



Criminal Justice Subcommittee

February 8th, 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 08, 2011 09:00 am
End Date and Time: Tuesday, February 08, 2011 11:00 am
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 45 Regulation of Firearms and Ammunition by Gaetz
HB 81 Treatment-based Drug Court Programs by Rouson
HB 101 Violations of Injunctions for Protection by Cruz

NOTICE FINALIZED on 02/01/2011 16:13 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 45 Regulation of Firearms and Ammunition

SPONSOR(S): Gaetz and others

TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

Section 790.33, F.S., currently preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. Subsection (2) of the statute provides such express authorization by giving counties the authority to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun.

HB 45 deletes subsection (2) from s. 790.33, F.S. This removes the statutory language that authorizes counties to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun. HB 45 replaces subsection (2) of s. 790.33, F.S., with language prohibiting specified local governmental entities from regulating or attempting to regulate firearms or ammunition in any manner (except as specifically authorized by s. 790.33, F.S., or by general law) and provides exceptions to this prohibition.

Counties would likely still have the authority, pursuant to Art. VIII, Section 5(b) of the Florida Constitution, to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within such county.

HB 45 also sets forth various penalties for violating s. 790.33, F.S., including provisions that:

- Make it a 3rd degree felony for any person or entity to knowingly and willfully violate s. 790.33, F.S.;
- Specify that a governmental entity in whose service or employ a provision of the statute is violated may be assessed a fine of no more than \$5 million if the court determines that the violation was willful and that any person at the governmental entity with oversight of the person knew or in the exercise of ordinary care should have known the act was a violation;
- Specify that a knowing and willful violation of the statute by a person acting in an official capacity is cause for immediate termination of employment; and
- Authorize a person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or enforced in violation of the statute to file suit for declarative and injunctive relief and for all actual and consequential damages attributable to the violation.

CJIC has not yet met to consider the prison bed impact of this bill. However, because the bill creates a new 3rd degree felony, it could have a negative fiscal impact on the Department of Corrections. The bill also requires governmental entities who willfully violate the statute to pay a \$5 million fine and requires the fine to be deposited in equal amounts into the administrative accounts of the state attorney and the court in the jurisdiction where the violation occurred and was prosecuted. This could have a negative fiscal impact on state and local governmental entities who willfully violate the statute but a positive fiscal impact on state attorneys and courts.

This bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Legislative Intent

Section 790.33, F.S., preempts local governments from regulating firearms¹ and ammunition² unless expressly authorized to do so by general law. Subsection (3) of the statute provides that the intent of the section is to:

- Provide uniform firearms laws in the state;
- Declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof;
- Prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and
- Require local jurisdictions to enforce state firearms laws.

Effect of the Bill

The bill adds the following legislative intent language to s. 790.33(3), F.S.:

It is further the intent of this section to deter and prevent the violation of this section, the abuse of official authority that occurs when local enactments are knowingly passed in violation of state law, and the violation under color of local authority of rights protected under the constitution and laws of this state.

What Constitutes Regulation

As noted above, s. 790.33(1), F.S., preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. The statute specifies that regulation includes the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation of firearms and ammunition. The statute does not currently specify that the *storage* of firearms is included within the term "regulation;" however, recent case law would indicate as such.³

Effect of the Bill

HB 45 amends s. 790.33(1), F.S., to specify that regulation also includes the storage of firearms and ammunition. Thus, unless expressly authorized by general law, local governments will be preempted from regulating how firearms and ammunition are stored.

Exceptions to Preemption

Florida law and the Florida Constitution contain exceptions to the general rule that firearm regulation is preempted to the state.

Section 790.33(2), F.S., enacted in 1987, currently authorizes counties to regulate firearms by giving them the option to adopt an ordinance requiring a waiting period of up to, but not to exceed, three working days between the purchase⁴ and delivery of a handgun.⁵ The statute further specifies that:

¹ Section 790.001, F.S., defines the term "firearm" as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."

² Section 790.001, F.S., defines the term "ammunition" to mean an object consisting of all of the following: a fixed metallic or nonmetallic hull or casing containing a primer; one or more projectiles, one or more bullets, or shot; and gunpowder.

³ In 2000, the City of South Miami passed City Ordinance Number 14-00-1716, which required locking devices on firearms stored within the city. In 2002, Florida's Third District Court of Appeal held the ordinance null and void stating that local governments were preempted from regulating firearms. *See National Rifle Ass'n of America, Inc., v. City of South Miami*, 812 So.2d 504 (Fla. 3rd DCA 2002).

⁴ For purposes of s. 790.33(2), F.S., "purchase" is defined as any payment of deposit, payment in full, or notification of intent to purchase.

- The adoption of a waiting period ordinance, by any county, requires a majority vote of the county commission.
- The authority to enact waiting period ordinances is limited solely to individual counties and to the provisions and restrictions contained in s. 790.33(2), F.S.
- Waiting period ordinances apply to all sales of handguns to individuals by a retail establishment⁶ unless an individual is exempt.
- Waiting period ordinances do not require reporting or notification to any source outside the retail establishment.⁷
- The following are exempt from waiting period ordinances:
 - o Individuals who are licensed to carry concealed firearms under the provisions of s. 790.06, F.S., or who are licensed to carry concealed firearms under any other provision of state law and who show a valid license;
 - o Individuals who already lawfully own another firearm and who show a sales receipt for another firearm, who are known to own another firearm through a prior purchase from the retail establishment, or who have another firearm for trade-in;
 - o Law enforcement or correctional officers as defined in s. 943.10, F.S.;
 - o Law enforcement agencies as defined in s. 934.02, F.S.;
 - o Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or
 - o Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.

