officers. The federal government uses flexible standards based on risk. Additionally, state law requires a state background check on both TWIC holders and employees who are not required to hold a TWIC.

There are some crimes that disqualify persons from working in Florida ports, which would not prohibit that person from obtaining a TWIC from the Federal government. These crimes include dealing in stolen property, manslaughter, burglary, aggravated assault, aggravated battery, aggravated stalking, any other violent felony, using a weapon in the commission of a felony, and felony theft.

Overall, the seaport security environment has changed significantly since 2001. The federal government has introduced numerous programs and initiatives to address the threat of terrorism against the nation’s seaports. Florida recognizes the threat of terrorism and has adapted its seaport security policy to include the threat of terrorism in addition to its original efforts to combat drug trafficking, money laundering, and cargo theft on its seaports.

Proposed Changes

Florida is believed to be the only state with its own seaport security standards in addition to the federal standards. Florida’s law only applies to public seaports and does not apply to businesses on the Miami River or other private seaport or cargo terminals, which may be only a few yards from the public seaport. The state seaport security standards are codified in s. 311.12, F.S., and the bill makes significant changes to this section. For ease of understanding, the analysis is arranged by topic with a brief explanation of the current law followed by the proposed change.

Statewide Minimum Security Standards

The current statewide minimum security standards were incorporated into statute by reference from the 2000 Camber Report commissioned by the Governor’s Office of Drug Control. Current law allows a seaport to implement security measures that are more stringent, more extensive, or supplemental to the minimum security standards. Additionally, the provisions of s. 790.251, F.S.,²⁷ are not superseded, preempted, or otherwise modified in any way by seaport security statutes.

The bill deletes the statewide minimum security standards, but authorizes a seaport to implement security measures that are more stringent, more extensive, or supplemental to the applicable federal security regulations.²⁸

²⁶ Letter from Bruce D. Grant, Direct, Florida Office of Drug Control, to Larry Cretul, Speaker, Florida House of Representatives. March 4, 2010.

²⁷ Section 790.251, F.S., relates to the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

²⁸ 33 C.F.R. s. 105.305

Exemption from Security Requirements

Current law allows FDLE to exempt all or part of a seaport from the security requirements in s. 311.12, F.S., if FDLE determines that activity associated with the use of the seaport is not vulnerable to criminal activity or terrorism.

Given the elimination of the statewide seaport security standards as explained above, the bill removes the authority for FDLE to exempt all or part of a seaport from those standards.

Security Plans

Current law requires each seaport to adopt and maintain a security plan, which must be revised every five years to ensure compliance with the minimum security standards. The law further provides that each adopted or revised security plan must be reviewed and approved by the Office of Drug Control and FDLE to ensure compliance with the applicable federal security assessment requirements and must jointly submit a written review to the U.S. Coast Guard, the Regional Domestic Security Task Force, and the Domestic Security Oversight Council.

The bill deletes the requirement for each seaport to update and revise its security plan every five years, and instead requires periodic revisions to the security plan to ensure compliance with applicable federal security regulations. The bill also deletes the requirement for FDLE and the Office of Drug Control to review an adopted or revised security plan.

Secure and Restricted Areas

Current law requires each seaport to clearly designate in seaport security plans and identify with markers on the premises all secure and restricted areas as defined by the U.S. Department of Homeland Security. Further, certain areas of a seaport are required to be protected from the most probable and credible terrorist threat to human life. The law also requires certain notices concerning the prohibition of concealed weapons and other contraband material. It also allows the temporary designation of a secure and restricted area during a period of high terrorist threat level.

The bill deletes the requirement for a seaport's security plan to set forth conditions to be imposed on persons who have access to secure and restricted areas of a seaport. It also removes a requirement that areas of a seaport with a potential human occupancy of 50 or more persons or any cruise terminal must be protected from the most probable and credible terrorist threat to human life. However, federal rules regarding passenger and ferry facilities and cruise ship terminals will remain in effect.²⁹

The bill removes an incorrect reference to a Coast Guard circular and corrects an incorrect reference to the Code of Federal Regulation.

The bill also removes references to FDLE and a seaport's security director designating a period of high terrorist threat level, since they do not have the legal authority to make this designation. The bill still provides that the Department of Homeland Security may make this designation.

Access Eligibility Reporting System

Current law requires FDLE to implement and administer a seaport access eligibility reporting system. The law identifies minimum capabilities the system must employ, which include:

- A centralized, secure method of collecting and maintaining finger-prints, other bio-metric data, or other means of confirming the identity of persons authorized to enter a secure or restricted area of a seaport;
- A methodology for receiving from and transmitting information to each seaport regarding a person's authority to enter a secure or restricted area of the seaport;
- A means for receiving prompt notification from a seaport when a person's authorization to enter a secure or restricted area of a seaport has been suspended or revoked; and

²⁹ 33 C.F.R. s. 105.285 provides additional security requirements for passenger and ferry facilities. 33 C.F.R. s. 105.290 provides additional security requirements for cruise ship terminals.

- A means to communicate to seaports when a person's authorization to enter a secure or restricted area of a seaport has been suspended or revoked.

Each seaport is responsible for granting, modifying, restricting, or denying access to secure and restricted areas to seaport employees and others. Based upon an individual's criminal history check, each seaport may determine specific access eligibility for that person. Upon determining that a person is eligible to enter a secure and restricted area of a port, the seaport shall, within three business days, report such determination to FDLE for inclusion in the system.

This system can be used to determine who is authorized to work on the ports and the ports can utilize the database to determine if an individual has been processed by another seaport. This database can also be used to notify seaports if anyone authorized to work on the port has been arrested in Florida. However it does not include federal charges and denial of access is only authorized for convictions.

On a daily basis, the TSA updates its list of canceled TWIC cards. The list includes arrests for serious federal crimes and threat information from domestic and international databases. However, it does not include state arrests.

FDLE is authorized to collect a \$50 fee to cover the initial costs for entering an individual into the system and an additional \$50 fee every five years thereafter to coincide with the issuance of the TWIC.³⁰

The bill deletes the requirement for FDLE to administer the Access Eligibility Reporting System.

Access to Secure and Restricted Areas on Seaports

Current law requires that a person seeking authorization for unescorted access to secure and restricted areas of a seaport must possess a TWIC and also execute an affidavit that indicates the following:

- The TWIC is currently valid and in full force and effect;
- The TWIC was not received through the waiver process for disqualifying criminal history allowed by Federal law; and
- The applicant has not been convicted of any state-designated disqualifying felony offense.

FDLE is required to establish a waiver process for a person who has been denied employment by a seaport or denied unescorted access to secure or restricted areas who:

- Does not have a TWIC,
- Obtained a TWIC through the federal waiver process, or
- Is found to be unqualified due to state disqualifying offenses.

The bill prohibits seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the (TWIC). The bill also provides that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under the following circumstances:

- The individual seeking to gain secured access is a new hire as defined under 33 C.F.R. s. 105; or
- The individual has lost or misplaced his or her federal TWIC.

The bill deletes the requirement for a TWIC holder to execute an affidavit when seeking authorization for unescorted access to secure and restricted areas of a seaport. It also deletes a reporting requirement to FDLE regarding grants of access, to conform to the removal of the access eligibility reporting system.

³⁰ FDLE currently collects the fees authorized for the administration of the Access Eligibility Reporting System.

Criminal History Checks

Current law requires that a fingerprint-based state criminal history check must be performed on employee applicants, current employees, and other persons authorized to regularly enter a secure or restricted area. The statutes also include a list of disqualifying offenses that would preclude an individual from gaining employment or unescorted access.

The bill deletes the requirement for seaport employee applicants, current employees, and other authorized persons to submit to a fingerprint-based state criminal history check. The bill also removes the authority for FDLE and each seaport to establish waiver procedures or to grant immediate temporary waivers to allow unescorted access to a seaport.

Waiver from Security Requirements

Current law permits the Office of Drug Control and FDLE to modify or waive any physical facility requirement contained in the minimum security standards upon a determination that the purpose of the standards have been reasonably met or exceeded at a specific seaport.

In light of the bill's removal of the statewide security standards, the bill removes the authority of FDLE and the Office of Drug Control to waive a physical facility requirement or other requirements contained in the minimum security standards upon a determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the waiver.

Inspections

Current law requires FDLE, or an entity it designates, to conduct at least one annual unannounced inspection of each seaport to determine whether the seaport is meeting the statewide minimum security standards, to identify seaport security changes or improvements needed, and to submit the inspection report to the Domestic Security Oversight Council.³¹ Seaports may request that the Domestic Security Oversight Council review the findings of FDLE's report, if the seaport disputes those findings.

The bill deletes the requirement for FDLE, or an entity it designates, to conduct an annual unannounced security inspection of each seaport to determine if it meets the state's seaport security standards. However, the bill provides that FDLE, or an entity it designates, may conduct unannounced inspections to determine whether a seaport is meeting applicable federal seaport security regulations.

Reports

Current law requires FDLE, in consultation with Office of Drug Control, to annually complete a report indicating the observations and findings of all reviews, inspections, or other operations relating to the seaports conducted for the year.

The bill removes the requirement that FDLE complete such report in consultation with the Office of Drug Control.

Funding

Current law authorizes the Office of Drug Control, FDLE, and the Florida Seaport Transportation and Economic Development Council to mutually determine the allocation of funding for security project needs.

The bill removes the Office of Drug Control as an entity that participates in determining the allocation of funding for seaport security projects.

Seaport Security Standards Advisory Council

Section 311.115, F.S., creates the Seaport Security Standards Advisory Council under the Office of Drug Control. The council consists of 14 unpaid council members who represent a wide range of interests as it relates to the security of Florida's seaports. The council convenes at least every 4 years to review the minimum security standards referenced in s. 311.12(1), F.S., for applicability to and

³¹ The Domestic Security Oversight Council is created in s. 943.0313, F.S.

effectiveness in combating current narcotics and terrorism threats to Florida's seaports. The recommendations and findings of the council must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill repeals the Seaport Security Standards Advisory Council.

The bill also amends ss. 311.121(2), 311.123(1), and 311.124(1), F.S. to make conforming changes in the bill.

The bill amends various sections of statute to include Port Citrus in those sections' provisions. Specifically, the bill amends:

- Sections 310.002, F.S., to add Port Citrus to the definition of the term "port."
- Section 311.09, F.S., to include a representative of Port Citrus as a member of the Florida Seaport Transportation and Economic Development Council.
- Section 374.976, F.S., to conform provisions relating to include Port Citrus in provisions relating to the authority of inland navigation districts.
- Section 403.021, F.S., to conform provisions to include Port Citrus in legislative declarations relating to environmental control.
- Section 403.061, F.S., to conform provisions to include Port Citrus in provisions relating to powers of the Department of Environmental Protection.
- Section 403.813, F.S., to conform provisions to include Port Citrus in provisions relating to permits issued at Department of Environmental Protection district centers.
- Section 403.816, F.S., to conform provisions to include Port Citrus in provisions relating to certain maintenance projects at deepwater ports and beach restoration projects.

B. SECTION DIRECTORY:

Section 1. Amends s. 311.12, F.S., relating to seaport security.

Section 2. Amends s. 311.121, F.S., relating to qualifications, training, and certification of licensed security officers at Florida seaports.

Section 3. Amends s. 311.123, F.S., relating to maritime domain security awareness training program.

Section 4. Amends s. 311.124, F.S., relating to trespassing; detention by a certified seaport security officer.

Section 5. Repeals s. 311.115, F.S., relating to the Seaport Security Standards Advisory Council.

Section 6. Amends s. 310.002, F.S., relating to definitions.

Section 7. Amends s. 311.09, F.S., relating to Florida Seaport Transportation and Economic Development Council.

Section 8. Amends s. 374.976, F.S., relating to authority to address impacts of waterway development projects.

Section 9. Amends s. 403.021, F.S., relating to legislative declaration; public policy.

Section 10. Amends s. 403.061, F.S., relating to department; powers and duties.

Section 11. Amends s. 403.813, F.S., relating to permits issued at district centers; exceptions.

Section 12. Amends s. 403.816, F.S., relating to permits for maintenance dredging of deepwater ports and beach restoration projects.

Section 13. The bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to FDLE, the Seaport Eligibility System went live in July 2010. Although it was authorized to begin collecting fees for enrollment in Fiscal Year 2010-2011, FDLE provided the system at no cost for the first year of operation. FDLE negotiated with the seaports to postpone the collection of the fees until the system's billing component was completed according to schedule in the spring of 2011.

FDLE is expected to process approximately 21,745 seaport related criminal history checks in Fiscal Year 2011-2012. The elimination of the requirement for the state background check will result in a decrease in FDLE's Operating Trust Fund of \$521,880. FDLE's Operating Trust Fund supports almost 25% of FDLE's recurring operating budget. It predominantly funds the Criminal Justice Information Program which serves a wide variety of information needs within the criminal justice community; some examples include the criminal history records check system, Criminal Justice Network, Sex Offender/Predator Database and Registry Services, the Biometric Identification System, the Florida Missing Endangered Persons Information Clearinghouse, the Firearms Purchase Program and all of FDLE's information resource services.

FDLE's Operating Trust Fund receives revenues from various fees including state criminal records checks, firearms record checks and DUI conviction fees. Revenues are projected to be \$92.4 million in Fiscal Year 2011-2012, and expenditures are projected to be \$91.7 million for a balance at the end of the fiscal year of approximately \$700,000.

2. Expenditures:

FDLE used \$1 million in federal stimulus funds that were appropriated by the Legislature in 2009 to develop the SES. It is not clear if Florida will face any sanctions or whether FDLE would be allowed to reprogram the system for other criminal justice purposes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Public seaports will see a reduction in costs associated with complying with state seaport security standards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could potentially save each port worker hundreds of dollars depending on their individual employment conditions. The table below displays the state and local fees that are currently authorized to be charged to persons seeking regular or unescorted access to Florida's seaports. Under this bill, port workers would only be liable for the local port access credential fee which may not exceed the administrative costs needed to produce and administer the credential.

Additionally, lessening costs on the ports would lessen the burden on port employees and tenants and potentially stimulate commerce by relieving burdensome regulatory measures.

Financial Impact of Florida Seaport Security Laws³²

Individuals who hold (and already paid for) a valid TWIC* not obtained through a Transportation Security Administration (TSA) waiver:	
• FDLE State of Florida criminal history check	\$24
• Fingerprint retention and FDLE seaport access eligibility reporting system	\$50
• Local port fees (approximate)	\$35
• Total	<u>\$110</u>

Individuals who hold a valid TWIC* (obtained through a TSA waiver) or are not required to obtain a TWIC under federal law	
• FDLE State of Florida criminal history check	\$24
• FBI national criminal history check	\$19.25
• Fingerprint retention and FDLE seaport access eligibility reporting system	\$50
• Local port fees (approximate)	\$35
• Total	<u>\$130</u>

* The fee for the TWIC is not included in these fee amounts. The current fee to obtain a TWIC is \$132.50 and it is valid for 5 years.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

³² Florida Ports Council, Memorandum to Florida House Transportation and Highway Safety Subcommittee, Seaport Security Workshop Information. February 22, 2011.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted two amendments to the bill and reported the bill favorably as a Committee Substitute. The amendments:

- Prohibit seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the Federal Transportation Worker Identification Credential (TWIC).
- Provide that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under certain circumstances.
- Adds Port Citrus to various seaport-related statutes.

This analysis is drafted to the Committee Substitute.

On March 15, 2011, the Transportation & Highway Safety Subcommittee adopted four amendments and reported the bill favorably as a Committee Substitute. These amendments:

- Removed an incorrect reference to a Coast Guard circular and corrected an incorrect reference to the Code of Federal Regulation.
- Removes references to FDLE and a seaport's security director designating a high terrorist threat level. These entities do not have the legal authority to designate a high terrorist threat level.
- Corrects an incorrect cross-reference.
- Change the effective date to upon becoming law.

The analysis is drafted to the Committee Substitute.

