Criminal Justice Subcommittee

February 22nd, 2011

9:00 AM

404 HOB

Dean Cannon
Speaker

Dennis Baxley
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, February 22, 2011 09:00 am

End Date and Time: Tuesday, February 22, 2011 12:00 pm

Location: 404 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 251 Sexual Offenses by Dorworth
HB 257 Financial Responsibility for Medical Expenses of Pretrial Detainees or Sentenced Inmates by Hooper
HB 265 Sexual Offenders and Predators by Harrell
HB 333 Community-based Juvenile Justice by Corcoran
HB 339 Possession of Stolen Credit or Debit Cards by Perman
HB 4069 Firearms Purchases by Diaz

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 Sexual Offenses
SPONSOR(S): Dorworth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		De La Paz	Cunningham
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 251addresses several issues relating to support for victims of sexual violence and criminal prosecution of such offenses. HB 251:

- Expands the admissibility of collateral crime or "similar fact" evidence in criminal prosecutions of crimes "of a sexual nature."
- Prohibits a court from granting a request of a defendant in a criminal proceeding for permission to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection.
- Requires licensed facilities providing emergency room services to gather forensic medical evidence from victims who have reported a sexual battery to a law enforcement agency or upon their request for purposes of filing a report in the future.
- Amends the statute of limitations for video voyeurism to authorize commencement of prosecutions within one year either from the date the victim learns of the existence of the video recording or the date the recording is confiscated by law enforcement, whichever occurs first.
- Adds crimes to the list of offenses for which an additional $151 dollar surcharge will be assessed against a convicted defendant in order to fund to the Rape Crisis Program Trust Fund.
- Requires the court, upon a victim's request, to order a defendant to undergo HIV testing within 48 hours of the filing of an indictment or information either: 1) when the defendant is charged with a specified sexual offense and the victim is a minor, or an elderly person or disabled adult, regardless of whether it involved the transmission of body fluids; or 2) when the defendant is charged with a specified crime, whether or not a sexual offense, that involved the transmission of body fluids from one person to another.
- Expands the availability of financial relocation assistance, currently provided to domestic violence victims, to victims of sexual violence.
- Requires the topic of internet safety to be taught at public schools.

HB 251 has both a positive and a negative fiscal impact on state government which is indeterminate at this time.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Evidence of Other Crimes Wrongs or Acts

Section 90.404(2)(a), F.S., is the general provision regarding the admission of "similar fact" or collateral crime evidence in criminal proceedings. It provides:

> (a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

Under this provision, evidence of other crimes or actions (also called "collateral crime" or "similar fact" evidence) is admissible when it is relevant to a matter that is at issue in a trial. Such evidence is not admissible, however, if it is **only** relevant to show a defendant's propensity to commit such crimes or other wrongful acts.

This section is a codification of standard of admissibility announced by the Florida Supreme Court in Williams v. State.[1] Under this standard, "relevant evidence will not be excluded merely because it relates to similar facts which point to the commission of a separate crime. The test of admissibility is relevancy. The test of inadmissibility is a lack of relevancy."[2]

Under this provision, similarity of detail or uniqueness is not required for the admission of similar fact evidence of other crimes, wrongs or acts.[3] Even though similarity it is not in and of itself required, it may be necessary to make the evidence relevant to the issue it is offered to prove. For example, if identity of the perpetrator is an issue at trial, then a "fingerprint" type of similarity between the other crimes or wrongs and the charged offense are necessary because without such similarity the evidence is prejudicial to the defendant, but doesn't necessarily prove the defendant actually committed the crime charged.[4] When identity is not disputed, finer points of similarity are not required to establish the relevance of collateral crime evidence to prove other issues such as absence of mistake, plan, opportunity, or preparation.

Additionally, all forms of relevant evidence are scrutinized under s. 90.403, F.S., which precludes the admission of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice" (also known as a "403 balancing test").

In the context of prosecutions for sexual offenses, the law surrounding the admission of collateral crime evidence has become confusing. A strict "fingerprint" type standard of similarity that the Florida Supreme Court articulated in connection with cases where identity is in issue has been held to apply in cases involving sexual abuse even where identity of the defendant is not in dispute.[5] In State v. Richman, a rheumatologist was charged with one count of sexual battery against a victim who was physically helpless to resist and another count for lewd and lascivious molestation of an elderly or

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[1] Williams v. State, 110 So. 2d 654 (Fla. 1959).

[2] Id. at 659-660.

[3] *See*, Williams v. State, 621 So.2d 413, at 414 (Fla. 1993); Gore v. State, 599 So.2d 978 (Fla. 1992); Bryan v. State, 533 So.2d 744, 746 (Fla. 1988), *cert. denied*, 490 U.S. 1028, 104 L.Ed.2d 200, 109 S.Ct. 1765 (1989); *See also*, C. Ehrhardt, Florida Evidence, Section 404.09, at 222-223 (2010 Edition).

[4] See, State v. Savino, 567 So.2d 892 (Fla. 1990). "When the purported relevancy of past crimes is to identify the perpetrator of the crime being tried, we have required a close similarity of facts, a unique or "fingerprint" type of information, for the evidence to be relevant."

[5] *See*, State v. Richman, 861 So.2d 1195 (2nd DCA,), a case involving sexual battery and lewd and lascivious molestation of adult victims where the District Court of Appeal applied the strict similarity requirements that existed in child sexual abuse cases prior to the 2001amendments to 90.404(2) (b), F.S., to the case before it. Richman, at 1197 *citing* Kulling v. State, 827 So.2d 311, 314 (2nd DCA, 2002) *citing* State v. Savino, 567 So.2d 892, 894 (Fla. 1990) .

disabled person. His victims were his patients. The state proffered the testimony of seven former patients, each of whom claimed to have been sexually assaulted by Richman. The trial judge first determined that testimony of three of the seven witnesses was admissible, but later changed his mind and disallowed all of their testimony. The Second District Court of Appeal, however, overruled the trial judge and found the testimony admissible.

In a concurring opinion, now Chief Justice Canady stated:

> . . . I believe the strict test set forth in (reference omitted) is not appropriately applied in a case . . . where the identity of the defendant is not at issue. The rationale for requiring a heightened level of similarity in cases where the defendant is identified as the perpetrator based on collateral crimes involving the same modus operandi used in the charged offense is simply not applicable where the similar acts evidence is offered to corroborate the victim's testimony that an offense occurred and to rebut the defendant's contention that the victim's testimony is fabricated.
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> . . .
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> The justification for applying a relaxed standard of similarity focuses on the appropriateness of using similar acts evidence to support the credibility of a victim who testifies concerning an offense committed when the victim was alone with a person well known to the victim. The rationale for allowing such similar acts evidence is just as compelling when the context is a sexual assault by a physician on a patient in the privacy of the physician's examining room as it is when the context is a sexual assault by a parent on that parent's child in the privacy of the home. Indeed, the rationale is compelling in any context where a defendant who is well known to the victim has been accused of an offense and the critical issue is whether the victim's testimony regarding the offense is a fabrication.[6]

In 2001, the Legislature amended s. 90.404, F.S., to add a new subsection (b) to expand the admissibility of collateral crime evidence in cases involving sexual abuse of children 16 years of age or younger.[7] Section 90.404(2)(b), F.S., provides:

> (b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.
>
> 2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 794.011, s. 800.04, or s. 847.0135(5) when committed against a person 16 years of age or younger.[8]

The conduct proscribed under these statutory sections are the following:

1. Sexual Battery under s. 794.011, F.S.,
2. Lewd or Lascivious Battery under s. 800.04(4), F.S.,
3. Lewd or Lascivious Molestation under s. 800.04(5), F.S.,
4. Lewd or Lascivious Conduct under s. 800.04(6), F.S.,
5. Lewd or Lascivious Exhibition under s. 800.04(7). F.S., and
6. Lewd or Lascivious Exhibition via computer transmission under s. 847.0135(5), F.S.

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[6] Id. at 1200-1203 (Canady concurring).

[7] Ch. 2001-221, Laws of Florida. For a discussion of issues surrounding the admission of similar fact evidence in child sexual abuse cases prior to Ch. 2001-221 see D. De La Paz, *Sacrificing the Whole Truth: Florida's Deteriorating Admissibility of Similar Fact Evidence in Cases of Child Sexual Abuse*, New York Law School Journal of Human Rights, Vol. 15, Part 3, 449-481 (Spring 1999).

[8] S. 847.0135(5), F.S., was added to the offenses in this subsection in Ch. 2008-172.

The 2001 addition to s. 90.404(b),F.S., was challenged on due process grounds and upheld by the Florida Supreme Court in McLean v. State.[9] This section significantly broadened the admissibility of collateral crime evidence in prosecutions of child molestation cases.[10] The Court noted that the amendments to s. 90.404, F.S. abrogated their prior cases with respect to the admission of such evidence.[11] In upholding the statute, the Court adopted standards to govern admission of such evidence designed to protect the due process rights of the accused. First, the court required that the evidence of the collateral crime be proven by clear and convincing evidence. Second, the court required that the trial court balance the probative value of the evidence against the danger of unfair prejudice, pursuant to section 90.403, F.S.[12] Third, the court cautioned that the collateral crime evidence must not become a "feature" of the trial. Finally, the court required that, upon request, the jury be instructed as to the limited purpose for which the evidence may be considered.

Effect of HB 251

HB 251 expands the admission of collateral crime evidence to all cases involving crimes "of a sexual nature," for its bearing on any matter to which it is relevant regardless of the age of the victim. The bill adds the following offenses to the current list of crimes for which the admission of collateral crime evidence is expanded:

s. 784.048, F.S.,-	Stalking
s. 787.01, F.S., -	Kidnapping
s. 787.02, F.S.,-	False imprisonment
s. 787.025(2)(c),-	F.S., Luring or enticing a child
s. 794.05, F.S., -	Unlawful activity with certain minors
s. 796.03, F.S., -	Procuring person under 18 for prostitution
s. 796.035, F.S., -	Selling or buying of minors into sex trafficking or prostitution
s. 796.045, F.S., -	Sex trafficking
s. 825.1025(2)(b), -	Lewd or lascivious offenses against an elderly or disabled person
s. 827.071, F.S., -	Sexual performance by a child
s. 847.0145, F.S., -	Selling or buying minors
s. 985.701(1), F.S., -	Sexual misconduct by a juvenile justice employee

Access to Evidence for Criminal Proceedings

HB 251 also requires material or property in a criminal proceeding which depicts a sexual performance by a child or child pornography to remain secured or locked in the custody or control of law enforcement, the state attorney or the court. It also prohibits courts from granting any request of a defendant to photo copy or otherwise reproduce such material notwithstanding any court rule or law to the contrary as long as the state attorney makes the material reasonably available. (See section on Other Constitutional Issues). The bill specifies that material is reasonably available if the state attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

Treatment of Sexual Assault Victims

Section 395.1021, F.S., requires medical facilities that perform emergency room services to arrange for rendering of appropriate medical attention and treatment of sexual assault victims.

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[9] McLean v. State, 934 So.2d 1248 (Fla. 2006).

[10] See, Mendez v. State, 961 So.2d 1088, 1090 (Fla. 2007).

[11] McLean, *supra*, at 1259.

[12] In upholding the statute, the Court compared the new provisions to the comparable federal rules of evidence dealing with the same issue and paralleled the federal court analysis in connection with its second requirement that such evidence be subject to the balancing test required under s. 90.403, F.S. McLean, *supra*, at 1259 -1261 comparing s. 90.404(2)(b) F.S. and s. 90.403, F.S., with Federal Rule of Evidence 413 relating to sexual assault, 414 relating to child molestation and 403 relating to balancing probative value against prejudice to the defense.

The bill requires that this be done in part through medical examinations conducted for the purpose of collecting physical evidence when required by law enforcement personnel.

Effect of HB 251
HB 251 amends s. 395.1021(2), F.S., to provide that the "appropriate medical attention and treatment of sexual assault victims" required under this section includes the gathering of forensic medical evidence necessary for investigation and prosecution either when a victim reports a sexual battery to a law enforcement agency or when the victim requests the evidence to be gathered for a possible future report to law enforcement.

