

Criminal Justice Subcommittee

March 15th, 2011

8:00 AM

404 HOB

**Dean Cannon
Speaker**

**Dennis Baxley
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 15, 2011 08:00 am

End Date and Time: Tuesday, March 15, 2011 11:00 am

Location: 404 HOB

Duration: 3.00 hrs

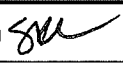
Consideration of the following bill(s):

HB 91 Drug-related Overdoses by Bernard
HB 347 Vehicle Crashes Involving Death by Bovo
HB 477 Human Trafficking by Burgin
HB 513 Missing Adults by Abruzzo
HB 517 Firearms by Dorworth
HB 1029 Interstate Compact for Juveniles by Brodeur

NOTICE FINALIZED on 03/11/2011 16:14 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 91 Drug-related Overdoses
SPONSOR(S): Bernard and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1146

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

SUMMARY ANALYSIS

Florida law contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances.

HB 91 creates s. 893.21, F.S., entitled the "911 Good Samaritan Act" and provides that:

- A person making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances. A description of these provisions follows.

Florida Good Samaritan Laws

The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity for liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training.²
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.³

Section 768.1325, F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355, F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

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

Reduction or Suspension of Criminal Sentence

Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of persons convicted of a felony who provide substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity.

Mitigating Circumstances

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"⁴ from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ Section 768.13(3), F.S.

⁴ Section 921.0022, F.S.

determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.⁵

The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."⁶ Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.⁷

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Possession of a Controlled Substance

Section 893.02, F.S., states possession of a controlled substance⁸ "includes temporary possession for the purpose of verification or testing, irrespective of dominion or control."

Actual or constructive possession of a controlled substance, unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, is a third degree felony punishable⁹ by up to 5 years in prison and a fine up to \$5,000.¹⁰

Possession of less than 20 grams of cannabis¹¹ is a first degree misdemeanor punishable¹² by up to 1 year in prison and a fine up to \$1,000.¹³

Possession of more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance is first degree felony punishable¹⁴ by up to 30 years in prison and a fine up to \$10,000.¹⁵

911 Good Samaritan Laws in Other States

In New Mexico, the 911 Good Samaritan Act prevents the prosecution for drug possession based on evidence "gained as a result of the seeking of medical assistance" to treat a drug overdose.¹⁶ This law, which took effect in June 2007, was the first of its kind in the country.¹⁷

While many states have considered similar Good Samaritan immunity legislation, Washington is the only other state to have passed such a law.¹⁸

⁵ Section 921.0024, F.S., provides that 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; and the defendant's prior record and other aggravating factors,

⁶ Section 921.0026, F.S.

⁷ *Id.*

⁸ Section 893.02(4), F.S., defines controlled substance as "any substance named or described in Schedules I-V of s. 893.03, F.S."

⁹ As provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ Section 893.13(6)(a), F.S.

¹¹ For the purposes of s. 893.13(6)(b), F.S., cannabis is defined as all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof.

¹² As provided in ss. 775.082 or 775.083 F.S.

¹³ Section 893.13(6)(b), F.S.

¹⁴ As provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁵ Section 893.13(6)(c), F.S.

¹⁶ "Preventing Overdose, Saving Lives." Drug Policy Alliance. March 2009. <http://www.drugpolicy.org/library/overdose2009.cfm> (Last accessed March 12, 2011.)

¹⁷ *Id.*

Effect of the Bill

HB 91 contains the following "Whereas clauses:"

- Whereas, some research suggests that in a majority of cases of fatal drug overdose another person was aware of or present during the decedent's fatal drug use and that in one third of the cases someone recognized the decedent's distress,
- Whereas, many people cite fear of police involvement or fear of arrest as their primary reason for not seeking immediate help for a person thought to be experiencing a drug overdose, and
- Whereas, it is in the public interest to encourage a person who is aware of or present during another individual's drug overdose to seek medical assistance for that individual.

The bill provides that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.

The bill also provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

B. SECTION DIRECTORY:

Section 1. Provides this act may be cited as the "911 Good Samaritan Act."

Section 2. Creates s. 893.21, F.S., relating to drug-related overdoses; medical assistance; immunity from prosecution.

Section 3. Amends s. 921.0026, F.S., relating to mitigating circumstances.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁸ SB 5516 entitled "Drug Overdose Prevention." Effective June 2010.

2. Expenditures:

Generally, possession of controlled substances is a felony offense. The bill precludes a person from being charged with possession of a controlled substances in specified instances. However, on March 2, 2011, the Criminal Justice Impact Conference (CJIC) determined that this bill would have no impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Possession of less than 20 grams of cannabis is a first degree misdemeanor. The bill could have a positive impact on local jails in that it precludes a person from being charged with possession of cannabis in specified instances. However, since CJIC determined that a similar provision would have "no impact" on prison beds, the jail bed impact will also likely be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to drug-related overdoses; providing a
 3 short title; creating s. 893.21, F.S.; providing that a
 4 person acting in good faith who seeks medical assistance
 5 for an individual experiencing a drug-related overdose may
 6 not be charged, prosecuted, or penalized for specified
 7 offenses in certain circumstances; providing that a person
 8 who experiences a drug-related overdose and needs medical
 9 assistance may not be charged, prosecuted, or penalized
 10 for specified offenses in certain circumstances; providing
 11 that the protections from prosecution for specified
 12 offenses are not grounds for suppression of evidence in
 13 other prosecutions; amending s. 921.0026, F.S.; amending
 14 mitigating circumstances under which a departure from the
 15 lowest permissible criminal sentence is reasonably
 16 justified to include circumstances in which a defendant
 17 was making a good faith effort to obtain or provide
 18 medical assistance for an individual experiencing a drug-
 19 related overdose; providing an effective date.

20
 21 WHEREAS, some research suggests that in a majority of cases
 22 of fatal drug overdose another person was aware of or present
 23 during the decedent's fatal drug use and that in one third of
 24 the cases someone recognized the decedent's distress, and

25 WHEREAS, many people cite fear of police involvement or
 26 fear of arrest as their primary reason for not seeking immediate
 27 help for a person thought to be experiencing a drug overdose,
 28 and

29 WHEREAS, it is in the public interest to encourage a person
 30 who is aware of or present during another individual's drug
 31 overdose to seek medical assistance for that individual, NOW,
 32 THEREFORE,

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

35
 36 Section 1. This act may be cited as the "911 Good
 37 Samaritan Act."

38 Section 2. Section 893.21, Florida Statutes, is created to
 39 read:

40 893.21 Drug-related overdoses; medical assistance;
 41 immunity from prosecution.-

42 (1) A person acting in good faith who seeks medical
 43 assistance for an individual experiencing a drug-related
 44 overdose may not be charged, prosecuted, or penalized pursuant
 45 to this chapter for possession of a controlled substance if the
 46 evidence for possession of a controlled substance was obtained
 47 as a result of the person's seeking medical assistance.

48 (2) A person who experiences a drug-related overdose and
 49 is in need of medical assistance may not be charged, prosecuted,
 50 or penalized pursuant to this chapter for possession of a
 51 controlled substance if the evidence for possession of a
 52 controlled substance was obtained as a result of the overdose
 53 and the need for medical assistance.

54 (3) Protection in this section from prosecution for
 55 possession offenses under this chapter may not be grounds for
 56 suppression of evidence in other criminal prosecutions.

HB 91

2011

57 Section 3. Paragraph (n) is added to subsection (2) of
 58 section 921.0026, Florida Statutes, to read:

59 921.0026 Mitigating circumstances.—This section applies to
 60 any felony offense, except any capital felony, committed on or
 61 after October 1, 1998.


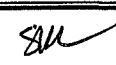
62 (2) Mitigating circumstances under which a departure from
 63 the lowest permissible sentence is reasonably justified include,
 64 but are not limited to:

65 (n) The defendant was making a good faith effort to obtain
 66 or provide medical assistance for an individual experiencing a
 67 drug-related overdose.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 347 Vehicle Crashes Involving Death
SPONSOR(S): Bovo
TIED BILLS: None IDEN./SIM. BILLS: SB 514

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

SUMMARY ANALYSIS

Currently, Florida law requires the driver of any vehicle involved in a crash that results in a person's death to immediately stop at the scene and remain there until fulfilling certain statutory duties, including assisting the injured and, insofar as possible, providing vehicular and personal identifying information. Willfully failing to stop at the scene of a crash which results in a death is punishable as a first degree felony.

HB 347 provides that a person arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of s. 316.027, F.S. (leaving the scene of an accident), s. 316.061, F.S. (crashes involving damage to vehicle or property), s. 316.191, F.S. (racing on highways), s. 316.193, F.S. (driving under the influence), or a felony violation of s.322.34, F.S. (driving while license suspended, revoked, canceled, or disqualified), must be held in custody until first appearance.

This would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. The bill would also prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

The bill cites the act as the "Ashley Nicole Valdes Act," in honor of an eleven year old hit-and-run victim.

The bill may have a minimal fiscal impact on local jail beds and is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 316.027(1)(b), F.S., provides that the driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062.¹ Any person who willfully violates this subsection commits a first degree felony.² The offense is currently ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code.³

Section 901.02, F.S., provides that a law enforcement officer may arrest a person who commits a crime if the officer obtains an arrest warrant signed by a judge. At the time of the issuance of the warrant, the judge may set a bond amount⁴ or, in some circumstances,⁵ require the arrestee be held until first appearance⁶ for determination of a bond amount. A person arrested on a warrant with a predetermined bond amount may immediately bond out of jail following an arrest by posting the bond amount.

A law enforcement officer may arrest a person who commits a felony without a warrant if the officer reasonably believes a felony has been committed.⁷ In such instances, the arrestee is generally held until first appearance for a determination of probable cause and bail amount. In some jurisdictions, a bond schedule with predetermined bond amounts for certain offenses is agreed to and provided by judicial officers to the county detention facility. If an arrestee meets the requirements of the bond schedule, the arrestee may bond out of jail for the predetermined bond amount. This eliminates the need for an arrestee to make a first appearance before a judge.

Proposed Changes

HB 347 provides that a person arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of s. 316.027, F.S. (leaving the scene of an accident), s. 316.061, F.S. (crashes involving damage to vehicle or property), s. 316.191, F.S. (racing on highways), s. 316.193, F.S. (driving under the influence), or a felony violation of s.322.34, F.S. (driving while license suspended, revoked, canceled, or disqualified), must be held in custody until first appearance.