1 A bill to be entitled
2 An act relating to seaports; amending s. 311.12, F.S.;
3 deleting provisions relating to statewide minimum
4 standards for seaport security; deleting provisions
5 authorizing the Department of Law Enforcement to exempt
6 all or part of a seaport from specified requirements in
7 certain circumstances; revising provisions relating to
8 seaport security plans; revising requirements for certain
9 secure or restricted areas; revising provisions relating
10 to when a part of a seaport property may temporarily be
11 designated as a secure or restricted area; deleting
12 provisions requiring that the Department of Law
13 Enforcement administer a statewide seaport access
14 eligibility reporting system; deleting provisions
15 requiring that persons seeking authorization to access
16 secure and restricted areas of a seaport execute an
17 affidavit; prohibiting a seaport from charging any fee for
18 administration or production of access control credentials
19 that require or are associated with a fingerprint-based
20 background check, in addition to the fee for the federal
21 TWIC; providing exceptions; providing for issuance of
22 seaport-specific access credentials; deleting provisions
23 requiring fingerprint-based state criminal history checks
24 on seaport employee applicants, current employees, and
25 other authorized persons; deleting provisions authorizing
26 waivers from security requirements in certain
27 circumstances; revising provisions relating to
28 inspections; revising reporting requirements; revising the

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29 parties that determine the allocation of appropriated
30 funds for security project needs; amending ss. 311.121,
31 311.123, and 311.124, F.S.; conforming provisions to
32 changes made by the act; repealing s. 311.115, F.S.,
33 relating to the Seaport Security Standards Advisory
34 Council; amending s. 310.002, F.S.; redefining the term
35 "port" for specified provisions to include Port Citrus;
36 amending s. 311.09, F.S.; including a representative of
37 Port Citrus as a member of the Florida Seaport
38 Transportation and Economic Development Council; amending
39 s. 374.976, F.S.; including Port Citrus in provisions
40 relating to the authority of inland navigation districts;
41 amending s. 403.021, F.S.; including Port Citrus in
42 legislative declarations relating to environmental
43 control; amending s. 403.061, F.S.; including Port Citrus
44 in provisions relating to powers of the Department of
45 Environmental Protection; amending s. 403.813, F.S.;
46 including Port Citrus in provisions relating to permits
47 issued at Department of Environmental Protection district
48 centers; amending s. 403.816, F.S.; including Port Citrus
49 in provisions relating to certain maintenance projects at
50 deepwater ports and beach restoration projects; providing
51 an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Section 311.12, Florida Statutes, is amended to
56 read:

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

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57 | 311.12 Seaport security.—

58 | (1) SECURITY STANDARDS.—

59 | ~~(a) The statewide minimum standards for seaport security~~
 60 | ~~applicable to seaports listed in s. 311.09 shall be those based~~
 61 | ~~on the Florida Seaport Security Assessment 2000 and set forth in~~
 62 | ~~the Port Security Standards Compliance Plan delivered to the~~
 63 | ~~Speaker of the House of Representatives and the President of the~~
 64 | ~~Senate on December 11, 2000. The Office of Drug Control within~~
 65 | ~~the Executive Office of the Governor shall maintain a sufficient~~
 66 | ~~number of copies of the standards at its offices for~~
 67 | ~~distribution to the public and provide copies to each affected~~
 68 | ~~seaport upon request.~~

69 | (a)~~(b)~~ A seaport may implement security measures that are
 70 | more stringent, more extensive, or supplemental to the
 71 | applicable federal security regulations, including federal
 72 | facility security assessment requirements under 33 C.F.R. s.
 73 | 105.305 ~~minimum security standards established by this~~
 74 | ~~subsection.~~

75 | (b)~~(e)~~ The provisions of s. 790.251 are not superseded,
 76 | preempted, or otherwise modified in any way by the provisions of
 77 | this section.

78 | ~~(2) EXEMPTION. The Department of Law Enforcement may~~
 79 | ~~exempt all or part of a seaport listed in s. 311.09 from the~~
 80 | ~~requirements of this section if the department determines that~~
 81 | ~~activity associated with the use of the seaport or part of the~~
 82 | ~~seaport is not vulnerable to criminal activity or terrorism. The~~
 83 | ~~department shall periodically review such exemptions to~~
 84 | ~~determine if there is a change in use. Such change may warrant~~

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85 ~~removal of all or part of the exemption.~~

86 ~~(2)(3)~~ SECURITY PLAN.—

87 (a) Each seaport listed in s. 311.09 shall adopt and
88 maintain a security plan specific to that seaport which provides
89 for a secure seaport infrastructure that promotes the safety and
90 security of state residents and visitors and the flow of
91 legitimate trade and travel.

92 ~~(b)(a)~~ Each seaport ~~Every 5 years after January 1, 2007,~~
93 ~~each seaport director, with the assistance of the Regional~~
94 ~~Domestic Security Task Force and in conjunction with the United~~
95 ~~States Coast Guard,~~ shall periodically revise the seaport's
96 security plan based on the seaport's ~~director's~~ ongoing
97 assessment of security risks, the risks of terrorist activities,
98 and the specific and identifiable needs of the seaport for
99 ensuring that the seaport is in substantial compliance with
100 applicable federal security regulations, including federal
101 facility security assessment requirements under 33 C.F.R. s.
102 105.305 ~~the minimum security standards established under~~
103 ~~subsection (1).~~

104 ~~(b)~~ ~~Each adopted or revised security plan must be reviewed~~
105 ~~and approved by the Office of Drug Control and the Department of~~
106 ~~Law Enforcement for compliance with federal facility security~~
107 ~~assessment requirements under 33 C.F.R. s. 105.305 and the~~
108 ~~minimum security standards established under subsection (1).~~
109 ~~Within 30 days after completion, a copy of the written review~~
110 ~~shall be delivered to the United States Coast Guard, the~~
111 ~~Regional Domestic Security Task Force, and the Domestic Security~~
112 ~~Oversight Council.~~

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113 (3)~~(4)~~ SECURE AND RESTRICTED AREAS.—Each seaport listed in
114 s. 311.09 must clearly designate in seaport security plans, and
115 clearly identify with appropriate signs and markers on the
116 premises of a seaport, all secure and restricted areas as
117 defined by 33 C.F.R. part 105 ~~the United States Department of~~
118 ~~Homeland Security United States Coast Guard Navigation and~~
119 ~~Vessel Inspection Circular No. 03-07 and 49 C.F.R. part 1572.~~
120 ~~The plans must also address access eligibility requirements and~~
121 ~~corresponding security enforcement authorizations.~~

122 (a) ~~The seaport's security plan must set forth the~~
123 ~~conditions and restrictions to be imposed on persons employed~~
124 ~~at, doing business at, or visiting the seaport who have access~~
125 ~~to secure and restricted areas which are sufficient to provide~~
126 ~~substantial compliance with the minimum security standards~~
127 ~~established in subsection (1) and federal regulations.~~

128 1. All seaport employees and other persons working at the
129 seaport who have regular access to secure or restricted areas
130 must comply with federal access control regulations ~~and state~~
131 ~~criminal history checks~~ as prescribed in this section.

132 2. All persons and objects in secure and restricted areas
133 are subject to search by a sworn state-certified law enforcement
134 officer, a Class D seaport security officer certified under
135 Maritime Transportation Security Act of 2002 guidelines ~~and s.~~
136 ~~311.121~~, or an employee of the seaport security force certified
137 under the Maritime Transportation Security Act of 2002
138 guidelines ~~and s. 311.121~~.

139 3. Persons found in these areas without the proper
140 permission are subject to the trespass provisions of ss. 810.08

141 and 810.09.

142 ~~(b) As determined by the seaport director's most current~~
 143 ~~risk assessment under paragraph (3)(a), any secure or restricted~~
 144 ~~area that has a potential human occupancy of 50 persons or more,~~
 145 ~~any cruise terminal, or any business operation that is adjacent~~
 146 ~~to a public access area must be protected from the most probable~~
 147 ~~and credible terrorist threat to human life.~~

148 (b)~~(e)~~ The seaport must provide clear notice of the
 149 prohibition against possession of concealed weapons and other
 150 contraband material on the premises of the seaport. Any person
 151 in a restricted area who has in his or her possession a
 152 concealed weapon, or who operates or has possession or control
 153 of a vehicle in or upon which a concealed weapon is placed or
 154 stored, commits a misdemeanor of the first degree, punishable as
 155 provided in s. 775.082 or s. 775.083. This paragraph does not
 156 apply to active-duty certified federal or state law enforcement
 157 personnel or persons so designated by the seaport director in
 158 writing.

159 (c)~~(d)~~ During a period of high terrorist threat level, as
 160 designated by the United States Department of Homeland Security
 161 ~~or the Department of Law Enforcement, or during an emergency~~
 162 ~~declared at a port by the seaport security director due to~~
 163 ~~events applicable to that particular seaport, the management or~~
 164 ~~controlling authority of the port may temporarily designate any~~
 165 ~~part of the seaport property as a secure or restricted area. The~~
 166 ~~duration of such designation is limited to the period in which~~
 167 ~~the high terrorist threat level is in effect or a port emergency~~
 168 ~~exists.~~

169 ~~(5) ACCESS ELIGIBILITY REPORTING SYSTEM. Subject to~~
 170 ~~legislative appropriations, the Department of Law Enforcement~~
 171 ~~shall administer a statewide seaport access eligibility~~
 172 ~~reporting system.~~

173 ~~(a) The system must include, at a minimum, the following:~~

174 ~~1. A centralized, secure method of collecting and~~
 175 ~~maintaining fingerprints, other biometric data, or other means~~
 176 ~~of confirming the identity of persons authorized to enter a~~
 177 ~~secure or restricted area of a seaport.~~

178 ~~2. A methodology for receiving from and transmitting~~
 179 ~~information to each seaport regarding a person's authority to~~
 180 ~~enter a secure or restricted area of the seaport.~~

181 ~~3. A means for receiving prompt notification from a~~
 182 ~~seaport when a person's authorization to enter a secure or~~
 183 ~~restricted area of a seaport has been suspended or revoked.~~

184 ~~4. A means to communicate to seaports when a person's~~
 185 ~~authorization to enter a secure or restricted area of a seaport~~
 186 ~~has been suspended or revoked.~~

187 ~~(b) Each seaport listed in s. 311.09 is responsible for~~
 188 ~~granting, modifying, restricting, or denying access to secure~~
 189 ~~and restricted areas to seaport employees, other persons working~~
 190 ~~at the seaport, visitors who have business with the seaport, or~~
 191 ~~other persons regularly appearing at the seaport. Based upon the~~
 192 ~~person's criminal history check, each seaport may determine the~~
 193 ~~specific access eligibility to be granted to that person. Each~~
 194 ~~seaport is responsible for access eligibility verification at~~
 195 ~~its location.~~

196 ~~(c) Upon determining that a person is eligible to enter a~~

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197 | ~~secure or restricted area of a port pursuant to subsections (6)~~
 198 | ~~and (7), the seaport shall, within 3 business days, report the~~
 199 | ~~determination to the department for inclusion in the system.~~

200 | ~~(d) All information submitted to the department regarding~~
 201 | ~~a person's access eligibility screening may be retained by the~~
 202 | ~~department for subsequent use in promoting seaport security,~~
 203 | ~~including, but not limited to, the review of the person's~~
 204 | ~~criminal history status to ensure that the person has not become~~
 205 | ~~disqualified for such access.~~

206 | ~~(e) The following fees may not be charged by more than one~~
 207 | ~~seaport and shall be paid by the seaport, another employing~~
 208 | ~~entity, or the person being entered into the system to the~~
 209 | ~~department or to the seaport if the seaport is acting as an~~
 210 | ~~agent of the department for the purpose of collecting the fees:~~

211 | ~~1. The cost of the state criminal history check under~~
 212 | ~~subsection (7).~~

213 | ~~2. A \$50 fee to cover the initial cost of entering the~~
 214 | ~~person into the system and an additional \$50 fee every 5 years~~
 215 | ~~thereafter to coincide with the issuance of the federal~~
 216 | ~~Transportation Worker Identification Credential described in~~
 217 | ~~subsection (6). The fee covers all costs for entering or~~
 218 | ~~maintaining the person in the system including the retention and~~
 219 | ~~use of the person's fingerprint, other biometric data, or other~~
 220 | ~~identifying information.~~

221 | ~~3. The seaport entering the person into the system may~~
 222 | ~~charge an administrative fee to cover, but not exceed, the~~
 223 | ~~seaport's actual administrative costs for processing the results~~
 224 | ~~of the state criminal history check and entering the person into~~

225 ~~the system.~~

226 ~~(f) All fees identified in paragraph (e) must be paid~~
 227 ~~before the person may be granted access to a secure or~~
 228 ~~restricted area. Failure to comply with the criminal history~~
 229 ~~check and failure to pay the fees are grounds for immediate~~
 230 ~~denial of access.~~

231 ~~(g) Persons, corporations, or other business entities that~~
 232 ~~employ persons to work or do business at seaports shall notify~~
 233 ~~the seaport of the termination, resignation, work related~~
 234 ~~incapacitation, or death of an employee who has access~~
 235 ~~permission.~~

236 ~~1. If the seaport determines that the person has been~~
 237 ~~employed by another appropriate entity or is self employed for~~
 238 ~~purposes of performing work at the seaport, the seaport may~~
 239 ~~reinstate the person's access eligibility.~~

240 ~~2. A business entity's failure to report a change in an~~
 241 ~~employee's work status within 7 days after the change may result~~
 242 ~~in revocation of the business entity's access to the seaport.~~

243 ~~(h) In addition to access permissions granted or denied by~~
 244 ~~seaports, access eligibility may be restricted or revoked by the~~
 245 ~~department if there is a reasonable suspicion that the person is~~
 246 ~~involved in terrorism or criminal violations that could affect~~
 247 ~~the security of a port or otherwise render the person ineligible~~
 248 ~~for seaport access.~~

249 ~~(i) Any suspension or revocation of port access must be~~
 250 ~~reported by the seaport to the department within 24 hours after~~
 251 ~~such suspension or revocation.~~

252 ~~(j) The submission of information known to be false or~~

253 | ~~misleading to the department for entry into the system is a~~
 254 | ~~felony of the third degree, punishable as provided in s.~~
 255 | ~~775.082, s. 775.083, or s. 775.084.~~

256 | (4)(6) ACCESS TO SECURE AND RESTRICTED AREAS.-

257 | (a) Any person seeking authorization for unescorted access
 258 | to secure and restricted areas of a seaport must possess, ~~unless~~
 259 | ~~waived under paragraph (7)(e),~~ a valid federal Transportation
 260 | Worker Identification Credential (TWIC).

261 | (b) A seaport may not charge a fee for the administration
 262 | or production of any access control credential that requires or
 263 | is associated with a fingerprint-based background check, in
 264 | addition to the fee for the federal TWIC. Beginning July 1,
 265 | 2013, a seaport may not charge a fee for a seaport-specific
 266 | access credential issued in addition to the federal TWIC, except
 267 | under the following circumstances:

268 | 1. The individual seeking to gain secured access is a new
 269 | hire as defined under 33 C.F.R. s. 105; or

270 | 2. The individual has lost or misplaced his or her federal
 271 | TWIC. and execute an affidavit under oath which provides TWIC
 272 | identification information and indicates the following:

273 | 1. The TWIC is currently valid and in full force and
 274 | effect.

275 | 2. The TWIC was not received through the waiver process
 276 | for disqualifying criminal history allowed by federal law.

277 | 3. He or she has not, in any jurisdiction, civilian or
 278 | military, been convicted of, entered a plea of guilty or nolo
 279 | contendere to, regardless of adjudication, or been found not
 280 | guilty by reason of insanity, of any disqualifying felony under

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281 ~~subsection (7) or any crime that includes the use or possession~~
282 ~~of a firearm.~~

283 ~~(b) Upon submission of a completed affidavit as provided~~
284 ~~in paragraph (a), the completion of the state criminal history~~
285 ~~check as provided in subsection (7), and payment of all required~~
286 ~~fees under subsection (5), a seaport may grant the person access~~
287 ~~to secure or restricted areas of the port.~~

288 ~~(c) Any port granting a person access to secure or~~
289 ~~restricted areas shall report the grant of access to the~~
290 ~~Department of Law Enforcement for inclusion in the access~~
291 ~~eligibility reporting system under subsection (5) within 3~~
292 ~~business days.~~

293 ~~(d) The submission of false information on the affidavit~~
294 ~~required by this section is a felony of the third degree,~~
295 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~
296 ~~Upon conviction for a violation of this provision, the person~~
297 ~~convicted forfeits all privilege of access to secure or~~
298 ~~restricted areas of a seaport and is disqualified from future~~
299 ~~approval for access to such areas.~~

300 ~~(e) Any affidavit form created for use under this~~
301 ~~subsection must contain the following statement in conspicuous~~
302 ~~type: "SUBMISSION OF FALSE INFORMATION ON THIS AFFIDAVIT IS A~~
303 ~~FELONY UNDER FLORIDA LAW AND WILL, UPON CONVICTION, RESULT IN~~
304 ~~DISQUALIFICATION FOR ACCESS TO A SECURE OR RESTRICTED AREA OF A~~
305 ~~SEAPORT."~~

306 ~~(f) Upon each 5-year renewal of a person's TWIC, the~~
307 ~~person must submit another affidavit as required by this~~
308 ~~subsection.~~

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309 ~~(7) CRIMINAL HISTORY SCREENING. A fingerprint-based~~
310 ~~criminal history check must be performed on employee applicants,~~
311 ~~current employees, and other persons authorized to regularly~~
312 ~~enter a secure or restricted area, or the entire seaport if the~~
313 ~~seaport security plan does not designate one or more secure or~~
314 ~~restricted areas.~~

315 ~~(a) A person is disqualified from employment or unescorted~~
316 ~~access if the person:~~

317 ~~1. Was convicted of, or entered a plea of guilty or nolo~~
318 ~~contendere to, regardless of adjudication, any of the offenses~~
319 ~~listed in paragraph (b) in any jurisdiction, civilian or~~
320 ~~military, including courts-martial conducted by the Armed Forces~~
321 ~~of the United States, during the 7 years before the date of the~~
322 ~~person's application for access; or~~

323 ~~2. Was released from incarceration, or any supervision~~
324 ~~imposed as a result of sentencing, for committing any of the~~
325 ~~disqualifying crimes listed in paragraph (b) in any~~
326 ~~jurisdiction, civilian or military, during the 5 years before~~
327 ~~the date of the person's application for access.~~

328 ~~(b) Disqualifying offenses include:~~

329 ~~1. An act of terrorism as defined in s. 775.30.~~

330 ~~2. A violation involving a weapon of mass destruction or a~~
331 ~~hoax weapon of mass destruction as provided in s. 790.166.~~