Video Voyeurism Statute of Limitation
Section 810.145, F.S., creates the criminal offenses of video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Depending on the circumstances, the offenses under this section are punishable as a first degree misdemeanor, third degree felony or second degree felony.[13]

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Section 775.15, F.S., provides statutes of limitations for criminal offenses. Under this section, the time limitations period begins to run the day after an offense is committed.[14] An offense is considered committed either when every element of the crime has occurred or, if there is a legislative purpose to prohibit a continuing course of conduct, at the time the course of conduct is terminated.[15] The statute of limitations for a misdemeanor of the first degree is two years. For second and third degree felonies the statute of limitations period is three years.

One of the essential elements of the video voyeurism offenses is that they occur without the victim's knowledge. As a result, the statute of limitations can expire before a victim becomes aware that the crime has occurred.

Effect of HB 251
HB 251 amends s. 775.15, F.S., to authorize prosecution for any offense of video voyeurism within one year after the date on which the victim obtained actual knowledge of the existence of a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first.

Rape Crisis Program Trust Fund
The Rape Crisis Program Trust Fund is created in s. 794.056, F.S. within the Department of Health to provide funds for rape crisis centers in the state. It is funded in part through collections of additional court assessments which consist of a $151 surcharge added to amounts paid by persons pleading guilty or no contest to, or found guilty of, specified sex offenses listed in s. 938.085, F.S., and s. 794.056, F.S.[16]

Effect of HB 251
HB 251 amends ss. 794.056 & 938.085, F.S. to add several new offenses to the list crimes which will support the financing of the trust fund through the additional $151 surcharge.[17]

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[13] S. 810.145(6), F.S., provides that the offense is generally a first degree misdemeanor. If, however, the person has a prior conviction , the person is guilty of a third degree felony. S. 810.145(7), F.S. Also, under s. 810.145(8), F.S., persons over 18 years of age responsible for a child under 16, or who are employed at a private school, and persons 24 years of age who commit the offense against a child under 16, commit a third degree felony. If persons under subsection (8) have been previously convicted, the offense is a second degree felony.

[14] S. 775.15(3), F.S.

[15] Id.

[16] The sum of $150 from these surcharges are deposited into the trust fund while $1 is paid to the clerk of court as a service charge. S. 938.085, F.S.

[17] The new crimes added are: s. 775.21, The Florida Sexual Predators Act, s. 787.025, Luring or enticing a child, s. 787.06, Human trafficking, s. 787.07, Human Smuggling, s. 794.05, Unlawful sexual activity with certain minors, s. 794.08, Female genital mutilation, s. 796.03, Procuring a person under 18 for prostitution, s. 796.035, selling or buying minors into sex trafficking, s. 796.04,

HIV Testing of Person Charge with Certain Crimes

Section 960.003(2)(a), F.S., requires a court to order a defendant to undergo HIV testing upon request of the victim in any case where the defendant is formally charged with any of the sexual or violent offenses listed in s. 775.0877(a)-(n), F.S., that involved the transmission of body fluids from one person to another.[18]

Section 960.003(2)(b), F.S., provides for HIV testing upon request of the victim when the crime involved is a sexual offense under ss. 775.0877(a)-(n) or 825.1025, F.S., and the victim is a minor, disabled adult or an elderly person regardless of whether the crime involved the transmission of body fluids from one person to another.

Under both sections, the defendant must undergo testing within 48 hours after the court enters an order compelling the testing.

Effect of HB 251

HB 251 amends these sections to require a court to order a defendant to undergo testing within 48 hours after the filing of the indictment or information. Because the court does not order the testing until requested by the victim, however, it is unclear how the bill's provisions will apply when the request of the victim is made more than 48 hours after the filing of formal charges.

Relocation Assistance

Section 960.198, F.S., authorizes the Department of Legal Affairs to award a one-time payment of up to $1,500 on a single claim and a maximum lifetime limit of $3,000 to a victim of domestic violence who needs immediate relocation assistance to escape domestic violence. In order to qualify for assistance

- There must be proof that an offense of domestic violence was committed;
- It must have been reported to law enforcement;
- The need for assistance must be certified by a domestic violence center within the state; and
- The center's certification must assert that the victim is cooperating with law enforcement officials.[19]

Effect of HB 251

HB 251 extends relocation assistance to victims of sexual violence. Under the bill, the need for assistance must be certified by a rape crisis center.

Unlike domestic violence cases, where it is common for the victim to reside with the abuser, and relocation concerns are typical after domestic violence has been reported, offenses involving sexual violence occur in more diverse and varied surroundings and circumstances. The extent to which acts of sexual violence occur under circumstances where the victim would seek relocation is unknown.

Forcing or compelling another to become a prostitute, s. 796.045, Sex trafficking, s. 796.05, Deriving support from proceeds of prostitution, s. 796.06, Renting space to be used for lewdness, assignation or prostitution, s. 796.07(2)(a)-(d) and (i), Prostitution, s. 800.03, Exposure of sexual organs, s. 810.14, Voyeurism, s. 810.145, Video voyeurism, s. 812.135, Home invasion robbery, s. 817.025, Home or private business invasion by false impersonation, s. 825.102, abuse or aggravated abuse of an elderly or disabled person, s. 825.1025, Lewd and lascivious offenses committed on an elderly or disabled person, s. 827.071, Sexual performance by a child, s. 836.10, Written threats to kill or do bodily injury, s. 847.0135(2), Computer pornography child exploitation, s. 847.0137, Transmission of pornography by electronic device, s. 847.0145, Selling or buying minors, or s. 943.0435, Sexual offender registration.

[18] The offenses are: s. 794.011, relating to sexual battery; s. 826.04, relating to incest; s. 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault; s. 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault; s. 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery; s. 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery; s. 827.03(1), relating to child abuse; s. 827.03(2), relating to aggravated child abuse; s. 825.102(1), relating to abuse of an elderly person or disabled adult; s. 825.102(2), relating to aggravated abuse of an elderly person or disabled adult; s. 827.071, relating to sexual performance by person less than 18 years of age; s. 796.03, 796.07, and 796.08, relating to prostitution; or s. 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue.

[19] Section 960.198(2), F.S.

Required Instruction
Section 1003.42(2), F.S., requires members of the instructional staff of public schools to teach prescribed courses of study on the following topics related to health and safety:

> (n) Comprehensive health education[20] that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; nutrition; personal health; prevention and control of disease; and substance use and abuse.

Effect of HB 251
HB 251 adds internet safety to the list of topics which must be covered under this section.

B. SECTION DIRECTORY:

Section 1. Amends s. 90.404(2), F.S., relating to character evidence; when admissible.

Section 2. Creates a new section of Florida Statutes relating to prohibition on reproduction of child pornography.

Section 3. Amends s. 395.1021, F.S., relating to treatment of sexual assault victims.

Section 4. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 5. Amends s. 794.056, F.S., relating to the Rape Crisis Program Trust Fund.

Section 6. Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 7. Reenacts s. 20.435, F.S., relating to Department of Health; trust funds.

Section 8. Reenacts s. 794.055, F.S., relating to access to services for victims of sexual battery.

Section 9. Amends s. 960.003, F.S., relating to HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.

Section 10. Amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence and sexual violence.

Section 11. Amends s. 1003.42, F.S., relating to required instruction.

Section 12. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

[20] The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HB 251's addition of crimes to be included in the contribution of funds supporting the Rape Crisis Program Trust Fund will increase funding for the trust fund. The extent of its positive fiscal impact on the trust fund is indeterminate at this time.

HB 251's expansion of financial relocation assistance to victims of sexual violence will have a negative fiscal impact on state government, but the amount of the impact will depend on the number of sexual violence victims who will seek and be granted relocation assistance. The frequency of that occurrence is unknown although it is expected to be a small number of instances in comparison to the number of overall sexual offenses reported.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Collateral crime evidence

   Among the crimes added to s. 90.404(2)(b) are the crimes of stalking, kidnapping and false imprisonment. Although these crimes may in some instances be committed in conjunction with or to facilitate the commission of sexual crimes, the elements of these crimes standing alone have no sexual component.

   Under McLean, balancing the probative value of the evidence against the danger of substantial unfair prejudice under s. 90.403, F.S., was a critical component of the Court's analysis in upholding the expansion of collateral crime evidence in cases of child sexual abuse against a due process challenge to Ch. 2002-221, Laws of Florida. The Court noted that ". . . the less similar the prior acts, the less relevant they are to the charged crime, and therefore the less likely they will be admissible. . . . the less similar the prior acts, the more likely that the probative value of this evidence will be substantially outweighed by the danger of unfair prejudice, . . . "[21] Under this bill, a person charged with a kidnapping or false imprisonment that doesn't include any fact "of a sexual nature" may have

[21] McLean, *supra* at 1259.

the state seeking to admit into evidence collateral crime evidence of a stalking, also with no facts of a sexual nature surrounding the collateral act. Because HB 251 expands the range of collateral crimes to include offenses that do not include sexual elements, it may subject the statute to a renewed constitutional challenge based on collateral crimes that are less similar to each other than crimes that have a common feature of including a sexual element to the crime.

Criminal Proceedings for Child Pornography

The Florida Supreme Court has held that the authority granted to it under Section 2, of Article V of the Florida Constitution to adopt rules of practice and procedure is exclusively its own.[22] Since that time, the Legislature has passed acts which the court has declared impermissibly procedural.[23]

In 2008 in the case of Massey v. David, the Supreme Court reviewed a statute that conditioned the award of expert witness fees as taxable costs upon a requirement that the expert witness furnish the opposing party with a written report within a certain number of days.[24] In Massey, the Supreme Court articulated how statutes containing a mixture of substance and procedure are analyzed in order to determine their constitutional validity in view of the Supreme Court's procedural rulemaking authority. They explained:

> Of course, statutes at times may not appear to fall exclusively into either a procedural or substantive classification. We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will not *impermissibly intrude* on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail. (citations omitted). If a statute is clearly substantive and "operates in an *area of legitimate legislative concern,*" this Court will not hold that it constitutes an unconstitutional encroachment on the judicial branch. (citations omitted) However, where a statute does not basically convey substantive rights, the procedural aspects of the statute cannot be deemed "incidental," and that statute is unconstitutional. (emphasis added).[25]

When a statute "impermissibly" intrudes on the practice and procedure of the courts or when legislation is within a "legitimate area of legislative concern" is unclear. For Massey, the Court found that the statute's requirement of a report submitted to the opposing party conflicted with the lack of such a provision in the court rule and the statute was invalidated.

Florida Rule of Criminal Procedure 3.220(b) relating to discovery in criminal cases mandates that the state must "disclose to the defendant and permit the defendant to inspect, copy, test, and photograph . . . any tangible papers or objects that were obtained from or belong to the defendant. . . ."

HB 251's provision prohibiting the court from granting a defendant's request to copy this particular type of evidence conflicts with the mandate of rule 3.220 and could subject it to a court challenge on the basis that this provision invades the Supreme Court's exclusive authority to adopt rules of practice and procedure.

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[22] *In re Clarification of Florida Rules of Practice and Procedure (Florida Constitution, Article V, Section 2(a))*, 281 So. 2d 204, 205 (Fla. 1973).

[23] *See,* Allen v. Butterworth, 756 So.2d 52 (Fla. 2000); invalidating legislation to reduce delays in death penalty cases; Haven v. Federal Savings & Loan, Assoc. v. Kirian, 579 So.2d 730, (Fla. 1991), invalidating a statute requiring a court to sever counterclaims for separate trial against a foreclosing mortgagee because it conflicted with court rules. See also, Watson v. First Florida Leasing, 537 So.2d 1370 (Fla. 1989); Johnson v. State, 336 So.2d 93 (Fla. 1976); Avila South Condominium Association v. Kappa Corp., 347 So.2d 599 (Fla. 1977); Jackson v. Fla. Dept. of Corrections, 790 So.2d 381 (Fla. 2001); Massey v. David, 979 So.2d 931 (Fla. 2008).

[24] Massey v. David, 979 So.2d 931 (Fla. 2008).

[25] Id. at 937.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It should be noted that some of the offenses added to fund the Rape Crisis Program Trust Fund are not sexual offenses. Specifically, s. 812.135,F.S., Home invasion robbery, s. 817.025, F.S., Home or private business invasion by false impersonation, s. 825.102, F.S., abuse or aggravated abuse of an elderly or disabled person, and s. 836.10, F.S., Written threats to kill or do bodily injury.