This would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. The bill would prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

¹ Section 316.062, F.S. provides that a driver of a vehicle involved in a crash resulting in death or serious bodily injury or damage to any vehicle or other property driven or attended by any person must provide his or her name, address, and the registration number of the vehicle he or she is driving, and must provide a driver's license to a police officer or other person involved in the crash. The section also requires the driver of any vehicle involved in a crash to report the incident to the nearest police department.

² A first degree felony is punishable by imprisonment for up to 30 years and a maximum \$10,000 fine. See ss. 775.082 and 775.083, F.S.

³ Section 921.0022(3)(g), F.S.

⁴ Section 903.046, F.S., provides criteria a judge may consider in determining a bail amount. A judge can also issue "no bond" in certain instances. See s. 907.041, F.S.

⁵ Section 741.2901(3), F.S. provides that a defendant arrested for domestic violence shall be held in custody until brought before the court for admittance to bail under Ch. 903, F.S. At first appearance the court must consider the safety of the victim if the defendant is released.

⁶ Florida Rule of Criminal Procedure 3.130 requires the state to bring an arrestee before a judge for a first appearance within 24 hours of arrest. At first appearance, a judge determines if there is probable cause to hold the arrestee, provides the arrestee notice of the charges against them, and advises the arrestee of his or her rights. If an arrestee is eligible for bail, the judge conducts a hearing in accordance with s. 903.046, F.S.

⁷ Section 901.15, F.S.

The bill cites the act as the "Ashley Nicole Valdes Act," in honor of an eleven year old hit-and-run victim.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Ashley Nicole Valdes Act."

Section 2. Amends s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 3. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There could be a potential jail bed impact since defendants arrested under the provisions of the HB 347 would be required to remain in jail until first appearance. Since first appearance must occur within 24 hours of arrest, the impact is likely to be minimal.

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 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

1 A bill to be entitled
 2 An act relating to vehicle crashes involving death;
 3 providing a short title; amending s. 316.027, F.S.;
 4 requiring a defendant who was arrested for leaving the
 5 scene of a crash involving death be held in custody until
 6 brought before a judge for admittance to bail in certain
 7 circumstances; reenacting s. 921.0022(3)(g), F.S.,
 8 relating to the Criminal Punishment Code, to incorporate
 9 the amendments made to s. 316.027, F.S., in a reference
 10 thereto; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. This act may be cited as the "Ashley Nicole
 15 Valdes Act."

16 Section 2. Paragraph (b) of subsection (1) of section
 17 316.027, Florida Statutes, is amended to read:

18 316.027 Crash involving death or personal injuries.—

19 (1)

20 (b) The driver of any vehicle involved in a crash
 21 occurring on public or private property that results in the
 22 death of any person must immediately stop the vehicle at the
 23 scene of the crash, or as close thereto as possible, and must
 24 remain at the scene of the crash until he or she has fulfilled
 25 the requirements of s. 316.062. A person who is arrested for a
 26 violation of this paragraph and who has previously been
 27 convicted of a violation of s. 316.027, s. 316.061, s. 316.191,
 28 or s. 316.193, or a felony violation of s. 322.34, shall be held

HB 347

2011

29 in custody until brought before the court for admittance to bail
 30 in accordance with chapter 903. Any person who willfully
 31 violates this paragraph commits a felony of the first degree,
 32 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 33 Any person who willfully commits such a violation ~~violates this~~
 34 ~~paragraph~~ while driving under the influence as set forth in s.
 35 316.193(1) shall be sentenced to a mandatory minimum term of
 36 imprisonment of 2 years.

37 Section 3. For the purpose of incorporating the amendment
 38 made by this act to section 316.027, Florida Statutes, in a
 39 reference thereto, paragraph (g) of subsection (3) of section
 40 921.0022, Florida Statutes, is reenacted to read:

41 921.0022 Criminal Punishment Code; offense severity
 42 ranking chart.—

43 (3) OFFENSE SEVERITY RANKING CHART

44 (g) LEVEL 7

45

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high

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HB 347

2011

speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

49

327.35(3)(c)2. 3rd Vessel BUI resulting in serious bodily injury.

50

402.319(2) 2nd Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

51

409.920 3rd Medicaid provider fraud; \$10,000 or less.
(2)(b)1.a.

52

409.920 2nd Medicaid provider fraud; more than \$10,000, but less than \$50,000.
(2)(b)1.b.

53

456.065(2) 3rd Practicing a health care profession without a license.

54

456.065(2) 2nd Practicing a health care profession without a license which results in serious bodily injury.

55

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 347

2011

56	458.327(1)	3rd	Practicing medicine without a license.
57	459.013(1)	3rd	Practicing osteopathic medicine without a license.
58	460.411(1)	3rd	Practicing chiropractic medicine without a license.
59	461.012(1)	3rd	Practicing podiatric medicine without a license.
60	462.17	3rd	Practicing naturopathy without a license.
61	463.015(1)	3rd	Practicing optometry without a license.
62	464.016(1)	3rd	Practicing nursing without a license.
63	465.015(2)	3rd	Practicing pharmacy without a license.
64	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
65	467.201	3rd	Practicing midwifery without a license.
66	468.366	3rd	Delivering respiratory care services without a license.

HB 347

2011

67	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
68	483.901(9)	3rd	Practicing medical physics without a license.
69	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
70	484.053	3rd	Dispensing hearing aids without a license.
71	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
72	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
73	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

HB 347

2011

74	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
75	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
76	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
77	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
78	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
79	782.07 (1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular

80			homicide).
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
81			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
82			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
83			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
84			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
85			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
86			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
87			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
88			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 347

2011

89	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
90	784.081(1)	1st	Aggravated battery on specified official or employee.
91	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
92	784.083(1)	1st	Aggravated battery on code inspector.
93	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
94	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
95	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
96	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass

HB 347

2011

			destruction.
97			
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
98			
	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
99			
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
100			
	796.03	2nd	Procuring any person under 16 years for prostitution.
101			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
102			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
103			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 347

2011

104	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
105	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
106	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
107	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
108	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
109	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
110	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
111	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 347

2011

112	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
113	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
114	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
115	812.131(2)(a)	2nd	Robbery by sudden snatching.
116	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
117	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
118	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
119	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341(2)(b)	1st	Making false entries of material fact

HB 347

2011

120	& (3) (b)		or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
121	825.102(3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
122	825.103(2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
123	827.03(3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
124	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
125	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
126	838.015	2nd	Bribery.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 347

2011

127	838.016	2nd	Unlawful compensation or reward for official behavior.
128	838.021(3)(a)	2nd	Unlawful harm to a public servant.
129	838.22	2nd	Bid tampering.
130	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
131	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
132	872.06	2nd	Abuse of a dead human body.
133	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

134			community center.
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
135			
	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
136			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
137			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
138			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
139			
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
140			
	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
141			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 347

2011

142	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
143	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
144	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
145	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
146	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
147	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
148	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements,

HB 347

2011

			financial transactions exceeding \$300 but less than \$20,000.
149	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
150	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
151	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
152	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
153	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
154	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
155	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
156			

HB 347

2011

157	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
158	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
159	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
160	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
161	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
162	Section 4. This act shall take effect October 1, 2011.		

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 477 Human Trafficking
SPONSOR(S): Burgin
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 246

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

SUMMARY ANALYSIS

Human trafficking, specifically trafficking for the purpose of sexual exploitation, is a growing problem, both in Florida and globally. Increasingly, human trafficking victims are being forced to work in massage parlors, providing sexual services under the guise of performing massage therapy.

Chapter 480, F.S., the Massage Practice Act, regulates the practice of massage. To be licensed as a massage therapist, an applicant must be at least 18 years old, complete an approved massage school, and pass a state examination. To be licensed as a massage establishment, an establishment must:

- Be in compliance with building codes;
- Meet safety and sanitary requirements;
- Maintain a licensed massage therapist onsite anytime a client is receiving massage services; and
- Maintain liability insurance.

Licensed massage therapists are prohibited by statute and by Department of Health (DOH) rules from using the therapist-client relationship to engage in, or make arrangements to engage in, sexual activity with a client.

HB 477 creates s. 480.0535, F.S., entitled "Documents required while offering or providing massage services." It requires persons providing or offering massage services to have in his or her possession, and to present to a requesting law enforcement officer, a DOH-issued wallet-size identification license card or wall license card and one of the following documents specifically issued to such person:

- A current driver's license or state-issued identification card;
- A valid U.S. passport;
- A valid I-551 permanent resident card; or
- A valid employment authorization document (EAD Card).

The bill also specifies that a person, firm, or corporation operating a massage establishment:

- Is required to maintain a valid work authorization document onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer.
- Is prohibited from knowingly using a massage establishment license for the purpose of lewdness, assignation, or prostitution at a massage establishment location.

The bill provides criminal penalties for violations of s. 480.0535, F.S.

On March 2, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. The bill may also have an impact on local jails.

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

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

STORAGE NAME: h0477.CRJS.DOCX

DATE: 3/9/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Trafficking – Generally

Human trafficking is a form of modern-day slavery. Victims of human trafficking, which consist of young children, teenagers, men and women, are subjected to force, fraud, or coercion, for the purpose of sexual exploitation or forced labor. After drug dealing, trafficking of humans is tied with arms dealing as the second largest criminal industry in the world, and is the fastest growing.¹

Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. But trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.²

Traffickers use various techniques to instill fear in victims and to keep them enslaved. While some traffickers keep their victims under lock and key, others use less obvious techniques including:

- Debt bondage - financial obligations, honor-bound to satisfy debt.
- Isolation from the public - limiting contact with outsiders and making sure that any contact is monitored or superficial in nature.
- Isolation from family members and members of their ethnic and religious community.
- Confiscation of passports, visas and/or identification documents.
- Use or threat of violence toward victims and/or families of victims.
- The threat of shaming victims by exposing circumstances to family.
- Telling victims they will be imprisoned for immigration violations if they contact authorities.
- Control of the victims' money, e.g., holding their money for "safe-keeping."³

The United States is a destination country for thousands of men, women, and children trafficked largely from Mexico and East Asia, as well as countries in South Asia, Central America, Africa, and Europe, for the purposes of sexual and labor exploitation.⁴ An estimated 18,000 to 20,000 people are trafficked into the United States annually.⁵ While the number of instances of trafficking in Florida is difficult to estimate, Florida is often cited as one of the top three states (with New York and California) receiving the majority of the women and children trafficked annually into the U.S.⁶

Federal Human Trafficking Law

Prior to 2000, no comprehensive Federal law existed to protect victims of trafficking or to prosecute their traffickers. In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA)⁷ made human trafficking a Federal crime. It was enacted to prevent human trafficking overseas, to protect victims and help them rebuild their lives in the United States, and to prosecute traffickers of humans under Federal penalties.⁸ The TVPA not only criminalizes human trafficking, but requires that victims, who might otherwise be treated as criminals (because of engagement in prostitution), be treated as victims of crime and be provided health and human services, if they cooperate with prosecutions.⁹

¹ U.S. Department of Health and Human Services, Administration for Children & Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html> (last accessed March 10, 2011).