332 ~~3. Planting of a hoax bomb as provided in s. 790.165.~~

333 ~~4. A violation of s. 876.02 or s. 876.36.~~

334 ~~5. A violation of s. 860.065.~~

335 ~~6. Trafficking as provided in s. 893.135.~~

336 ~~7. Racketeering activity as provided in s. 895.03.~~

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- 337 | ~~8. Dealing in stolen property as provided in s. 812.019.~~
- 338 | ~~9. Money laundering as provided in s. 896.101.~~
- 339 | ~~10. Criminal use of personal identification as provided in~~
- 340 | ~~s. 817.568.~~
- 341 | ~~11. Bribery as provided in s. 838.015.~~
- 342 | ~~12. A violation of s. 316.302, relating to the transport~~
- 343 | ~~of hazardous materials.~~
- 344 | ~~13. A forcible felony as defined in s. 776.08.~~
- 345 | ~~14. A violation of s. 790.07.~~
- 346 | ~~15. Any crime that includes the use or possession of a~~
- 347 | ~~firearm.~~
- 348 | ~~16. A felony violation for theft as provided in s.~~
- 349 | ~~812.014.~~
- 350 | ~~17. Robbery as provided in s. 812.13.~~
- 351 | ~~18. Burglary as provided in s. 810.02.~~
- 352 | ~~19. Any violation involving the sale, manufacture,~~
- 353 | ~~delivery, or possession with intent to sell, manufacture, or~~
- 354 | ~~deliver a controlled substance.~~
- 355 | ~~20. Any offense under the laws of another jurisdiction~~
- 356 | ~~that is similar to an offense listed in this paragraph.~~
- 357 | ~~21. Conspiracy or attempt to commit any of the offenses~~
- 358 | ~~listed in this paragraph.~~
- 359 | ~~(c) Each individual who is subject to a criminal history~~
- 360 | ~~check shall file a complete set of fingerprints taken in a~~
- 361 | ~~manner acceptable to the Department of Law Enforcement for state~~
- 362 | ~~processing. The results of the criminal history check must be~~
- 363 | ~~reported to the requesting seaport and may be shared among~~
- 364 | ~~seaports.~~

365 ~~(d) All fingerprints submitted to the Department of Law~~
366 ~~Enforcement shall be retained by the department and entered into~~
367 ~~the statewide automated fingerprint identification system~~
368 ~~established in s. 943.05(2)(b) and available for use in~~
369 ~~accordance with s. 943.05(2)(g) and (h). An arrest record that~~
370 ~~is identified with the retained fingerprints of a person subject~~
371 ~~to the screening shall be reported to the seaport where the~~
372 ~~person has been granted access to a secure or restricted area.~~
373 ~~If the fingerprints of a person who has been granted access were~~
374 ~~not retained, or are otherwise not suitable for use by the~~
375 ~~department, the person must be refingerprinted in a manner that~~
376 ~~allows the department to perform its functions as provided in~~
377 ~~this section.~~

378 ~~(e) The Department of Law Enforcement shall establish a~~
379 ~~waiver process for a person who does not have a TWIC, obtained a~~
380 ~~TWIC through a federal waiver process, or is found to be~~
381 ~~unqualified under paragraph (a) and denied employment by a~~
382 ~~seaport or unescorted access to secure or restricted areas. If~~
383 ~~the person does not have a TWIC and a federal criminal history~~
384 ~~record check is required, the Department of Law Enforcement may~~
385 ~~forward the person's fingerprints to the Federal Bureau of~~
386 ~~Investigation for a national criminal history record check. The~~
387 ~~cost of the national check must be paid by the seaport, which~~
388 ~~may collect it as reimbursement from the person.~~

389 ~~1. Consideration for a waiver shall be based on the~~
390 ~~circumstances of any disqualifying act or offense, restitution~~
391 ~~made by the individual, and other factors from which it may be~~
392 ~~determined that the individual does not pose a risk of engaging~~

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393 | ~~in any act within the public seaports regulated under this~~
394 | ~~chapter that would pose a risk to or threaten the security of~~
395 | ~~the seaport and the public's health, safety, or welfare.~~

396 | ~~2. The waiver process begins when an individual who has~~
397 | ~~been denied initial employment within or denied unescorted~~
398 | ~~access to secure or restricted areas of a public seaport submits~~
399 | ~~an application for a waiver and a notarized letter or affidavit~~
400 | ~~from the individual's employer or union representative which~~
401 | ~~states the mitigating reasons for initiating the waiver process.~~

402 | ~~3. Within 90 days after receipt of the application, the~~
403 | ~~administrative staff of the Parole Commission shall conduct a~~
404 | ~~factual review of the waiver application. Findings of fact shall~~
405 | ~~be transmitted to the department for review. The department~~
406 | ~~shall make a copy of those findings available to the applicant~~
407 | ~~before final disposition of the waiver request.~~

408 | ~~4. The department shall make a final disposition of the~~
409 | ~~waiver request based on the factual findings of the~~
410 | ~~investigation by the Parole Commission. The department shall~~
411 | ~~notify the waiver applicant of the final disposition of the~~
412 | ~~waiver.~~

413 | ~~5. The review process under this paragraph is exempt from~~
414 | ~~chapter 120.~~

415 | ~~6. By October 1 of each year, each seaport shall report to~~
416 | ~~the department each instance of denial of employment within, or~~
417 | ~~access to, secure or restricted areas, and each instance waiving~~
418 | ~~a denial occurring during the last 12 months. The report must~~
419 | ~~include the identity of the individual affected, the factors~~
420 | ~~supporting the denial or waiver, and any other material factors~~

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421 | ~~used to make the determination.~~

422 | ~~(f) In addition to the waiver procedure established by the~~
423 | ~~Department of Law Enforcement under paragraph (c), each seaport~~
424 | ~~security plan may establish a procedure to appeal a denial of~~
425 | ~~employment or access based upon procedural inaccuracies or~~
426 | ~~discrepancies regarding criminal history factors established~~
427 | ~~pursuant to this subsection.~~

428 | ~~(g) Each seaport may allow immediate waivers on a~~
429 | ~~temporary basis to meet special or emergency needs of the~~
430 | ~~seaport or its users. Policies, procedures, and criteria for~~
431 | ~~implementation of this paragraph must be included in the seaport~~
432 | ~~security plan. All waivers granted by the seaports pursuant to~~
433 | ~~this paragraph must be reported to the department within 30 days~~
434 | ~~after issuance.~~

435 | ~~(8) WAIVER FROM SECURITY REQUIREMENTS. The Office of Drug~~
436 | ~~Control and the Department of Law Enforcement may modify or~~
437 | ~~waive any physical facility requirement or other requirement~~
438 | ~~contained in the minimum security standards upon a determination~~
439 | ~~that the purposes of the standards have been reasonably met or~~
440 | ~~exceeded by the seaport requesting the modification or waiver.~~
441 | ~~An alternate means of compliance must not diminish the safety or~~
442 | ~~security of the seaport and must be verified through an~~
443 | ~~extensive risk analysis conducted by the seaport director.~~

444 | ~~(a) Waiver requests shall be submitted in writing, along~~
445 | ~~with supporting documentation, to the Office of Drug Control and~~
446 | ~~the Department of Law Enforcement. The office and the department~~
447 | ~~have 90 days to jointly grant or reject the waiver, in whole or~~
448 | ~~in part.~~

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449 ~~(b) The seaport may submit any waivers that are not~~
450 ~~granted or are jointly rejected to the Domestic Security~~
451 ~~Oversight Council for review within 90 days. The council shall~~
452 ~~recommend that the Office of Drug Control and the Department of~~
453 ~~Law Enforcement grant the waiver or reject the waiver, in whole~~
454 ~~or in part. The office and the department shall give great~~
455 ~~weight to the council's recommendations.~~

456 ~~(c) A request seeking a waiver from the seaport law~~
457 ~~enforcement personnel standards established under s. 311.122(3)~~
458 ~~may not be granted for percentages below 10 percent.~~

459 ~~(d) Any modifications or waivers granted under this~~
460 ~~subsection shall be noted in the annual report submitted by the~~
461 ~~Department of Law Enforcement pursuant to subsection (10).~~

462 ~~(5)(9)~~ INSPECTIONS.—It is the intent of the Legislature
463 that the state's seaports adhere to security practices that are
464 consistent with the risks assigned to each seaport through the
465 ongoing risk assessment process established in paragraph
466 ~~(2)(3)(a)~~.

467 (a) The Department of Law Enforcement, or any entity
468 designated by the department, ~~may~~ shall conduct ~~at least one~~
469 ~~annual~~ unannounced inspections ~~inspection~~ of each seaport to
470 determine whether the seaport is meeting the requirements under
471 33 C.F.R. s. 105.305 ~~minimum security standards established~~
472 ~~pursuant to subsection (1)~~ and to identify seaport security
473 changes or improvements needed or otherwise recommended.

474 (b) The Department of Law Enforcement, or any entity
475 designated by the department, may conduct additional announced
476 or unannounced inspections or operations within or affecting any

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477 | seaport to test compliance with, or the effectiveness of,
 478 | security plans and operations at each seaport, to determine
 479 | compliance with physical facility requirements and standards, ~~or~~
 480 | ~~to assist the department in identifying changes or improvements~~
 481 | ~~needed to bring a seaport into compliance with minimum security~~
 482 | ~~standards.~~

483 | (c) Within 30 days after completing the inspection report,
 484 | the department shall submit a copy of the report to the Domestic
 485 | Security Oversight Council.

486 | (d) A seaport may request that the Domestic Security
 487 | Oversight Council review the findings in the department's report
 488 | as they relate to the requirements of this section. The council
 489 | may review only those findings that are in dispute by the
 490 | seaport. In reviewing the disputed findings, the council may
 491 | concur in the findings of the department or the seaport or may
 492 | recommend corrective action to the seaport. The department and
 493 | the seaport shall give great weight to the council's findings
 494 | and recommendations.

495 | (e) All seaports shall allow the Department of Law
 496 | Enforcement, or an entity designated by the department,
 497 | unimpeded access to affected areas and facilities for the
 498 | purpose of plan or compliance inspections or other operations
 499 | authorized by this section.

500 | (6) ~~(10)~~ REPORTS.—The Department of Law Enforcement, ~~in~~
 501 | ~~consultation with the Office of Drug Control,~~ shall annually
 502 | complete a report indicating the observations and findings of
 503 | all reviews, inspections, or other operations relating to the
 504 | seaports conducted during the year and any recommendations

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505 resulting from such reviews, inspections, and operations. A copy
506 of the report shall be provided to the Governor, the President
507 of the Senate, the Speaker of the House of Representatives, the
508 governing body of each seaport or seaport authority, and each
509 seaport director. The report must include each director's
510 response indicating what actions, if any, have been taken or are
511 planned to be taken pursuant to the observations, findings, and
512 recommendations reported by the department.

513 (7)~~(11)~~ FUNDING.—

514 (a) In making decisions regarding security projects or
515 other funding applicable to each seaport listed in s. 311.09,
516 the Legislature may consider the Department of Law Enforcement's
517 annual report under subsection (6) ~~(10)~~ as authoritative,
518 ~~especially regarding each seaport's degree of substantial~~
519 ~~compliance with the minimum security standards established in~~
520 ~~subsection (1).~~

521 (b) The Legislature shall regularly review the ongoing
522 costs of operational security on seaports, the impacts of this
523 section on those costs, mitigating factors that may reduce costs
524 without reducing security, and the methods by which seaports may
525 implement operational security using a combination of sworn law
526 enforcement officers and private security services.

527 (c) Subject to the provisions of this chapter and
528 appropriations made for seaport security, state funds may not be
529 expended for security costs without certification of need for
530 such expenditures by the Office of Ports Administrator within
531 the Department of Law Enforcement.

532 (d) If funds are appropriated for seaport security, ~~the~~

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533 ~~Office of Drug Control,~~ the Department of Law Enforcement, and
534 the Florida Seaport Transportation and Economic Development
535 Council shall mutually determine the allocation of such funds
536 for security project needs identified in the approved seaport
537 security plans. Any seaport that receives state funds for
538 security projects must enter into a joint participation
539 agreement with the appropriate state entity and use the seaport
540 security plan as the basis for the agreement.

541 1. If funds are made available over more than 1 fiscal
542 year, the agreement must reflect the entire scope of the project
543 approved in the security plan and, as practicable, allow for
544 reimbursement for authorized projects over more than 1 year.

545 2. The agreement may include specific timeframes for
546 completion of a security project and the applicable funding
547 reimbursement dates. The agreement may also require a
548 contractual penalty of up to \$1,000 per day to be imposed for
549 failure to meet project completion dates if state funding is
550 available. Any such penalty shall be deposited into the State
551 Transportation Trust Fund and used for seaport security
552 operations and capital improvements.

553 Section 2. Subsection (2) of section 311.121, Florida
554 Statutes, is amended to read:

555 311.121 Qualifications, training, and certification of
556 licensed security officers at Florida seaports.—

557 (2) The authority or governing board of each seaport
558 identified under s. 311.09 that is subject to the ~~statewide~~
559 ~~minimum~~ seaport security standards referenced ~~established~~ in s.
560 311.12 shall require that a candidate for certification as a

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561 seaport security officer:

562 (a) Has received a Class D license as a security officer
563 under chapter 493.

564 (b) Has successfully completed the certified training
565 curriculum for a Class D license or has been determined by the
566 Department of Agriculture and Consumer Services to have
567 equivalent experience as established by rule of the department.

568 (c) Has completed the training or training equivalency and
569 testing process established by this section for becoming a
570 certified seaport security officer.

571 Section 3. Subsection (1) of section 311.123, Florida
572 Statutes, is amended to read:

573 311.123 Maritime domain security awareness training
574 program.—

575 (1) The Florida Seaport Transportation and Economic
576 Development Council, in conjunction with the Department of Law
577 Enforcement ~~and the Office of Drug Control within the Executive~~
578 ~~Office of the Governor~~, shall create a maritime domain security
579 awareness training program to instruct all personnel employed
580 within a seaport's boundaries about the security procedures
581 required of them for implementation of the seaport security plan
582 required under s. 311.12(2) ~~(3)~~.

583 Section 4. Subsection (1) of section 311.124, Florida
584 Statutes, is amended to read:

585 311.124 Trespassing; detention by a certified seaport
586 security officer.—

587 (1) Any Class D or Class G seaport security officer
588 certified under the federal Maritime Transportation Security Act

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589 of 2002 guidelines ~~and s. 311.121~~ or any employee of the seaport
590 security force certified under the federal Maritime
591 Transportation Security Act of 2002 guidelines ~~and s. 311.121~~
592 who has probable cause to believe that a person is trespassing
593 pursuant to s. 810.08 or s. 810.09 or this chapter in a
594 designated secure or restricted area pursuant to s. 311.12(3)~~(4)~~
595 is authorized to detain such person in a reasonable manner for a
596 reasonable period of time pending the arrival of a law
597 enforcement officer, and such action does not render the
598 security officer criminally or civilly liable for false arrest,
599 false imprisonment, or unlawful detention.

600 Section 5. Section 311.115, Florida Statutes, is repealed.

601 Section 6. Subsection (4) of section 310.002, Florida
602 Statutes, is amended to read:

603 310.002 Definitions.—As used in this chapter, except where
604 the context clearly indicates otherwise:

605 (4) "Port" means any place in the state into which vessels
606 enter or depart and includes, without limitation, Fernandina,
607 Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Port
608 Citrus, Ft. Pierce, Palm Beach, Port Everglades, Miami, Key
609 West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port
610 Tampa, Port Manatee, St. Petersburg, Clearwater, Apalachicola,
611 Carrabelle, Panama City, Port St. Joe, and Pensacola.

612 Section 7. Subsection (1) of section 311.09, Florida
613 Statutes, is amended to read:

614 311.09 Florida Seaport Transportation and Economic
615 Development Council.—

616 (1) The Florida Seaport Transportation and Economic

617 Development Council is created within the Department of
 618 Transportation. The council consists of the following 18 ~~17~~
 619 members: the port director, or the port director's designee, of
 620 each of the ports of Jacksonville, Port Canaveral, Port Citrus,
 621 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,
 622 St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key
 623 West, and Fernandina; the secretary of the Department of
 624 Transportation or his or her designee; the director of the
 625 Office of Tourism, Trade, and Economic Development or his or her
 626 designee; and the secretary of the Department of Community
 627 Affairs or his or her designee.

628 Section 8. Paragraph (c) of subsection (1) of section
 629 374.976, Florida Statutes, is amended to read:

630 374.976 Authority to address impacts of waterway
 631 development projects.—

632 (1) Each inland navigation district is empowered and
 633 authorized to undertake programs intended to alleviate the
 634 problems associated with its waterway or waterways, including,
 635 but not limited to, the following:

636 (c) The district is authorized to aid and cooperate with
 637 the Federal Government; state; member counties; nonmember
 638 counties that contain any part of the intracoastal waterway
 639 within their boundaries; navigation districts; the seaports of
 640 Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm
 641 Beach, Port Everglades, Miami, Port Manatee, St. Petersburg,
 642 Tampa, Port St. Joe, Panama City, Pensacola, Key West, and
 643 Fernandina; and local governments within the district in
 644 planning and carrying out public navigation, local and regional

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645 anchorage management, beach renourishment, public recreation,
 646 inlet management, environmental education, and boating safety
 647 projects, directly related to the waterways. The district is
 648 also authorized to enter into cooperative agreements with the
 649 United States Army Corps of Engineers, state, and member
 650 counties, and to covenant in any such cooperative agreement to
 651 pay part of the costs of acquisition, planning, development,
 652 construction, reconstruction, extension, improvement, operation,
 653 and maintenance of such projects.

654 Section 9. Paragraph (b) of subsection (9) of section
 655 403.021, Florida Statutes, is amended to read:

656 403.021 Legislative declaration; public policy.—

657 (9)

658 (b) The provisions of paragraph (a) apply only to the port
 659 waters, dredged-material management sites, port harbors,
 660 navigation channels, turning basins, and harbor berths used for
 661 deepwater commercial navigation in the ports of Jacksonville,
 662 Tampa, Port Everglades, Miami, Port Canaveral, Port Citrus, Ft.
 663 Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St.
 664 Petersburg, Pensacola, Fernandina, and Key West.