With respect to the amendment in section 4 to the video voyeurism statute of limitations, the phrase "[n]otwithstanding the time periods prescribed in this section . . ." may be construed to render the current two and three year statute of limitations inapplicable. Depending on when the victim learns of the existence of the video recording or the date it is confiscated by law enforcement, the bill may actually shorten the statute of limitations in some instances. If the term "notwithstanding" were changed to "in addition to" the bill would increase the statute of limitations for these offenses in every case.

Section 10 of the bill appears to add the phrase "or to a victim of sexual violence" in the wrong place in the subsection amended. It appears that this term belongs after the reference to "domestic violence" on line 234. An additional reference to escaping from a sexual violence environment would also clarify the intended effect of the amendment to the subsection.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sexual offenses; amending s. 90.404, F.S.; permitting admission of evidence of the defendant's commission of other crimes of a sexual nature in a criminal case in which the defendant is charged with a crime of a sexual nature; defining the term "crime of a sexual nature"; requiring certain property or material that is used in a criminal proceeding to remain in the care, custody, and control of the law enforcement agency, the state attorney, or the court; prohibiting the reproduction of such property or material by the defendant when specified criteria are met by the state attorney; permitting access to the materials by the defendant; amending s. 395.1021, F.S.; requiring a licensed facility that provides emergency room services to arrange for the gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report; amending s. 775.15, F.S.; providing that a prosecution for video voyeurism in violation of specified provisions may be commenced within 1 year after the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the recording is confiscated by a law enforcement agency, whichever occurs first; providing that dissemination of a recording before such knowledge or confiscation does not affect such a time period; amending ss. 794.056 and 938.085, F.S.; requiring

that an additional court cost or surcharge be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, certain criminal offenses; providing for proceeds of the additional court cost or surcharge to be deposited into the Rape Crisis Program Trust Fund; reenacting s. 20.435(21)(a), F.S., relating to the Rape Crisis Program Trust Fund, to incorporate the amendment made to s. 794.056, F.S., in a reference thereto; reenacting s. 794.055(3)(b), F.S., relating to access to services for victims of sexual battery, to incorporate the amendment made to s. 938.085, F.S., in a reference thereto; amending s. 960.003, F.S.; revising provisions relating to HIV testing of persons alleged to have committed certain offenses; amending s. 960.198, F.S.; authorizing relocation assistance awards to victims of sexual violence; amending s. 1003.42, F.S.; requiring that public schools provide comprehensive health education that addresses concepts of Internet safety; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(b)1. In a criminal case in which the defendant is charged

with a crime of a sexual nature ~~involving child molestation~~, evidence of the defendant's commission of other crimes of a sexual nature~~, wrongs, or acts of child molestation~~ is admissible~~,~~ and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "crime of a sexual nature" ~~"child molestation"~~ means conduct proscribed by s. 784.048, s. 787.01, s. 787.02, s. 787.025(2)(c), s. 794.011, s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 800.04, s. 825.1025(2)(b), s. 827.071, ~~or~~ s. 847.0135(5), s. 847.0145, or s. 985.701(1) ~~when committed against a person 16 years of age or younger~~.

Section 2. Prohibition on reproduction of child pornography.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, Florida Statutes, or constitutes child pornography as defined in s. 847.001, Florida Statutes, must remain secured or locked in the care, custody, and control of a law enforcement agency, the state attorney, or the court.

(2) Notwithstanding any law or rule of court, a court shall deny, in a criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays sexual performance by a child or constitutes child pornography so long as the state attorney makes the property or material reasonably available to the defendant.

(3) For purposes of this section, property or material is

deemed to be reasonably available to the defendant if the state attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

Section 3. Subsection (2) of section 395.1021, Florida Statutes, is amended to read:

395.1021 Treatment of sexual assault victims.—Any licensed facility which provides emergency room services shall arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

(2) The ~~administration of medical examinations, tests, and analyses required by law enforcement personnel in the~~ gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report.

Such licensed facility shall also arrange for the protection of the victim's anonymity while complying with the laws of this state and may encourage the victim to notify law enforcement personnel and to cooperate with them in apprehending the suspect.

Section 4. Subsection (17) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations;

exceptions.—

(17) Notwithstanding the time periods prescribed in this section, a prosecution for video voyeurism in violation of s. 810.145 may be commenced within 1 year after the date on which the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. Any dissemination of such a recording before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.

Section 5. Section 794.056, Florida Statutes, is amended to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense defined in s. 775.21, s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s.

810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0135(2), s. 847.0137, s. 847.0145, or s. 943.0435. Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

(2) The Department of Health shall establish by rule criteria consistent with the provisions of s. 794.055(3)(a) for distributing moneys from the trust fund to rape crisis centers.

Section 6. Section 938.085, Florida Statutes, is amended to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21, s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0135(2), s. 847.0137, s. 847.0145, or s. 943.0435, the court shall impose a surcharge of $151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects

as a service charge of the clerk's office.

Section 7. For the purpose of incorporating the amendment made by this act to section 794.056, Florida Statutes, in a reference thereto, paragraph (a) of subsection (21) of section 20.435, Florida Statutes, is reenacted to read:

20.435 Department of Health; trust funds.—The following trust funds shall be administered by the Department of Health:

(21) Rape Crisis Program Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of s. 794.056.

Section 8. For the purpose of incorporating the amendment made by this act to section 938.085, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 794.055, Florida Statutes, is reenacted to read:

794.055 Access to services for victims of sexual battery.—

(3)

(b) Funds received under s. 938.085 shall be used to provide sexual battery recovery services to victims and their families. Funds shall be distributed to rape crisis centers based on an allocation formula that takes into account the population and rural characteristics of each county. No more than 15 percent of the funds shall be used by the statewide nonprofit association for statewide initiatives. No more than 5 percent of the funds may be used by the department for administrative costs.

Section 9. Subsection (2) of section 960.003, Florida Statutes, is amended to read:

960.003 HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo HIV testing within 48 hours after ~~of~~ the information or indictment ~~court order~~.

(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, the court shall order such person to undergo HIV testing within 48 hours after ~~of~~ the information or indictment ~~court order~~. The testing shall be performed under the direction of the Department of Health in accordance with s. 381.004. The results of an HIV test performed on a defendant or juvenile offender pursuant to this subsection

shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.

Section 10. Section 960.198, Florida Statutes, is amended to read:

960.198 Relocation assistance for victims of domestic violence and sexual violence.—

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award a one-time payment of up to $1,500 on any one claim and a lifetime maximum of $3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment or to a victim of sexual violence.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a domestic violence or sexual violence offense was committed;

(b) The domestic violence or sexual violence offense must be reported to the proper authorities;

(c) The victim's need for assistance must be certified by a certified domestic violence center or a certified rape crisis center in this state; and

(d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

Section 11. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historic accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 257 Financial Responsibility for Medical Expenses of Pretrial Detainees or Sentenced Inmates
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham SC
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

HB 257 would allow a county or municipality to pay the medical costs of an in-custody pretrial detainee or sentenced inmate at 110 percent of the Medicare allowable rate if no formal written agreement exists between the county or municipality and the third-party medical care provider. The bill exempts payments to physicians for emergency services provided within a hospital emergency department from the maximum allowable rate.

Medical costs include medical care, treatment, hospitalization, and transportation.

The bill requires that before a third-party provider can seek reimbursement from a county or municipal's general fund, it must show that a "good faith effort" was made to collect payment for medical care expenses from an in-custody pretrial detainee or sentenced inmate.

The bill may have a positive fiscal impact on local governments but may have a negative impact on medical care providers. See "Fiscal Comments."

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Financial Responsibility for Medical Expenses of Arrestees

Section 901.35, F.S., provides that a medical services provider shall recover the expenses of medical care, treatment, hospitalization, and transportation (hereinafter referred to simply as "medical care") for a person ill, wounded, or otherwise injured during or at the time of arrest[1] for any violation of state law or a county or municipal ordinance from the following sources in the following order:

(1) Insurance of the person receiving the medical care;
(2) The person receiving medical care; or
(3) A financial settlement for the medical care.[2]

When reimbursement from these sources is unavailable, the cost of medical care is paid from the general fund of the county in which the person was arrested or from the general fund of the municipality if the arrest was for a violation of a municipal ordinance.[3] The rates medical service providers can charge local governments are not capped.[4]

The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency.[5] If an arrested person has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source, he or she must assign those benefits to the health care provider.[6]

Financial Responsibility for Medical Expenses of County and Municipal Prisoners

Section 951.032, F.S., articulates a local government's rights to reimbursement from a prisoner or person[7] seeking medical attention. A county or municipal detention facility incurring expenses for providing medical care may seek reimbursement for the expenses in the following order:

(1) From the prisoner or person receiving medical care by deducting the cost from the prisoner's cash account on deposit with the detention facility or placing a lien on the prisoner's cash account or other personal property;[8] or
(2) From an insurance company, health care corporation or other source if the prisoner or person is covered by an insurance policy.

If the prisoner refuses to cooperate with the reimbursement efforts of the detention facility he or she may not receive gain-time as provided by s. 951.21, F.S.

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[1] The injury or illness need not be caused by the arrest. Fla. Op. Atty. Gen. 85-6, (Feb. 4, 1985). "[S]ection 901.35 seems to impose tertiary responsibility on the general fund for any medical expenses incurred for the treatment of persons ill or injured at the time of arrest, regardless of whether the person's condition arises from or is attributable to the circumstances of the arrest."

[2] Section 901.35, F.S.

[3] *Id.*

[4] Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004).

[5] 901.35, F.S. *See Comeau v. State*, 611 So. 2d 68, (Fla. 1st DCA 1992)(stating that the county, as a custodian of a prisoner charged with violating a state law or county ordinance, has a duty to provide medical care for its prisoner.)

[6] *Id.*

[7] *See Williams v. Ergle*, 698 So.2d 1294, (5th DCA 1997) (stating that pretrial detainees are prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners).

[8] Section 951.032(1)(a), F.S., provides that any existing lien may be carried over to future incarceration of the same prisoner as long as the future incarceration takes place within the county originating the lien and takes place within 3 years of the date the lien was placed against the prisoner's account or other personal property.

Medicare Rates

The Social Security Act, 42 U.S.C. § 1395, addresses Medicare. Medicare consists of Part A (hospital insurance), Part B (medical insurance), and Part D (prescription drug coverage) as health insurance for:

- people age 65 or older,
- people under age 65 with certain disabilities, and
- people of any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant).[9]

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.[10] Other Medicare providers are paid via a prospective payment system (PPS). The PPS is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services). The CMS uses separate PPSs for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.[11]

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill, chapter 2008-153, Laws of Florida, capped medical payment rates the Department of Corrections (department) could pay to a hospital, or a health care provider providing services at a hospital. Payments were capped at 110 percent of the Medicare allowable rate for inmate medical care when no contract existed between the department and a hospital, or a health care provider providing services at a hospital. However hospitals reporting an operating loss to the Agency for Health Care Administration were capped at 125 percent of the Medicare allowable rate.

In 2009, s. 945.6041, F.S., created by chapter 2009-63, Laws of Florida, codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap. The department has reported savings of over $63 million since the payment caps were implemented.[12] The department's community hospital expenditures, which include inpatient and outpatient hospital charges, outpatient surgery and emergency room visits, totaled nearly $70 million in FY 2009-10.[13]

Effect of the Bill

HB 257 modifies s. 901.35(1), F.S., to specify that except as provided in 951.032, F.S., a person is responsible for paying any medical care expenses if he or she is ill, wounded, or otherwise injured during or *as a result of* an arrest for any state law or county or municipal ordinance. This specification, "as a result of an arrest," replaces current language, "at the time of an arrest." The bill removes all language regarding how a medical care service provider can recover medical care expenses from arrestees from s. 901.35(2), F.S., and adds it to s. 951.032, F.S., (which relates to how county and municipal detention facilities recover medical costs from prisoners.)

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[9] "Medicare Program – General Information," The Centers for Medicare and Medicaid Services, http://www.cms.gov/MedicareGenInfo/ (Last visited on February 11, 2011)

[10] "Fee Schedules – General Information," The Centers for Medicare and Medicaid Services, http://www.cms.gov/FeeScheduleGenInfo/ (Last visited on February 11, 2011)

[11] "Perspective Payment System – General Information," The Centers for Medicare and Medicaid Services, http://www.cms.gov/ProspMedicareFeeSvcPmtGen/ (Last visited on February 11, 2011)

[12] Savings from FY 2008- December 2010. Correspondence with the Department of Corrections. On file with the Criminal Justice Subcommittee.