In 1998, subsequent to the enactment of s. 790.33, F.S., the Florida Constitution was amended to authorize counties to regulate firearms. Article VIII, s. 5(b) of the Florida Constitution authorizes counties to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale⁸ of any firearm occurring within such county.⁹

Effect of the Bill

HB 45 deletes subsection (2) from s. 790.33, F.S. This removes the statutory language that authorizes counties to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun. Counties would likely still have the authority, pursuant to the Florida Constitution, to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within such county.

HB 45 replaces subsection (2) of s. 790.33, F.S., with language prohibiting specified entities, when acting in their official capacity or otherwise under the color of law, from regulating or attempting to regulate firearms or ammunition in any manner, whether by enactment or enforcement of any ordinance, regulation, measure, directive, rule, enactment, order, policy, or exercise of proprietary authority, or by any other means, except as specifically authorized by s. 790.33, F.S., or by general law.

The specified entities include:

- Local governments;
- Special districts;
- Political subdivisions;
- Governmental authorities, commissions, or boards;
- State governmental agencies;

⁵ While the term “handgun” is not defined in s. 790.33, F.S., the term is defined in s. 790.0655, F.S., as “a firearm capable of being carried and used by one hand, such as a pistol or revolver.”

⁶ The term “retail establishment” is defined as a gun shop, sporting goods store, pawn shop, hardware store, department store, discount store, bait or tackle shop, or any other store or shop that offers handguns for walk-in retail sale but does not include gun collectors shows or exhibits, or gun shows. s. 790.33(2)(b), F.S.

⁷ Records of handgun sales must be available for inspection by any law enforcement agency. s. 790.33(2)(c), F.S.

⁸ The term “sale” is defined as “the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access.” Art. VIII, s. 5(b), Fla. Const.

⁹ Concealed weapons permit holders do not have to comply with the waiting periods when purchasing a firearm. Art. VIII, s. 5(b), Fla. Const.

- Any official, agent, employee, or person, whether public or private, who works or contracts with any state or other governmental entity;
- Any entity that serves the public good when such service is provided in whole or in part by any governmental entity or utilizes public support or public funding;
- Any body to which authority or jurisdiction is given by any unit or subdivision of any government or that serves the public good in whole or in part with public support, authorization, or funding or that has the authority to establish rules or regulations that apply to the public use of facilities, property, or grounds; and
- Any public entity other than those specified above, including, but not limited to, libraries, convention centers, fairgrounds, parks, and recreational facilities.

The bill specifies that s. 790.33, F.S., does not prohibit:

- Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;
- A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties;
- Except as provided in s. 790.251, F.S.,¹⁰ any entity listed above from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties; or
- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge.

The bill adds a new subsection (4) to s. 790.33, F.S., setting forth various penalty provisions for violating the statute. Specifically, the bill:

- Makes it a 3rd degree felony¹¹ for any person or entity to knowingly and willfully violate s. 790.33, F.S.;
- Specifies that, except as provided for by the Florida and United States Constitutions, public funds may not be used to defend the unlawful conduct of a person charged with a knowing and willful violation of the statute unless the charges are dismissed or the person is determined to be not guilty;
- Provides that public funds may be used to provide the services of a public defender or court-appointed conflict counsel as provided by law;
- Specifies that a governmental entity in whose service or employ a provision of the statute is violated may be assessed a fine of no more than \$5 million if the court determines that the violation was willful and that any person at the governmental entity with oversight of the offending official, designee, contractee, or employee knew or in the exercise of ordinary care should have known the act was a violation. The bill requires the fine to be deposited in equal amounts into the administrative accounts of the state attorney and the court in the jurisdiction where the violation occurred and was prosecuted;
- Requires the state attorney to investigate complaints of criminal violations of the statute and, where probable cause exists, to prosecute violators. The bill provides that state attorneys who fail to do so may be held accountable under the appropriate Florida rules of professional conduct;
- Specifies that a knowing and willful violation of the statute by a person acting in an official capacity for any of the entities listed above is cause for immediate termination of employment or contract or removal from office by the Governor; and
- Authorizes a person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or enforced in violation of the statute to file suit for declarative and injunctive relief and for all actual and consequential damages attributable to the violation. The bill requires the court to award the

¹⁰ Section 790.251, F.S., related to the protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

prevailing plaintiff in any such suit attorneys fees as determined by the rate used by the federal district court with jurisdiction over the political subdivision for civil rights actions, liquidated damages of three times the attorney's fees, and litigation costs.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.33, F.S., relating to field of regulation of firearms and ammunition preempted.

Section 2. This bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

CJIC has not yet met to consider the prison bed impact of this bill. However, because the bill creates a new 3rd degree felony, it could have a negative fiscal impact on the Department of Corrections.

The bill also requires governmental entities who willfully violate the statute to pay a \$5 million fine and requires the fine to be deposited in equal amounts into the administrative accounts of the state attorney and the court in the jurisdiction where the violation occurred and was prosecuted. This could have a negative fiscal impact on state and local governmental entities who willfully violate the statute but a positive fiscal impact on state attorneys and courts.

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:

See "Drafting Issues or other Comments."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Currently, the bill is effective upon becoming a law. Generally, bills that impose criminal penalties are effective on October 1 so as to give adequate notice to the public, state attorneys, public defenders, etc.
2. The bill adds a new subsection (2) to s. 790.33, F.S., prohibiting specified entities from regulating or attempting to regulate firearms or ammunition in any manner, *except as specifically authorized by s. 790.33, F.S., or by general law*. The phrase "general law" is generally construed to refer to statutes - not provisions contained within the Florida Constitution.