² *Id.*

³ *Id.*

⁴ U.S. Department of State, *Trafficking in Persons Report (June 2010)*. <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm> (last accessed March 10, 2011).

⁵ U.S. Department of State, *Trafficking in Persons Report (June, 2003)*, <http://www.state.gov/g/tip/rls/tiprpt/2003> (last accessed March 11, 2011).

⁶ National Organization for Women, *Human Trafficking*, <http://www.flnow.org/trafficking.html> (last accessed March 12, 2011).

⁷ Pub.L. No. 106-386 (2000).

⁸ U.S. Department of Health and Human Services, Administration for Children & Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html> (last accessed March 10, 2011).

⁹ Pub.L. No. 106-386 (2000).

Florida Human Trafficking Law

Florida law provides that a person commits human trafficking¹⁰ if they knowingly:

- Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.¹¹

A person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution commits sex trafficking.¹² Both human trafficking and sex trafficking are 2nd degree felonies.¹³

Sex Trafficking in Massage Establishments

In 2009, the Florida Legislature created the Florida Statewide Task Force on Human Trafficking for the purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating human trafficking in Florida.¹⁴ The legislation required Florida State University's Center for Advancement of Human Rights (CAHR) to submit a statewide strategic plan and plan of implementation.¹⁵

In studying human trafficking in Florida, CAHR found that massage establishments are often used to disguise sex trafficking. Women working at these establishments are trafficked into Florida from Korea, Vietnam, Thailand, and China using tourist visas, and are then forced to "work off" their debt of being smuggled into the state.¹⁶ The debts are typically \$50,000 to \$100,000.¹⁷ Officials in Florida have discovered a very pronounced pattern of "moving targets" with some massage establishments operating a "taxi service" that transports women to other massage establishments throughout the country as often as every 7 to 14 days.¹⁸ Many of these establishments also open and close frequently to avoid having to hold trafficked women in a single location.¹⁹

Current Regulation of Massage Therapists and Massage Establishments

Chapter 480, F.S., entitled the Massage Practice Act, regulates the practice of massage.²⁰ The Board of Massage Therapy (Board) within the Department of Health (DOH) issues licenses to practice massage and to operate massage establishments^{21, 22} To be licensed as a massage therapist,²³ an applicant must:

¹⁰ Section 787.06(2), F.S., defines "human trafficking" as "transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport."

¹¹ Section 787.06(3), F.S.

¹² Section 796.045, F.S.

¹³ Sections 787.06(3) and 796.045, F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S. In certain instances, sex trafficking is punishable as a 1st degree felony.

¹⁴ Ch. 2009-95, L.O.F.

¹⁵ *Id.*

¹⁶ 2011 Florida Senate Bill Analysis of CS/SB 246 (on file with Criminal Justice Subcommittee staff).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 480.033, F.S., defines the term "massage" as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

²¹ Section 480.033, F.S., defines the term "establishment" as a site or premises, or portion thereof, wherein a massage therapist practices massage.

²² Sections 480.041 and 480.043, F.S.

²³ Section 480.033, F.S., defines the term "massage therapist" as a person licensed as required by ch. 480, F.S., who administers massage for compensation.

- Be at least 18 years old;
- Complete board-approved massage school²⁴ or apprenticeship program; and
- Pass an examination, currently offered in Spanish and English.²⁵

Licensed massage therapists may practice in a licensed massage establishment, at a client's residence or office, or at a sports event, convention or trade show.²⁶

Section 480.43, F.S., specifies that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the Board to adopt license application criteria. Board rules require such establishments to have insurance, comply with building codes, comply with safety and sanitary requirements, and have a licensed massage therapist onsite anytime a client is receiving massage services.²⁷ Upon receiving a license application, DOH inspects the establishment to ensure it meets the requirements,²⁸ and once licensed, inspects the establishment at least annually.²⁹

Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in verbal or physical sexual activity outside the scope of the profession, is prohibited.³⁰ Board rules also provide:

- Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.
- No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.³¹

An application for a massage therapist license or a massage establishment license may be denied if the applicant engaged in sexual misconduct.³² Operation of an unlicensed massage establishment is considered a 1st degree misdemeanor,³³ while the unlicensed practice of massage therapy is punishable as a 3rd degree felony.^{34 35}

Currently, upon receiving a complaint that unlicensed activity is occurring, DOH's Medical Quality Insurance inspectors coordinate with local law enforcement to investigate the complaint. The DOH may issue cease and desist notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in circuit court.³⁶ The DOH may also impose, by citation, an administrative penalty up to \$5,000.³⁷ While DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

²⁴ Section 480.033, F.S., defines the term "board-approved massage school" as a facility which meets minimum standards for training and curriculum as determined by rule of the board and which is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state.

²⁵ Section 480.041, F.S.

²⁶ Section 480.046(1), F.S.

²⁷ Rule 64B7-26.003, F.A.C.

²⁸ Rule 64B7-26.004, F.A.C.

²⁹ Rule 64B7-26.005, F.A.C.

³⁰ Section 480.046 and 480.0485, F.S.

³¹ Rule 64B7-26.010, F.A.C.

³² Section 480.046(2) and (3), F.S.

³³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

³⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

³⁵ Section 456.065, F.S.

³⁶ *Id.*

³⁷ *Id.*

Effect of the Bill

HB 477 creates s. 480.0535, F.S., entitled "Documents required while offering or providing massage services."

Documents Required for Massage Therapists

The bill requires each person providing or offering massage services for compensation or on behalf of a massage establishment or any business, to have in his or her possession a DOH-issued wallet-size identification license card or wall license card and one of the following documents specifically issued to such person:

- A current driver's license or state-issued identification card;
- A valid U.S. passport;
- A valid I-551 permanent resident card; or
- A valid employment authorization document (EAD Card).

The bill also requires that such persons present his or her massage therapist license issued in his or her name and one of the above-listed documents to a law enforcement officer upon request. The bill specifies that it is unlawful to provide or offer to provide massage services without the above-described documents.

The bill states that the above requirements are necessary to provide law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking or prostitution by the fraudulent or valid use of a license to practice massage therapy or operate a massage establishment.

Documents Required for Massage Establishments

The bill requires a person, firm, or corporation operating a massage establishment to maintain a valid work authorization document onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer. Valid work authorization documents include a valid I-551 permanent resident card or a valid employment authorization document. The bill specifies that it is unlawful to operate a massage establishment without maintaining such documents onsite.

Lewdness, Assignation, or Prostitution Prohibited

The bill also prohibits a person, firm, or corporation operating a massage establishment from knowingly using a massage establishment license for the purpose of lewdness, assignation, or prostitution at any massage establishment location or structure, or any part thereof, including any trailer or other conveyance.

Criminal Penalties

The bill provides that a person who violates any of the above provisions commits a 2nd degree misdemeanor³⁸ for a first offense and a 1st degree misdemeanor for a second offense. Third and subsequent violations are punishable as a 3rd degree felony ranked in Level 5 of the offense severity ranking chart of the Criminal Punishment Code.³⁹

B. SECTION DIRECTORY:

Section 1. Creates s. 480.0535, F.S., relating to documents required while offering or providing massage services.

Section 2. The bill is effective October 1, 2011.

³⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

³⁹ Section 921.0022(3)(e), F.S. The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill makes third and subsequent violations of s. 480.0535, F.S., a 3rd degree felony ranked in Level 5 of the offense severity ranking chart of the Criminal Punishment Code. On March 2, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates 1st and 2nd degree misdemeanor offenses which could impact local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (3) of s. 480.0535, F.S., (lines 68-79) appears to re-state the prohibitions in subsection (1).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 477

2011

29 to more effectively identify, investigate, and arrest persons
 30 engaging in human trafficking as defined in s. 787.06 or
 31 prostitution as proscribed by chapter 796 by the fraudulent or
 32 valid use of a license to practice massage therapy or operate a
 33 massage establishment:

34 (a) Each person providing or offering to provide massage
 35 services for compensation or on behalf of a massage
 36 establishment or for any business must have in his or her
 37 possession, and it is unlawful to provide or offer to provide
 38 massage services without, a wallet-size identification license
 39 card or wall license card issued by the Department of Health
 40 pursuant to s. 456.013, plus one of the following documents
 41 specifically issued to such person:

42 1. A current driver's license or identification card
 43 issued by a state.

44 2. A valid passport issued by the United States of
 45 America.

46 3. A valid I-551 permanent resident card.

47 4. A valid employment authorization document.

48 (b) Upon request by a law enforcement officer, each person
 49 providing or offering to provide massage services for
 50 compensation or on behalf of a massage establishment or for any
 51 business must present the wallet-size identification license
 52 card or wall license card issued in his or her name by the
 53 Department of Health pursuant to s. 456.013, plus one of the
 54 additional documents specified in paragraph (a).

55 (2)(a) A person, firm, or corporation operating a massage
 56 establishment pursuant to s. 480.043 shall maintain, and it is

57 unlawful to operate a massage establishment without, a valid
 58 work authorization document on the premises for each employee
 59 who is not a United States citizen. Valid work authorization
 60 documents for an employee who is not a United States citizen
 61 include:

62 1. A valid I-551 permanent resident card.

63 2. A valid employment authorization document.

64 (b) Upon request by a law enforcement officer, any person,
 65 firm, or corporation operating a massage establishment must
 66 present one of the documents specified in paragraph (a) for each
 67 employee who is not a United States citizen.

68 (3) A person may not offer or provide massage services for
 69 compensation or on behalf of a massage establishment or for any
 70 business without being in possession of a valid wallet-size
 71 identification license card or wall license card issued in his
 72 or her name by the Department of Health pursuant to s. 456.013
 73 and one of the following documents issued in his or her name:

74 (a) A current driver's license.

75 (b) An identification card issued by a state.

76 (c) A valid passport issued by the Department of State of
 77 the United States.

78 (d) A valid I-551 permanent residence card.

79 (e) A valid employment authorization document.

80 (4) A person, firm, or corporation operating a massage
 81 establishment may not knowingly use a massage establishment
 82 license issued under s. 480.043 for the purpose of lewdness,
 83 assignation, or prostitution at any massage establishment
 84 location or structure, or any part thereof, including any

85 | trailer or other conveyance.

86 | (5) A person who violates any provision of this section
 87 | commits:

88 | (a) A misdemeanor of the second degree for a first
 89 | violation, punishable as provided in s. 775.082 or s. 775.083.