[13] *Id.*

The bill amends s. 951.032, F.S., by replacing each use of the term "prisoner" with the term "in-custody pretrial detainee or sentenced inmate." However, the process by which county and municipal facilities recover medical care expenses from such persons remains unchanged.

As noted above, the bill moves language regarding how a medical care service provider can recover medical care expenses from s. 901.35, F.S., to s. 951.032, F.S. This language specifies that a third-party provider shall recover the expenses of medical care from an in-custody pretrial detainee or sentenced inmate from the following sources in the following order:

(1) Insurance of the person receiving the medical care;
(2) The person receiving medical care; or
(3) A financial settlement for the medical care.

The bill requires the third-party provider to make a "good faith effort" to recover the payment before it can seek reimbursement from the general fund of a county or municipality in which a person was arrested.[14] A "good faith effort" is described as one that is consistent with that provider's usual policies and procedures related to the collection of fees from indigent patients who are not in the custody of a county or municipal detention facility.

The bill requires that, in the absence of a formal written agreement, payments made from county or municipal general funds for an in-custody pretrial detainee or sentenced inmate's medical care will be made at 110 percent of the Medicare allowable rate. However, payments can be increased to 125 percent of the Medicare allowable rate if the third-party provider reports a negative operating margin for the previous year to the Agency of Health Care Administration through hospital-audited financial data.

The bill exempts payments to physicians licensed under ch. 458, F.S., or ch. 459, F.S., for emergency services provided within a hospital emergency department from the maximum allowable rate.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 901.35, F.S., relating to financial responsibility for medical expenses.

Section 2. Amends s. 951.032, F.S., relating to financial responsibility for medical expenses.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

[14] The third-party provider must show that a "good faith effort" was made to collect payment from the sources listed in subsection 1. Subsection 1 lists the sources that the county or municipal detention facility may recover medical expenses from. This reference to subsection 1 instead of subsection 3 may be a possible drafting error. See "Drafting Errors or Other Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to in-custody pretrial detainees and sentenced inmates when the person receiving the services cannot provide for payment of the costs and the provider does not have a formal written agreement with the county or municipality in which the person was arrested.

D. FISCAL COMMENTS:

This bill may be a cost savings measure for counties and municipalities because it caps the cost of medical services provided to in-custody pretrial detainees and sentenced inmates at 110 percent of the Medicare allowable rate or in some cases at 125 percent of the Medicare allowable rate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The exception in section 1 of the bill provides that *except as provided in s.951.032, F.S.,* a person is responsible for their medical care expenses. If the intent is to allow third-party providers to recoup medical care expenses in accordance with 951.032, F.S., this could be clarified to read: "Such payment shall be made in accordance with s. 951.032, F.S."

- It is unclear what the term "in-custody pretrial detainee" refers to. In *Williams v. Ergle* (698 So.2d 1294, 5th DCA 1997), a Florida appellate court found that pretrial detainees are considered prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners.

- Lines 144-149 of the bill provide that a third-party provider must show a good faith effort was made to obtain reimbursement from the sources listed in subsection 1. The sources in subsection 1 relate how a county or municipal detention facility may seek reimbursement for medical care expenses. Subsection 3 (lines 126-143 of the bill) details how a third-party provider can recover medical care expenses. The reference to subsection 1 instead of subsection 3 may be a possible drafting error.

- Lines 152-156 of the bill provide that a third-party provider must first make a "good faith effort" to recover medical care expenses from in-custody pretrial detainees and sentenced inmates before they seek reimbursement from the general fund of a county or municipality that originated the arrest. This would require the arresting county or municipality to pay medical care

expenses related to an in-custody pretrial detainee or sentenced inmate when he or she may no longer be detained in that county or municipality detention facility.

- Lines 158-174 of the bill use the term "governmental body." It is unclear what that term refers to.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to financial responsibility for medical expenses of pretrial detainees or sentenced inmates; amending s. 901.35, F.S.; providing that the responsibility for paying the expenses of medical care, treatment, hospitalization, and transportation for a person who is ill, wounded, or otherwise injured during or as a result of an arrest for a violation of a state law or a county or municipal ordinance is the responsibility of the person receiving the medical care, treatment, hospitalization, or transportation; deleting provisions establishing the order by which medical providers receive reimbursement for the expenses incurred in providing the medical services; amending s. 951.032, F.S.; setting forth the order by which a county or municipal detention facility may seek reimbursement for the expenses incurred during the course of treating in-custody pretrial detainees or sentenced inmates; requiring each in-custody pretrial detainee or sentenced inmate who receives medical care or other services to cooperate with the county or municipal detention facility in seeking reimbursement for the expenses incurred by the facility and providing for certain liens against detainees or prisoners; setting forth the order of fiscal resources from which a third-party provider of medical services may seek reimbursement for the expenses the provider incurred in providing medical care; requiring each in-custody pretrial detainee or sentenced inmate who has health insurance, subscribes

to a health care corporation, or receives health care benefits from any other source to assign such benefits to the health care provider; requiring assignment of health insurance or health care benefits to providers by detainees or inmates who have such insurance or benefits; providing an effective date.

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

Section 1. Section 901.35, Florida Statutes, is amended to read:

901.35 Financial responsibility for medical expenses.—

~~(1)~~ Except as provided in s. 951.032 ~~Notwithstanding any other provision of law~~, the responsibility for paying the expenses of medical care, treatment, hospitalization, and transportation for any person ill, wounded, or otherwise injured during or as a result ~~at the time~~ of an arrest for any violation of a state law or a county or municipal ordinance is the responsibility of the person receiving such care, treatment, hospitalization, and transportation. ~~The provider of such services shall seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization, and transportation from the following sources in the following order:~~

~~(a) From an insurance company, health care corporation, or other source, if the prisoner is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.~~

~~(b) From the person receiving the medical care, treatment, hospitalization, or transportation.~~

~~(c) From a financial settlement for the medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.~~

~~(2) Upon a showing that reimbursement from the sources listed in subsection (1) is not available, the costs of medical care, treatment, hospitalization, and transportation shall be paid:~~

~~(a) From the general fund of the county in which the person was arrested, if the arrest was for violation of a state law or county ordinance; or~~

~~(b) From the municipal general fund, if the arrest was for violation of a municipal ordinance.~~

~~The responsibility for payment of such medical costs shall exist until such time as an arrested person is released from the custody of the arresting agency.~~

~~(3) An arrested person who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source shall assign such benefits to the health care provider.~~

Section 2. Section 951.032, Florida Statutes, is amended to read:

951.032 Financial responsibility for medical expenses.—

(1) A county detention facility or municipal detention facility incurring expenses for ~~providing~~ medical care, treatment, hospitalization, or transportation <u>provided by the</u>

county or municipal detention facility may seek reimbursement for the expenses incurred during the course of treatment of in-custody pretrial detainees or sentenced inmates in the following order:

(a) From the in-custody pretrial detainee or sentenced inmate ~~prisoner or person~~ receiving medical care, treatment, hospitalization, or transportation by deducting the cost from the in-custody pretrial detainee's or sentenced inmate's ~~prisoner's~~ cash account on deposit with the detention facility. If the in-custody pretrial detainee's or sentenced inmate's ~~prisoner's~~ cash account does not contain sufficient funds to cover medical care, treatment, hospitalization, or transportation, ~~then~~ the detention facility may place a lien against the in-custody pretrial detainee's or sentenced inmate's ~~prisoner's~~ cash account or other personal property, to provide payment in the event sufficient funds become available at a later time. Any existing lien may be carried over to future incarceration of the same detainee or inmate ~~prisoner~~ as long as the future incarceration takes place within the county originating the lien and the future incarceration takes place within 3 years after ~~of~~ the date the lien was placed against the in-custody pretrial detainee's or sentenced inmate's ~~prisoner's~~ account or other personal property.

(b) From an insurance company, health care corporation, or other source if the in-custody pretrial detainee or sentenced inmate ~~prisoner or person~~ is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.

(2) An in-custody pretrial detainee or sentenced inmate ~~A prisoner~~ who receives medical care, treatment, hospitalization, or transportation by a county or municipal detention facility shall cooperate with that ~~the county detention~~ facility ~~or municipal detention facility~~ in seeking reimbursement under paragraphs (1)(a) and (b) for expenses incurred by the facility for the in-custody pretrial detainee or sentenced inmate ~~prisoner~~. An in-custody pretrial detainee or sentenced inmate ~~A prisoner~~ who willfully refuses to cooperate with the reimbursement efforts of the detention facility may have a lien placed against his or her ~~the prisoner's~~ cash account or other personal property and may not receive gain-time as provided by s. 951.21.

(3) A third-party provider of medical care, treatment, hospitalization, or transportation for in-custody pretrial detainees or sentenced inmates of a county or municipal detention facility shall seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization, and transportation to such in-custody pretrial detainees or sentenced inmates from the following sources in the following order:

(a) From an insurance company, health care corporation, or other source, if the pretrial detainee or sentenced inmate is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.

(b) From the pretrial detainee or sentenced inmate receiving the medical care, treatment, hospitalization, or transportation.

(c) From a financial settlement for the medical care, treatment, hospitalization, or transportation payable or accruing to the injured pretrial detainee or sentenced inmate.

(4) Upon a showing by the third-party provider that a good faith effort was made, consistent with that provider's usual policies and procedures related to the collection of fees from indigent patients outside the custody of a county or municipal detention facility, to obtain reimbursement from the sources listed in subsection (1), but that such reimbursement is not available, the costs of medical care, treatment, hospitalization, and transportation shall be paid:

(a) From the general fund of the county in which the person was arrested, if the arrest was for violation of a state law or county ordinance; or

(b) From the municipal general fund, if the arrest was for violation of a municipal ordinance.

Absent a written agreement between the third-party provider and the governmental body, remuneration made pursuant to paragraph (a) or paragraph (b) shall be billed by the third-party provider and paid by the governmental body at a rate not to exceed 110 percent of the Medicare allowable rate for such services. Compensation to a third-party provider may not exceed 125 percent of the Medicare allowable rate if there is no written agreement between the third-party provider and the governmental body, and the third-party provider reported a negative operating margin for the previous year to the Agency for Health Care Administration through hospital-audited financial data. However,

these maximum allowable rates do not apply to amounts billed and paid for physicians licensed under chapter 458 or chapter 459 for emergency services provided within a hospital emergency department. The responsibility of the governmental body for payment of any in-custody medical costs shall cease upon release of the in-custody pretrial detainee or sentenced inmate.

(5) An in-custody pretrial detainee or sentenced inmate who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source shall assign such benefits to the health care provider.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 265 Sexual Offenders and Predators
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. Article I, section 14, of the Florida Constitution provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.

Bail, one of the most common forms of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute contains an extensive list of factors a court must consider when determining whether to release a defendant on bail or other conditions, including, but not limited to, the defendant's criminal history, family ties, danger to the community, and whether the defendant is on probation or parole.

HB 265 adds the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Whether the defendant is required to register as a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

This bill takes effect July 1, 2011, and may have a negative fiscal impact on local governments. See "Fiscal Section."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[1] Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.[2]

Article I, section 14, of the Florida Constitution provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. The accused may be detained if no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.[3]

Bail, one of the most common forms of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.[4]
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.[5]

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[1] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.

[2] *Id.*

[3] Art. I, s. 14, Fla. Const.

[4] Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than $2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

[5] Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social

- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,[6] or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.[7]

Pretrial Release – Offenders on Community Supervision

Section 948.06, F.S., sets forth the procedures used when an offender on probation[8] or community control[9] violates the terms and conditions of their supervision. Offenders arrested for violating the terms and conditions of community supervision are arrested and brought before the sentencing court.[10] Generally, if the offender denies having violated the terms of supervision, the court has the option to commit the offender to jail, release the offender with or without bail to await further hearing, or dismiss the charge.[11]

In certain instances, courts are limited or prohibited from granting pretrial release to offenders arrested for violating their terms of supervision. Section 948.06(4), F.S., requires the court to make a finding that the following offenders are not a danger to the public before releasing the offender on bail:

- Offenders who are under supervision for any offense prescribed in ch. 794., s. 800.04(4), (5), and (6), s. 827.071, or s. 847.0145, F.S.[12]
- Offenders are registered sexual offenders or sexual predators.[13]
- Offenders who are under supervision for a criminal offense for which the offender would meet the sexual predator or sexual offender registration requirements in ss. 775.21, 943.0435, or 944.607, F.S., but for the effective date of those sections.