665 Section 10. Paragraph (b) of subsection (26) of section
 666 403.061, Florida Statutes, is amended to read:

667 403.061 Department; powers and duties.—The department
 668 shall have the power and the duty to control and prohibit
 669 pollution of air and water in accordance with the law and rules
 670 adopted and promulgated by it and, for this purpose, to:

671 (26)

672 (b) The provisions of paragraph (a) apply only to the port

673 waters, spoil disposal sites, port harbors, navigation channels,
 674 turning basins, and harbor berths used for deepwater commercial
 675 navigation in the ports of Jacksonville, Tampa, Port Everglades,
 676 Miami, Port Canaveral, Port Citrus, Ft. Pierce, Palm Beach, Port
 677 Manatee, Port St. Joe, Panama City, St. Petersburg, Port Bartow,
 678 Florida Power Corporation's Crystal River Canal, Boca Grande,
 679 Green Cove Springs, and Pensacola.

680

681 The department shall implement such programs in conjunction with
 682 its other powers and duties and shall place special emphasis on
 683 reducing and eliminating contamination that presents a threat to
 684 humans, animals or plants, or to the environment.

685 Section 11. Subsection (3) of section 403.813, Florida
 686 Statutes, is amended to read:

687 403.813 Permits issued at district centers; exceptions.—

688 (3) For maintenance dredging conducted under this section
 689 by the seaports of Jacksonville, Port Canaveral, Port Citrus,
 690 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,
 691 St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key
 692 West, and Fernandina or by inland navigation districts:

693 (a) A mixing zone for turbidity is granted within a 150-
 694 meter radius from the point of dredging while dredging is
 695 ongoing, except that the mixing zone may not extend into areas
 696 supporting wetland communities, submerged aquatic vegetation, or
 697 hardbottom communities.

698 (b) The discharge of the return water from the site used
 699 for the disposal of dredged material shall be allowed only if
 700 such discharge does not result in a violation of water quality

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701 standards in the receiving waters. The return-water discharge
702 into receiving waters shall be granted a mixing zone for
703 turbidity within a 150-meter radius from the point of discharge
704 during and immediately after the dredging, except that the
705 mixing zone may not extend into areas supporting wetland
706 communities, submerged aquatic vegetation, or hardbottom
707 communities.

708 (c) The state may not exact a charge for material that
709 this subsection allows a public port or an inland navigation
710 district to remove.

711 (d) The use of flocculants at the site used for disposal
712 of the dredged material is allowed if the use, including
713 supporting documentation, is coordinated in advance with the
714 department and the department has determined that the use is not
715 harmful to water resources.

716 (e) This subsection does not prohibit maintenance dredging
717 of areas where the loss of original design function and
718 constructed configuration has been caused by a storm event,
719 provided that the dredging is performed as soon as practical
720 after the storm event. Maintenance dredging that commences
721 within 3 years after the storm event shall be presumed to
722 satisfy this provision. If more than 3 years are needed to
723 commence the maintenance dredging after the storm event, a
724 request for a specific time extension to perform the maintenance
725 dredging shall be submitted to the department, prior to the end
726 of the 3-year period, accompanied by a statement, including
727 supporting documentation, demonstrating that contractors are not
728 available or that additional time is needed to obtain

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729 authorization for the maintenance dredging from the United
730 States Army Corps of Engineers.

731 Section 12. Subsection (3) of section 403.816, Florida
732 Statutes, is amended to read:

733 403.816 Permits for maintenance dredging of deepwater
734 ports and beach restoration projects.—

735 (3) The provisions of this section relating to ports apply
736 only to the port waters, spoil disposal sites, port harbors,
737 navigation channels, turning basins, and harbor berths used for
738 deepwater commercial navigation in the ports of Jacksonville,
739 Tampa, Port Everglades, Miami, Port Canaveral, Port Citrus, Ft.
740 Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St.
741 Petersburg, Port Bartow, Florida Power Corporation's Crystal
742 River Canal, Boca Grande, Green Cove Springs, and Pensacola.

743 Section 13. This act shall take effect upon becoming a
744 law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 283 (2011)

Amendment No. 01

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: Justice Appropriations
2 Subcommittee

3 Representative Young offered the following:

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

6 Remove lines 462-552 and insert:

7 ~~(9) INSPECTIONS. It is the intent of the Legislature that~~
8 ~~the state's seaports adhere to security practices that are~~
9 ~~consistent with the risks assigned to each seaport through the~~
10 ~~ongoing risk assessment process established in paragraph (3)(a).~~

11 ~~(a) The Department of Law Enforcement, or any entity~~
12 ~~designated by the department, shall conduct at least one annual~~
13 ~~unannounced inspection of each seaport to determine whether the~~
14 ~~seaport is meeting the minimum security standards established~~
15 ~~pursuant to subsection (1) and to identify seaport security~~
16 ~~changes or improvements needed or otherwise recommended.~~

17 ~~(b) The Department of Law Enforcement, or any entity~~
18 ~~designated by the department, may conduct additional announced~~
19 ~~or unannounced inspections or operations within or affecting any~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 283 (2011)

Amendment No. 01

20 ~~seaport to test compliance with, or the effectiveness of,~~
21 ~~security plans and operations at each seaport, to determine~~
22 ~~compliance with physical facility requirements and standards, or~~
23 ~~to assist the department in identifying changes or improvements~~
24 ~~needed to bring a seaport into compliance with minimum security~~
25 ~~standards.~~

26 ~~(c) Within 30 days after completing the inspection report,~~
27 ~~the department shall submit a copy of the report to the Domestic~~
28 ~~Security Oversight Council.~~

29 ~~(d) A seaport may request that the Domestic Security~~
30 ~~Oversight Council review the findings in the department's report~~
31 ~~as they relate to the requirements of this section. The council~~
32 ~~may review only those findings that are in dispute by the~~
33 ~~seaport. In reviewing the disputed findings, the council may~~
34 ~~concur in the findings of the department or the seaport or may~~
35 ~~recommend corrective action to the seaport. The department and~~
36 ~~the seaport shall give great weight to the council's findings~~
37 ~~and recommendations.~~

38 ~~(e) All seaports shall allow the Department of Law~~
39 ~~Enforcement, or an entity designated by the department,~~
40 ~~unimpeded access to affected areas and facilities for the~~
41 ~~purpose of plan or compliance inspections or other operations~~
42 ~~authorized by this section.~~

43 ~~(10) REPORTS. The Department of Law Enforcement, in~~
44 ~~consultation with the Office of Drug Control, shall annually~~
45 ~~complete a report indicating the observations and findings of~~
46 ~~all reviews, inspections, or other operations relating to the~~
47 ~~seaports conducted during the year and any recommendations~~

Amendment No. 01

48 ~~resulting from such reviews, inspections, and operations. A copy~~
49 ~~of the report shall be provided to the Governor, the President~~
50 ~~of the Senate, the Speaker of the House of Representatives, the~~
51 ~~governing body of each seaport or seaport authority, and each~~
52 ~~seaport director. The report must include each director's~~
53 ~~response indicating what actions, if any, have been taken or are~~
54 ~~planned to be taken pursuant to the observations, findings, and~~
55 ~~recommendations reported by the department.~~

56 ~~(11) FUNDING.—~~

57 ~~(a) In making decisions regarding security projects or~~
58 ~~other funding applicable to each seaport listed in s. 311.09,~~
59 ~~the Legislature may consider the Department of Law Enforcement's~~
60 ~~annual report under subsection (10) as authoritative, especially~~
61 ~~regarding each seaport's degree of substantial compliance with~~
62 ~~the minimum security standards established in subsection (1).~~

63 ~~(b) The Legislature shall regularly review the ongoing~~
64 ~~costs of operational security on seaports, the impacts of this~~
65 ~~section on those costs, mitigating factors that may reduce costs~~
66 ~~without reducing security, and the methods by which seaports may~~
67 ~~implement operational security using a combination of sworn law~~
68 ~~enforcement officers and private security services.~~

69 ~~(c) Subject to the provisions of this chapter and~~
70 ~~appropriations made for seaport security, state funds may not be~~
71 ~~expended for security costs without certification of need for~~
72 ~~such expenditures by the Office of Ports Administrator within~~
73 ~~the Department of Law Enforcement.~~

74 ~~(d) If funds are appropriated for seaport security, the~~
75 ~~Office of Drug Control, the Department of Law Enforcement, and~~

Amendment No. 01

76 ~~the Florida Seaport Transportation and Economic Development~~
77 ~~Council shall mutually determine the allocation of such funds~~
78 ~~for security project needs identified in the approved seaport~~
79 ~~security plans. Any seaport that receives state funds for~~
80 ~~security projects must enter into a joint participation~~
81 ~~agreement with the appropriate state entity and use the seaport~~
82 ~~security plan as the basis for the agreement.~~

83 ~~1. If funds are made available over more than 1 fiscal~~
84 ~~year, the agreement must reflect the entire scope of the project~~
85 ~~approved in the security plan and, as practicable, allow for~~
86 ~~reimbursement for authorized projects over more than 1 year.~~

87 ~~2. The agreement may include specific timeframes for~~
88 ~~completion of a security project and the applicable funding~~
89 ~~reimbursement dates. The agreement may also require a~~
90 ~~contractual penalty of up to \$1,000 per day to be imposed for~~
91 ~~failure to meet project completion dates if state funding is~~
92 ~~available. Any such penalty shall be deposited into the State~~
93 ~~Transportation Trust Fund and used for seaport security~~
94 ~~operations and capital improvements.~~

95
96
97
98 -----
99 **T I T L E A M E N D M E N T**

100 Remove lines 27-30 and insert:

101 circumstances; deleting provisions relating to inspections;
102 deleting reporting requirements; revising the parties that

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 283 (2011)

Amendment No. 01

103 | determine the allocation of appropriated funds for security

104 | project needs; amending ss. 311.121,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 283 (2011)

Amendment No. 02

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: Justice Appropriations
2 Subcommittee

3 Representative Young offered the following:

4



5 **Amendment**

6 Remove lines 576-577 and insert:

7 Development Council, ~~in conjunction with the Department of Law~~
8 ~~Enforcement and the Office of Drug Control within the Executive~~
9 ~~Office of the Governor,~~ shall create a maritime domain security

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 513 Missing Adults
SPONSOR(S): Criminal Justice Subcommittee; Abruzzo and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee		 McAuliffe	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

In October 2008, Governor Charlie Crist signed an Executive Order establishing the Florida Silver Alert Plan. The Silver Alert Plan was developed to broadcast information in a timely manner to the general public about a missing elderly person who suffers from irreversible deterioration of intellectual faculties.

Section 937.022, F.S., creates the Missing Endangered Persons Information Clearinghouse (MEPIC) within the Florida Department of Law Enforcement (FDLE) which serves as a central repository of information regarding missing endangered persons. Upon receiving information about a missing endangered person, MEPIC disseminates the information in an effort to locate the missing endangered person. A "missing endangered person" is defined as a missing child, a missing adult younger than 26 years of age, or a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

Although not specifically included in the definition, FDLE considers a person who meets the criteria for a state Silver Alert to be a "missing endangered person" as defined by s. 937.021, F.S.

CS/HB 513 amends the definition of "missing endangered person" in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The bill also provides that only the law enforcement agency having jurisdiction over the case may make a request to MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The bill provides immunity from civil liability to entities who act in good faith when requested to record, report, transmit, display, or release information pertaining to a Silver Alert.

FDLE reports that the bill will have no fiscal impact as statewide Silver Alerts have been issued since October 2008 and FDLE has historically considered a person who meets the criteria for a state Silver Alert to be a "missing endangered person" as defined by s. 937.0201, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information

Silver Alert Plan

In October 2008, Governor Charlie Crist signed an Executive Order establishing the Florida Silver Alert Plan (plan.)¹ The plan was developed to broadcast information in a timely manner to the general public about a missing elderly person who suffers from irreversible deterioration of intellectual faculties.²

A law enforcement agency can issue a *local or regional* Silver Alert³ when a missing person meets the following criteria:

- The missing person must be age 60 or older and there must be a clear indication that the individual has an irreversible deterioration of intellectual faculties, which must be verified⁴ by law enforcement, or
- Under extraordinary circumstances when a person age 18 to 59 has irreversible deterioration of intellectual faculties and law enforcement has determined the individual lacks the capacity to consent and where the use of dynamic message signs may be the only possible way to rescue the missing person.⁵

FDLE's Missing Endangered Person Information Clearinghouse (MEPIC) will activate⁶ a *statewide* Silver Alert, including the Florida Department of Transportation, the Florida Highway Patrol, and FDLE Dynamic Message Sign activation,⁷ if a case meets all of the above criteria, in addition to the following:

- Local law enforcement has already activated a local and regional alert by contacting media outlets.⁸
- The local law enforcement agency's investigation has concluded that the disappearance poses a credible threat to the person's safety.
- A description of the missing person's vehicle and a license plate number is available and has been verified by local law enforcement.
- The local law enforcement agency has entered the missing person into the Florida Crime Information Center and issued a statewide "Be On the Look Out" (BOLO) to other law enforcement and 911 centers.⁹

¹ Office of the Governor, Executive Order Number 08-211.

² Missing/Endangered Persons (AMBER & Silver Alert.) Florida Department of Law Enforcement, Revised 6/24/10. (On file with Criminal Justice Subcommittee staff.)

³ Local law enforcement will take a report of a missing person, issue a Silver Alert if the criteria are met, and notify FDLE if the person is driving a vehicle. The local law enforcement agency determines how long a Silver Alert remains activated. "Florida's Silver Alert Plan Frequently Asked Questions." FDLE. <http://www.fdle.state.fl.us/MCICSearch/Documents/SilverAlertFAQ.pdf> (Last accessed on March 11, 2011.)

⁴ Law enforcement requires the parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing person to provide specific information which may include documentation from a medical or mental health professional of the person's condition. Missing Endangered Persons Information Clearinghouse Policies and Procedures Manual. FDLE. July 2010. (On file with Criminal Justice Subcommittee staff.)

⁵ *Id.*

⁶ *Id.*

⁷ Dynamic message signs are activated regionally or statewide when criteria are met. If road signs are used, they remain activated for a maximum of 6 hours, unless the missing elderly person is rescued or the Florida Department of Transportation is otherwise instructed. *Supra* "Florida's Silver Alert Plan Frequently Asked Questions."

⁸ However, media outlets have the option on whether or not to broadcast Silver Alert information. *Id.*

According to FDLE, since the program's inception, the department has issued 282 statewide Silver Alerts with 42 direct recoveries as a result of the alerts.¹⁰

Missing Person Investigations

Chapter 937, F.S., relates to missing person investigations. Section 937.021, F.S., requires a law enforcement agency, upon receiving a report that a child is missing,¹¹ to immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center and the National Crime Information Center (FCIC/NCIC) databases. Upon the filing of a report that an adult is missing,¹² the law enforcement agency receiving the report must, within 2 hours after receipt of the report, transmit the report for inclusion within the FCIC/NCIC databases.¹³

Section 937.021, F.S., also provides immunity from civil liability for damages to specified entities who have been requested by law enforcement to record, report, transmit, display, or release information pertaining to a missing child or adult if they complied with the request in good faith. These entities include:

- FDLE as the state Amber Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies;
- Any radio or television network, broadcaster, or other media representative;
- Any dealer of communications services as defined in s. 202.11, F.S.; or
- Any agency, employee, individual, or entity.¹⁴

Entities who report, transmit, display, or release information pertaining to a missing child or adult are presumed to have acted in good faith.¹⁵ The presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction or if the missing child or adult information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.¹⁶

Nothing in s. 937.021, F.S., or any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, or missing adult information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.¹⁷

Section 937.0201, F.S., defines a "missing endangered person" as a missing child, a missing adult younger than 26 years of age, or a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity. Every state, county, and municipal law enforcement agency is required to submit to MEPIC information concerning missing

⁹ *Supra* Missing Endangered Persons Information Clearinghouse Policies and Procedures Manual.

¹⁰ Silver Alert Monthly Report. FDLE. February 2011. <http://www.fdle.state.fl.us/Content/getdoc/25c645e1-c20a-47bc-9b69-d23fb4f0c408/SilverAlertReport.aspx> (Last accessed on March 11, 2011.)

¹¹ Section 937.021(3), F.S., defines a "missing child" as "a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency."

¹² Section 937.021(2), F.S., defines a "missing adult" as "a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency."

¹³ Section 937.021(4), F.S.

¹⁴ Section 937.021(5)(a) and (b), F.S.

¹⁵ Section 937.021(5)(c), F.S.

¹⁶ *Id.*

¹⁷ Section 937.021(5)(d), F.S.

endangered persons.¹⁸ MEPIC serves as the central repository of information regarding missing endangered persons.¹⁹ Upon receiving information about a missing endangered person, MEPIC disseminates the information in an effort to locate the missing endangered person.

Under current law, FDLE considers a person who meets the criteria for a Silver Alert to be a "missing endangered person,"²⁰ although the definition of that term does not specifically include a person who meets the Silver Alert criteria.

Effect of Proposed Bill

CS/HB 513 amends the definition of "missing endangered person" in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The bill also provides that only the law enforcement agency having jurisdiction over the case may make a request to MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The bill amends s. 937.021, F.S., to provide the same immunity from civil liability as described above to entities who act in good faith when requested to record, report, transmit, display, or release information pertaining to a Silver Alert.

The bill also provides entities who have been requested to record, report, transmit, display, or release Silver Alert information the same presumption of good faith given to those who have been requested to record, report, transmit, display, or release information related to missing children and adults. The bill also specifies that this presumption is not overcome if the law enforcement agency submitting the Silver Alert information made technical or clerical errors or provided incomplete or incorrect information.

The bill specifies that agencies, employees, and individuals do not have a duty to record, report, transmit, display, or release Silver Alert information received from a law enforcement agency. Such decision is discretionary with the entity receiving the information.

B. SECTION DIRECTORY:

Section 1. Amends s. 937.0201, F.S., relating to definitions.