90 | (b) A misdemeanor of the first degree for a second
 91 | violation, punishable as provided in s. 775.082 or s. 775.083.

92 | (c) A felony of the third degree for a third or subsequent
 93 | violation, punishable as provided in s. 775.082, s. 775.083, or
 94 | s. 775.084.

95 | Section 2. Paragraph (e) of subsection (3) of section
 96 | 921.0022, Florida Statutes, is amended to read:

97 | 921.0022 Criminal Punishment Code; offense severity
 98 | ranking chart.—

99 | (3) OFFENSE SEVERITY RANKING CHART

100 | (e) LEVEL 5

101 |

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or

102 |

103 |

104 |

HB 477

2011

105			serious bodily injury.
106	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
107	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
108	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
109	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
110	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
111	<u>480.0535 (5) (c)</u>	<u>3rd</u>	<u>Lack of possession of identifying documents or work authorization documents to provide massage services or operate a massage establishment.</u> <u>Unlawful use of a massage establishment license for the purpose of assignation, prostitution, or lewdness.</u>

HB 477

2011

112	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
113	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
114	790.01(2)	3rd	Carrying a concealed firearm.
115	790.162	2nd	Threat to throw or discharge destructive device.
116	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
117	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
118	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
119	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender

HB 477

2011

120			18 years or older.
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
121			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
122			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
123			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
124			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
125			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
126			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
127			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
128			

HB 477

2011

129	817.2341(1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
130	817.568(2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
131	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
132	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
133	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
	827.071(5)	3rd	Possess any photographic material,

HB 477

2011

			motion picture, etc., which includes sexual conduct by a child.
134	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
135	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
136	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
137	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
138	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
139	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
140	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

HB 477

2011

141	893.13(1)(c)2.	2nd	drugs). Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
142	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
143	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
144	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine

HB 477

2011

(or other s. 893.03(1)(a), (1)(b),
(1)(d), or (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of public
housing facility.

145

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

146

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

147

148

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

HB 513 amends the definition of "missing endangered person" in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The bill also provides that only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to MEPIC involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information

Silver Alert Plan

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

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

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

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

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

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

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

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

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

⁵ *Id.*

⁶ *Id.*

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

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

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

Missing Person Investigations

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

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

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

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

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

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

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

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

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

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

¹³ Section 937.021(4), F.S.

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

¹⁵ Section 937.021(5)(c), F.S.

¹⁶ *Id.*

¹⁷ Section 937.021(5)(d), F.S.

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

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

Effect of Proposed Bill

HB 513 amends the definition of "missing endangered person" in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The bill also provides that only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to MEPIC involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

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

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

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

B. SECTION DIRECTORY:

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

¹⁸ Section 937.022(3)(b), F.S.

¹⁹ See ss. 937.0201 and 937.022, F.S.

²⁰ FDLE 2011 Analysis of HB 513.

²¹ FDLE 2011 Analysis of HB 513.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE indicated concern with language found at lines 114-118 of the bill, which state:

"Only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan."

FDLE states that "Silver Alert report" would be confusing nomenclature as reports are not collected for Silver Alerts. Also, Silver Alerts issued locally, when the criteria for statewide activation are not met, do not require interaction with the Missing Endangered Persons Information Clearinghouse.

FDLE recommends replacing the words "submit a Silver Alert report to the clearinghouse" in line 115 with "make a request for the activation of a state Silver Alert to the clearinghouse."²³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²² *Id.*

²³ *Id.*

HB 513

2011

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

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

16
 17 Section 1. Subsection (4) of section 937.0201, Florida
 18 Statutes, is amended to read:

19 937.0201 Definitions.—As used in this chapter, the term:

20 (4) "Missing endangered person" means:

21 (a) A missing child;

22 (b) A missing adult younger than 26 years of age; ~~or~~

23 (c) A missing adult 26 years of age or older who is
 24 suspected by a law enforcement agency of being endangered or the
 25 victim of criminal activity; or

26 (d) A missing adult who meets the criteria for activation
 27 of the Silver Alert Plan.

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

29 Statutes, is amended to read:

30 937.021 Missing child and missing adult reports.—

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

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

57 | photographs pertaining to the missing adult.

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

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

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

HB 513

2011

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

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

90 937.022 Missing Endangered Persons Information
91 Clearinghouse.—

92 (3) The clearinghouse shall:

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

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

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

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

HB 513

2011

113 | endangered or the victim of criminal activity.

114 | 4. Only the law enforcement agency having jurisdiction
 115 | over the case may submit a Silver Alert report to the
 116 | clearinghouse involving a missing adult who is suspected by a
 117 | law enforcement agency of meeting the criteria for activation of
 118 | the Silver Alert Plan.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 517 Firearms
SPONSOR(S): Dorworth and others
TIED BILLS: None IDEN./SIM. BILLS: SB 234

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

SUMMARY ANALYSIS

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

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

Currently, concealed weapon or firearm license-holders are not permitted to carry a concealed weapon or firearm into any elementary or secondary school facility, any career center, or any college or university facility.

HB 517 amends the concealed weapons license law to allow a concealed weapon or firearm license-holder to:

- Carry a weapon or firearm openly in addition to carrying it in a concealed manner.
- Carry a weapon or firearm, either openly or concealed, into a career center, a college or university, and nonpublic elementary or secondary school facilities.

The bill also adds a provision to s. 790.06(12), F.S., specifying that concealed weapon or firearm license-holders are not prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

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

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

The bill amends s. 790.065, F.S., which sets forth Florida's requirements for the sale and delivery of firearms, to provide that the purchase, trade, or transfer of a shotgun or rifle to a Florida resident by a licensed dealer in another state is subject only to federal law and the law of the state where the purchase, trade, or transfer is made.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Carrying of Concealed Weapons / Firearms - General Prohibition

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

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

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

Open Carrying of Weapons / Firearms - General Prohibition

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

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

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

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

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

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

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

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

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

⁶ Section 790.01(2), F.S.

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

⁸ Section 790.01(4), F.S.

⁹ Section 790.01(3), F.S.

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

¹¹ Section 790.053(2), F.S.

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

Concealed Weapons Licensure

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

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

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

¹² Section 790.25(3), F.S.

¹³ Section 790.06(1), F.S.

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

¹⁵ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.²² Failure to have proper documentation and display it upon demand is a 2nd degree misdemeanor.²³

¹⁷ Section 790.06(3), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 790.06(10), F.S.

²² Section 790.06(1), F.S.

²³ *Id.*

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

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

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

Firearms in Vehicles

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

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

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

²⁴ Section 790.06(12), F.S.

²⁵ Section 790.25(5), F.S.

²⁶ Section 790.001(17), F.S.

²⁷ Section 790.001(16), F.S.

²⁸ Ch. 2008-7, L.O.F.

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

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

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

Florida Residents Purchasing Shotguns and Rifles in Other States

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

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

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

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

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

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

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

³⁶ 18 U.S.C. § 922(b)(3) (1968).

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

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

³⁹ 18 U.S.C. § 922(b)(3) (1968).

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

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

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

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

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

Effect of the Bill

Open and Concealed Carrying of Weapons and Firearms

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

The bill amends s. 790.06(12), F.S., and makes conforming changes in s. 790.115, F.S., to allow a concealed weapon or firearm license-holder to carry a weapon or firearm, either openly or concealed, into a career center, a college or university, and nonpublic elementary or secondary school facilities. Such persons would still be prohibited from carrying a concealed weapon or firearm into a public elementary or secondary school facility or administration building.

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

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

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

Florida Residents Purchasing Shotguns and Rifles in Other States

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

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

The bill amends s. 790.065, F.S., which sets forth Florida's requirements for the sale and delivery of firearms, to provide that the purchase, trade, or transfer of a shotgun or rifle to a Florida resident by a licensed dealer in another state is subject only to federal law and the law of the state where the purchase, trade, or transfer is made.

⁴¹ Pub. L. No. 99-308.

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

B. SECTION DIRECTORY:

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

Section 2. Amends s. 790.115, F.S., relating to possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.

Section 3. Repeals s. 790.28, F.S., relating to purchase of rifles and shotguns in contiguous states.

Section 4. Amends s. 790.065, F.S., relating to sale and delivery of firearms.

Section 5. The bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 790.06(12), F.S., currently prohibits concealed weapon or firearm license-holders from carrying a concealed weapon or firearm into a list of specified places (e.g., courthouses, polling places, prisons, etc.). Because the bill authorizes a person who holds a valid concealed weapon or firearm license to carry such weapon or firearm openly, language may be needed in s. 790.06(12), F.S., to clarify that concealed weapon or firearm license-holders are prohibited from *openly carrying or* carrying a concealed weapon or firearm into the list of specified places.

Lines 265 – 272 of the bill amend s. 790.065, F.S., to provide that the purchase, trade, or transfer of a shotgun or rifle to a Florida resident by a licensed dealer in another state is subject only to federal law and the law of the state where the purchase, trade, or transfer is made. This is in conflict with federal law which requires such purchases, trades, or transfers to fully comply with the legal conditions of sale in *both* states.

Section 790.065, F.S., contains various provisions that disqualify a person from purchasing a firearm. Lines 265-272 of the bill specify that *section* 790.065, F.S., does not apply to the purchase, trade, or transfer of a shotgun or rifle to a Florida resident by a licensed dealer in another state. This language allows a Florida resident to purchase a shotgun or rifle in another state despite being disqualified to do so in Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to firearms; amending s. 790.06, F.S.;
3 providing that a person in compliance with the terms of a
4 concealed carry license may carry openly notwithstanding
5 specified provisions; allowing the Division of Licensing
6 of the Department of Agriculture and Consumer Services to
7 take fingerprints from concealed carry license applicants;
8 limiting a prohibition on carrying a concealed weapon or
9 firearm into an elementary or secondary school facility,
10 career center, or college or university facility to
11 include only a public elementary or secondary school
12 facility or administration building; providing that
13 concealed carry licensees shall not be prohibited from
14 carrying or storing a firearm in a vehicle for lawful
15 purposes; providing that a provision limiting the scope of
16 a license to carry a concealed weapon or firearm does not
17 modify certain exceptions to prohibited acts with respect
18 to a person's right to keep and bear arms in motor
19 vehicles for certain purposes; amending s. 790.115, F.S.,
20 relating to the prohibition against possessing or
21 discharging weapons or firearms at a school-sponsored
22 event or on school property; revising the definition of
23 the term "school"; repealing s. 790.28, F.S., relating to
24 the purchase of rifles and shotguns in contiguous states;
25 amending s. 790.065, F.S.; providing that specified
26 provisions do not apply to certain firearms transactions
27 by a resident of this state that take place in another
28 state; providing applicable law; requiring a specified

HB 517

2011

29 background check for such transactions; providing an
 30 effective date.