As noted above, Art. VIII, Section 5(b) of the Florida Constitution authorizes counties to regulate firearms by giving them the authority to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within such county. As drafted, the bill does not recognize this provision, which could cause confusion (and possible litigation) as to whether counties still have the authority to regulate firearms in accordance with the Constitution. This could be remedied by replacing the language on lines 60 and 61 with:

other means, except as specifically authorized by this section, by general law, or by the Florida Constitution:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to regulation of firearms and ammunition;
3 amending s. 790.33, F.S.; clarifying and reorganizing
4 provisions which preempt to the state the entire field of
5 regulation of firearms; prohibiting specified persons and
6 entities, when acting in their official capacity, from
7 regulating or attempting to regulate firearms or
8 ammunition in any manner except as specifically authorized
9 by s. 790.33, F.S., or by general law; providing a penalty
10 for knowing and willful violations; eliminating provisions
11 authorizing counties to adopt an ordinance requiring a
12 waiting period between the purchase and delivery of a
13 handgun; providing additional intent of the section;
14 providing that public funds may not be used to defend the
15 unlawful conduct of any person charged with a knowing and
16 willful violation of the section; providing exceptions;
17 providing fines for governmental entities in whose service
18 or employ the provisions of the section are knowingly and
19 willfully violated; providing for deposit of fines;
20 providing for investigation of complaints of criminal
21 violations of the section and prosecution of violators by
22 the state attorney; providing for termination of
23 employment or contract or removal from office of a person
24 acting in an official capacity who knowingly and willfully
25 violates any provision of the section; providing for
26 declarative and injunctive relief for specified persons or
27 organizations; providing for specified damages and
28 interest; providing for seizure of certain municipal

HB 45

2011

29 vehicles for specified nonpayment of damages; providing
 30 exceptions to prohibitions of the section; providing an
 31 effective date.

32

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

34

35 Section 1. Section 790.33, Florida Statutes, is amended to
 36 read:

37 790.33 Field of regulation of firearms and ammunition
 38 preempted.—

39 (1) PREEMPTION.—Except as expressly provided by general
 40 law, the Legislature hereby declares that it is occupying the
 41 whole field of regulation of firearms and ammunition, including
 42 the purchase, sale, transfer, taxation, manufacture, ownership,
 43 possession, storage, and transportation thereof, to the
 44 exclusion of all existing and future county, city, town, or
 45 municipal ordinances or regulations relating thereto. Any such
 46 existing ordinances or regulations are hereby declared null and
 47 void. ~~This subsection shall not affect zoning ordinances which~~
 48 ~~encompass firearms businesses along with other businesses.~~
 49 ~~Zoning ordinances which are designed for the purpose of~~
 50 ~~restricting or prohibiting the sale, purchase, transfer, or~~
 51 ~~manufacture of firearms or ammunition as a method of regulating~~
 52 ~~firearms or ammunition are in conflict with this subsection and~~
 53 ~~are prohibited.~~

54 (2) PROHIBITIONS.—The following entities may not, when
 55 acting in their official capacity or otherwise under color of
 56 law, regulate or attempt to regulate firearms or ammunition in

57 any manner, whether by the enactment or enforcement of any
 58 ordinance, regulation, measure, directive, rule, enactment,
 59 order, policy, or exercise of proprietary authority, or by any
 60 other means, except as specifically authorized by this section
 61 or by general law:

62 (a) A local government.

63 (b) A special district.

64 (c) A political subdivision.

65 (d) A governmental authority, commission, or board.

66 (e) A state governmental agency.

67 (f) Any official, agent, employee, or person, whether
 68 public or private, who works or contracts with any state or
 69 other governmental entity.

70 (g) Any entity that serves the public good when such
 71 service is provided in whole or in part by any governmental
 72 entity or utilizes public support or public funding.

73 (h) Any public entity other than those specified in this
 74 subsection, including, but not limited to, libraries, convention
 75 centers, fairgrounds, parks, and recreational facilities.

76 (i) Any body to which authority or jurisdiction is given
 77 by any unit or subdivision of any government or that serves the
 78 public good in whole or in part with public support,
 79 authorization, or funding or that has the authority to establish
 80 rules or regulations that apply to the public use of facilities,
 81 property, or grounds.

82 ~~(2) LIMITED EXCEPTION; COUNTY WAITING PERIOD ORDINANCES.~~

83 ~~(a) Any county may have the option to adopt a waiting-~~
 84 ~~period ordinance requiring a waiting period of up to, but not to~~

85 | ~~exceed, 3 working days between the purchase and delivery of a~~
 86 | ~~handgun. For purposes of this subsection, "purchase" means~~
 87 | ~~payment of deposit, payment in full, or notification of intent~~
 88 | ~~to purchase. Adoption of a waiting-period ordinance, by any~~
 89 | ~~county, shall require a majority vote of the county commission~~
 90 | ~~on votes on waiting-period ordinances. This exception is limited~~
 91 | ~~solely to individual counties and is limited to the provisions~~
 92 | ~~and restrictions contained in this subsection.~~

93 | ~~(b) Ordinances authorized by this subsection shall apply~~
 94 | ~~to all sales of handguns to individuals by a retail~~
 95 | ~~establishment except those sales to individuals exempted in this~~
 96 | ~~subsection. For purposes of this subsection, "retail~~
 97 | ~~establishment" means a gun shop, sporting goods store, pawn~~
 98 | ~~shop, hardware store, department store, discount store, bait or~~
 99 | ~~tackle shop, or any other store or shop that offers handguns for~~
 100 | ~~walk-in retail sale but does not include gun collectors shows or~~
 101 | ~~exhibits, or gun shows.~~