The statute also prohibits a court from granting pretrial release to an offender arrested for violating their terms of supervision (other than violations related to a failure to pay costs) and who is:

- A violent felony offender of special concern;[14]
- On supervision for any offense committed on or after March 12, 2007, and who is arrested for any qualifying offense; or[15]

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concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

[6] Chapter 874, F.S., relates to criminal gang enforcement and prevention.

[7] s. 903.046, F.S.

[8] Section 948.001, F.S., defines the term "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

[9] Section 948.001, F.S., defines the term "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.

[10] s. 948.06, F.S.

[11] *Id.*

[12] Chapter 794, F.S., relates to sexual battery. Section 800.04, F.S., relates to lewd and lascivious offenses upon or in the presence of a person less than 16 years of age. Section 827.071, F.S., relates to sexual performance by a child. Section 847.0145, F.S., relates to selling or buying of minors.

[13] Sections 775.21, 943.0435, and 944.607, F.S., set forth the criteria one must meet to be considered a sexual offender or sexual offenders. The statutes also provide registration requirements for sexual offenders and sexual predators.

[14] The term "violent felony offender of special concern" is defined in s. 948.06(8)(b), F.S.

[15] The term "qualifying offense" is defined in s. 948.06(8)(c), F.S., and includes offenses that qualify someone as a sexual offender.

- On supervision, has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S., and who is arrested for committing a qualifying offense on or after March 12, 2007.

Such persons must remain in custody pending the resolution of the violation.[16]

Effect of the Bill

HB 265 amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Whether the defendant is required to register as a sexual predator[17] under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   As of January, 2010, there were 32,692 registered sexual offenders and 7,743 registered sexual predators in Florida.[18] It is unknown how many of these persons are arrested each year. However, because the bill would prohibit such persons from being released on bail or surety bond until first appearance, it will likely have a negative impact on local jails.

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[16] s. 948.06(8)(d), F.S.

[17] In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.

[18] Data provided by the Florida Department of Law Enforcement on 2/2/2011.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sexual offenders and predators; amending s. 903.046, F.S.; requiring a court considering whether to release a defendant on bail to determine whether the defendant is subject to registration as a sexual offender or predator and, if so, to hold the defendant without bail until the first appearance on the case; providing an effective date.

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

Section 1. Paragraphs (m) and (n) are added to subsection (2) of section 903.046, Florida Statutes, to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(m) Whether the defendant is required to register as a sexual offender under s. 943.0435; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

(n) Whether the defendant is required to register as a sexual predator under s. 775.21; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 333 Community-based Juvenile Justice
SPONSOR(S): Corcoran and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 554

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill requires the Department of Juvenile Justice (DJJ), beginning in the 2011-2012 fiscal year, to establish a minimum of three pilot sites where a community-based juvenile justice system will be implemented for two years. The pilot sites must be in the 2nd (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla counties), 6th (Pasco and Pinellas counties), and 11th (Dade county) judicial circuits.

The bill defines the term "regional coordinating agency" as a single nonprofit or county government agency with which DJJ must contract for the provision of juvenile justice services in a community that consists of at least one entire county. The bill also sets forth various requirements that an RCA must meet.

The bill requires DJJ, by December 1, 2011, to contract with a regional coordinating agency (RCA) for the delivery, administration, and management of the following juvenile justice services: intervention, prevention, assessment centers, diversion programs, civil citation, home detention, alternatives to detention, community-based services, probation, day treatment, independent living, evidenced-based programs, residential programming, and detention. DJJ is required to transfer all administrative and operational funding associated with these services to the RCA (less those funds that are necessary to provide and coordinate management of quality assurance and oversight).

The bill requires RCAs to contract with providers that meet current DJJ standards and to comply with statutory requirements and agency regulations in providing contractual services. The bill specifies that DJJ remains responsible for the quality of contracted services and programs and requires DJJ to ensure that such services are delivered in accordance with applicable federal and state statutes and regulations. The bill specifies that DJJ must coordinate inspections of program offices pursuant to the approval of the applicable RCA.

The bill requires DJJ to:

- Establish a quality assurance program for community-based juvenile justice;
- Establish and operate a comprehensive system to measure the outcomes and effectiveness of the services that are part of an RCA's community-based juvenile justice service programs.
- Establish minimum thresholds for each component of service;
- Annually evaluate each RCA under the provisions of the quality assurance program
- Beginning in 2013, annually submit the evaluation regarding quality performance, outcome measure attainment, and cost efficiency to specified entities.

The bill has an indeterminate fiscal impact and is effective July 1, 2011. See "Fiscal Comments."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

History of the Juvenile Justice System

Florida has traditionally managed juveniles under a "rehabilitative" model of justice. This traces back to the time when all "proceedings relating to children" were under the auspices of the Department of Health and Rehabilitative Services, formerly known as HRS. The agency's approach to dependency cases and delinquency cases were the same - provide social services to the child and the family.[1]

The first of Florida's gradual efforts to shift the state's juvenile justice system away from a social services model occurred in 1994. That year, the Legislature created the Department of Juvenile Justice (DJJ), providing for the transfer of powers, duties, property, records, personnel, and unexpended balances of related appropriations and other funds from the HRS Juvenile Justice Program Office to the new agency. DJJ was assigned responsibility for juvenile delinquency cases and children and families in need of services (CINS/FINS) cases. Juvenile justice provisions, which were then found in ch. 39, F.S., remained virtually unchanged, and DJJ continued to approach juveniles as children in need of treatment and reform rather than criminals deserving punishment.[2]

A further distancing of DJJ from its HRS origins occurred in 1997. Although few changes were made to substantive law, two new chapters in the Florida Statutes were created by transferring juvenile justice provisions from ch. 39, F.S., to the newly created ch. 984 and 985, F.S. Chapter 984, F.S., was created to contain provisions relating to CINS/FINS and ch. 985, F.S., was created to contain provisions relating to juvenile delinquency cases.[3]

In 2000, comprehensive legislation, known as the "Tough Love" plan, provided statutory authority for DJJ to overhaul its organizational structure. As a result, DJJ shifted away from HRS service district structure to a structure that conformed to the boundaries of the 20 judicial circuits. The "Tough Love" legislation also signified the most dramatic policy shift away from the social services model and toward a punitive criminal justice approach. However, even under the "Tough Love" plan, the juvenile justice system continued to be operationally and philosophically distinct from the adult criminal justice system. Florida continues to segregate juveniles from their adult counterparts, and youth continue to be managed under a strategy of redirection and rehabilitation, rather than punishment.[4]

Department of Juvenile Justice - Organization

Currently, DJJ is organized in five programs areas - Administrative Services, Prevention and Victim Services, Probation and Community Intervention, Detention Services, and Residential Services.[5]

Administrative Services

The Administrative Services program area (also referred to as Executive Direction and Support) serves as the administrative support arm of DJJ. It is comprised of the following offices:

- Chief of Staff
- Deputy Secretary
- Office of General Counsel
- Office of the Inspector General
- Administrative Services
- Staff Development and Training
- Program Accountability

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[1] *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last accessed February 17, 2011).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*

- Legislative Affairs
- Communications[6]

Prevention and Victim Services

DJJ provides delinquency prevention services through the Office of Prevention and Victim Services. Prevention services target at-risk youth who exhibit problem behaviors (such as ungovernability, truancy, running away from home, and other pre-delinquent behaviors) before they result in more serious crimes.[7] DJJ addresses these problem behaviors by contracting for delinquency prevention services and awarding grants to local providers throughout the state.

The three primary prevention programs are the CINS/FINS program, the PACE Center for Girls, and Outward Bound Discovery. Other prevention programs include State Community Partnership and State Invest in Children, as well as federally funded programs administered by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.[8] On an average day, there are 6,643 youth participating in prevention programs throughout Florida.[9]

Probation and Community Intervention

Every youth under the age of 18 charged with a crime in Florida is referred to DJJ. A referral is similar to an arrest in the adult criminal justice system. Once referred, DJJ assesses the youth[10] and recommends to the state attorney and the court appropriate sanctions and services for the youth. When making a recommendation, DJJ has several options that allow the youth to remain in his or her home community.[11]

One option is diversion, which uses alternatives to the formal juvenile justice system for youth who have been charged with a minor crime. Diversion programs include Intensive Delinquency Diversion Services (IDDS), Community Arbitration, the Juvenile Alternative Services Program (JASP), Teen Court, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools. These programs employ a variety of non-judicial sanctions, including:

- Restitution (payment) to the victim(s);
- Community service hours;
- Letter of apology to the victim(s);
- Curfew;
- Forfeiture of driver's license;
- Encouragement to avoid contact with co-defendants, friends, or acquaintances who are deemed to be inappropriate associations;
- Referrals to local social service agencies; and
- Substance abuse or mental health counseling.[12]

If the court places a youth on probation, he or she must complete court-ordered sanctions and services (e.g., community service, restitution, curfew, substance abuse or mental health counseling, etc.). Each youth is assigned a juvenile probation officer who monitors compliance and helps the youth connect with service providers. If the youth does not comply with the terms of probation, the youth may be ordered to live in a residential commitment facility for a period of time.[13]

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[6] *Florida Department of Juvenile Justice Fiscal year 2009-10 Annual Report*, p. 23-25, via http://www.djj.state.fl.us/AboutDJJ/index.html (last accessed on February 17, 2011).
[7] *Id.* at p. 13
[8] *Id.*
[9] *Id.*
[10] The primary tool used in assessing youth is the Positive Achievement Change Tool (PACT), an evidenced based comprehensive assessment and case management process that addresses both criminogenic needs and protective factors, from the moment a youth enters the system to the moment they exit.
[11] *Probation and Community Intervention*, http://www.djj.state.fl.us/Probation/index.html (last accessed February 17, 2011).
[12] *Id.*
[13] *Id.*

Probation and Community Intervention is also responsible for aftercare services when a youth is released from a commitment facility. When a youth is discharged from a commitment facility, he or she is usually placed on conditional release (similar to parole in the adult criminal justice system). Conditional release is designed to provide monitoring and services to those youth who are transitioning back to the community after being in a residential program. These youth have court-ordered sanctions and services that they must complete.

Detention Services

Detention is the custody status for youth who are held pursuant to a court order, or following arrest for a violation of the law. In Florida, a youth may be detained only when specific statutory criteria, outlined in s. 985.215, F.S., are met. Criteria for detention include current offenses, prior history, legal status, and any aggravating or mitigating factors.[14] Detention screening is performed at Juvenile Assessment Centers (JACs) or by juvenile probation staff using a standardized Detention Risk Assessment Instrument. Juvenile detention consists of two types - secure detention and home detention.[15]

Youths placed in secure detention have been assessed as risks to public safety and must remain in a physically secure detention center while awaiting court proceedings. They appear before the court within 24-hours of placement, at which time the judge decides whether there is a need for continued detention. Generally there is a 21-day limit to secure detention, but those charged with serious offenses can be held up to 30 days. Serious juvenile offenders also can be held in secure detention while awaiting placement in a residential corrections facility.[16]

Youths on home detention status are released to their parents or guardians. Both youth and parents sign a home detention agreement, which stipulates the conditions of home detention which the youth is required to follow (e.g., mandatory school attendance and curfew).[17]

In FY2009-10, DJJ operated 25 juvenile detention centers in 24 counties with a total of 2,007 beds, and employed 1,791 specially trained and certified juvenile detention officers. The detention centers provide custody, supervision, education, and mental health/substance abuse services to juveniles statewide.[18]

Detention Center Data for the 2nd, 6th, and 11th Judicial Circuits

- The Leon Regional Detention Center is the only detention center in the 2nd judicial circuit (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla counties). It is a 56-bed center and has 59 employees. This center also serves youth from the western portion of the 3rd judicial circuit. The utilization rate for this center during FY2009-2010 was 47 percent.[19]

- There are two detention centers in the 6th judicial circuit (Pasco and Pinellas counties). The Pinellas Regional Detention Center is a 120-bed facility with 104 employees. This center only serves youth from Pinellas County and had a 58 percent utilization rate in FY2009-2010. The Pasco Regional Detention Center is a 57-bed center with 58 employees. This center only serves youth from Pasco County and had a 52 percent utilization rate in FY2009-2010.[20]