31

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

33

34 Section 1. Subsection (1), paragraph (c) of subsection
 35 (5), and subsection (12) of section 790.06, Florida Statutes,
 36 are amended to read:

37 790.06 License to carry concealed weapon or firearm.—

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

57 payable to the clerk of the court.

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

60 (c) A full set of fingerprints of the applicant
61 administered by a law enforcement agency or the Division of
62 Licensing of the Department of Agriculture and Consumer
63 Services.

64 (12) (a) ~~A~~ No license issued under ~~pursuant to~~ this section
65 does not shall authorize any person to carry a concealed weapon
66 or firearm into:

- 67 1. Any place of nuisance as defined in s. 823.05;
- 68 2. Any police, sheriff, or highway patrol station;
- 69 3. Any detention facility, prison, or jail;
- 70 4. Any courthouse;
- 71 5. Any courtroom, except that nothing in this section
72 would preclude a judge from carrying a concealed weapon or
73 determining who will carry a concealed weapon in his or her
74 courtroom;
- 75 6. Any polling place;
- 76 7. Any meeting of the governing body of a county, public
77 school district, municipality, or special district;
- 78 8. Any meeting of the Legislature or a committee thereof;
- 79 9. Any school, college, or professional athletic event not
80 related to firearms;
- 81 10. Any public elementary or secondary school facility or
82 administration building;
- 83 11. Any portion of an establishment licensed to dispense
84 alcoholic beverages for consumption on the premises, which

85 | portion of the establishment is primarily devoted to such
 86 | ~~purpose; any elementary or secondary school facility; any career~~
 87 | ~~center; any college or university facility unless the licensee~~
 88 | ~~is a registered student, employee, or faculty member of such~~
 89 | ~~college or university and the weapon is a stun gun or nonlethal~~
 90 | ~~electric weapon or device designed solely for defensive purposes~~
 91 | ~~and the weapon does not fire a dart or projectile;~~

92 | 12. The inside of the passenger terminal and sterile area
 93 | of any airport, provided that no person shall be prohibited from
 94 | carrying any legal firearm into the terminal, which firearm is
 95 | encased for shipment for purposes of checking such firearm as
 96 | baggage to be lawfully transported on any aircraft; or

97 | 13. Any place where the carrying of firearms is prohibited
 98 | by federal law.

99 | (b) A person licensed under this section shall not be
 100 | prohibited from carrying or storing a firearm in a vehicle for
 101 | lawful purposes.

102 | (c) This subsection does not modify the terms or
 103 | conditions of s. 790.251(7).

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

107 | Section 2. Section 790.115, Florida Statutes, is amended
 108 | to read:

109 | 790.115 Possessing or discharging weapons or firearms at a
 110 | school-sponsored event or on school property prohibited;
 111 | penalties; exceptions.—

112 | (1) A person who exhibits any sword, sword cane, firearm,

HB 517

2011

113 | electric weapon or device, destructive device, or other weapon
 114 | as defined in s. 790.001(13), including a razor blade, box
 115 | cutter, or common pocketknife, except as authorized in support
 116 | of school-sanctioned activities, in the presence of one or more
 117 | persons in a rude, careless, angry, or threatening manner and
 118 | not in lawful self-defense, at a school-sponsored event or on
 119 | the grounds or facilities of any school, school bus, or school
 120 | bus stop, or within 1,000 feet of the real property that
 121 | comprises a public or private elementary school, middle school,
 122 | or secondary school, during school hours or during the time of a
 123 | sanctioned school activity, commits a felony of the third
 124 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 125 | 775.084. This subsection does not apply to the exhibition of a
 126 | firearm or weapon on private real property within 1,000 feet of
 127 | a school by the owner of such property or by a person whose
 128 | presence on such property has been authorized, licensed, or
 129 | invited by the owner.

130 | (2)(a) A person may ~~shall~~ not possess any firearm,
 131 | electric weapon or device, destructive device, or other weapon
 132 | as defined in s. 790.001(13), including a razor blade or box
 133 | cutter, except as authorized in support of school-sanctioned
 134 | activities, at a school-sponsored event or on the property of
 135 | any school, school bus, or school bus stop; however, a person
 136 | may carry a firearm:

137 | 1. In a case to a firearms program, class, or function
 138 | that ~~which~~ has been approved in advance by the principal or
 139 | chief administrative officer of the school as a program or class
 140 | to which firearms could be carried;

HB 517

2011

141 2. In a case to a career center having a firearms training
142 range; or

143 3. In a vehicle pursuant to s. 790.25(5); except that
144 school districts may adopt written and published policies that
145 waive the exception in this subparagraph for purposes of student
146 and campus parking privileges.

147
148 For the purposes of this section, the term "school" means any
149 preschool, elementary school, middle school, junior high school,
150 or secondary school, ~~career center, or postsecondary school~~,
151 whether public or nonpublic.

152 (b) A person who willfully and knowingly possesses any
153 electric weapon or device, destructive device, or other weapon
154 as defined in s. 790.001(13), including a razor blade or box
155 cutter, except as authorized in support of school-sanctioned
156 activities, in violation of this subsection commits a felony of
157 the third degree, punishable as provided in s. 775.082, s.
158 775.083, or s. 775.084.

159 (c)1. A person who willfully and knowingly possesses any
160 firearm in violation of this subsection commits a felony of the
161 third degree, punishable as provided in s. 775.082, s. 775.083,
162 or s. 775.084.

163 2. A person who stores or leaves a loaded firearm within
164 the reach or easy access of a minor who obtains the firearm and
165 commits a violation of subparagraph 1. commits a misdemeanor of
166 the second degree, punishable as provided in s. 775.082 or s.
167 775.083; except that this does not apply if the firearm was
168 stored or left in a securely locked box or container or in a

HB 517

2011

169 location which a reasonable person would have believed to be
 170 secure, or was securely locked with a firearm-mounted push-
 171 button combination lock or a trigger lock; if the minor obtains
 172 the firearm as a result of an unlawful entry by any person; or
 173 to members of the Armed Forces, National Guard, or State
 174 Militia, or to police or other law enforcement officers, with
 175 respect to firearm possession by a minor which occurs during or
 176 incidental to the performance of their official duties.

177 (d) A person who discharges any weapon or firearm while in
 178 violation of paragraph (a), unless discharged for lawful defense
 179 of himself or herself or another or for a lawful purpose,
 180 commits a felony of the second degree, punishable as provided in
 181 s. 775.082, s. 775.083, or s. 775.084.

182 (e) The penalties of this subsection do ~~shall~~ not apply to
 183 persons licensed under s. 790.06. Persons licensed under s.
 184 790.06 shall be punished as provided in s. 790.06(12), except
 185 that a licenseholder who unlawfully discharges a weapon or
 186 firearm on school property as prohibited by this subsection
 187 commits a felony of the second degree, punishable as provided in
 188 s. 775.082, s. 775.083, or s. 775.084.

189 (3) This section does not apply to any law enforcement
 190 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
 191 (8), (9), or (14).

192 (4) Notwithstanding s. 985.24, s. 985.245, or s.
 193 985.25(1), any minor under 18 years of age who is charged under
 194 this section with possessing or discharging a firearm on school
 195 property shall be detained in secure detention, unless the state
 196 attorney authorizes the release of the minor, and shall be given

HB 517

2011

197 a probable cause hearing within 24 hours after being taken into
 198 custody. At the hearing, the court may order that the minor
 199 continue to be held in secure detention for a period of 21 days,
 200 during which time the minor shall receive medical, psychiatric,
 201 psychological, or substance abuse examinations pursuant to s.
 202 985.18, and a written report shall be completed.

203 Section 3. Section 790.28, Florida Statutes, is repealed.

204 Section 4. Subsection (1) of section 790.065, Florida
 205 Statutes, is amended to read:

206 790.065 Sale and delivery of firearms.—

207 (1) (a) A licensed importer, licensed manufacturer, or
 208 licensed dealer may not sell or deliver from her or his
 209 inventory at her or his licensed premises any firearm to another
 210 person, other than a licensed importer, licensed manufacturer,
 211 licensed dealer, or licensed collector, until she or he has:

212 1. (a) Obtained a completed form from the potential buyer
 213 or transferee, which form shall have been promulgated by the
 214 Department of Law Enforcement and provided by the licensed
 215 importer, licensed manufacturer, or licensed dealer, which shall
 216 include the name, date of birth, gender, race, and social
 217 security number or other identification number of such potential
 218 buyer or transferee and has inspected proper identification
 219 including an identification containing a photograph of the
 220 potential buyer or transferee.

221 2. (b) Collected a fee from the potential buyer for
 222 processing the criminal history check of the potential buyer.
 223 The fee shall be established by the Department of Law
 224 Enforcement and may not exceed \$8 per transaction. The

HB 517

2011

225 Department of Law Enforcement may reduce, or suspend collection
 226 of, the fee to reflect payment received from the Federal
 227 Government applied to the cost of maintaining the criminal
 228 history check system established by this section as a means of
 229 facilitating or supplementing the National Instant Criminal
 230 Background Check System. The Department of Law Enforcement
 231 shall, by rule, establish procedures for the fees to be
 232 transmitted by the licensee to the Department of Law
 233 Enforcement. All such fees shall be deposited into the
 234 Department of Law Enforcement Operating Trust Fund, but shall be
 235 segregated from all other funds deposited into such trust fund
 236 and must be accounted for separately. Such segregated funds must
 237 not be used for any purpose other than the operation of the
 238 criminal history checks required by this section. The Department
 239 of Law Enforcement, each year prior to February 1, shall make a
 240 full accounting of all receipts and expenditures of such funds
 241 to the President of the Senate, the Speaker of the House of
 242 Representatives, the majority and minority leaders of each house
 243 of the Legislature, and the chairs of the appropriations
 244 committees of each house of the Legislature. In the event that
 245 the cumulative amount of funds collected exceeds the cumulative
 246 amount of expenditures by more than \$2.5 million, excess funds
 247 may be used for the purpose of purchasing soft body armor for
 248 law enforcement officers.

249 3.~~(e)~~ Requested, by means of a toll-free telephone call,
 250 the Department of Law Enforcement to conduct a check of the
 251 information as reported and reflected in the Florida Crime
 252 Information Center and National Crime Information Center systems

253 as of the date of the request.