102 | ~~(c) Ordinances authorized by this subsection shall not~~
 103 | ~~require any reporting or notification to any source outside the~~
 104 | ~~retail establishment, but records of handgun sales must be~~
 105 | ~~available for inspection, during normal business hours, by any~~
 106 | ~~law enforcement agency as defined in s. 934.02.~~

107 | ~~(d) The following shall be exempt from any waiting period:~~

108 | ~~1. Individuals who are licensed to carry concealed~~
 109 | ~~firearms under the provisions of s. 790.06 or who are licensed~~
 110 | ~~to carry concealed firearms under any other provision of state~~
 111 | ~~law and who show a valid license;~~

112 | ~~2. Individuals who already lawfully own another firearm~~

HB 45

2011

113 | ~~and who show a sales receipt for another firearm; who are known~~
 114 | ~~to own another firearm through a prior purchase from the retail~~
 115 | ~~establishment; or who have another firearm for trade-in;~~

116 | ~~3. A law enforcement or correctional officer as defined in~~
 117 | ~~s. 943.10;~~

118 | ~~4. A law enforcement agency as defined in s. 934.02;~~

119 | ~~5. Sales or transactions between dealers or between~~
 120 | ~~distributors or between dealers and distributors who have~~
 121 | ~~current federal firearms licenses; or~~

122 | ~~6. Any individual who has been threatened or whose family~~
 123 | ~~has been threatened with death or bodily injury, provided the~~
 124 | ~~individual may lawfully possess a firearm and provided such~~
 125 | ~~threat has been duly reported to local law enforcement.~~

126 | (3) POLICY AND INTENT.—

127 | (a) It is the intent of this section to provide uniform
 128 | firearms laws in the state; to declare all ordinances and
 129 | regulations null and void which have been enacted by any
 130 | jurisdictions other than state and federal, which regulate
 131 | firearms, ammunition, or components thereof; to prohibit the
 132 | enactment of any future ordinances or regulations relating to
 133 | firearms, ammunition, or components thereof unless specifically
 134 | authorized by this section or general law; and to require local
 135 | jurisdictions to enforce state firearms laws.

136 | (b) It is further the intent of this section to deter and
 137 | prevent the violation of this section, the abuse of official
 138 | authority that occurs when local enactments are knowingly passed
 139 | in violation of state law, and the violation under color of
 140 | local authority of rights protected under the constitution and

141 laws of this state.

142 (4) PENALTIES.-

143 (a) Any person who, or entity that, knowingly and
 144 willfully violates a provision of this section commits a felony
 145 of the third degree, punishable as provided in s. 775.082 or s.
 146 775.083.

147 (b)1. Except as required by s. 16, Art. I of the State
 148 Constitution or the Sixth Amendment to the United States
 149 Constitution, public funds may not be used to defend the
 150 unlawful conduct of any person charged with a knowing and
 151 willful violation of this section, unless the charges against
 152 such person are dismissed or such person is determined to be not
 153 guilty at trial.

154 2. Notwithstanding subparagraph 1., public funds may be
 155 expended to provide the services of the office of public
 156 defender or court-appointed conflict counsel as provided by law.

157 (c) The governmental entity in whose service or employ a
 158 provision of this section is violated may be assessed a fine of
 159 not more than \$5 million if the court determines that the
 160 violation was willful and that any person at the governmental
 161 entity with oversight of the offending official, designee,
 162 contractee, or employee knew or in the exercise of ordinary care
 163 should have known the act was a violation. Fines assessed under
 164 this section shall be deposited in equal amounts into the
 165 administrative account of the state attorney and the
 166 administrative account of the court in the jurisdiction in which
 167 the offense occurred and was prosecuted.

168 (d) The state attorney in the appropriate jurisdiction
 169 shall investigate complaints of criminal violations of this
 170 section and, where the state attorney determines probable cause
 171 of a violation exists, shall prosecute violators. Any state
 172 attorney who fails to execute his or her duties under this
 173 section may be held accountable under the appropriate Florida
 174 rules of professional conduct.

175 (e) A knowing and willful violation of any provision of
 176 this section by a person acting in an official capacity for any
 177 of the entities specified in this section or otherwise under
 178 color of law shall be cause for immediate termination of
 179 employment or contract or removal from office by the Governor.

180 (f) A person or an organization whose membership is
 181 adversely affected by any ordinance, regulation, measure,
 182 directive, rule, enactment, order, or policy promulgated or
 183 enforced in violation of this section may file suit in an
 184 appropriate court for declarative and injunctive relief and for
 185 all actual and consequential damages attributable to the
 186 violation. A court shall award the prevailing plaintiff in any
 187 such suit:

188 1. Attorney's fees in the trial and appellate courts to be
 189 determined by the rate used by the federal district court with
 190 jurisdiction over the political subdivision for civil rights
 191 actions;

192 2. Liquidated damages of three times the attorney's fees
 193 under subparagraph 1.; and

194 3. Litigation costs in the trial and appellate courts.
 195

196 Interest on the sums awarded pursuant to this subsection shall
 197 accrue at 15 percent from the date on which suit was filed.
 198 Where applicable, payment may be secured by seizure against any
 199 municipal vehicles used or operated for the benefit of any
 200 elected officeholder in the appropriate municipality if not paid
 201 within 72 hours after the order's enrollment and publication.