- The Miami-Dade Regional Detention Center is the only detention center in the 11th judicial circuit (Dade County). It is a 226-bed facility with 211 employees. The center only serves youth from Miami-Dade County and had a 52 percent utilization rate in FY2009-2010.[21]

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[14] *Florida Department of Juvenile Justice Fiscal year 2009-10 Annual Report*, p. 14, via http://www.djj.state.fl.us/AboutDJJ/index.html (last accessed on February 17, 2011).
[15] *Juvenile Justice Detention Services*, http://www.djj.state.fl.us/Detention/index.html (last accessed February 17, 2011).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Department of Juvenile Justice analysis of HB 333 (on file with Criminal Justice Subcommittee staff).
[20] *Id.*
[21] *Id.*

- All of the detention centers in the 2nd 6th, and 11th judicial circuits are operated by DJJ. Security, transportation, maintenance, food, and administrative services are provided by DJJ employees. Medical, mental health, psychiatric, and pharmaceutical services are provided by contract employees. Funding for these detention centers comes from General Revenue and trust funds (largely the Shared County/State Juvenile Detention Trust Fund).[22]

Residential Services

Delinquent youth in Florida can be ordered by the court to serve time in a juvenile residential or detention facility depending on the severity of his or her crime and behavior. DJJ either contracts for or directly operates more than 116 residential programs with a total of approximately 4,200 beds.[23]

DJJ commitment managers conduct multidisciplinary commitment conferences for all youth considered for commitment to DJJ for juvenile or adult court. After a comprehensive evaluation of the youth and receiving input from conference participants, the commitment manager establishes DJJ's commitment recommendation to the court.[24] Primary consideration for commitment recommendations is public safety, meeting the individual treatment needs of the youth, and ensuring no other options are viable at a less restrictive level to reduce or eliminate the youth's threat to public safety. Once the court has ordered the youth to a specific restrictiveness level, it is the responsibility of DJJ to determine the most appropriate placement available within that restrictiveness level.[25]

Consistent with s. 985.03(44), F.S., DJJ's residential commitment programs are grouped into five custody classifications based on the assessed risk to public safety. The restrictiveness levels represent increasing restriction on youths' movement and freedom. The least restrictive, or minimum-risk level, is non-residential and falls under the jurisdiction of Probation and Community Control rather than Residential Services.[26] The remaining four restrictiveness levels of commitment are as follows:

- Low-risk residential (may allow youth unsupervised access to the community);
- Moderate-risk residential (may allow youth supervised access to the community);
- High-risk residential (does not allow youth access to the community, except as approved for limited reasons); and
- Maximum-risk residential (does not allow youth to have access to the community).[27]

Residential programs provide differing levels of programming to address the supervision, custody, care, and treatment needs of committed children.[28] In residential programs, delinquent youth receive educational and vocational services and complete an individually designed treatment plan, based on their rehabilitative needs. In addition, all residential programs provide medical, mental health, substance abuse, and developmental disability services.[29]

Currently, Florida has a budgeted capacity of 4,146 residential commitment beds for juvenile youths with approximately two-thirds of those providing special needs services.[30] The current utilization rate hovers around 90 percent of the number of operational beds.[31] In FY 2008-2009, there were 6,402 new admissions of juveniles to residential programs, representing a 3% reduction from FY 2007-08 (6,587) and a five-year overall reduction of 28 percent (8,897) in new admissions to residential programs.[32]

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[22] *Id.*
[23] *Florida Department of Juvenile Justice Fiscal year 2009-10 Annual Report*, p. 16, via http://www.djj.state.fl.us/AboutDJJ/index.html (last accessed on February 17, 2011).
[24] *Juvenile Justice Office of Residential Services*, http://www.djj.state.fl.us/Residential/index.html (last accessed February 17, 2011).
[25] *Id.*
[26] *Id.*
[27] *Florida Department of Juvenile Justice Fiscal year 2009-10 Annual Report*, p. 16, via http://www.djj.state.fl.us/AboutDJJ/index.html (last accessed on February 17, 2011).
[28] *Id.*
[29] *Id.*
[30] *Juvenile Justice Office of Residential Services*, http://www.djj.state.fl.us/Residential/index.html (last accessed February 17, 2011).
[31] *Id.*
[32] *Id.*

Private providers operate most of the residential facilities for juveniles in Florida under contracts with DJJ. The providers are regularly monitored and evaluated through the DJJ's Quality Assurance program. DJJ's Inspector General investigates incidents at programs involving staff or youth.[33]

DJJ provided the following that shows the disposition of youth in the 2nd, 6th, and 11th judicial circuits:

	Dispositions for FY 2009-2010 Probation & Community Intervention				
Circuit	Youth Received at Intake	Youth Diverted from Court	Youth Ordered on Probation	Youth Ordered to Residential	Youth Transferred to Adult Court
2	1510	625	552	209	27
6	4656	979	1863	348	282
11	7041	2997	1535	348	269

The Juvenile Court Process

A juvenile who is alleged to have committed a violation of law is formally charged by the filing of a petition for delinquency by the state attorney.[34] Because a juvenile may be subject to deprivation of liberty if adjudicated delinquent, federal constitutional law requires that juveniles be afforded many of the same due process safeguards afforded to adult criminal defendants. For example, juveniles are entitled to legal representation by counsel at all stages of any proceeding, and the state must provide free legal representation to juvenile offenders who cannot afford to retain counsel.[35]

If the juvenile is held in detention or released to home detention, a detention hearing must be held within 24 hours at which the judge orders continued detention or release. If the juvenile is detained, an arraignment hearing must be held within 48 hours of the filing of the petition.[36] At the arraignment hearing, the juvenile admits to delinquency, denies delinquency, or does not contest the allegation. If the juvenile denies delinquency, an adjudicatory hearing (trial) is held.[37] Circuit court judges preside over juvenile court proceedings and determine all issues of fact and law in such cases.[38] At the adjudicatory hearing, the juvenile has the right to compel the attendance of witnesses on his or her behalf, the right to cross-examine state witnesses, and the right to remain silent.[39] The state must prove the allegations beyond a reasonable doubt or the case is dismissed and the juvenile is released.[40] An adjudication of delinquency by a court is not considered a conviction.[41]

If a judge finds that a juvenile committed a delinquent act, or if a youth pleads guilty or no contest to a charge, a disposition (sentencing) hearing must be held.[42] Before making a final disposition, the court must review a pre-disposition report (PDR), which is prepared by a juvenile probation officer.[43] The PDR includes a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning the disposition of the case.[44] The judicial dispositions available in juvenile court include judicial warnings, judicial plans, probation, or

[33] *Id.*
[34] *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last accessed February 17, 2011).
[35] *Id.*
[36] *Id. Also see*, s. 985.26, F.S.
[37] *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last accessed February 17, 2011).
[38] *Id. Also see*, s. 985.35, F.S.
[39] s. 985.35, F.S.
[40] *Id.*
[41] *Id.*
[42] s. 985.433, F.S.
[43] s. 985.43, F.S.
[44] *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last accessed February 17, 2011). *Also see*, s. 985 43, F.S.

commitment to a non-secure or secure residential program or facility.[45] In many cases where the court commits a youth to a residential program, youth will also be required to participate in a supervised conditional release program upon completion of the residential component.[46]

A juvenile charged with a violation of law has a state constitutional right to be charged and tried as an adult.[47] Florida law also specifies several circumstances where the state is required or authorized to initiate the prosecution of a juvenile in the adult criminal system.[48] These offenders may remain subject to juvenile, rather than adult, sanctions at the discretion of the trial judge.[49]

Effect of the Bill

The bill provides the following "Whereas" clauses:

- Whereas, 94 percent of Florida youth grow up to be productive citizens, but the 6 percent of Florida youth that become delinquent cost the state of Florida an average of $5,200 per child annually according to 2008 statistics, and
- Whereas, according to national studies, 27 percent of abused or neglected children become delinquent, and
- Whereas, one of the most effective ways to reduce delinquency is to prevent child abuse, abandonment, and neglect, and
- Whereas, Florida's juvenile commitment programs have a 39 percent recidivism rate within 1 year, and
- Whereas, the Department of Juvenile Justice shows that 59 percent of the juveniles being rearrested offend within 120 days after being released, revealing a critical transition period currently not being addressed, and
- Whereas, the State of Washington undertook a study which demonstrated that a significant level of future prison construction can be avoided, taxpayer dollars can be saved, and crime rates can be reduced by a portfolio of evidence-based youth service options, and
- Whereas, it has been proven that at-risk youth benefit from a comprehensive approach through coordination of intensive prevention, diversion, and family services, and
- Whereas, local management fosters all these approaches, ensures stronger relationships between providers and the family, and allows providers to assist in strengthening relationships between the child and the family, and
- Whereas, instead of competing for funding, prevention, diversion, and juvenile justice services should cooperate with the goal of keeping youth out of juvenile detention.

The bill creates s. 985.665, F.S., entitled "Community-Based Juvenile Justice," and provides the following legislative intent language:

> It is the intent of the Legislature to direct the department to contract with competent community-based agencies to coordinate and manage juvenile justice and related services. By implementing community-based juvenile justice, the community-based regional coordinating agency will provide flexibility to assess needs, apportion the funds allocated to the department for this purpose, and build the appropriate continuum of care resulting in more local ownership of juvenile justice problems and better service outcomes. The community-based juvenile justice model is designed to treat most of the juveniles in services that are located and managed in their home communities and that will promote greater family involvement and engagement, promote better system and service coordination, and achieve more significant economic and operational efficiencies.

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[45] *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last accessed February 17, 2011).
[46] *Id.*
[47] Art. I, s. 15 Fla. Const. *Also see*, s. 985.556, F.S.
[48] ss. 985.556, 985.557, and 985.56, F.S.
[49] *History of the Juvenile Justice System in Florida*, http://www.djj.state.fl.us/AboutDJJ/history.html (last accessed February 17, 2011). *Also see*, s. 985.565, F.S.

The bill requires DJJ, beginning in the 2011-2012 fiscal year, to establish a minimum of three pilot sites where a community-based juvenile justice system will be implemented for two years. The pilot sites must be in the 2nd (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla counties), 6th (Pasco and Pinellas counties), and 11th (Dade county) judicial circuits.

The bill requires DJJ, by December 1, 2011, to contract with a regional coordinating agency (RCA) for the delivery, administration, and management of the following juvenile justice services: intervention, prevention, assessment centers, diversion programs, civil citation, home detention, alternatives to detention, community-based services, probation, day treatment, independent living, evidenced-based programs, residential programming, and detention. DJJ is required to transfer all administrative and operational funding associated with these services to the RCA (less those funds that are necessary to provide and coordinate management of quality assurance and oversight). RCAs are required to thoroughly analyze and report the complete direct and indirect costs of delivering the above-described services through DJJ and the full cost of community-based juvenile justice, including the cost of monitoring and evaluating the contracted services. The bill specifies that RCAs may be selected from a single source pursuant to s. 287.057(3)(c), F.S.,[50] but requires them to be established organizations within the judicial circuit.

The bill requires RCAs to contract with providers that meet current DJJ standards and to comply with statutory requirements and agency regulations in providing contractual services. The bill specifies that DJJ will remain responsible for the quality of contracted services and programs and requires DJJ to ensure that such services are delivered in accordance with applicable federal and state statutes and regulations. The bill specifies that DJJ must coordinate inspections of program offices pursuant to the approval of the applicable RCA.

The bill requires DJJ, in partnership with an objective, competent entity, to establish a quality assurance program for community-based juvenile justice that includes national standards for each specific component of services. The bill also requires DJJ, in consultation with the RCAs, to establish minimum thresholds for each component of service. DJJ, or an objective, competent entity designated by DJJ, must annually evaluate each RCA under the provisions of the quality assurance program. Beginning in 2013, DJJ must annually submit the evaluation regarding quality performance, outcome measure attainment, and cost efficiency to the President of the Senate, Speaker of the House of Representatives, the minority leaders of the Senate and the House of Representatives, and the Governor.

The bill requires DJJ to establish and operate a comprehensive system to measure the outcomes and effectiveness of the services that are part of the RCAs' community-based juvenile justice service programs. DJJ must use these findings in making recommendations to the Governor and the Legislature for future program and funding priorities.