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

257 (b) However, if the person purchasing, or receiving
 258 delivery of, the firearm is a holder of a valid concealed
 259 weapons or firearms license pursuant to the provisions of s.
 260 790.06 or holds an active certification from the Criminal
 261 Justice Standards and Training Commission as a "law enforcement
 262 officer," a "correctional officer," or a "correctional probation
 263 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or
 264 (9), ~~the provisions of~~ this subsection does ~~de~~ not apply.

265 (c) This section does not apply to the purchase, trade, or
 266 transfer of firearms by a resident of this state when the
 267 resident makes such purchase, trade, or transfer in another
 268 state, in which case the laws and regulations of that state and
 269 the United States governing the purchase, trade, or transfer of
 270 firearms shall apply. A National Instant Criminal Background
 271 Check System check shall be performed prior to such purchase,
 272 trade, or transfer of firearms by a resident of this state.

273 Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 Interstate Compact for Juveniles

SPONSOR(S): Brodeur

TIED BILLS: None IDEN./SIM. BILLS: SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams <i>AA</i>	Cunningham <i>SC</i>
2) Rulemaking & Regulation Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In the early 1950's, a group of organizations sought to develop a uniform set of procedures to facilitate the return of juveniles who ran away to other states and to create a system in which juvenile offenders could be supervised in other states. This resulted in the enactment of the Interstate Compact on Juveniles (Compact).

In 1999, the Office of Juvenile Justice and Delinquency Prevention conducted a detailed survey of the states, uncovering many contentious issues within the Compact structure, and asked for recommendations to address these growing concerns. In 2003, a revised Compact was drafted to address these issues.

The requirements of the revised Compact are laid out in a series of articles which provide the purposes of the Compact; create the Interstate Commission for Juveniles (Commission) as the governing body for Compact activities; provide for the Commission's authority and responsibilities; provide a financing mechanism for the Commission; require each state to create a State Council for Interstate Juvenile Supervision (State Council); provide for enforcement of the Compact including imposition of fines and fees; and provide for judicial enforcement of the Compact that are binding by state authorities. The revised Compact further specified that it would become effective and binding upon legislative enactment of the Compact into law by no less than 35 states.

In 2005, Florida adopted the revised Compact when it enacted HB 577, entitled "The Interstate Compact for Juveniles," which created ss. 985.502 and 985.5025, F.S., (subsequently renumbered as ss. 985.802 and 985.8025, F.S.). The bill included a sunset provision that the law be repealed two years after the effective date of the Compact unless reviewed and saved from repeal through reenactment by the Legislature.

The Compact became effective on August 26, 2008, when Illinois became the 35th state to adopt the Compact. Since the Compact's enactment, the Florida Legislature has taken no action to reenact ss. 985.802 and 985.8025, F.S. Consequently, these statutes were repealed on August 26, 2010. As a result, Florida is no longer a member of the Compact and the mechanism by which Florida manages the interstate movement of juvenile offenders no longer exists.

HB 1029 reenacts s. 985.802, F.S., relating to Execution of Interstate Compact for Juveniles, and s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision. The bill does not include the two year sunset provision language of the repealed statute. As a result, Florida will once again be a member of the Compact which will allow Florida to regulate the interstate movement of juvenile delinquents and offenders in accordance with the Compact's provisions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In the early 1950's, *Parade* magazine published a series of articles entitled "Nobody's Children," which depicted the plight of runaways in America. Inspired by these articles and recognizing that action was needed, a group of organizations sought to develop a uniform set of procedures to facilitate the return of juveniles who ran away to other states and to create a system in which juvenile offenders could be supervised in other states.¹ Representatives from the Council of State Governments (CSG), National Council on Crime and Delinquency (formerly the National Probation and Parole Association), National Council of Juvenile and Family Court Judges, American Public Welfare Association, National Association of Attorneys General, and Adult Parole and Probation Compact Administrators Association drafted an Interstate Compact on Juveniles (Compact) to meet these needs.² The Compact was approved by these organizations in January 1955 and ratified by all 50 States, the District of Columbia, the Virgin Islands, and Guam by 1986.³

In 1999, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) conducted a detailed survey of the states, uncovering many contentious issues within the Compact structure, and asked for recommendations to address these growing concerns.⁴ In 2000, a Compact Advisory Group was formed to assist in assessing interstate supervision options and alternatives, and to assist in identifying groups having an interest in effective interstate supervision.⁵ They identified a revision of the existing Compact as the only option for long-term change.⁶

In 2001, CSG worked with OJJDP and the Association of Juvenile Compact Administrators (AJCA) to develop and facilitate a drafting team of state officials to begin the design of a revised Compact.⁷ In 2002, the Compact language was finalized, and by 2003 the revised Compact was first available for introduction in the states.⁸

The Revised Compact

The requirements of the revised Compact are laid out in a series of articles which provide the purposes of the Compact; create the Interstate Commission for Juveniles (Commission) as the governing body for Compact activities; provide for the Commission's authority and responsibilities; provide a financing mechanism for the Commission; require each state to create a State Council for Interstate Juvenile Supervision (State Council); provide for enforcement of the Compact including imposition of fines and fees; and provide for judicial enforcement of the Compact that are binding by state authorities.⁹

The purpose of the revised Compact, through means of joint and cooperative action among the states participating in the Compact, is to:

- Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

¹ Office of Juvenile Justice and Delinquency Prevention Fact Sheet, *Interstate Compact on Juveniles*, September 2000 #12 (on file with Criminal Justice Subcommittee staff).

² *Id.*

³ *Id.*

⁴ Interstate Commission for Juveniles, *ICJ History*. (<http://www.juvenilecompact.org/About/History.aspx>) (last accessed March 13, 2011.)

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Interstate Commission for Juveniles. *Serving Juveniles While Protecting Communities. Compact Statute*. (<http://www.juvenilecompact.org/LinkClick.aspx?fileticket=b9nFo9GaUco%3d&tabid=654>) (last accessed March 11, 2011).

- Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;
- Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;
- Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
- Provide for the effective tracking and supervision of juveniles;
- Equitably allocate the costs, benefits and obligations of the compacting states;
- Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;
- Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
- Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;
- Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
- Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
- Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
- Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.¹⁰

The revised Compact further specified that it would become effective and binding upon legislative enactment of the Compact into law by no less than 35 states.¹¹

Florida's Adoption of the Revised Compact

In 2003, 12 states adopted the revised compact.¹² In 2004, an additional 22 states adopted the Compact, and in 2005 the Compact was adopted by 7 states, including Florida.¹³

Florida adopted the Compact when it enacted HB 577, entitled "The Interstate Compact for Juveniles," which created ss. 985.502 and 985.5025, F.S.¹⁴ In addition to defining the purpose of the Compact and creating the Commission, the bill created the State Council to oversee Florida's participation in the activities of the Commission.¹⁵ The State Council is comprised of eight members, including the Secretary of the Department of Juvenile Justice (or designee), who is to serve as chair of the State Council, the compact administrator (or designee), and the Executive Director of the Department of Law Enforcement (or designee).¹⁶ The remaining five members are to be appointed by the Governor for four-year terms.¹⁷ Currently Florida has a Commission but no State Council.¹⁸

¹⁰ The Council of State Governments. *Interstate Compact for Juveniles Resource Kit*, (<http://www.csg.org/knowledgecenter/docs/ncic/ICJ-ResourceKit.pdf>) (last accessed March 13, 2011.)

¹¹ *Id.*

¹² Interstate Commission for Juveniles, *ICJ History*. (<http://www.juvenilecompact.org/About/History.aspx>) (last accessed March 13, 2011.)

¹³ *Id.*

¹⁴ Ch. 2005-80, L.O.F. (Note: In 2006 ss. 985.502 and 985.5025, F.S., were renumbered as ss. 985.802 and 985.8025, F.S. See s.101, Ch. 2006-120, L.O.F.)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Department of Juvenile Justice 2011 Analysis of HB 1029 (on file with Criminal Justice Subcommittee Staff).

Because enacting the law resulted in the state being bound to rules of the Commission that had not yet been written,¹⁹ the bill included a sunset provision that the law be repealed two years after the effective date of the Compact unless reviewed and saved from repeal through reenactment by the Legislature.²⁰

The Compact became effective on August 26, 2008, when Illinois became the 35th state to adopt the Compact.²¹ Since the Compact's enactment, the Florida Legislature has taken no action to reenact ss. 985.802 and 985.8025, F.S. Consequently, these statutes were repealed on August 26, 2010. As a result, Florida is no longer a member of the Compact and the mechanism by which Florida manages the interstate movement of juvenile offenders no longer exists.²²

Effect of the bill

HB 1029 reenacts s. 985.802, F.S., relating to Execution of Interstate Compact for Juveniles, and s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision. The bill does not include the two-year sunset provision.

As a result, Florida will once again be a member of the Compact which will allow Florida to regulate the interstate movement of juvenile delinquents and offenders in accordance with the Compact's provisions.

B. SECTION DIRECTORY:

Section 1. Reenact s. 985.802, F.S., relating to execution of interstate compact for juveniles.

Section 2. Reenacts s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision.

Section 3. The bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commission levies and collects annual assessment from each compacting state to cover the cost of internal operation and activities.²³ The annual assessment amount is allocated by a formula based on the population and juvenile movement of each state.²⁴ When HB 577 was enacted in 2005, the Department of Juvenile Justice (DJJ) estimated there would be a recurring cost of \$40,000 per year to cover the dues to the Commission and traveling expenses. DJJ reports HB 1029 will have no fiscal impact since the funds are already allocated for the Commission.²⁵

¹⁹ The Rules and Regulations for Administration of the Interstate Compact on Juveniles were adopted on August 9, 2006. AJCA Policy and Procedure Manual (January 2007.) (http://www.ajca.us/pdf/ajca_final_06_regs_07.pdf) (last accessed March 13, 2011.)

²⁰ Ch. 2005-80, L.O.F.

²¹ Association of Juvenile Compact Administrators. Interstate Compact on Juveniles. September 2008. (http://www.ajca.us/documents/new_compact_092008.pdf) (last accessed March 10, 2011).

²² Department of Juvenile Justice 2011 Analysis of HB 1029 (on file with Criminal Justice Subcommittee Staff).

²³ Interstate Compact for Juveniles Resource Kit, *Fiscal Note*, Council of State Government. (<http://www.csg.org/knowledgecenter/docs/ncic/ICJ-ResourceKit.pdf>) (last accessed March 11, 2011).

²⁴ *Id.*

²⁵ March 11, 2011 conversation with DJJ Legislative Affairs Director, Ana Maria Sanchez.

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:

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

HB 1029

2011

29 oversee state participation in the compact; providing
 30 membership; providing for records and open meetings;
 31 prescribing procedures if the council is abolished;
 32 providing an effective date.