202 (5) EXCEPTIONS.—This section does not prohibit:

203 (a) Zoning ordinances that encompass firearms businesses
 204 along with other businesses, except that zoning ordinances that
 205 are designed for the purpose of restricting or prohibiting the
 206 sale, purchase, transfer, or manufacture of firearms or
 207 ammunition as a method of regulating firearms or ammunition are
 208 in conflict with this subsection and are prohibited;

209 (b) A duly organized law enforcement agency from enacting
 210 and enforcing regulations pertaining to firearms, ammunition, or
 211 firearm accessories issued to or used by peace officers in the
 212 course of their official duties;

213 (c) Except as provided in s. 790.251, any entity listed in
 214 paragraphs (2)(a)-(i) from regulating or prohibiting the
 215 carrying of firearms and ammunition by an employee of the entity
 216 during and in the course of the employee's official duties; or

217 (d) A court or administrative law judge from hearing and
 218 resolving any case or controversy or issuing any opinion or
 219 order on a matter within the jurisdiction of that court or
 220 judge.

221 (6)(b) SHORT TITLE.—As created by chapter 87-23, Laws of
 222 Florida, this section shall be known and may be cited as the
 223 "Joe Carlucci Uniform Firearms Act."

HB 45

2011

224 | Section 2. This act shall take effect upon becoming a law. |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 81 Treatment-based Drug Court Programs

SPONSOR(S): Rouson and others

TIED BILLS: IDEN./SIM. BILLS: SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>SM</i>
2) Health & Human Services Access Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.

In 2009, the admission criteria for post-adjudicatory drug courts was created to include more serious prison-bound, non-violent offenders and to allow drug court judges to hear any probation or community control violations related to failed substance abuse tests. The goal was to increase state savings by diverting prison-bound offenders to drug court programming. However, the Office of Program Policy Analysis & Government Accountability recently reported that without further post-adjudicatory drug court program expansion the projected savings will not be realized.

HB 81:

- Provides courts the discretion to allow offenders with prior violent felony offenses into a post-adjudicatory treatment-based drug court program after considering the offender's criminal record.
- Allows the drug court participant to have all their probation and community control violations heard by the judge presiding over the post-adjudicatory drug court.
- Allows an offender to be placed into a post-adjudicatory drug court after violating the terms of their probation or community control.
- Increases the number of sentencing points required for admission into the post-adjudicatory treatment-based drug court program to allow more offenders to be sentenced to the program.

This bill has an indeterminate fiscal impact on state expenditures. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior and is thus not a quantifiable fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drug Court Background

The drug court concept was developed in 1989 in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction." The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together. There are two types of drug court programs: pre-trial diversion and post-adjudicatory.¹

Pre-trial Diversion Drug Courts

Pre-trial diversion drug courts are designed for first-time offenders who, in lieu of the program, would likely be placed on county probation. Participants are diverted into the program prior to adjudication. Upon successful completion of the program, the offender's charges may be dropped.²

A person is eligible for pretrial diversion drug court if he or she is charged with a second or third degree felony for purchase or possession of a controlled substance under chapter 893, F.S., prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud and he or she:

- Has not been charged with a crime involving violence, including but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence;
- Has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in s. 948.08, F.S.; and
- Has not rejected on the record previously offered admission into the program.^{3,4}

Post-adjudicatory Drug Courts

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who have been adjudicated and typically have prior convictions. Post-adjudicatory drug courts generally use graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays.⁵ Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.⁶

Post-adjudicatory Drug Court Expansion

¹ *The Florida Drug Court System*, Publication by the Florida Supreme Court, revised January 2004, p.1.

² *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Office of Program Policy Analysis & Government Accountability, Report No. 09-13.

³ Section 948.08(6)(a), F.S.

⁴ However, if the state attorney can prove that the defendant was involved in the dealing or selling of controlled substances, the court can deny the defendant's admission into a pretrial intervention program. Section 948.08(6)(a)2., F.S.

⁵ OPPAGA Report No. 09-13.

⁶ OPPAGA Report No. 09-13.

In 2009, the Legislature appropriated \$19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to expand post-adjudicatory drug courts into eight counties.⁷ Currently, there are 30 post-adjudicatory drug courts operating in 14 judicial circuits.⁸

Through the passage of Ch. 2009-64, L.O.F., the Legislature created criteria for admission to post-adjudicatory drug courts to include more serious prison-bound, non-violent offenders.⁹ The goal was to divert these offenders from prison and reduce corrections costs by an estimated \$95 million. The eligibility criteria for post-adjudicatory drug court is based on the sentencing court's assessment of the defendant's:

- Criminal history,¹⁰
- Substance abuse screening outcome,
- Amenability to the services of the program,
- Total sentence points (must be 52 or fewer,)
- Agreement to enter the program, and
- The recommendation of the state attorney and the victim, if any.¹¹

The 2009 expansion allowed for two ways for an offender to participate in post-adjudicatory drug court:

- An offender can be sentenced to drug court as a condition of their probation or community control.¹²
- An offender can be placed into drug court after violating the terms of their probation or community control due to a failed or suspect substance abuse treatment test.¹³

In addition, the expansion provided:

- Violations of probation or community control by a post-adjudicatory drug court participant due to a failed or suspect substance abuse test to be heard by the judge presiding over the post-adjudicatory drug court program. After a hearing on or admission of the violation, the judge disposes of such violation, as he or she deems appropriate.¹⁴
- A mitigating sentence factor¹⁵ that allows a defendant to participate in a post-adjudicatory program if the defendant committed a nonviolent felony,¹⁶ has a Criminal Punishment Code scoresheet total of 52 points or fewer after including points for the violation, and is amenable to the services and is otherwise qualified.

⁷ *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Office of Program Policy Analysis & Government Accountability, Report No. 10-54.

⁸ *Treatment-Based Drug Courts in Florida*, Office of the State Courts Administrator, Updated October 28, 2010. On file with the Criminal Justice Subcommittee.

⁹ Prior to 2009, Florida statutes did not address eligibility criteria for post-adjudicatory drug court.