The bill defines the term "regional coordinating agency" as a single nonprofit or county government agency with which DJJ must contract for the provision of juvenile justice services in a community that consists of at least one entire county. The requirements for an RCA include, but are not limited to:

- The organizational infrastructure and financial capacity to coordinate, integrate, and manage all juvenile justice services in the designated community in cooperation with law enforcement and the judiciary.
- The ability to ensure continuity of care from entry to exit for all juveniles referred to the agency by law enforcement agencies, the court system, and other referral services.
- The ability to contract with providers to create a local network of juvenile justice services.

[50] Section 287.053(3)(c), F.S., provides that commodities or contractual services available only from a single source may be excepted from competitive-solicitation requirements. The statute also outlines what agencies must do to procure commodities or services from a single source.

- The willingness to accept accountability for meeting the outcomes and performance standards related to juvenile justice established by the Legislature and the federal government.
- The capacity and willingness to serve all juveniles referred to the agency by law enforcement agencies and the court system with funding from DJJ.
- The willingness to ensure that each individual who provides juvenile justice services has successfully completed the training required by DJJ as of July 1, 2011.

The bill requires operations of an RCA to be governed by a local board of directors, of which 75 percent of the membership must be comprised of persons residing within the RCA's service area. The bill specifies that with respect to the treatment of juvenile offenders, RCAs and contracted providers will be treated as the state and its agencies and subdivisions for liability purposes under s. 768.28, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 985.665, F.S., relating to community-based juvenile justice.

Section 2. This bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill specifies that a county government agency could qualify as an RCA. This bill could have a positive fiscal impact on such entities should they be selected to be an RCA.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on juvenile justice service providers as well as private entities who are selected to serve as an RCA.

D. FISCAL COMMENTS:

The bill requires DJJ to transfer all administrative and operational funding associated with community-based juvenile justice services to the RCA in each pilot site (less those funds that are necessary to provide and coordinate management of quality assurance and oversight). DJJ provided the following chart that identifies the FTE and funding associated with each pilot site:

	Budget Entity									
Circuit	Detention Centers		Probation & Community Corrections		Residential Corrections		Prevention		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
2	59.0	3,499,684	27.0	2,937,058	-	5,343,098	-	2,121,815	**86.0**	**13,901,655**
6	163.0	9,481,008	100.0	8,388,165	24.0	9,476,243	1.0	4,795,264	**288.0**	**32,140,680**
11	211.0	13,648,702	146.0	12,936,145	-	5,769,631	1.0	3,169,052	**358.0**	**35,523,530**
	433.0	**26,629,394**	**273.0**	**24,261,368**	**24.0**	**20,588,972**	**2.0**	**10,086,131**	**732.0**	**81,565,865**

Using the above data, DJJ would be required to transfer $81,565,865 (less the funds necessary to provide and coordinate management of quality assurance and oversight) to the regional coordinating agencies. It is unclear what will happen to the FTE currently associated with these services. DJJ will no longer have the funding for these FTE; however, the RCA may elect to hire some or all of them.

DJJ noted in its analysis of the bill that it would have to determine what funds in circuits outside of the pilot circuits apply to youth in the pilot circuits. They would also have to determine what funds in the pilot circuits apply to youth not from the pilot circuits. This would be necessary in order to accurately reflect the costs associated with those youth in the pilot circuits.

Regarding the bill's requirement that DJJ establish a quality assurance program, DJJ stated the following:

> The Department will need to establish a quality assurance program to include aspects outlined in the proposed bill which is different than the existing quality assurance process. Currently the Department's quality assurance process reviews and evaluates individual service providers. The bill implies that the regional coordinating agencies will be reviewed on a set of standards as opposed to the individual providers to ensure services regionally are being provided as dictated by statute, rule etc. The quality assurance program might be similar to that of DCF that reviews youth records to ensure appropriate, quality services are provided overall and not at the individual service provider level. If this were to occur a statewide youth records system would need to be established to provide for outcome reviews. The currently existing quality assurance system could absorb this task as they are regionally located and well trained in quality assurance protocols.

The bill requires DJJ to annually measure and report the outcomes and effectiveness of the services provided by providers who contract with the RCAs. DJJ states that this can be done using existing resources with DJJ's Bureau of Research and Planning but will be dependent on the providers using DJJ's Juvenile Justice Information System and Prevention Web System to track information.

Section 985.686, F.S., requires counties to pay the costs of providing detention care for juveniles for the period of time prior to final court disposition. The state is responsible for paying the costs of detention after final court disposition. As noted above, the detention centers in the 2nd, 6th, and 11th judicial circuits are operated by DJJ. Funding for these centers comes from General Revenue and trust funds (largely the Shared County/State Juvenile Detention Trust Fund). In their analysis of the bill, DJJ addressed this "cost-sharing" obligation and noted that the counties would still be required to pay the costs for pre-dispositional youth.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 130-132 require regional coordinating agencies to comply with statutory requirements and agency regulations in the provision of contractual services. It appears that the reference to "regional coordinating agency" may need to be changed to "providers" and the reference to "agency" should specify "regional coordinating agency."

DJJ noted the following their analysis of the bill:

> The three proposed pilot circuits do not currently have a complete continuum of services available within the circuit. The development of community-based and residential programs to meet specific treatment needs of boys and girls within a small geographic area, such as a circuit, will pose a challenge. To further complicate this issue, located within two of the pilot circuits are highly specialized programs, each being the only program of its type, that provide specialized placement for youth from throughout the state. Both of these programs are highly utilized, yet during 2010 only 14% of all placements originated from that home circuit. A mechanism would need to be put into place to allow these specialized programs to continue to be utilized statewide.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community-based juvenile justice; creating s. 985.665, F.S.; providing legislative intent; defining the term "regional coordinating agency"; providing requirements for a regional coordinating agency; providing for the Department of Juvenile Justice to contract with regional coordinating agencies for specified services relating to juvenile justice; providing for annual measurement and reporting concerning the outcomes and effectiveness of community-based juvenile justice services; requiring regional coordinating agencies to comply with specified requirements; providing for liability of regional coordinating agencies and contracted providers with respect to the treatment of juvenile offenders; providing for governance of regional coordinating agencies; providing for 2-year pilot programs in specified judicial circuits; requiring reports; providing an effective date.

WHEREAS, 94 percent of Florida youth grow up to be productive citizens, but the 6 percent of Florida youth that become delinquent cost the state of Florida an average of $5,200 per child annually according to 2008 statistics, and

WHEREAS, according to national studies, 27 percent of abused or neglected children become delinquent, and

WHEREAS, one of the most effective ways to reduce delinquency is to prevent child abuse, abandonment, and neglect, and

WHEREAS, Florida's juvenile commitment programs have a 39 percent recidivism rate within 1 year, and

WHEREAS, the Department of Juvenile Justice shows that 59 percent of the juveniles being rearrested offend within 120 days after being released, revealing a critical transition period currently not being addressed, and

WHEREAS, the State of Washington undertook a study which demonstrated that a significant level of future prison construction can be avoided, taxpayer dollars can be saved, and crime rates can be reduced by a portfolio of evidence-based youth service options, and

WHEREAS, it has been proven that at-risk youth benefit from a comprehensive approach through coordination of intensive prevention, diversion, and family services, and

WHEREAS, local management fosters all these approaches, ensures stronger relationships between providers and the family, and allows providers to assist in strengthening relationships between the child and the family, and

WHEREAS, instead of competing for funding, prevention, diversion, and juvenile justice services should cooperate with the goal of keeping youth out of juvenile detention, NOW, THEREFORE,

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

Section 1. Section 985.665, Florida Statutes, is created to read:

985.665 Community-based juvenile justice.—

(1)(a) It is the intent of the Legislature to direct the department to contract with competent community-based agencies to coordinate and manage juvenile justice and related services. By implementing community-based juvenile justice, the community-based regional coordinating agency will provide flexibility to assess needs, apportion the funds allocated to the department for this purpose, and build the appropriate continuum of care resulting in more local ownership of juvenile justice problems and better service outcomes. The community-based juvenile justice model is designed to treat most of the juveniles in services that are located and managed in their home communities and that will promote greater family involvement and engagement, promote better system and service coordination, and achieve more significant economic and operational efficiencies. These services may include intervention, prevention, assessment centers, diversion programs, civil citation, home detention, alternatives to detention, community-based services, probation, day treatment, independent living, evidence-based programs, residential programming, and detention.

(b) As used in this section, the term "regional coordinating agency" means a single nonprofit or county government agency with which the department shall contract for the provision of juvenile justice services in a community that consists of at least one entire county.

(c) The requirements for a regional coordinating agency include, but are not limited to:

1. The organizational infrastructure and financial capacity to coordinate, integrate, and manage all juvenile

justice services in the designated community in cooperation with law enforcement and the judiciary.

2. The ability to ensure continuity of care from entry to exit for all juveniles referred to the agency by law enforcement agencies, the court system, and other referral sources.

3. The ability to contract with providers to create a local network of juvenile justice services.

4. The willingness to accept accountability for meeting the outcomes and performance standards related to juvenile justice established by the Legislature and the Federal Government.

5. The capability and willingness to serve all juveniles referred to the agency by law enforcement agencies and the court system with funding from the department.

6. The willingness to ensure that each individual who provides juvenile justice services has successfully completed the training required by the department as of July 1, 2011.

(2) The department shall contract with the regional coordinating agency for the delivery, administration, and management of services, including the services specified in subsection (1) relating to juvenile justice, and other related services or programs, as appropriate. The department shall retain responsibility for the quality of contracted services and programs and shall ensure that services are delivered in accordance with applicable federal and state statutes and regulations.

(3)(a) The department, in partnership with an objective, competent entity, shall establish a quality assurance program

for community-based juvenile justice. The quality assurance program must include national standards for each specific component of these services. The department, in consultation with the regional coordinating agencies that are undertaking community-based juvenile justice, shall establish minimum thresholds for each component of service. Each regional coordinating agency must be evaluated annually by the department or by an objective, competent entity designated by the department under the provisions of the quality assurance program.

(b) The department shall establish and operate a comprehensive system to measure and report annually the outcomes and effectiveness of the services that are part of the regional coordinating agencies' community-based juvenile justice service programs. The department shall use these findings in making recommendations to the Governor and the Legislature for future program and funding priorities in the juvenile justice system.

(4) The regional coordinating agency must comply with statutory requirements and agency regulations in the provision of contractual services. Each regional coordinating agency must contract with providers meeting the current department standards under this chapter. The department, in order to eliminate or reduce the number of duplicate inspections by various program offices, shall coordinate inspections required pursuant to approval of agencies under this section.

(5) With respect to the treatment of juvenile offenders under this section, regional coordinating agencies and contracted providers shall be treated as the state and its

agencies and subdivisions for liability purposes under s. 768.28.

(6) The operations of a regional coordinating agency shall be governed by a local board of directors, of which 75 percent of the membership shall be comprised of persons residing within the service area of the regional coordinating agency.

(7) Beginning in the 2011-2012 fiscal year, the department shall establish a minimum of three pilot sites to operate for 2 years each. These pilot sites must be established in judicial circuits 2, 6, and 11. Regional coordinating agencies may be selected from a single source pursuant to s. 287.057(3)(c) and must be established organizations within the circuit. The department shall select the regional coordinating agencies for each of the pilot sites by December 1, 2011. Contracts with organizations responsible for the pilots shall include the management and administration of all juvenile justice services specified in subsection (1). The department is required to transfer all administrative and operational funding associated with these services to the regional coordinating agency, less those funds necessary to provide and coordinate management of quality assurance and oversight. Each regional coordinating agency that participates in the pilot effort or any future community-based juvenile justice effort as described in this section must thoroughly analyze and report the complete direct and indirect costs of delivering these services through the department and the full cost of community-based juvenile justice, including the cost of monitoring and evaluating the contracted services. No later than January 31 of each year,

beginning in 2013, the department shall submit the evaluation regarding quality performance, outcome measure attainment, and cost efficiency, as provided in paragraph (3)(b), for each pilot program in operation during the preceding fiscal year, to the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and the House of Representatives, and the Governor.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 339 Possession of Stolen Credit or Debit Cards
SPONSOR(S): Perman
TIED BILLS: **IDEN./SIM. BILLS:** SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, mere possession of a stolen credit or debit card is not, per se, illegal. Section 817.60, F.S., contains several offenses relating to the unauthorized possession of a credit card, however all current offenses under this section require either proof of intent to use, sell, or transfer a stolen credit card or require a fraudulent intent in obtaining the credit card.