Section 2. Amends s. 937.021, F.S., relating to missing child and missing adult reports.

Section 3. Amends s. 937.022, F.S., relating to Missing Endangered Persons Information Clearinghouse.

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:

FDLE reports that the bill will have no fiscal impact as statewide Silver Alerts have been issued since October 2008 and FDLE has historically considered a person who meets the criteria for a state Silver Alert to be a "missing endangered person" as defined by s. 937.0201, F.S.²¹

¹⁸ Section 937.022(3)(b), F.S.

¹⁹ See ss. 937.0201 and 937.022, F.S.

²⁰ FDLE 2011 Analysis of HB 513.

²¹ FDLE 2011 Analysis of HB 513.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It appears the bill would have no fiscal impact on local governments as local Silver Alerts have been issued since October 2008 and a person who meets the criteria for a state Silver Alert has been historically considered to be a "missing endangered person" as defined by s. 937.0201, F.S.²²

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Criminal Justice Subcommittee adopted an amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment provides that only a law enforcement agency having jurisdiction over the case may make a request to the Missing Endangered Persons Information Clearinghouse for activation of a state Silver Alert if criteria for activation are met.

This analysis is drafted to the Committee Substitute.

²² *Id.*

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1 A bill to be entitled
 2 An act relating to missing adults; amending s.
 3 937.0201, F.S.; revising the definition of the term
 4 "missing endangered person" to include a missing adult
 5 who meets the criteria for activation of the Silver
 6 Alert Plan; amending s. 937.021, F.S.; providing
 7 immunity from civil liability for certain persons
 8 providing Silver Alert information pertaining to the
 9 missing adult in good faith; amending s. 937.022,
 10 F.S.; providing that only the law enforcement agency
 11 having jurisdiction over the case may request that the
 12 clearinghouse activate a state Silver Alert; providing
 13 an effective date.

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

16
 17 Section 1. Subsection (4) of section 937.0201, Florida
 18 Statutes, is amended to read:
 19 937.0201 Definitions.—As used in this chapter, the term:
 20 (4) "Missing endangered person" means:
 21 (a) A missing child;
 22 (b) A missing adult younger than 26 years of age; ~~or~~
 23 (c) A missing adult 26 years of age or older who is
 24 suspected by a law enforcement agency of being endangered or the
 25 victim of criminal activity; or
 26 (d) A missing adult who meets the criteria for activation
 27 of the Silver Alert Plan.

28 Section 2. Subsection (5) of section 937.021, Florida

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29 Statutes, is amended to read:

30 937.021 Missing child and missing adult reports.—

31 (5)(a) Upon receiving a request to record, report,
 32 transmit, display, or release Amber Alert or Missing Child Alert
 33 information from the law enforcement agency having jurisdiction
 34 over the missing child, the department ~~of Law Enforcement~~ as the
 35 state Amber Alert coordinator, any state or local law
 36 enforcement agency, and the personnel of these agencies; any
 37 radio or television network, broadcaster, or other media
 38 representative; any dealer of communications services as defined
 39 in s. 202.11; or any agency, employee, individual, or entity is
 40 immune from civil liability for damages for complying in good
 41 faith with the request and is presumed to have acted in good
 42 faith in recording, reporting, transmitting, displaying, or
 43 releasing Amber Alert or Missing Child Alert information
 44 pertaining to such child.

45 (b) Upon receiving a request to record, report, transmit,
 46 display, or release information and photographs pertaining to a
 47 missing adult from the law enforcement agency having
 48 jurisdiction over the missing adult, the department, a state or
 49 local law enforcement agency, and the personnel of these
 50 agencies; any radio or television network, broadcaster, or other
 51 media representative; any dealer of communications services as
 52 defined in s. 202.11; or any agency, employee, individual, or
 53 person is immune from civil liability for damages for complying
 54 in good faith with the request to provide information and is
 55 presumed to have acted in good faith in recording, reporting,
 56 transmitting, displaying, or releasing information or

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57 | photographs pertaining to the missing adult.

58 | (c) Upon receiving a request to record, report, transmit,
59 | display, or release Silver Alert information from the law
60 | enforcement agency having jurisdiction over the missing adult,
61 | the department as the state Silver Alert coordinator, any state
62 | or local law enforcement agency, and the personnel of these
63 | agencies; any radio or television network, broadcaster, or other
64 | media representative; any dealer of communications services as
65 | defined in s. 202.11; or any agency, employee, individual, or
66 | entity is immune from civil liability for damages for complying
67 | in good faith with the request and is presumed to have acted in
68 | good faith in recording, reporting, transmitting, displaying, or
69 | releasing Silver Alert information pertaining to the missing
70 | adult.

71 | (d)~~(e)~~ The presumption of good faith is not overcome if a
72 | technical or clerical error is made by any agency, employee,
73 | individual, or entity acting at the request of the local law
74 | enforcement agency having jurisdiction, or if the Amber Alert,
75 | Missing Child Alert, ~~or~~ missing adult, or Silver Alert
76 | information is incomplete or incorrect because the information
77 | received from the local law enforcement agency was incomplete or
78 | incorrect.

79 | (e)~~(d)~~ Neither this subsection nor any other provision of
80 | law creates a duty of the agency, employee, individual, or
81 | entity to record, report, transmit, display, or release the
82 | Amber Alert, Missing Child Alert, ~~or~~ missing adult, or Silver
83 | Alert information received from the local law enforcement agency
84 | having jurisdiction. The decision to record, report, transmit,

85 | display, or release information is discretionary with the
 86 | agency, employee, individual, or entity receiving the
 87 | information.

88 | Section 3. Paragraph (b) of subsection (3) of section
 89 | 937.022, Florida Statutes, is amended to read:

90 | 937.022 Missing Endangered Persons Information
 91 | Clearinghouse.—

92 | (3) The clearinghouse shall:

93 | (b) Provide a centralized file for the exchange of
 94 | information on missing endangered persons.

95 | 1. Every state, county, or municipal law enforcement
 96 | agency shall submit to the clearinghouse information concerning
 97 | missing endangered persons.

98 | 2. Any person having knowledge may submit a missing
 99 | endangered person report to the clearinghouse concerning a child
 100 | or adult younger than 26 years of age whose whereabouts is
 101 | unknown, regardless of the circumstances, subsequent to
 102 | reporting such child or adult missing to the appropriate law
 103 | enforcement agency within the county in which the child or adult
 104 | became missing, and subsequent to entry by the law enforcement
 105 | agency of the child or person into the Florida Crime Information
 106 | Center and the National Crime Information Center databases. The
 107 | missing endangered person report shall be included in the
 108 | clearinghouse database.

109 | 3. Only the law enforcement agency having jurisdiction
 110 | over the case may submit a missing endangered person report to
 111 | the clearinghouse involving a missing adult age 26 years or
 112 | older who is suspected by a law enforcement agency of being

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113 | endangered or the victim of criminal activity.

114 | 4. Only the law enforcement agency having jurisdiction
115 | over the case may make a request to the clearinghouse for the
116 | activation of a state Silver Alert involving a missing adult if
117 | circumstances regarding the disappearance have met the criteria
118 | for activation of the Silver Alert Plan.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 997 Juvenile Civil Citations
SPONSOR(S): Pilon
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 1300

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Criminal Justice Subcommittee, Justice Appropriations Subcommittee, and Judiciary Committee.

SUMMARY ANALYSIS

Civil Citation Programs (CCPs) are diversion programs, created by s. 985.12, F.S., that provide law enforcement with an alternative to taking youth into custody. Under a CCP, a law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and requiring participation in intervention services appropriate to identified needs of the juvenile.

Currently, s. 985.12, F.S., authorizes the establishment of civil citation programs at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. Local entities are not required to establish civil citation programs.

HB 997 amends s. 985.12, F.S., to require that a civil citation program be established at the local level. The bill specifies that a CCP may be operated by:

- A law enforcement agency;
The Department of Juvenile Justice (DJJ);
A juvenile assessment center;
A county or municipality; or
An entity selected by a county or municipality.

The bill requires DJJ to develop a civil citation model that is based upon proven CCPs within Florida and that includes intervention services.

The bill restricts CCPs to only first-time misdemeanor offenders and requires juveniles participating in a CCP to participate in no more than 50 community service hours and intervention services as indicated by an assessment of the juvenile's needs. Upon completion of the CCP, the agency who issued the citation must report the outcome to DJJ.

By requiring that CCPs be established at the local level, the bill will likely have a positive fiscal impact on DJJ, the counties, and the courts. However, the precise impact of the bill will depend on how many additional civil citations would result and the success rate of the program. See "Fiscal Analysis" section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Justice Process

The juvenile justice process starts when a law enforcement agency charges a youth¹ with a law violation.² Depending on the seriousness of the offense and the law enforcement officer's view of what is needed to appropriately address the offense, the law enforcement officer may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary.
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available).
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office.
- Release the youth to parent or guardian with a direct referral to a diversion program.³

Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system.⁴ These services are intended to intervene at an early stage of delinquency, prevent subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.⁵ Diversion programs include Intensive Delinquency Diversion Services, Community Arbitration, the Juvenile Alternative Services Program, Teen Court, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools.⁶

Civil Citation Program

The Civil Citation Program (CCP) is a diversion program, created by s. 985.12, F.S., that provides law enforcement with an alternative to taking youth into custody while ensuring swift and appropriate consequences for youth who commit non-serious delinquent acts.⁷ Under a CCP, a law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and requiring participation in intervention services appropriate to identified needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁸ The statute requires the law enforcement officer issuing the civil citation to advise the child of his or her option to refuse the citation and be referred to a DJJ intake office.⁹

A child that elects to participate in the CCP must report to the community service performance monitor within seven working days after the date of issuance of the civil citation.¹⁰ The work assignment must be accomplished at a rate of not less than 5 hours per week.¹¹ If the child fails to report timely for a work assignment, complete a work assignment, or comply with assigned intervention services within the prescribed time, or if the juvenile commits a third or subsequent misdemeanor, the law enforcement

¹ "Child" or "juvenile" or "youth" is defined as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years." s. 985.03(6), F.S.,

² Florida Department of Juvenile Justice, Juvenile, Justice Process. May 2009. (<http://www.djj.state.fl.us/Parents/juvenileprocess.html>) (last accessed March 17, 2011).

³ *Id.*

⁴ Rule 63D-10.002(1) (2010), F.A.C.

⁵ *Id.*

⁶ *Probation and Community Intervention*, <http://www.djj.state.fl.us/Probation/index.html> (last accessed February 17, 2011).

⁷ Rule 63D-10.002(4) (2010), F.A.C.

⁸ Section 985.12(1), F.S.

⁹ Section 985.12(5), F.S.

¹⁰ Section 985.12(3), F.S.

¹¹ *Id.*

officer must issue a report alleging the child has committed a delinquent act and a juvenile probation officer must commence the intake process pursuant to s. 985.145, F.S.¹²

The statute requires the law enforcement officer issuing the civil citation to provide a copy to:

- DJJ;¹³
- The county sheriff;
- State attorney;
- The appropriate DJJ intake office;
- The community performance monitor designated by DJJ;
- The parents or guardian of the youth; and
- The victim.¹⁴

Currently, s. 985.12, F.S., *authorizes* the establishment of civil citation programs at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency.¹⁵ Local entities are not *required* to establish civil citation programs.

There are currently 28 CCPs, all of which are funded at the local level.¹⁶

Effect of the bill

HB 997 amends s. 985.12, F.S., to *require* that a civil citation program be established at the local level. The bill specifies that the CCP may be operated by a law enforcement agency, DJJ, a juvenile assessment center, a county or municipality, or an entity selected by a county or municipality.

Currently, there are six circuits that do not have civil citation programs in place:¹⁷

1. 1st Circuit (Escambia, Okaloosa, Santa Rosa, & Walton Counties);
2. 3rd Circuit (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, & Taylor Counties);
3. 10th Circuit (Hardee, Highlands, & Polk Counties);
4. 12th Circuit (DeSoto, Manatee, & Sarasota Counties);
5. 14th Circuit (Bay, Calhoun, Gulf, Holmes, Jackson, & Washington Counties); and
6. 15th Circuit (Palm Beach County).

The bill requires DJJ to develop a civil citation model that is based upon proven CCPs within Florida and that includes intervention services.

The bill restricts CCPs to only first-time misdemeanor offenders and requires juveniles participating in a CCP to participate in no more than 50 community service hours and intervention services as indicated by an assessment of the juvenile's needs. Upon completion of the CCP, the agency who issued the citation must report the outcome to DJJ.

The bill provides that the issuance of a civil citation is not considered a referral to DJJ. However, if the juvenile fails to report timely for a work assignment, complete a work assignment, or comply with assigned intervention services required by the citation within the prescribed time, the law enforcement officer must issue a report stating that the child has not complied with the requirements of the civil citation and the juvenile probation officer must process the original delinquent act as a referral to DJJ.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

¹² Section 985.12(4), F.S.

¹³ Upon receiving the citation, DJJ must enter the information into the juvenile offender information system. s. 985.12(1), F.S.

¹⁴ Section 985.12(2), F.S.

¹⁵ Section 985.12(1), F.S.

¹⁶ March 18, 2011 e-mail from DJJ employee Theda Roberts (on file with Criminal Justice Subcommittee staff).

¹⁷ *Circuit Civil Citation Programs – March 15, 2011*, Department of Juvenile Justice (on file with Justice Appropriations Subcommittee staff)

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Civil citation programs are designed to prevent youth from formally entering the juvenile justice system. By requiring that CCPs be established at the local level, it is possible for the bill to have a positive fiscal impact on DJJ and the courts. Because civil citation programs are designed to prevent youth from formally entering into the juvenile justice system, cost savings could occur throughout several entities within DJJ. However, the precise impact of the bill will depend on how many additional civil citations would result and the success rate of the programs.

2. Expenditures:

The bill requires DJJ to develop a model civil citation program. DJJ's analysis states the cost of the requirements in this bill are "cost neutral" and can be accomplished "within existing funds."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Civil citation programs are designed to prevent youth from formally entering the juvenile justice system. Juveniles who participate in a CCP may avoid being placed in detention, which would have a positive fiscal impact on counties. However, the precise impact of the bill will depend on how many additional civil citations would result and the success rate of the program.

2. Expenditures:

The bill requires that CCPs be established at the local level. Local governments may incur costs to establish such programs. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill states that the civil citation "program may be operated by ... some other entity selected by the county or municipality." This allows for the possibility of a private company to operate a CCP if they so choose in accordance with the local government.

D. FISCAL COMMENTS:

Each of these Circuits would be required to start a civil citation program. The Department of Juvenile Justice has stated that civil citation programs can be accomplished within existing funds at the local level and at the department level.¹⁸ The Department's bill analysis states that "implementation of civil citation is cost neutral" for the agency.

Currently, there are six circuits that do not have civil citation programs in place:¹⁹

1. 1st Circuit (Escambia, Okaloosa, Santa Rosa, & Walton Counties);
2. 3rd Circuit (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, & Taylor Counties);
3. 10th Circuit (Hardee, Highlands, & Polk Counties);
4. 12th Circuit (DeSoto, Manatee, & Sarasota Counties);
5. 14th Circuit (Bay, Calhoun, Gulf, Holmes, Jackson, & Washington Counties); and
6. 15th Circuit (Palm Beach County).

¹⁸ March 24, 2011 e-mail from DJJ employee Theda Roberts (on file with Justice Appropriations Subcommittee staff).

¹⁹ *Circuit Civil Citation Programs – March 15, 2011*, Department of Juvenile Justice (on file with Justice Appropriations Subcommittee staff)

Once CCPs are established for these circuits, it is possible for a cost savings to occur. Juveniles who participate in a CCP may avoid being placed in detention, which would have a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions are obligated to expend funds in order to establish CCPs as required by the bill, the bill could constitute a mandate as defined in Article VII, Section 18 of the Florida Constitution for which no funding source is provided.

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2010,²⁰ a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.87 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to establish CCPs required by the bill. If the fiscal impact is less than \$1.87 million, the impact is insignificant, and an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a law officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and *require* participation in intervention services indicated by the assessment. As drafted, it is unclear if it is the *citation* that requires the participation in intervention services or if it is the *law enforcement officer that* requires such participation.

As drafted, the bill does not specify who performs the needs assessment of the juvenile to determine the appropriate intervention service.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁰ <http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf>

HB 997

2011

1 A bill to be entitled

2 An act relating to juvenile civil citations; amending s.
3 985.12, F.S.; requiring that a juvenile civil citation
4 program be established at the local level with the
5 concurrence of the chief judge of the circuit and other
6 designated persons; authorizing a law enforcement agency,
7 the Department of Juvenile Justice, a juvenile assessment
8 center, the county or municipality, or an entity selected
9 by the county or municipality to operate the program;
10 authorizing a law enforcement officer, upon making contact
11 with a juvenile who admits to having committed a
12 misdemeanor, to require participation in intervention
13 services based upon an assessment of the needs of the
14 juvenile; restricting eligibility of participants for the
15 civil citation program to first-time misdemeanor
16 offenders; requiring the issuing agency to report on the
17 outcome to the Department of Juvenile Justice at the
18 conclusion of a youth's civil citation program; providing
19 that the issuance of a civil citation is not considered a
20 referral to the department; requiring the department to
21 develop a civil citation model that includes intervention
22 services and is based upon proven civil citation programs
23 within the state; requiring a law enforcement officer to
24 issue a report if the child has not complied with the
25 requirements of the civil citation program; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 4

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

hb0997-00

HB 997

2011

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Section 1. Section 985.12, Florida Statutes, is amended to read:

985.12 Civil citation.—

(1) There is established a juvenile civil citation process for the purpose of providing an efficient and innovative alternative to custody by the Department of Juvenile Justice for ~~of~~ children who commit nonserious delinquent acts and to ensure swift and appropriate consequences. The civil citation program shall ~~may~~ be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved and may be operated by a law enforcement agency, the department, a juvenile assessment center, the county or municipality, or an entity selected by the county or municipality. Under such a juvenile civil citation program, any law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and ~~may~~ require participation in intervention services as indicated by an assessment of the appropriate to identified needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. A copy of each citation issued under this section shall be provided to the department, and the department shall enter appropriate information into the juvenile offender information system. Only first-time misdemeanor offenders are eligible for the civil citation program. At the conclusion of a youth's civil citation

HB 997

2011

57 | program, the issuing agency shall report the outcome to the
58 | department. The issuance of a civil citation is not considered a
59 | referral to the department.