¹⁰ Section 948.06(2)(i)c., F.S., allows for a defendant who violated their probation or community control to be placed in a post-adjudicatory drug court if the underlying offense is a nonviolent felony. Section 948.01, F.S., states that a defendant can be sentenced to drug court as a condition of their probation or community control if they are a nonviolent felony offender. In both instances, nonviolent felony is defined as a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

¹¹ Sections 397.334(3)(a), F.S.

¹² Section 948.01, F.S.

¹³ Section 948.06(2)(i)a., F.S.

¹⁴ Section 397.334(3)(b), F.S. Prior to 2009, violations by post-adjudicatory drug court participants had to be heard by the court that originally granted their probation or community control. Section 948.06, F.S.

¹⁵ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Section 921.0026, F.S., provides that a sentence may be "mitigated," which means that the length of a state prison sentence may be reduced or a non-prison sanction may be imposed even if the offender scored a prison sentence, if the court finds any permissible mitigating factor.

¹⁶ Section 948.08(6), F.S., defines the term "nonviolent felony" as a third degree felony violation of chapter 810 (entitled Burglary and Trespass) or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

2010 OPPAGA Report

In 2010, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) issued a report on the post-adjudicatory drug court expansion. OPPAGA reported the post-adjudicatory drug courts were generally meeting standards for their operation, but that they were not likely to generate the projected cost savings. Specifically OPPAGA found that, initial admissions targets overestimated the potential population of offenders who would qualify for the programs, strict eligibility criteria limited admissions, and some programs appeared to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court.¹⁷

The Office of the State Court Administrator reported to OPPAGA that "as of June 30, 2010, the state had not spent approximately \$18.1 million, or 96%, of the funds." The state has until September 30, 2012 to spend the remaining amount before the money is reverted back to the federal government.

To prevent reverting the funds and to increase state savings by diverting prison-bound offenders, OPPAGA made the following suggestions to the Legislature:

- Expand drug court criteria to serve more prison-bound offenders by:
 - Authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation, and
 - Giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.
- Include additional counties to divert more prison-bound offenders.
- Require existing expansion courts to serve predominantly prison-bound offenders.
- Shift federal drug court funds to other prison diversion programs.

Effect of the Bill

HB 81 provides courts the discretion to allow an offender with prior violent felony offenses into a post-adjudicatory treatment-based drug court program on a case-by-case basis after considering the offender's record.

The bill allows the drug court participant to have all of their probation and community control violations heard by the judge presiding over the post-adjudicatory drug court.

The bill allows an offender to be placed into a post-adjudicatory drug court after violating the terms of their probation or community control.

The bill also increases the maximum amount of Criminal Punishment Code scoresheet points from 52 to 60 that an offender can have and still be eligible for participation in the post-adjudicatory drug court program. Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a post-adjudicatory drug court program may not score more than 60 sentencing points.

B. SECTION DIRECTORY:

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

¹⁷ *Id.*

Section 2. Amends s. 921.0026, F.S., relating to mitigating circumstances.

Section 3. Amends s. 948.01, F.S., relating to when a court may place defendant on probation or into community control.

Section 4. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 5. Amends s. 948.20, F.S., relating to drug offender probation.

Section 6. 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."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Substance abuse treatment providers could see a positive fiscal impact if more people become eligible for post-adjudicatory drug court.

D. FISCAL COMMENTS:

This bill has an indeterminate fiscal impact on state expenditures. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior and is thus not quantifiable.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to treatment-based drug court programs;
 3 amending s. 397.334, F.S.; providing that a court has the
 4 discretion to allow offenders with prior violent felony
 5 offenses into postadjudicatory treatment-based drug court
 6 programs on a case-by-case basis; requiring all offenders
 7 sentenced to a postadjudicatory drug court program who are
 8 drug court participants who are the subject of a violation
 9 of probation or community control hearing under specified
 10 provisions to have the violation of probation or community
 11 control heard by the judge presiding over the drug court
 12 program; providing that treatment-based drug court
 13 programs may include postadjudicatory programs provided
 14 under specified provisions; amending s. 921.0026, F.S.;
 15 increasing the number of Criminal Punishment Code
 16 scoresheet total sentence points that a defendant may have
 17 and be eligible for a postadjudicatory treatment-based
 18 drug court program; amending s. 948.01, F.S.; increasing
 19 the number of Criminal Punishment Code scoresheet total
 20 sentence points that a defendant may have and be eligible
 21 for a postadjudicatory treatment-based drug court program;
 22 amending s. 948.06, F.S.; making defendants other than
 23 those who have violated probation or community control by
 24 a failed or suspect substance abuse test eligible for
 25 postadjudicatory treatment-based drug court programs;
 26 increasing the number of Criminal Punishment Code
 27 scoresheet total sentence points that a defendant may have
 28 and be eligible for a postadjudicatory treatment-based

29 drug court program; amending s. 948.20, F.S.; increasing
 30 the number of Criminal Punishment Code scoresheet total
 31 sentence points that a defendant may have and be eligible
 32 for a postadjudicatory treatment-based drug court program;
 33 providing an effective date.

34

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

36

37 Section 1. Subsections (3) and (5) of section 397.334,
 38 Florida Statutes, are amended to read:

39 397.334 Treatment-based drug court programs.—

40 (3) (a) Entry into any postadjudicatory treatment-based
 41 drug court program as a condition of probation or community
 42 control pursuant to s. 948.01, s. 948.06, or s. 948.20 must be
 43 based upon the sentencing court's assessment of the defendant's
 44 criminal history, substance abuse screening outcome, amenability
 45 to the services of the program, total sentence points, the
 46 recommendation of the state attorney and the victim, if any, and
 47 the defendant's agreement to enter the program. The court has
 48 the discretion to allow offenders with prior violent felony
 49 offenses into any postadjudicatory treatment-based drug court
 50 program on a case-by-case basis after consideration of the
 51 offender's record.