33

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

35

36 Section 1. Notwithstanding the repeal of this section by
 37 section 4 of chapter 2005-80, Laws of Florida, effective 2 years
 38 after the effective date of the act, section 985.802, Florida
 39 Statutes, is reenacted to read:

40 985.802 Execution of interstate compact for juveniles.—The
 41 Governor is authorized and directed to execute a compact on
 42 behalf of this state with any other state or states legally
 43 joining thereto in the form substantially as follows. This
 44 compact does not interfere with this state's authority to
 45 determine policy regarding juvenile offenders and nonoffenders
 46 within this state.

47

THE INTERSTATE COMPACT FOR JUVENILES

48

ARTICLE I

49

PURPOSE.—

50

(1) The compacting states to this Interstate Compact
 51 recognize that each state is responsible for the proper
 52 supervision or return of juveniles, delinquents, and status
 53 offenders who are on probation or parole and who have absconded,
 54 escaped, or run away from supervision and control and in so
 55 doing have endangered their own safety and the safety of others.
 56 The compacting states also recognize that each state is

57 | responsible for the safe return of juveniles who have run away
58 | from home and in doing so have left their state of residence.
59 | The compacting states also recognize that Congress, by enacting
60 | the Crime Control Act, 4 U.S.C. s. 112 (1965), has authorized
61 | and encouraged compacts for cooperative efforts and mutual
62 | assistance in the prevention of crime.

63 | (2) It is the purpose of this compact, through means of
64 | joint and cooperative action among the compacting states to: (A)
65 | ensure that the adjudicated juveniles and status offenders
66 | subject to this compact are provided adequate supervision and
67 | services in the receiving state as ordered by the adjudicating
68 | judge or parole authority in the sending state; (B) ensure that
69 | the public safety interests of the public, including the victims
70 | of juvenile offenders, in both the sending and receiving states
71 | are adequately protected; (C) return juveniles who have run
72 | away, absconded, or escaped from supervision or control or who
73 | have been accused of an offense to the state requesting their
74 | return; (D) make contracts for the cooperative
75 | institutionalization in public facilities in member states for
76 | delinquent youth needing special services; (E) provide for the
77 | effective tracking and supervision of juveniles; (F) equitably
78 | allocate the costs, benefits, and obligations of the compacting
79 | states; (G) establish procedures to manage the movement between
80 | states of juvenile offenders released to the community under the
81 | jurisdiction of courts, juvenile departments, or any other
82 | criminal or juvenile justice agency that has jurisdiction over
83 | juvenile offenders; (H) ensure immediate notice to jurisdictions
84 | where defined offenders are authorized to travel or to relocate

85 across state lines; (I) establish procedures to resolve pending
 86 charges (detainers) against juvenile offenders prior to transfer
 87 or release to the community under the terms of this compact; (J)
 88 establish a system of uniform data collection of information
 89 pertaining to juveniles subject to this compact which allows
 90 access by authorized juvenile justice and criminal justice
 91 officials, and regular reporting of activities under this
 92 compact to heads of state executive, judicial, and legislative
 93 branches and juvenile and criminal justice administrators; (K)
 94 monitor compliance with rules governing interstate movement of
 95 juveniles and initiate interventions to address and correct
 96 noncompliance; (L) coordinate training and education regarding
 97 the regulation of interstate movement of juveniles for officials
 98 involved in such activity; and (M) coordinate the implementation
 99 and operation of the compact with the Interstate Compact for the
 100 Placement of Children, the Interstate Compact for Adult Offender
 101 Supervision, and other compacts affecting juveniles,
 102 particularly in those cases where concurrent or overlapping
 103 supervision issues arise. It is the policy of the compacting
 104 states that the activities conducted by the Interstate
 105 Commission created in this compact are the formation of public
 106 policies and therefore are public business. Furthermore, the
 107 compacting states shall cooperate and observe their individual
 108 and collective duties and responsibilities for the prompt return
 109 and acceptance of juveniles subject to the provisions of the
 110 compact. The provisions of the compact shall be reasonably and
 111 liberally construed to accomplish the purposes and policies of
 112 the compact.

ARTICLE II

DEFINITIONS.—As used in this compact, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance or for directing or controlling its actions or conduct.

(2) "Compact administrator" means the individual in each compacting state, appointed pursuant to the terms of this compact, who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and the policies adopted by the state council under this compact.

(3) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(4) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of the compact who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and the policies adopted by the state council under this compact.

141 (7) "Interstate Commission" means the Interstate
 142 Commission for Juveniles created by Article III of this compact.

143 (8) "Juvenile" means any person defined as a juvenile in
 144 any member state or by the rules of the Interstate Commission,
 145 including:

146 (a) Accused delinquent - a person charged with an offense
 147 that, if committed by an adult, would be a criminal offense;

148 (b) Adjudicated delinquent - a person found to have
 149 committed an offense that, if committed by an adult, would be a
 150 criminal offense;

151 (c) Accused status offender - a person charged with an
 152 offense that would not be a criminal offense if committed by an
 153 adult;

154 (d) Adjudicated status offender - a person found to have
 155 committed an offense that would not be a criminal offense if
 156 committed by an adult; and

157 (e) Nonoffender - a person in need of supervision who has
 158 not been accused or adjudicated a status offender or delinquent.

159 (9) "Noncompacting state" means any state that has not
 160 enacted the enabling legislation for this compact.

161 (10) "Probation or parole" means any kind of supervision
 162 or conditional release of juveniles authorized under the laws of
 163 the compacting states.

164 (11) "Rule" means a written statement by the Interstate
 165 Commission adopted pursuant to Article VI of this compact which
 166 is of general applicability and implements, interprets, or
 167 prescribes a policy or provision of the compact, or an
 168 organizational, procedural, or practice requirement of the

197 include individuals who are not commissioners, but who are
 198 members of interested organizations. Such noncommissioner
 199 members must include a member of the national organization of
 200 governors, legislatures, state chief justices, attorneys
 201 general, Interstate Compact for Adult Offender Supervision,
 202 Interstate Compact for the Placement of Children, juvenile
 203 justice and juvenile corrections officials, and crime victims.
 204 All noncommissioner members of the Interstate Commission shall
 205 be ex officio, nonvoting members. The Interstate Commission may
 206 provide in its bylaws for such additional ex officio, nonvoting
 207 members, including members of other national organizations, in
 208 such numbers as shall be determined by the Interstate
 209 Commission.

210 (4) Each compacting state represented at any meeting of
 211 the Interstate Commission is entitled to one vote. A majority of
 212 the compacting states shall constitute a quorum for the
 213 transaction of business, unless a larger quorum is required by
 214 the bylaws of the Interstate Commission.

215 (5) The Interstate Commission shall establish an executive
 216 committee, which shall include commission officers, members, and
 217 others as determined by the bylaws. The executive committee
 218 shall have the power to act on behalf of the Interstate
 219 Commission during periods when the Interstate Commission is not
 220 in session, with the exception of rulemaking or amendment to the
 221 compact. The executive committee shall oversee the day-to-day
 222 activities of the administration of the compact, which shall be
 223 managed by an executive director and Interstate Commission
 224 staff. The executive committee shall administer enforcement and

253 (2) To adopt rules to effect the purposes and obligations
 254 as enumerated in this compact, and which shall have the force
 255 and effect of statutory law and shall be binding in the
 256 compacting states to the extent and in the manner provided in
 257 this compact.

258 (3) To oversee, supervise, and coordinate the interstate
 259 movement of juveniles subject to the terms of this compact and
 260 any bylaws and rules adopted by the Interstate Commission.

261 (4) To enforce compliance with the compact provisions, the
 262 rules adopted by the Interstate Commission, and the bylaws,
 263 using all necessary and proper means, including, but not limited
 264 to, the use of judicial process.

265 (5) To establish and maintain offices that are located
 266 within one or more of the compacting states.

267 (6) To purchase and maintain insurance and bonds.

268 (7) To borrow, accept, hire, or contract for services of
 269 personnel.

270 (8) To establish and appoint committees and hire staff
 271 that it deems necessary for carrying out its functions,
 272 including, but not limited to, an executive committee as
 273 required in Article III which shall have the power to act on
 274 behalf of the Interstate Commission in carrying out its powers
 275 and duties hereunder.

276 (9) To elect or appoint such officers, attorneys,
 277 employees, agents, or consultants; to fix their compensation,
 278 define their duties, and determine their qualifications; and to
 279 establish the Interstate Commission's personnel policies and
 280 programs relating to, inter alia, conflicts of interest, rates

281 | of compensation, and qualifications of personnel.

282 | (10) To accept any and all donations and grants of money,

283 | equipment, supplies, materials, and services, and to receive,

284 | use, and dispose of such donations and grants.

285 | (11) To lease, purchase, accept contributions or donations

286 | of, or otherwise to own, hold, improve, or use any property,

287 | real, personal, or mixed.

288 | (12) To sell, convey, mortgage, pledge, lease, exchange,

289 | abandon, or otherwise dispose of any property, real, personal,

290 | or mixed.

291 | (13) To establish a budget and make expenditures and levy

292 | dues as provided in Article VIII of this compact.

293 | (14) To sue and to be sued.

294 | (15) To adopt a seal and bylaws governing the management

295 | and operation of the Interstate Commission.

296 | (16) To perform such functions as may be necessary or

297 | appropriate to achieve the purposes of this compact.

298 | (17) To report annually to the legislatures, governors,

299 | judiciary, and state councils of the compacting states

300 | concerning the activities of the Interstate Commission during

301 | the preceding year. Such reports shall also include any

302 | recommendations that may have been adopted by the Interstate

303 | Commission.

304 | (18) To coordinate education, training, and public

305 | awareness regarding the interstate movement of juveniles for

306 | officials involved in such activity.

307 | (19) To establish uniform standards of the reporting,

308 | collecting, and exchanging of data.

309 (20) To maintain its corporate books and records in
 310 accordance with the bylaws.

311 ARTICLE V

312 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.—

313 Section A. Bylaws.—The Interstate Commission shall, by a
 314 majority of the members present and voting, within 12 months
 315 after the first Interstate Commission meeting, adopt bylaws to
 316 govern its conduct as may be necessary or appropriate to carry
 317 out the purposes of the compact, including, but not limited to:

- 318 (1) Establishing the fiscal year of the Interstate
 319 Commission;
- 320 (2) Establishing an executive committee and such other
 321 committees as may be necessary;
- 322 (3) Providing for the establishment of committees
 323 governing any general or specific delegation of any authority or
 324 function of the Interstate Commission;
- 325 (4) Providing reasonable procedures for calling and
 326 conducting meetings of the Interstate Commission and ensuring
 327 reasonable notice of each such meeting;
- 328 (5) Establishing the titles and responsibilities of the
 329 officers of the Interstate Commission;
- 330 (6) Providing a mechanism for concluding the operation of
 331 the Interstate Commission and the return of any surplus funds
 332 that may exist upon the termination of the compact after the
 333 payment or reserving all of its debts and obligations;
- 334 (7) Providing start-up rules for initial administration of
 335 the compact; and
- 336 (8) Establishing standards and procedures for compliance

337 | and technical assistance in carrying out the compact.