60 | (2) The department shall develop a civil citation model
61 | that includes intervention services and is based upon proven
62 | civil citation programs within Florida.

63 | (3)~~(2)~~ Upon issuing such citation, the law enforcement
64 | officer shall send a copy to the county sheriff, state attorney,
65 | the appropriate intake office of the department, the community
66 | service performance monitor designated by the department, the
67 | parent or guardian of the child, and the victim.

68 | (4)~~(3)~~ The child shall report to the community service
69 | performance monitor within 7 working days after the date of
70 | issuance of the citation. The work assignment shall be
71 | accomplished at a rate of not less than 5 hours per week. The
72 | monitor shall advise the intake office immediately upon
73 | reporting by the child to the monitor, that the child has in
74 | fact reported and the expected date upon which completion of the
75 | work assignment will be accomplished.

76 | (5)~~(4)~~ If the child ~~juvenile~~ fails to report timely for a
77 | work assignment, complete a work assignment, or comply with
78 | assigned intervention services within the prescribed time, ~~or if~~
79 | ~~the juvenile commits a third or subsequent misdemeanor,~~ the law
80 | enforcement officer shall issue a report stating that the child
81 | has not complied with the requirements of the civil citation
82 | ~~alleging the child has committed a delinquent act,~~ at which
83 | point a juvenile probation officer shall process the original
84 | delinquent act as a referral to the department ~~perform a~~

HB 997

2011

85 | ~~preliminary determination as provided under s. 985.145.~~

86 | (6)~~(5)~~ At the time of issuance of the citation by the law
87 | enforcement officer, such officer shall advise the child that
88 | the child has the option to refuse the citation and to be
89 | referred to the intake office of the department. That option may
90 | be exercised at any time prior to completion of the work
91 | assignment.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 997 (2011)

Amendment No. 01

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: Justice Appropriations
2 Subcommittee

3 Representative(s) Pilon offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 985.12, Florida Statutes, is amended to
8 read:

9 985.12 Civil citation.—

10 (1) There is established a juvenile civil citation process
11 for the purpose of providing an efficient and innovative
12 alternative to custody by the Department of Juvenile Justice for
13 ~~of~~ children who commit nonserious delinquent acts and to ensure
14 swift and appropriate consequences. The department shall
15 encourage and assist in the implementation and improvement of
16 civil citation programs or other similar diversion programs
17 around the state. The civil citation or similar program shall
18 ~~may~~ be established at the local level with the concurrence of
19 the chief judge of the circuit, state attorney, public defender,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 997 (2011)

Amendment No. 01

20 and the head of each local law enforcement agency involved. The
21 program may be operated by an entity such as a law enforcement
22 agency, the department, a juvenile assessment center, the county
23 or municipality, or some other entity selected by the county or
24 municipality. Whichever entity is selected to operate the civil
25 citation or similar diversion program shall be done so in
26 consultation and agreement with the state attorney and local law
27 enforcement agencies. Under such a juvenile civil citation
28 program or similar diversion program, any law enforcement
29 officer, upon making contact with a juvenile who admits having
30 committed a misdemeanor, may issue a civil citation and assess
31 assessing not more than 50 community service hours, and ~~may~~
32 require participation in intervention services as indicated by
33 an assessment of the ~~appropriate to identified~~ needs of the
34 juvenile, including family counseling, urinalysis monitoring,
35 and substance abuse and mental health treatment services. A copy
36 of each citation issued under this section shall be provided to
37 the department, and the department shall enter appropriate
38 information into the juvenile offender information system. Only
39 first-time misdemeanor offenders are eligible for the civil
40 citation program or similar diversion program. At the conclusion
41 of a juvenile's civil citation program or similar diversion
42 program, the agency operating the program shall report the
43 outcome to the department. The issuance of a civil citation is
44 not considered a referral to the department.

45 (2) The department shall develop guidelines for the civil
46 citation program which include intervention services that are

Amendment No. 01

47 based upon proven civil citation programs or similar diversion
48 programs within the state.

49 ~~(3)(2)~~ Upon issuing such citation, the law enforcement
50 officer shall send a copy to the county sheriff, state attorney,
51 the appropriate intake office of the department, or the
52 community service performance monitor designated by the
53 department, the parent or guardian of the child, and the victim.

54 ~~(4)(3)~~ The child shall report to the community service
55 performance monitor within 7 working days after the date of
56 issuance of the citation. The work assignment shall be
57 accomplished at a rate of not less than 5 hours per week. The
58 monitor shall advise the intake office immediately upon
59 reporting by the child to the monitor, that the child has in
60 fact reported and the expected date upon which completion of the
61 work assignment will be accomplished.

62 ~~(5)(4)~~ If the child juvenile fails to report timely for a
63 work assignment, complete a work assignment, or comply with
64 assigned intervention services within the prescribed time, or if
65 the juvenile commits a ~~third or~~ subsequent misdemeanor, the law
66 enforcement officer shall issue a report alleging the child has
67 committed a delinquent act, at which point a juvenile probation
68 officer shall process the original delinquent act as a referral
69 to the department and refer the report to the state attorney for
70 review ~~perform a preliminary determination as provided under s.~~
71 ~~985.145.~~

72 ~~(6)(5)~~ At the time of issuance of the citation by the law
73 enforcement officer, such officer shall advise the child that
74 the child has the option to refuse the citation and to be

Amendment No. 01

75 referred to the intake office of the department. That option may
76 be exercised at any time before ~~prior to~~ completion of the work
77 assignment.

78 Section 2. This act shall take effect July 1, 2011.
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80

81 -----
82 **T I T L E A M E N D M E N T**

83 Remove the entire title and insert:

84 A bill to be entitled

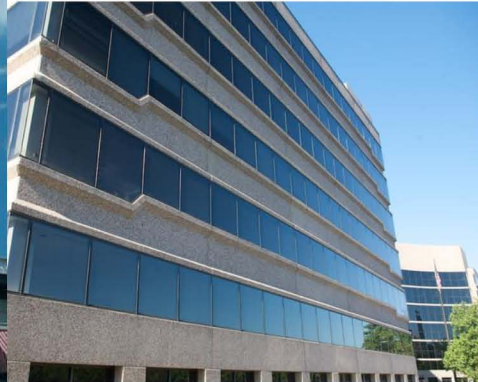
85 An act relating to juvenile civil citations; amending
86 s. 985.12, F.S.; requiring the Department of Juvenile
87 Justice to encourage and assist in the implementation
88 and improvement of civil citation and similar
89 diversionary programs; requiring that a juvenile civil
90 citation and similar diversion program be established
91 at the local level with the concurrence of the chief
92 judge of the circuit and other designated persons;
93 authorizing a law enforcement agency, the Department
94 of Juvenile Justice, a juvenile assessment center, the
95 county or municipality, or an entity selected by the
96 county or municipality to operate the civil citation
97 or similar diversion program; requiring the entity
98 operating the program to do so in consultation with
99 and agreement by the state attorney and the local law
100 enforcement agencies; authorizing a law enforcement
101 officer, upon making contact with a juvenile who
102 admits to having committed a misdemeanor, to require

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 997 (2011)

Amendment No. 01

103 participation in intervention services based upon an
104 assessment of the needs of the juvenile; restricting
105 eligibility of participants for the civil citation
106 program to first-time misdemeanor offenders unless the
107 participation is approved by the state attorney or
108 assistant state attorney; requiring the agency
109 operating the program to report on the outcome to the
110 Department of Juvenile Justice at the conclusion of a
111 youth's civil citation or similar diversion program;
112 providing that the issuance of a civil citation is not
113 considered a referral to the department; requiring the
114 department to develop guidelines for the civil
115 citation program which include intervention services
116 that are based upon proven civil citation and similar
117 diversionary programs within the state; deleting a
118 provision requiring that a law enforcement officer
119 send a copy of a civil citation to the victim of the
120 offense; requiring a juvenile probation officer to
121 process the original delinquent act as a referral to
122 the department in specified circumstances and to refer
123 certain reports to the state attorney for review;
124 providing an effective date.



THE PUBLIC-PRIVATE PARTNER FOR HEALTH CARE

Florida House of Representatives
Criminal and Civil Justice Appropriations Committee

March 28, 2011

Robert W. May, MS
Sr. Vice President, Development

George Johns, MPH
Regional Vice President, Operations



MHM is the National Leader in Correctional Mental Health

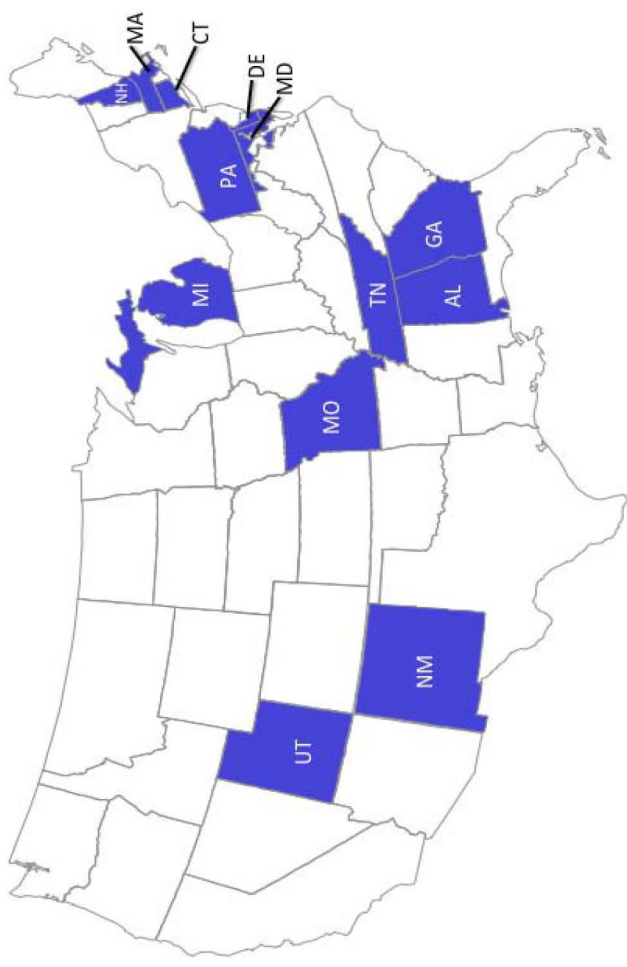
13 States

200+ Facilities

280,000+ inmates

2,000 Employees

Est. 1981



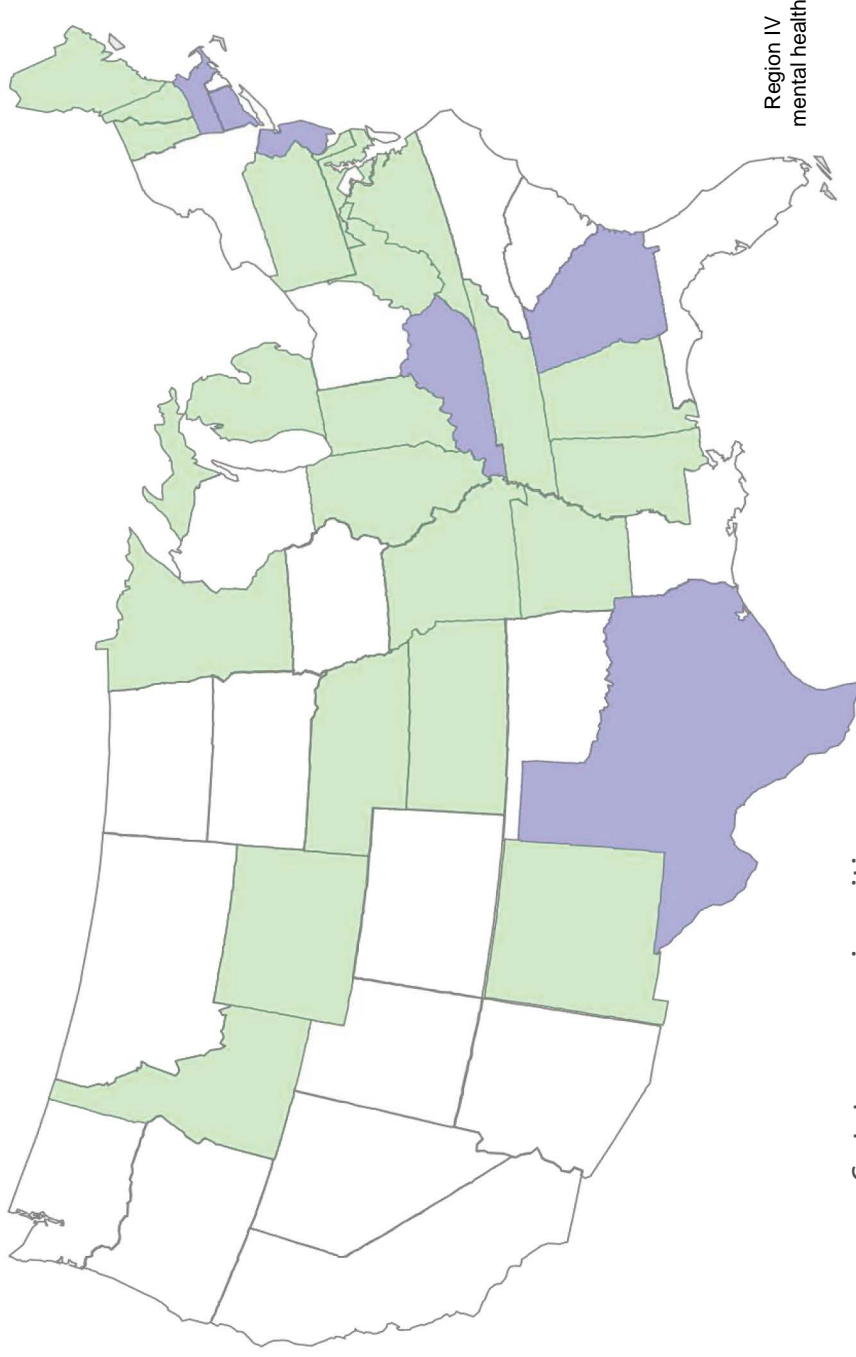
Clients MHM Serves Include:

- State Departments of Corrections
- Municipal Jails
- State Psychiatric Hospitals
- Community Mental Health Centers
- Court Support Services Divisions
- Departments of Juvenile Justice



Outsourcing of State Inmate Medical Healthcare

...29 states outsource inmate healthcare services

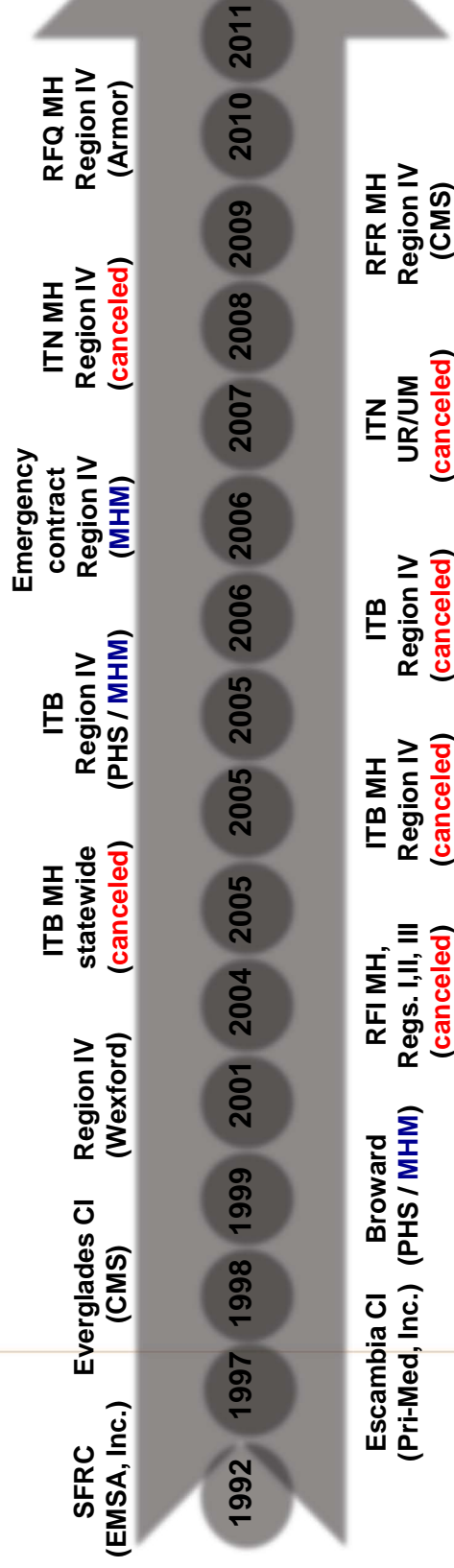


6 states use universities

23 states use private companies



Florida's History of Inmate Healthcare Procurements





What FL can expect from privatization of inmate healthcare

...major inmate healthcare program components include:

- Onsite care (*sick-call, specialty clinics*)
- Offsite specialty care
- Hospitalization (*emergency, surgical, etc.*)
- Pharmacy (*medication management programs*)



What FL can expect from privatization

- Better workforce planning and staffing results
MHM has 12 full-time recruiters, 98% fill rate, low turnover
- Results-oriented management
MHM provides significant corporate management resources
- Leveraged buying power
Offsite costs, hospitalization, supplies, medications
- Application of proven managed care approaches
Clinical guidelines, case management, continuity of care
- Lower Costs



Doing more with ~~X~~ less...