52 (b) An offender who is sentenced to a postadjudicatory
 53 drug court program and who, while a drug court participant, is
 54 the subject of a violation of probation or community control
 55 under s. 948.06, ~~based solely upon a failed or suspect substance~~
 56 ~~abuse test administered pursuant to s. 948.01 or s. 948.03,~~

57 shall have the violation of probation or community control heard
 58 by the judge presiding over the postadjudicatory drug court
 59 program. The judge shall dispose of any such violation, after a
 60 hearing on or admission of the violation, as he or she deems
 61 appropriate if the resulting sentence or conditions are lawful.

62 (5) Treatment-based drug court programs may include
 63 pretrial intervention programs as provided in ss. 948.08,
 64 948.16, and 985.345, treatment-based drug court programs
 65 authorized in chapter 39, postadjudicatory programs as provided
 66 in ss. 948.01, 948.06, and 948.20, and review of the status of
 67 compliance or noncompliance of sentenced offenders through a
 68 treatment-based drug court program. While enrolled in a
 69 treatment-based drug court program, the participant is subject
 70 to a coordinated strategy developed by a drug court team under
 71 subsection (4). The coordinated strategy may include a protocol
 72 of sanctions that may be imposed upon the participant for
 73 noncompliance with program rules. The protocol of sanctions may
 74 include, but is not limited to, placement in a substance abuse
 75 treatment program offered by a licensed service provider as
 76 defined in s. 397.311 or in a jail-based treatment program or
 77 serving a period of secure detention under chapter 985 if a
 78 child or a period of incarceration within the time limits
 79 established for contempt of court if an adult. The coordinated
 80 strategy must be provided in writing to the participant before
 81 the participant agrees to enter into a treatment-based drug
 82 court program.

83 Section 2. Paragraph (m) of subsection (2) of section
 84 921.0026, Florida Statutes, is amended to read:

85 921.0026 Mitigating circumstances.—This section applies to
 86 any felony offense, except any capital felony, committed on or
 87 after October 1, 1998.

88 (2) Mitigating circumstances under which a departure from
 89 the lowest permissible sentence is reasonably justified include,
 90 but are not limited to:

91 (m) The defendant's offense is a nonviolent felony, the
 92 defendant's Criminal Punishment Code scoresheet total sentence
 93 points under s. 921.0024 are 60 ~~52~~ points or fewer, and the
 94 court determines that the defendant is amenable to the services
 95 of a postadjudicatory treatment-based drug court program and is
 96 otherwise qualified to participate in the program as part of the
 97 sentence. For purposes of this paragraph, the term "nonviolent
 98 felony" has the same meaning as provided in s. 948.08(6).

99 Section 3. Paragraph (a) of subsection (7) of section
 100 948.01, Florida Statutes, is amended to read:

101 948.01 When court may place defendant on probation or into
 102 community control.—

103 (7)(a) Notwithstanding s. 921.0024 and effective for
 104 offenses committed on or after July 1, 2009, the sentencing
 105 court may place the defendant into a postadjudicatory treatment-
 106 based drug court program if the defendant's Criminal Punishment
 107 Code scoresheet total sentence points under s. 921.0024 are 60
 108 ~~52~~ points or fewer, ~~and the offense defendant~~ and the ~~offender,~~ the defendant is amenable to substance abuse
 109 felony ~~offender,~~ the defendant is amenable to substance abuse
 110 treatment, and the defendant otherwise qualifies under s.
 111 397.334(3). The satisfactory completion of the program shall be
 112 a condition of the defendant's probation or community control.

113 As used in this subsection, the term "nonviolent felony" means a
 114 third degree felony violation under chapter 810 or any other
 115 felony offense that is not a forcible felony as defined in s.
 116 776.08.

117 Section 4. Paragraph (i) of subsection (2) of section
 118 948.06, Florida Statutes, is amended to read:

119 948.06 Violation of probation or community control;
 120 revocation; modification; continuance; failure to pay
 121 restitution or cost of supervision.—

122 (2)

123 (i)1. Notwithstanding s. 921.0024 and effective for
 124 offenses committed on or after July 1, 2009, the court may order
 125 the defendant to successfully complete a postadjudicatory
 126 treatment-based drug court program if:

127 a. The court finds or the offender admits that the
 128 offender has violated his or her community control or probation
 129 ~~and the violation was due only to a failed or suspect substance~~
 130 ~~abuse test;~~

131 b. The offender's Criminal Punishment Code scoresheet
 132 total sentence points under s. 921.0024 are 60 ~~52~~ points or
 133 fewer after including points for the violation;

134 c. The underlying offense is a nonviolent felony. As used
 135 in this subsection, the term "nonviolent felony" means a third
 136 degree felony violation under chapter 810 or any other felony
 137 offense that is not a forcible felony as defined in s. 776.08;

138 d. The court determines that the offender is amenable to
 139 the services of a postadjudicatory treatment-based drug court
 140 program;

141 e. The court has explained the purpose of the program to
 142 the offender and the offender has agreed to participate; and

143 f. The offender is otherwise qualified to participate in
 144 the program under the provisions of s. 397.334(3).

145 2. After the court orders the modification of community
 146 control or probation, the original sentencing court shall
 147 relinquish jurisdiction of the offender's case to the
 148 postadjudicatory treatment-based drug court program until the
 149 offender is no longer active in the program, the case is
 150 returned to the sentencing court due to the offender's
 151 termination from the program for failure to comply with the
 152 terms thereof, or the offender's sentence is completed.