This bill provides that a person commits a third degree felony if a person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent and with the intent to impede the recovery of the credit or debit card by the cardholder.

The bill provides that a retailer who takes, accepts, retains, possesses or processes a stolen credit or debit card in the ordinary course of business and without actual knowledge that the card is stolen does not violate the provisions of the bill.

The Criminal Justice Impact Conference (CJIC) has not met to determine the fiscal impact of HB 339. On March 17, 2010, CJIC determined that CS/HB 621, which contained similar provisions relating to unlawful possession of a credit or debit card, would have an insignificant impact on state prison beds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 817.60(1), F.S., is contained within Part II of ch. 817, F.S., which is the 1967 "State Credit Card Crime Act."[1] This subsection provides criminal penalties for various crimes related to credit cards.[2] Several offenses that are punishable as a first degree misdemeanor[3] include:

- Taking[4] a credit card from the person, possession, custody, or control of another without the cardholder's consent or, with knowledge the card has been so taken, receiving the credit card with the intent to use it, to sell it, or to transfer it to another person other than the issuer or the cardholder;
- Receiving a credit card that is known to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retaining the card with the intent to use, sell, or transfer the card to another person other than the issuer or the cardholder;
- Selling or buying a credit card from a person other than the issuer;
- Obtaining a credit card as security for debt with intent to defraud; or
- Signing the credit card of another.[5]

Section 817.60, F.S., also provides criminal penalties punishable as a third degree felony[6] for more serious offenses relating to credit cards such as:

- Receiving two or more credit cards within a 12-month period issued in the names of different cardholders, which the person had reason to know were taken or retained under circumstances that constitute credit card theft;
- Possessing two or more counterfeit credit cards;
- Making a device or instrument that purports to be a credit card of a named issuer but which the issuer did not authorize; or
- Falsely embossing a credit card without authorization of the issuer.[7]

It is possible that possession of a stolen credit card could be prosecuted as theft under s. 812.014, F.S. Section 812.014(1), F.S., provides a person commits theft if he or she knowingly obtains the property of another with the intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[8]

The penalties for a violation of s. 812.014, F.S., are generally tied to value of the stolen goods.[9] The actual value of a credit card would likely be determined to be the value of the plastic used to make the

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[1] Section 817.57, F.S.

[2] "Credit card" is defined to mean any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device." Section 817.58(4), F.S.

[3] A first degree misdemeanor is punishable by up to one year in county jail and a maximum $1,000 fine. Sections 775.082, and 775.083, F.S.

[4] Taking a credit card without consent includes obtaining the card by statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, or embezzlement or obtaining property through false pretense, false promise, or extortion. Section 817.60(1), F.S.

[5] Section 817.60(1)-(4), F.S.

[6] A third degree felony is punishable by up to five years imprisonment and a maximum $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

[7] Section 817.60(5) and (6), F.S.

[8] Section 812.014(1), F.S.

[9] Section 812.014, F.S. If the value of the stolen property is $100,000 or greater, the offense is punishable as a first degree felony; if the value of the stolen property is between $20,000 and $100,000, the offense is a second degree felony; if the value of the stolen

credit card, which would likely be under $300 and thus prosecuted as a second degree misdemeanor[10].[11]

It is possible that possession of a stolen credit card could be prosecuted as the offense of dealing in stolen property.[12] Section 812.019(1), F.S., provides that a person commits a second degree felony[13] if the person traffics[14] in or endeavors to traffic in property that he or she knew or should have known was stolen.

Effect of the Bill

The bill amends s. 817.60(1), F.S., to provide that a person commits a third degree felony if a person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent and with the intent to impede the recovery of the credit or debit card by the cardholder.

The bill provides that a retailer who takes, accepts, retains, possesses, or processes a stolen credit or debit card in the ordinary course of business and without actual knowledge that the card is stolen does not violate the provisions of the bill. This exception does not apply to a retail employee who has actual knowledge that the card is stolen.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 817.60, F.S., relating to theft; obtaining credit card through fraudulent means.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference (CJIC) has not met to determine the fiscal impact of HB 339. On March 17, 2010, CJIC determined that CS/HB 621, which contained similar provisions relating to unlawful possession of a credit or debit card, would have an insignificant impact on state prison beds.

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property is between $300 and $5,000, the offense is a third degree felony; if the value of the stolen goods is valued at between $100 and $300, the offense is a first degree misdemeanor; if the value of the stolen goods is valued at less than $100, the offense is a second degree misdemeanor. Some property is listed specifically in s. 812.014, F.S. Theft of this specified property may be punished at a greater degree of punishment regardless of the value of the stolen items.

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

[11] Section 812.014(3)(a), F.S.

[12] Section 812.019(1), F.S.

[13] A second degree felony is punishable by up to 15 years imprisonment and a maximum $10,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

[14] "Traffic" is defined to mean to sell, transfer, distribute, dispense, or otherwise dispose of property, or to buy, receive possess, obtain control of, or use property with intent to sell, transfer, distribute, dispense, or otherwise dispose of such property. Section 812.012(8), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The term "debit card" is not defined in ch. 817, F.S.

- The bill provides that a person commits a third degree felony if he or she knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent and with the intent to impede the recovery of the card by the cardholder.

  Lines 26-33 of the bill state that, "A retailer who takes, accepts, retains, possesses, or processes a stolen credit or debit card does not commit a violation of this subsection if the retailer does so in the ordinary course of business and the retailer does not have actual knowledge that the card is stolen; provided, this exception does not apply to a retail employee who has actual knowledge that the card is stolen."

  It is unclear why this exception is necessary. Only retail employees who have the intent to impede recovery of the card by the cardholder could be charged with a violation of this subsection. Retail employees who do not have such intent could not be charged. Further, there are numerous statutes that make it a crime to possess certain instruments/documents that do not contain exceptions for retailers (see, e.g., s. 831.28, F.S., which makes it a crime for a person to possess a counterfeit payment instrument; and s. 322.212, F.S., which makes it a crime for a person to possess any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card).

- As drafted, the exception applies to retailers who take, accept, retain, possess, or process a card, yet the offense only applies to those who possess, receive, or retain a card. These "acts" should be identical to the acts described by the offense.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to possession of stolen credit or debit cards; amending s. 817.60, F.S.; prohibiting possession of a stolen credit or debit card in specified circumstances; providing penalties; providing that a retailer who takes, accepts, retains, or possesses a stolen credit or debit card without knowledge that the card is stolen and who is authorized to process transactions by the company issuing the credit or debit card does not commit a violation under certain circumstances; providing an exception for certain retail employees; providing an effective date.

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

Section 1. Subsection (8) is added to section 817.60, Florida Statutes, to read:

817.60 Theft; obtaining credit card through fraudulent means.—

(8) UNLAWFUL POSSESSION OF A STOLEN CREDIT OR DEBIT CARD.—A person who knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent and with the intent to impede the recovery of the credit or debit card by the cardholder commits unlawful possession of a stolen credit or debit card and is subject to the penalties set forth in s. 817.67(2). A retailer that takes, accepts, retains, possesses, or processes a stolen credit card or debit card does not commit a violation of this subsection if

the retailer does so in the ordinary course of business and the retailer does not have actual knowledge that the credit card or debit card is stolen; provided, this exception does not apply to a retail employee who has actual knowledge that the credit card or debit card is stolen.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4069 Firearms Purchases
SPONSOR(S): Diaz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams	Cunningham
2) Judiciary Committee			

SUMMARY ANALYSIS

In 1968, the federal Gun Control Act (GCA) was enacted, which prohibited a licensed importer, manufacturer, dealer, or collector to sell or deliver any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located. The GCA specified that this prohibition did not apply to the sale or delivery of a rifle or shotgun to a resident of a contiguous state, provided that certain conditions were met. This "contiguous state" provision was amended in 1986 by the Firearms Owners' Protection Act, to allow licensees to sell or deliver rifles and shotguns to residents of any state (not just contiguous states), provided that certain conditions were met.

In 1979, Florida enacted SB 452, which created s. 790.28, F.S. The law mirrored the provisions in the original GCA and provided that a resident of Florida may purchase a rifle or shotgun in any contiguous state as long as that resident conforms to the applicable laws and regulations of the United States, the state where the purchase is made, and laws and regulations of the state of Florida.

Some states have revised their laws to reflect the 1986 amendments to the GCA, allowing interstate sales of rifles and shotguns to residents of any state. However, Florida's current law remains similar to the original provision of the GCA that allows interstate sales of rifles and shotguns only to residents of contiguous states.

HB 4069 repeals s. 790.28, F.S. As a result, Florida residents will be able to purchase rifles and shotguns from any state (not just contiguous states), as long as the transferee meets in person with the transferor to accomplish the transfer; and the sale, delivery and receipt complies with federal law and the applicable laws and regulations of both states.

This bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1968, the federal Gun Control Act (GCA) was enacted.[1] Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector[2] to sell or deliver any firearm[3] to any person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located.[4] The GCA specified that this prohibition did not apply to the sale or delivery of a rifle[5] or shotgun[6] to a resident of a state contiguous to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permits such sale or delivery by law;
- The sale fully complies with the legal conditions of sale in both such contiguous states; and
- The purchaser and the licensee have, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to interstate firearm transactions that take place at a location other than at the licensee's premises.[7]

The "contiguous state" provision of the GCA was amended in 1986 by the Firearms Owners' Protection Act, to allow licensees to sell or deliver a rifle or shotgun to residents of any state (not just contiguous states), provided that the transferee met in person with the transferor to accomplish the transfer; and that the sale, delivery and receipt fully complied with the legal conditions of sale in the buyer's and seller's states.[8] Thus, since 1986, it has been legal for a resident of one state to purchase a rifle or shotgun in any other state (not just contiguous states) so long as the above criteria are met.

A number of states, including Florida, patterned their laws after the original provision of the GCA that allows nonresidents to purchase rifles and shotguns from licensees only in contiguous states.[9] However, some states have revised their laws to reflect the 1986 amendments to the GCA that allows interstate sales of rifles or shotguns to residents of any state.[10]

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[1] Pub. L. No. 90-618 (codified at 18 U.S.C. ss. 921-928).

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

[3] 18 U.S.C. s. 921 defines the term "firearm" as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

[4] 18 U.S.C. s. 922(b)(3) (1968).

[5] 18 U.S.C. s. 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

[6] 18 U.S.C. s. 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

[7] 18 U.S.C. s. 922(b)(3) (1968).

[8] Pub. L. No. 99-308.

[9] The law of Oregon provides that a resident may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive or transport into Oregon such rifle or shotgun, unless the purchase or transfer violates the law of Oregon, the state in which the purchase or transfer is made or the United States. "Contiguous state" means California, Idaho, Nevada or Washington. *See* ORS 166.490.

[10] The law of Alabama provides that any resident of Alabama authorized to sell and deliver rifles, shotguns, and ammunition may sell and deliver them to a resident of any state where the sale of the firearms and ammunition is legal. Any purchaser of the firearm or ammunition may take or send it out of the state or have it delivered to his or her place of residence. Any resident of Alabama who legally purchases rifles, shotguns, and ammunition in any state where the purchase is legal may take delivery of the weapons either in the state where they were purchased or in Alabama. *See* Ala. Code. S. 13A-11-58 (2006).

Florida's law

In 1979, Florida enacted SB 452, which created s. 790.28, F.S. The law mirrored the provisions in the original GCA and provided that a resident of Florida may purchase a rifle or shotgun in any contiguous state as long as that resident conforms to the applicable laws and regulations of the United States, the state where the purchase is made, and laws and regulations of the state of Florida.[11]

Effect of the bill

HB 4069 repeals s. 790.28, F.S. As a result, Florida residents will be able to purchase rifles and shotguns from any state (not just contiguous states), provided that the transferee meets in person with the transferor to accomplish the transfer; and that the sale, delivery and receipt complies with the legal conditions of sale in the buyer's and seller's states.

The bill does not exempt residents of Florida that purchase a rifle or shotgun in any state and bring such firearm back into Florida from Florida's laws relating to weapons and firearms in Chapter 790, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 790.28, F.S., related to purchase of rifles and shotguns in contiguous states.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[11] *See* s. 790.28, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to firearms purchases; repealing s. 790.28, F.S., relating to purchase of rifles and shotguns in contiguous states; providing an effective date.

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

Section 1. Section 790.28, Florida Statutes, is repealed.

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