- More efficient staffing patterns
- Better management of offsite services
- Better prices for services, supplies, equipment
- Early intervention, prevention
- Medications



Why State DOCs Contract Mental Health Services

...11 states procure mental health services separate from medical

- 16% of inmates have serious mental illnesses
- High-risk / high-cost / high-recidivism population
- Litigation
- Requires special expertise and programming



Contracting for mental health

...well established precedence in 'free-world' managed care market

- Community standard
- Major insurers engage mental health specialists
- Public health and community mental health
- Medical hospitals v. psychiatric hospitals



Mental Health Services

...why it costs less to contract separately for mental health services:

- Reduction of suicide/self-harm behaviors
- Reduction of assault to staff
- Reduction of offsite medical costs
- Management of high cost medications
- Better caseload management / bed utilization
- Litigation avoidance



Moving Forward...Challenges

- Florida is unique (100,000 inmates)
- Procurement options
- Procurement and transition timeframes

Florida's inmate medical and mental health solution will require innovation and creative alternatives to traditional privatization models



Presentation to State of Florida

March 28, 2011

Wexford Health representatives

- **Darius Holmes**
Senior VP of Strategic Development
- **Emil Dameff, MD**
Corporate Medical Director, Medical Affairs
Former facility Chief Medical Officer for Florida DOC



Wexford Health corporate summary

- Incorporated in Florida in 1992
- One of the largest correctional health care companies in the United States
- Extensive breadth and depth of experience with statewide prison contracts, including health care programs for the corrections departments and/or human services agencies in 10 states
- Privatized comprehensive health services in Region IV (South Florida) for the DOC in 2001

Wexford Health state prison experience

- **Various contracts with the State of Illinois since 1992**
 - Comprehensive medical, dental, mental health, and pharmacy services to adult offenders in 32 correctional centers and satellite facilities across the state
 - Recently re-awarded for another 10 years
 - Separate state contracts for screening and medical services for sexually violent predators
- **Statewide contract since 2006 with the Mississippi DOC**
 - Onsite care to offenders in 3 main correctional facilities, 11 county-regional facilities, and 17 work centers
 - Recently re-awarded for another 5 years

State prison experience *(continued)*

- Awarded statewide contract in 2007 by the West Virginia DOC
 - Statewide contract to provide comprehensive medical, mental health, dental, & pharmacy services to inmates housed in the state's 8 correctional facilities
- Statewide contract since 2005 with the Maryland Department of Public Safety & Correctional Services
 - Comprehensive utilization management, claims processing, and provider network development and management services at 30 prisons and other correctional institutions

Cost containment programs

- **Cost containment**
 - Assertive, comprehensive **utilization management** has generated literally millions of dollars in cost savings for our other statewide correctional clients
 - Comprehensive **pharmacy cost containment program** includes rebates; volume purchasing; the use of Group Purchasing Organizations; generic substitution
 - **Drug utilization review (DUR)** ensures that prescribed drugs are appropriate, medically necessary, and not likely to result in adverse medical results. This not only contains pharmacy costs, but reduces the likelihood of pharmacy-related lawsuits
 - **State-of-the-art Kronos® HRIS system** enables cost-effective scheduling, reporting, & labor management to optimize productivity of staff across all positions

Technology resources

- Technology
 - Proven **telemedicine** program increases access to care and reduces security risk by providing long-distance health services to inmates who might otherwise have to wait and/or travel for necessary specialty care
 - **WexCare**, one of the industry's only fully automated claims, contracting, & utilization management systems
 - Kronos® **biometric timekeeping & payroll** system increases reporting efficiency levels
 - WebConnect **pharmacy ordering software** allows clients to order, refill, and return medications online; provides secure access to patient medication data
 - Extensive, comprehensive **data warehouse**, designed to facilitate reporting and analysis

How privatization can benefit the state

- Financially
 - Private companies are results-oriented and focus on their “bottom lines,” bound to answer to owners, clients, and other stakeholders. This promotes solid budgetary performance on the contract.
 - Freedom from the restrictions that government agencies are subject to with regard to maintaining similar employee rates/salaries/benefits across different facilities
 - Having state workers become employees of a private company will provide Florida taxpayers with significant savings in the long term, as the State will no longer be financially responsible for providing retirement and other benefits to those workers
 - Private companies can offer nationwide volume pricing on many goods and services, as opposed to statewide pricing

How privatization can benefit the state *(cont'd)*

- **Operationally**
 - Private companies are experts in staffing, and maintain dedicated internal departments to develop successful client-specific recruitment/retention programs
 - Private companies maintain claims adjudication/payment systems that are based on “free world” managed care software, but customized to fit the corrections environment
 - Private companies already have clinical policies, procedures, and training programs in place
 - Some private companies have great practical experience in deploying EHRs, and could support DOC transition to an EHR through training, practical expertise, financial support
 - Private companies are experts in maintaining accreditation and enforcing industry standards of care

Recommendations for solicitation process

- **Make solicitation an RFP process, not an ITB or ITN**
 - Health services are not a commodity
 - Have all bidders give “apples-to-apples” pricing on exact services specified in the bid document
- **Privatize entire state at same time**
- **Contract should be comprehensive, including medical, mental health, dental, & pharmacy services**
- **Term should be 5 years with a 5-year option to extend**
- **Require a single, nationally certified EHR for all state correctional facilities**

Recommendations *(continued)*

- Keep state regionalized, with multiple vendors to maintain competition and ensure quality of care
 - With multiple vendors, the State would have the option to transition services to one of the other awardees if a vendor performs poorly or requests re-negotiation of its contract
 - Awarding to multiple vendors reduces the risk associated with a single vendor performing the entire first-time privatization
 - Allows state to move facilities from weak vendors to strong vendors in case of poor performance in one area
 - Size of DOC system allows for economies of scale even if split into multiple regions
 - A prison system the size & complexity of Florida's would be more easily managed by dividing it into multiple regions with multiple vendors

Recommendations *(continued)*

- While start-up could be performed in 30 days, due to the size/complexity of the Florida system, we suggest a 6-month implementation with a percentage of the DOC facilities transitioning each month
- Include minimum experience requirements for all bidders, to ensure expertise and competency
 - Minimum of five years' experience
 - Minimum of three current state correctional contracts
 - Require experience providing care to more than 15,000 inmates under a single contract
 - Require letters of reference from at least two current state systems

THANK YOU
for allowing us to give this presentation.



Wexford Health
SOURCES INCORPORATED

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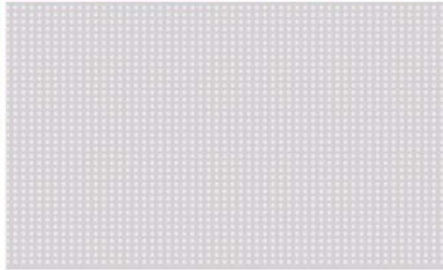
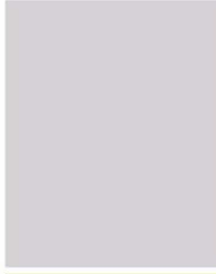
Florida Department of Corrections

Privatization of Health Services

March 2011



MANAGING
RISKS
PROACTIVELY



PROVIDING A BETTER VALUE FOR TAXPAYERS



DELIVERING
BETTER HEALTH
OUTCOMES



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CMS Overview

- Leader in correctional healthcare with more than 32 years of experience
- Sole focus is correctional healthcare
- Full service provider with in-house pharmacy, substance abuse, and behavioral health services
- Experienced executive management team averaging over 20 years in healthcare
- Dedicated to understanding and responding to unique needs of each client
- FDOC Region IV mental health contractor since April 2009

CMS Geographic Profile

CMS provides healthcare services to 277,000 inmates in 330 facilities within 28 correctional agencies

		<p>Statewide systems One or more sites State Pharmacy contracts Genesis Behavioral Health</p>	<p>(30)</p> <p>3</p>

Advantages of Privatization

- Cost Effective Labor Management
 - ✓ Staffing Performance:
 - 97% of Contracted Hours Provided Companywide
 - Minimal Agency Usage – High Cost Labor
 - Ability to Recruit on a National Basis
 - Understanding of Success in Corrections

Advantages of Privatization

- Management of Offsite Costs:
 - ✓ Maximize Infirmery Utilization to Decrease all Offsite Referrals
 - ✓ Criteria Based Inpatient Hospital Admissions
 - ✓ Utilization of Local Community Hospitals and Network Pricing
- ✓ Significant Efficiencies and Expense Reductions Gained in Transportation Costs

Advantages of Privatization

- CMS Operates on the Core Belief that Providing Quality Healthcare will Reduce Costs
 - ✓ Utilization Management Expertise
 - ✓ Chronic Care Management
 - ✓ Disease Management and Preventive Care Approach
 - ✓ National Accreditation – NCCCHC/ACA – 136 Sites
 - ✓ Positive HEDIS Results – Expect Accountability
 - ✓ Highly Automated/Reporting Capabilities

Advantages of Privatization

- A Solid Pharmacy Option
 - ✓ CMS Owns and Operates PharmaCorr with Locations in Oklahoma City and Indianapolis that Serve our Inmate Population
 - Technology and Automation Used to Track Drug Utilization, Formulary Compliance, and Prescription Ordering Patterns
 - 87% Generic Drug Utilization
 - Expertise of PharmDs
 - Purchasing Power
 - Drug pricing is only part of cost savings. Managing utilization and administrative costs are key to leveraging savings.

Advantages of Privatization

- A Sound Risk Reduction Option
 - ✓ Budget Certainty
 - Based on Contract Structure, Fixed Pricing is Possible
 - Full Risk
 - Comprehensive
 - Capitated
 - ✓ Reduced Litigation Risk
 - ✓ Familiarity/Experience with Organized Labor

Advantages of Privatization

- Increased focus on technology
 - ✓ Fully automated human resources system
 - ✓ New state of the art claims system
 - ✓ Automated pharmacy operation
 - ✓ Telemedicine
 - ✓ Electronic Medical Record

Advantages of Privatization

- Lower Costs
 - ✓ Streamlined staffing levels
 - ✓ Reduced benefit costs
 - ✓ Reduced pharmacy costs
 - ✓ Formulary management
 - ✓ Real time pharmacist intervention
 - ✓ Reduced offsite costs through utilization management, contracting initiatives, and enhanced onsite care
 - ✓ Typical savings of 10-15% from self operated systems

In Summary

- Savings through Key Efficiencies
- Significant Risk Reduction
- Corporate Strength
- Quality Maintained/Improved
- Transparency = Control

CMS Contact Information:

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314-919-9108
ffletcher@cmsstl.com



White Paper on Healthcare Costs

May 2008

New Parameters for Partnerships in Correctional Healthcare

EXECUTIVE SUMMARY

The ongoing dramatic rise in healthcare costs impacts correctional facilities and their contracted healthcare providers just as it does all private and public employers who provide healthcare coverage to employees. This translates into increased costs for correctional healthcare contracts that have typically contained high levels of provider-managed risk and multi-year terms with limited renegotiation provisions.

In recent years, these factors have created an imbalance in the contracting relationship that must be addressed to insure that productive and viable client-vendor partnerships continue. These changes to business-as-usual contracts are required to advance the substantial savings and other benefits that correctional facilities can realize through contracted healthcare services.

Innovative new contracting arrangements are required to maintain partnership relationships that provide clients with 'best value' and a win-win for both parties. Several alternatives exist to correctional administrators seeking ways to reduce healthcare costs and limit risk including innovative risk/cost-sharing provisions, alternative pricing structures and mutual provisions for renegotiation based on predefined changes in costs or operating assumptions.

PERSPECTIVE

In response to healthcare cost increases in the 1980's, the market developed the now-familiar elements of managed care that today permeate virtually all private and public healthcare delivery and financing systems.¹ Such mechanisms as utilization review and case management, provider networks and contracted payment terms were successful in dramatically lowering the rate of growth in healthcare spending during this period. Indeed, during much of the 1990's, the rate of increase in healthcare costs slowed to a range of 3-4% annually, though still outpacing the overall inflation rate.

The slowing trend ended with the turn of the century, and costs were on the rise again until 2005 when costs declined and showed an increase of only 9%, compared to 12-15% in recent prior years.² However, even though the rates of increase fell, healthcare costs continued to rise at rates of up to two times the base rate of inflation and healthcare spending as a percent of gross domestic product continued to grow. In fact, the slowdown in healthcare costs may have been short-lived as it is now projected to increase 12% in 2008, approaching 16% of the GDP.^{3,4} It is predicted

that by 2016, the U.S. government will spend approximately \$4 trillion dollars on healthcare, approximating 20% of the gross domestic product.⁵

The decision to contract correctional healthcare is fundamentally the search for contractual accountability to consistently deliver an acceptable standard of healthcare at an acceptable price over a defined time period. The contracting solutions that provide the best value to clients are those that demonstrate long-term viability by balancing cost containment and risk/liability provisions with adequate provider payments. Clients clearly should not overpay on pricing; neither is it in their interests to buy healthcare ‘on the cheap’ and face incremental liability, contract non-performance and costly operational problems resulting from vendor failure. The old adage that “lowest bid does not necessarily mean lowest cost” remains true.

CURRENT TRENDS

Following a decade-long period where healthcare costs had been under relative restraint, during the early millennium several market-based factors converged to exert sustained, system-wide upward pressure on costs. Health plans in the private sector are seeing relentless pressures on their medical cost ratios (the percentage of premium revenues going directly to provision of care) leading to average rate increases of more than 10.5% for employer-sponsored medical plans.⁶ In this environment, it becomes immediately apparent that multi-year correctional healthcare contracts with substantial risk and annual increases in the 3-5% range are untenable to the provider or not cost effective for the purchaser. The same major cost drivers contributing to the private sector increases also directly impact correctional healthcare providers as summarized below.

Physician and Nursing Shortages The economics of supply and demand are being felt throughout the country as fewer people enter the nursing profession at the same time that many existing nurses are either retiring or leaving the field for quality-of-work reasons. About 41% of registered nurses in the United States are at least 50 years old, and nearing retirement.

To complicate the matter, recruitment and promotion of the nursing field hits a brick wall due to lack of faculty to teach eager students. Qualified nursing faculty are choosing hospital jobs, where they can make an up to 38% higher salary than teaching. Nationally, about 30,000 applicants are turned away each year due to lack of faculty and/or space.⁷

These dynamics will compound dramatically as the baby boomer generation enters the period of life when they begin to consume more healthcare services creating an unprecedented demand on resources. The U.S. Census Bureau indicates that the U.S. population will grow by almost 54 million people from 2005 to 2025.⁸ Yet by 2020, the number of RN’s needed to meet our healthcare needs is predicted to fall short by at least 34%.⁹

The shortage is not limited to nurses. While the shortage of physicians has not been as thoroughly explored, numerous signs point to a growing deficit of doctors in the United States.

The Council on Graduate Medical Education (COGME) a group of healthcare experts charged by the federal government with monitoring physician supply, projects a deficit of some 90,000 physicians by 2020.¹⁰ Other analysts and academics project that the deficit of physicians could reach 200,000 by 2025.¹¹

With over 120,000 unfilled hospital positions, a vacancy rate exceeding 8.5% of capacity the economic and clinical delivery impacts have become acute in virtually all markets. ^{9,12} The net effect is a dramatic and continuing rise in the compensation package required for healthcare providers to attract and retain a sufficient number of qualified nursing personnel.

Correctional healthcare providers are competing with private, community and teaching hospitals, physicians' offices, skilled nursing facilities and other organizations in the same local and regional labor pools for these staff. The depth and scope of the healthcare provider shortage is already forcing a re-engineering of current clinical/staffing models that allows nurses and doctors to focus more exclusively on clinical care while other tasks are handled by other personnel.

Pharmaceuticals It has long been touted that a significant source of escalating health care costs is rising medication expenditures. Spending on prescription drugs in the U.S. has grown to \$216.7 billion, which is more than 5 times the \$40.3 billion spent in 1990.⁴ The annual rate of increase in prescription spending declined from a high of 18% in 1999 to 6% in 2005. This is due to the slowdown in Medicaid drug spending, the increased use of generic drugs, changes in the types of drugs used, and a decrease in the number of new drugs introduced.¹³ In fact, generic drugs accounted for 63% of all drugs dispensed in 2006.⁴

Correctional systems experience an even greater increase in overall pharmaceutical treatment costs due to three major influences:

- 1) increased prevalence of HIV and other chronic conditions,
- 2) more advanced technology being used in the daily practice of medicine, and
- 3) increased cost of care for the mentally ill.

HIV and Other Chronic Conditions The incarcerated population brings a much higher prevalence of many clinical conditions (mental health and suicide risk, HIV/AIDS, chronic illnesses, sexually transmitted diseases, drug and alcohol abuse and hepatitis.) These conditions escalate the cost of healthcare. At yearend 2005, the estimated rate of confirmed AIDS in State and Federal prisons was more than 2½ times higher than in the general population.¹⁴ The cost for treatment of HIV alone can range from \$1200 - \$2500 per inmate per month.

Technology Healthcare experts point to the development and diffusion of medical technology as primary factors in explaining the persistent difference between health spending and overall economic growth, with some arguing that new medical technology may account for about one-half or more of real long-term spending growth.

Broadly speaking, the term “medical technology” can be used to refer to the procedures, equipment, and processes by which medical care is delivered.