153 Section 5. Section 948.20, Florida Statutes, is amended to
 154 read:

155 948.20 Drug offender probation.—

156 (1) If it appears to the court upon a hearing that the
 157 defendant is a chronic substance abuser whose criminal conduct
 158 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent
 159 felony if such nonviolent felony is committed on or after July
 160 1, 2009, and notwithstanding s. 921.0024 the defendant's
 161 Criminal Punishment Code scoresheet total sentence points are 60
 162 ~~52~~ points or fewer, the court may either adjudge the defendant
 163 guilty or stay and withhold the adjudication of guilt. In either
 164 case, the court may also stay and withhold the imposition of
 165 sentence and place the defendant on drug offender probation or
 166 into a postadjudicatory treatment-based drug court program if
 167 the defendant otherwise qualifies. As used in this section, the
 168 term "nonviolent felony" means a third degree felony violation

HB 81

2011

169 under chapter 810 or any other felony offense that is not a
 170 forcible felony as defined in s. 776.08.

171 (2)~~(1)~~ The Department of Corrections shall develop and
 172 administer a drug offender probation program which emphasizes a
 173 combination of treatment and intensive community supervision
 174 approaches and which includes provision for supervision of
 175 offenders in accordance with a specific treatment plan. The
 176 program may include the use of graduated sanctions consistent
 177 with the conditions imposed by the court. Drug offender
 178 probation status shall include surveillance and random drug
 179 testing, and may include those measures normally associated with
 180 community control, except that specific treatment conditions and
 181 other treatment approaches necessary to monitor this population
 182 may be ordered.

183 (3)~~(2)~~ Offenders placed on drug offender probation are
 184 subject to revocation of probation as provided in s. 948.06.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 101 Violations of Injunctions for Protection

SPONSOR(S): Cruz

TIED BILLS: IDEN./SIM. BILLS: SB 240

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

SUMMARY ANALYSIS

Currently, a person commits a first degree misdemeanor if the person willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.

The bill adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The bill also adds the following to the existing list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

The bill would make the list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence identical to the list of ways a person could violate an injunction for protection against domestic violence.

The bill adds to the list of ways in which a person can violate an injunction for protection. Such violations will be first degree misdemeanors, which could impact county jails. The bill is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 784.046, F.S., relates to the issuance of injunctions for protection against repeat violence¹, dating violence², and sexual violence³. The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.⁴
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.⁵

Section 784.047, F.S., provides criminal penalties for violating a temporary or permanent injunction for protection against repeat violence, sexual violence, or dating violence. The statute specifies that a person commits a first degree misdemeanor⁶ if they willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.⁷

¹ "Repeat violence" is defined as, "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member."

Section 784.046(1), F.S.

² "Dating violence" is defined as, "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors: a dating relationship must have existed within the past 6 months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context." *Id.*

³ "Sexual violence" is defined as, "any one incident of sexual battery, as defined in chapter 794; a lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787; sexual performance by a child, as described in chapter 827; or any other forcible felony wherein a sexual act is committed or attempted; regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney." *Id.*

⁴ The court may impose monetary fines for noncompliance of a violation of injunction. Criminal penalties are imposed pursuant to s. 784.047, F.S.

⁵ s. 784.046(7)(c), F.S.

⁶ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. *See ss. 775.082 and 775.083.*

⁷ Section 784.047(5), F.S.

Effect of the Bill

The bill adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle;
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The bill also adds the following to the existing list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

It should be noted that s. 741.31, F.S., which provides penalties for violating an injunction for protection against domestic violence,⁸ contains the same provisions as those added by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

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:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill adds to the list of ways in which a person can violate an injunction for protection. Such violations will be first degree misdemeanors, which could impact county jails.

⁸ Section 741.28, F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

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:

Currently, the bill is effective July 1, 2011. Generally, bills that impose criminal penalties are effective on October 1 so as to give adequate notice to the public, state attorneys, public defenders, etc.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to violations of injunctions for
 3 protection; amending s. 784.047, F.S.; adding
 4 circumstances that violate an injunction for protection
 5 against repeat violence, sexual violence, or dating
 6 violence; providing an effective date.

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

9
 10 Section 1. Section 784.047, Florida Statutes, is amended
 11 to read:

12 784.047 Penalties for violating protective injunction
 13 against violators.—A person who willfully violates an injunction
 14 for protection against repeat violence, sexual violence, or
 15 dating violence, issued pursuant to s. 784.046, or a foreign
 16 protection order accorded full faith and credit pursuant to s.
 17 741.315 by:

18 (1) Refusing to vacate the dwelling that the parties
 19 share;

20 (2) Going to, or being within 500 feet of, the
 21 petitioner's residence, school, place of employment, or a
 22 specified place frequented regularly by the petitioner and any
 23 named family or household member;

24 (3) Committing an act of repeat violence, sexual violence,
 25 or dating violence against the petitioner;

26 (4) Committing any other violation of the injunction
 27 through an intentional unlawful threat, word, or act to do
 28 violence to the petitioner; ~~or~~

HB 101

2011

29 (5) Telephoning, contacting, or otherwise communicating
30 with the petitioner directly or indirectly, unless the
31 injunction specifically allows indirect contact through a third
32 party;

33 (6) Knowingly and intentionally coming within 100 feet of
34 the petitioner's motor vehicle, whether or not that vehicle is
35 occupied;

36 (7) Defacing or destroying the petitioner's personal
37 property, including the petitioner's motor vehicle; or

38 (8) Refusing to surrender firearms or ammunition if
39 ordered to do so by the court,

40
41 commits a misdemeanor of the first degree, punishable as
42 provided in s. 775.082 or s. 775.083.

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