- Development of new treatments for previously untreatable terminal conditions, including long-term maintenance therapy for treatment of such diseases as diabetes, end-stage renal disease, and AIDS;
- Major advances in clinical ability to treat previously untreatable acute conditions, such as coronary artery bypass graft;
- Development of new procedures for discovering and treating secondary diseases within a disease, such as erythropoietin to treat anemia in dialysis patients;
- Expansion of the indications for a treatment over time, increasing the patient population to which the pharmacologic treatment is applied. ¹⁵

Caring for the Mentally Ill In the last few decades, the number of inmates with severe mental illness has grown so significantly that prisons may now be the largest mental health providers in the United States. There are three times as many mentally ill people in prisons as in mental health hospitals, and the rate of mental illness in prisons is two to four times greater than in the general public.¹⁶ It is estimated that 49% of state prisoners and 60 percent of inmates in jail custody have “symptoms of a mental disorder based on criteria specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV).”¹⁷ Although prescriptive costs for treating mental illness have flattened, the substantial growth in utilization has caused greater costs due to the sheer number of patients in treatment. While there are cost savings achieved through use of medications in such areas as reduced hospitalization and more effective disease management strategies, the annual increase in medication expenditures is expected to continue for the next decade, particularly with the aging of the inmate population.

The Aging Population Behind Bars

The graying of the nation’s prisons is another factor in additional costs for medical care. The number of state and federal prisoners 50 years or older grew by an astounding 173% between 1992 and 2001, according to a 2004 report by the National Institute of Corrections. ¹

By 2010, older inmates are forecast to make up one third of the population in federal prisons. While aging decreases criminal activity, it brings a multitude of challenges in a prison setting, including visual impairments, incontinence, dietary intolerance depression, and early onset of chronic diseases. As a result, the average cost associated with an older prisoner is \$70,000 – two to three times that of a younger prisoner.¹⁸

Physician and Hospital Charges

Payers today, no matter how large, no longer have the ability to unilaterally dictate terms and prices to hospitals. According to the American Hospital Association, the number of hospital beds has shrunk by 18% since 1985. Simultaneously, hospital admissions increased from 30.9 million in 1995 to over 35 million in 2005. Outpatient visits increased 30% during the same timeframe.¹⁹ Many hospitals use their market position to force payers to renegotiate reimbursement rates upward or risk termination of their existing contracts. These new contracts have significant price escalators and over-all hospitals have found themselves in stronger market position while becoming more risk adverse.

According to the Health Affairs policy journal, hospital compensation costs were estimated to account for approximately 62 percent of operating expenses in 2004, and have continued to rise with inflation.²⁰ Hospitals are now paying more for nursing staff, pharmaceuticals, blood processing, new technology, regulatory compliance, patient safety initiatives and information system demands.

Physician reimbursement based on Medicare methodology represented 17.2% of national health spending in 2005.²¹ In many cases, these payments still fail to meet the physicians’ actual costs in providing care. The end result is that more physicians are unwilling to accept reimbursement based upon Medicare. Physicians who accept new patients generally are only willing to do so under a discount arrangement from the standard billed charges. Finally, the potential pool of physicians willing to practice medicine within the specialized environment of corrections is limited. This supply-side limitation can increase the rates necessary to secure physician services.

Utilization & Acuity

As described in the Institute of Medicine report “Crossing the Quality Chasm: A New Health System for the 21st Century”, the health needs of the American population have been shifting from predominantly acute, episodic care to care for chronic conditions. “Chronic conditions [...] are now the leading cause of illness, disability and death.” Chronic illnesses affect almost half of the U.S. population and account for the majority of health-care expenditures.²² Individuals admitted to correctional facilities today have a high rate of chronic physical and mental conditions, many of which have long gone untreated.

Additionally, correctional healthcare programs act as extensions of and in collaboration with local public health departments, performing communicable disease surveillance and disease management. Since individuals admitted to correctional facilities typically present multiple medical and mental health issues, they require intensive work-up and service upon admission. Since over 95% of incarcerated individuals are released back to the community, this presents a critical point at which to intervene in the cycle of poor access to healthcare services and resulting chronic problems in this population, to create improvements to the public health of the community. The net result is an increased number of healthcare services and events that must be provided and resources allocated for this purpose.

The cost of providing healthcare services to incarcerated individuals has also been adversely affected by changes in reimbursement and contracting trends. In the past, many states provided Medicaid reimbursement for enrolled individuals until the time at which they were sentenced. Now, in many states eligibility stops once an individual is housed in a correctional setting. Likewise, Medicare benefits are not available to the incarcerated population, while the elderly population in correctional facilities continues to increase dramatically with attendant rise in healthcare needs/costs, mirroring the national trends.

In simplest terms, the overall cost of healthcare is equal to the number of events times the average cost per event. Within the nation’s correctional settings, both elements of the equation continue to grow at increasing rates resulting in a cost multiplier effect.

Insurance The United States is the most litigious country in the world, and prisoners are the nation’s most litigious group. Inmates bring a disproportionately high percentage of all civil actions filed in federal district court. The rate and cost of medical litigation have increased dramatically over the past decades and the impact on corrections, both from private suits as well as court-ordered public actions, has been profound. Medical malpractice insurance premiums increased by 71% from 1991 to 2003.²³ The cost of this litigation in the area of corrections is not lost on insurance markets.

Few insurance industry leaders are interested in bidding on corrections business and those who do are pushing through significant rate increases. Insurers have increased rates for medical malpractice liability coverage from 30% to 100% and at the same time raising policyholders’ co-pays and deductibles in an effort to restore profitability.^{24,25} These insurers are experiencing deteriorating underwriting results and rising costs on medical malpractice lines which are caused largely by high jury verdicts against medical practitioners and the inability to raise rates in the previous soft market. One result is that the ability of healthcare providers to obtain performance and bid bonding coverage has been severely curtailed. These factors

were pressing factors even before the events of September 11th, the losses of which have placed additional pressure from other lines of insurance and which the carriers are trying to spread over their entire portfolio.

Employee Healthcare Costs As a consequence of the factors above, employers nationwide are experiencing on average a 10-12% increase in the annual renewal premiums charged by insurance companies to provide employee medical coverage and related plans.⁶ As a result, employers have shifted away from traditional indemnity insurance plans and are passing on an increasing level of cost to employees for their medical coverage. These same fundamental dynamics affect the cost of providing and means of contracting for correctional healthcare.

No private insurance company in the marketplace provides the type of multi-year, fixed price contract once typical in the corrections field, due to the risk and inflationary factors described here. Healthcare providers and companies such as PHS, which employs over 4,000 personnel, are not immune from these cost increases, the result being the vast majority have shifted away from traditional indemnity insurance policies to administrative services contract reviewed and renewed on an annual basis. Ultimately, these fundamental costs of doing business must be reflected in the pricing of services to customers and restructuring of contract terms. Full-risk, multi-year correctional healthcare contracts that contain fixed annual inflators and no provision for renegotiation have become an unsustainable and too costly a vehicle for purchasing correctional healthcare services with increasingly limited taxpayer resources.

IMPLICATIONS FOR CONTRACTING

Higher Risk = Higher Cost

The net effects of these sustained cost increases within what have typically been multi-year, fixed cost correctional healthcare contracts translates into significantly greater risk to the provider. Not surprisingly, there must be a pass through of these increased costs in the form of a substantial “risk premium” to the potential client as no provider, public or private, can continue to absorb cost increases at this rate. What was feasible in an environment of stable, predictable healthcare costs (if indeed such a time existed) becomes increasingly expensive and untenable as the premium needed to cover such risk rises.

Benefits of Contracting Remain

Correctional facilities have been choosing to contract their healthcare services for almost 30 years for the simple reason that it saves money while improving quality, limiting liability and freeing correctional administrators to focus their expertise on issues of custody, security and control. The current turbulence in healthcare costs combined with increasing budget shortages in the public sector only increase the potential benefits of contracting for these services.

At the same time, there will be situations where existing contracts become unsustainable in the face of rising costs and risks. Contracts with no provision for renegotiation, low fixed annual inflators and/or high levels of vendor risk (e.g., no catastrophic limits or carve-out of high cost treatments) set the stage for a lose-lose scenario. Contractors continue to incur financial losses, potentially to the point of insolvency and clients lose the assurance of a well-functioning contract and service delivery system capable of consistently meeting their original objectives.

Three basic options are open to clients in a situation where an existing contract structure is no longer tenable:

- Return to self-operation
- Re-bid the project
- Renegotiate contract terms

Self-operation

Return to self-operation is an option for the contracting authority at any time. This entails the assumption of all operational management, staff recruiting, direct and indirect costs, malpractice and other liabilities and the substantial administrative ‘headaches’ that lead to the original decision to contract the healthcare service. The high degree of incremental internal costs incurred in rebuilding an infrastructure to effectively manage these services renders a return to self-op an infrequent occurrence.

Re-bid

Re-bidding the project can provide both parties a chance to ‘test the market’ for the services and recalibrate the contract terms and pricing to reflect current realities with the current or newly selected provider. The ultimate impact on contract costs depends on the scope and risk parameters of the resulting RFP. Rebidding an existing contract “as is” has often resulted in substantial cost increases; but it can also present an opportunity to restructure the contract and risk terms into a more viable long-term solution for both parties by incorporating some of the risk-sharing alternatives discussed below.

Renegotiation

It is in neither party’s interest for an existing contractor who is providing an otherwise responsive level of service to be forced, because of unsustainable and unforeseeable financial losses, to prematurely end an otherwise mutually beneficial contract. The issue is not one of increasing profits to the contractor (in many cases it is a matter of ‘stopping the bleeding’), but rather of finding win-win solutions to the contracting process that appropriately reflect the new environment. Renegotiation of key contract terms, to the extent permitted by applicable purchasing regulations, in the context of a collaborative working dialogue, utilizing some of the elements described below can provide such an outcome.

CONTRACT ALTERNATIVES

The following sections briefly describe several elements that can be utilized in the correctional healthcare contracting process to re-establish a workable balance in the cost vs. risk trade-off and provide benefits to both the client and provider. Some variation or combination of these factors will be most appropriate depending upon the unique circumstances of each contract and client operating characteristics (e.g., prison vs. jail, facility capacity and annual intakes, detainee health status profile, etc.).

Cost-Based or Fixed Management Fee

In contrast to more traditional capitation or per diem-driven pricing models, an alternative long-favored by many federal and other agencies utilizes a structure based upon actual operating costs plus a percentage or fixed management fee component. Not only does this approach mitigate criticism leveled at capitated contracts regarding implied incentives to withhold services, but utilizing a fixed management fee (set amount) also takes away any supposed incentive of the contractor to drive up costs in order to realize a larger fee. In essence, clients retain the expertise and resources of an experienced healthcare manager to

control costs and improve quality for a pre-determined management fee. Indeed such an approach most closely resembles the structure under which a majority of private and public sector employers purchased health plans services for their members under Administrative Service Only (ASO) contracts with little or no risk borne by the health plans.

For this approach to be successful it requires a clear definition of allowable costs, including a percentage or agreed-upon allocation of necessary corporate overhead expenses assigned to the contract (e.g. professional liability premiums, risk management, accounting, legal and other support functions). Regularly scheduled audits are used to verify the actual expenses and make whatever adjustments may be appropriate as agreed by both parties.

To address concerns about this model's ability to control costs, additional components may include a sliding fee scale that is determined, in part, by the actual costs incurred (lower costs mean higher fee), some element of risk-sharing by the provider (e.g. off-site costs) and review of the quality of care achieved or other operationally defined indicators of success. For example, in 2006 the State of Vermont Department of Corrections not only opted to change their contracting structure from full-risk to a cost-based model (with some risk-sharing by the provider) but also instituted a "pay for performance" component which provides modest financial incentives to the provider for meeting predefined measures of patient care process and outcome. Such a scenario provides for clear provider accountability for cost control and quality care while also avoiding the incrementally high costs that bidders must build into a full- or high-risk contract.

Risk Pools and Variations

Aggregate Limits

Currently utilized in many correctional healthcare contracts, this mechanism establishes predetermined cost levels for certain categories of service or expense. Usually calculated on an annual basis, cost categories typically included are off-site care (e.g., inpatient days, ER visits, outpatient surgery procedures, etc.), pharmaceuticals and specialized diagnostic tests. Cost thresholds are usually determined through an analysis of actual experience and comparisons to similarly sized sites/contracts. Often, there are cost-sharing provisions whereby savings achieved below the threshold are shared between client and vendor and costs incurred above the limit are also shared, but up to a certain predetermined point, beyond which the client is responsible.

This approach can save clients the significant up-front expense that results from having to price all potential aspects of healthcare costs into a bid, particularly in the highly volatile area of off-site services. Aggregate pools also provide a clear cost- and risk-sharing mechanism that focuses both parties on effective management and regular reporting on major cost drivers within the contract.

Carve-outs

Under this variation, certain high risk and/or high cost services are either paid for directly by the client (pass-through) or paid by the vendor for later reimbursement by the client. Typically this would be applied to procedures that are pre-existing, relatively infrequent and/or exceptionally expensive (e.g., organ transplants, Factor 8

treatment for hemophiliacs) or treatments that are still in a state of flux regarding clinical protocols, cost-effectiveness and outcome (e.g., Hepatitis C).

For example, ten years ago this exemption was frequently applied to the treatment of HIV/AIDS patients. However, as clinical protocols and standards of care have emerged, this has become a reasonably predictable cost given appropriate prevalence data, and it is not uncommon for HIV to now be included as a risk factor. In contrast, Hepatitis C is now the disease where such a carve-out methodology is best applied. Again, the client saves on the front-end of the bid process where potentially excessive and still unpredictable costs must be priced into an all-risk proposal.

Catastrophic Limits

By defining upper limits of provider responsibility for medical costs incurred on a per inmate basis, there are client savings in avoiding the incremental pricing for a 'worst case scenario' or actuarial pricing where the provider must bear full-risk for the occasional but exceptionally high-cost case.

These limits may be set on either an episode of care basis (e.g. a course of hospitalization or course of treatment for a disease state) or more commonly for an annual total per inmate. The amounts typically range from \$5,000 to \$20,000 annually with the degree of savings inversely related to the catastrophic limit. In rare instances where the amount may be set as high as \$50,000, the savings effect is effectively nullified.

Defining Up- and Down-side Risks

Focusing directly on the financial structure of the contract, there are mechanisms that can more precisely define the risk and return to both the client and provider. For instance, a contract may be constructed such that the overall profit is capped at a certain percentage of the annual revenues. In return for limiting its upside return on the contract, the provider is guaranteed a 'floor' under which its operating results will not be allowed to fall (either a lower percentage or break-even when allocated indirect costs are included).

Similar to cost-based arrangements, this requires a clear definition of all costs, including an allocation of necessary overhead expenses assigned to the contract (e.g. professional liability premiums, accounting, legal and other support functions). Regularly scheduled audits (semi-annually) are used to "true-up" the numbers and make whatever adjustments are appropriate as approved by both parties. In essence, this approach allows the parties to define the risk-return balance of the contract under a "concept of reasonableness" that minimizes surprises and adds stability to the contract.

Contract Re-openers

These elements provide pre-determined points or events under which the parties may review and renegotiate key terms of the agreement. Examples may include:

- Market-based inflation or deflation of nursing rates over a defined threshold, after the provider has been at risk for certain amounts and verified through audit;
- Renewal years exercised at both parties' option, allowing for negotiation of annual increases or decreases based on actual costs and experience;
- Mutual notice of termination whereby either party may end the contract without cause by providing appropriate advance notice, typically of 90-120 days.

Again, the intent is not to relieve the provider of all risk, but to clearly define the risk and identify up-front those cost drivers that are either to a large degree outside of the provider's control and/or of such volatility that it is not in the client's best interest to price these risk premium costs into a bid for a multi-year, no-out contract. Mutual termination provisions become an option of last resort since triggering this clause implies that one of the parties is in a losing situation where continuation of the contract is not feasible. The inclusion of other contract provisions described here minimizes the possibility of this outcome.

OFF-LOADING RISK TO PROVIDERS

The desire of clients to off-load risk onto the healthcare provider is one of the fundamental needs driving the contracting decision. In response to potential criticism that these variations take the provider 'off the hook' for any risks and obviate the need to consider contracting, there remain several elements of substantial size and risk that the provider must successfully manage, including:

- Personnel costs – the single largest cost component of most correctional healthcare contracts, particularly for nursing staff in a chronic shortage across the country;
- Employee health and benefit costs – currently increasing at rates of 10-12%;⁶
- Staffing levels and service performance – often defined through staffing plans and clinical/operational performance indicators with attached financial penalties or liquidated damages;
- Professional liability (malpractice) insurance – these costs increased 96% between 1993 and 2003;²⁶ many liability, bonding and related risk management costs, are increasing at annual rates of 20-50%.

Beyond these specific risks, the client is retaining the expertise and resources of an experienced correctional healthcare management team to effectively control not only actual costs, but also the mechanics and effectiveness of the healthcare delivery process. This frees the administration to focus on issues of custody, security and control while an accountable partner manages this complex system reducing overall facility risk and liability.

SUMMARY

The market factors and client needs that created the private correctional healthcare field 30 years ago remain valid and vital today. This is especially true given chronically inflationary healthcare costs at rates higher than general inflation which are exacerbated by the incarcerated population's greater incidence of medical and mental health needs and aging population, all within a context of growing public sector budget shortfalls. Creatively adopting alternative contract terms and conditions to reflect the increased costs and risk that accompanies this environment is required to 'rebalance' the risk vs. cost trade-off that forms the basis for successful partnerships to manage these services.

Client objectives for off-loading risk while insuring cost-effective services that meet community standards of care are best met through contractual relationships that provide a continuity of care through long-term partnerships.

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