338 | Section B. Officers and staff.—

339 | (1) The Interstate Commission shall, by a majority of the
 340 | members, elect annually from among its members a chairperson and
 341 | vice chairperson, each of whom shall have such authority and
 342 | duties as may be specified in the bylaws. The chairperson or, in
 343 | the chairperson's absence or disability, the vice chairperson
 344 | shall preside at all meetings of the Interstate Commission. The
 345 | officers so elected shall serve without compensation or
 346 | remuneration from the Interstate Commission; provided that,
 347 | subject to the availability of budgeted funds, the officers
 348 | shall be reimbursed for any ordinary and necessary costs and
 349 | expenses incurred by them in the performance of their duties and
 350 | responsibilities as officers of the Interstate Commission.

351 | (2) The Interstate Commission shall, through its executive
 352 | committee, appoint or retain an executive director for such
 353 | period, upon such terms and conditions, and for such
 354 | compensation as the Interstate Commission deems appropriate. The
 355 | executive director shall serve as secretary to the Interstate
 356 | Commission, but may not be a member, and shall hire and
 357 | supervise such other staff as may be authorized by the
 358 | Interstate Commission.

359 | Section C. Qualified immunity, defense, and
 360 | indemnification.—

361 | (1) The Interstate Commission's executive director and
 362 | employees shall be immune from suit and liability, either
 363 | personally or in their official capacity, for any claim for
 364 | damage to or loss of property or personal injury or other civil

365 liability caused or arising out of or relating to any actual or
 366 alleged act, error, or omission that occurred, or that such
 367 person had a reasonable basis for believing occurred, within the
 368 scope of commission employment, duties, or responsibilities;
 369 provided that any such person is not protected from suit or
 370 liability for any damage, loss, injury, or liability caused by
 371 the intentional or willful and wanton misconduct of any such
 372 person.

373 (2) The liability of any commissioner, or the employee or
 374 agent of a commissioner, acting within the scope of such
 375 person's employment or duties for acts, errors, or omissions
 376 occurring within such person's state may not exceed the limits
 377 of liability set forth under the constitution and laws of that
 378 state for state officials, employees, and agents. Nothing in
 379 this subsection shall be construed to protect any such person
 380 from suit or liability for any damage, loss, injury, or
 381 liability caused by the intentional or willful and wanton
 382 misconduct of any such person.

383 (3) The Interstate Commission shall defend the executive
 384 director or the employees or representatives of the Interstate
 385 Commission and, subject to the approval of the Attorney General
 386 of the state represented by any commissioner of a compacting
 387 state, shall defend such commissioner or the commissioner's
 388 representatives or employees in any civil action seeking to
 389 impose liability arising out of any actual or alleged act,
 390 error, or omission that occurred within the scope of Interstate
 391 Commission employment, duties, or responsibilities, or that the
 392 defendant had a reasonable basis for believing occurred within

421 | deems appropriate consistent with due process requirements under
 422 | the United States Constitution as now or hereafter interpreted
 423 | by the United States Supreme Court. All rules and amendments
 424 | shall become binding as of the date specified, as published with
 425 | the final version of the rule as approved by the Interstate
 426 | Commission.

427 | (3) When adopting a rule, the Interstate Commission shall,
 428 | at a minimum:

429 | (a) Publish the proposed rule's entire text stating the
 430 | reason for that proposed rule;

431 | (b) Allow and invite any and all persons to submit written
 432 | data, facts, opinions, and arguments, which information shall be
 433 | added to the record and made publicly available;

434 | (c) Provide an opportunity for an informal hearing if
 435 | petitioned by 10 or more persons; and

436 | (d) Adopt a final rule and its effective date, if
 437 | appropriate, based on input from state or local officials or
 438 | interested parties.

439 | (4) Allow, not later than 60 days after a rule is adopted,
 440 | any interested person to file a petition in the United States
 441 | District Court for the District of Columbia, or in the Federal
 442 | District Court where the Interstate Commission's principal
 443 | office is located, for judicial review of such rule. If the
 444 | court finds that the Interstate Commission's actions are not
 445 | supported by the substantial evidence in the rulemaking record,
 446 | the court shall hold the rule unlawful and set it aside. For
 447 | purposes of this subsection, evidence is substantial if it would
 448 | be considered substantial evidence under the Model State

449 Administrative Procedures Act.

450 (5) If a majority of the legislatures of the compacting
 451 states rejects a rule, those states may, by enactment of a
 452 statute or resolution in the same manner used to adopt the
 453 compact, cause that such rule shall have no further force and
 454 effect in any compacting state.

455 (6) The existing rules governing the operation of the
 456 Interstate Compact on Juveniles superseded by this act shall be
 457 null and void 12 months after the first meeting of the
 458 Interstate Commission created hereunder.

459 (7) Upon determination by the Interstate Commission that a
 460 state of emergency exists, it may adopt an emergency rule that
 461 shall become effective immediately upon adoption; provided that
 462 the usual rulemaking procedures provided hereunder shall be
 463 retroactively applied to said rule as soon as reasonably
 464 possible, but no later than 90 days after the effective date of
 465 the emergency rule.

466 ARTICLE VII

467 OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE
 468 INTERSTATE COMMISSION.—

469 Section A. Oversight.—

470 (1) The Interstate Commission shall oversee the
 471 administration and operations of the interstate movement of
 472 juveniles subject to this compact in the compacting states and
 473 shall monitor such activities being administered in
 474 noncompacting states which may significantly affect compacting
 475 states.

476 (2) The courts and executive agencies in each compacting

477 state shall enforce this compact and shall take all actions
 478 necessary and appropriate to effectuate the compact's purposes
 479 and intent. The provisions of this compact and the rules adopted
 480 hereunder shall be received by all the judges, public officers,
 481 commissions, and departments of the state government as evidence
 482 of the authorized statute and administrative rules. All courts
 483 shall take judicial notice of the compact and the rules. In any
 484 judicial or administrative proceeding in a compacting state
 485 pertaining to the subject matter of this compact which may
 486 affect the powers, responsibilities, or actions of the
 487 Interstate Commission, the commission shall be entitled to
 488 receive all service of process in any such proceeding and shall
 489 have standing to intervene in the proceeding for all purposes.

490 Section B. Dispute resolution.—

491 (1) The compacting states shall report to the Interstate
 492 Commission on all issues and activities necessary for the
 493 administration of the compact as well as issues and activities
 494 pertaining to compliance with the provisions of the compact and
 495 its bylaws and rules.

496 (2) The Interstate Commission shall attempt, upon the
 497 request of a compacting state, to resolve any disputes or other
 498 issues that are subject to the compact and that may arise among
 499 compacting states and between compacting and noncompacting
 500 states. The commission shall adopt a rule providing for both
 501 mediation and binding dispute resolution for disputes among the
 502 compacting states.

503 (3) The Interstate Commission, in the reasonable exercise
 504 of its discretion, shall enforce the provisions and rules of

505 | this compact using any or all means set forth in Article XI of
 506 | this compact.

507 | ARTICLE VIII

508 | FINANCE.—

509 | (1) The Interstate Commission shall pay or provide for the
 510 | payment of the reasonable expenses of its establishment,
 511 | organization, and ongoing activities.

512 | (2) The Interstate Commission shall levy on and collect an
 513 | annual assessment from each compacting state to cover the cost
 514 | of the internal operations and activities of the Interstate
 515 | Commission and its staff which must be in a total amount
 516 | sufficient to cover the Interstate Commission's annual budget as
 517 | approved each year. The aggregate annual assessment amount shall
 518 | be allocated based upon a formula to be determined by the
 519 | Interstate Commission, taking into consideration the population
 520 | of each compacting state and the volume of interstate movement
 521 | of juveniles in each compacting state, and the Interstate
 522 | Commission shall adopt a rule that is binding upon all
 523 | compacting states governing the assessment.

524 | (3) The Interstate Commission shall not incur any
 525 | obligations of any kind prior to securing the funds adequate to
 526 | meet the same, nor shall the Interstate Commission pledge the
 527 | credit of any of the compacting states, except by and with the
 528 | authority of the compacting state.

529 | (4) The Interstate Commission shall keep accurate accounts
 530 | of all receipts and disbursements. The receipts and
 531 | disbursements of the Interstate Commission shall be subject to
 532 | the audit and accounting procedures established under its

533 | bylaws. However, all receipts and disbursements of funds handled
 534 | by the Interstate Commission shall be audited yearly by a
 535 | certified or licensed public accountant, and the report of the
 536 | audit shall be included in and become part of the annual report
 537 | of the Interstate Commission.

538 | ARTICLE IX

539 | THE STATE COUNCIL.—Each member shall create a State Council
 540 | for Interstate Juvenile Supervision. While each state may
 541 | determine the membership of its own state council, its
 542 | membership must include at least one representative from the
 543 | legislative, judicial, and executive branches of government; at
 544 | least one representative of victims groups; a parent of a youth
 545 | who is not currently in the juvenile justice system; and the
 546 | compact administrator, deputy compact administrator, or
 547 | designee. Each compacting state retains the right to determine
 548 | the qualifications of the compact administrator or deputy
 549 | compact administrator. Each state council may advise and
 550 | exercise oversight and advocacy concerning that state's
 551 | participation in the activities of the Interstate Commission and
 552 | other duties as may be determined by that state, including, but
 553 | not limited to, development of policy concerning operations and
 554 | procedures of the compact within that state.

555 | ARTICLE X

556 | COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT.—

557 | (1) Any state, including the District of Columbia (or its
 558 | designee), the Commonwealth of Puerto Rico, the United States
 559 | Virgin Islands, Guam, American Samoa, and the Northern Mariana
 560 | Islands, as defined in Article II of this compact, is eligible

561 to become a compacting state.

562 (2) The compact shall become effective and binding upon
 563 legislative enactment of the compact into law by no less than 35
 564 of the states. The initial effective date shall be the later of
 565 July 1, 2005, or upon enactment into law by the 35th
 566 jurisdiction. Thereafter, it shall become effective and binding
 567 as to any other compacting state upon enactment of the compact
 568 into law by that state. The governors of nonmember states or
 569 their designees shall be invited to participate in the
 570 activities of the Interstate Commission on a nonvoting basis
 571 prior to adoption of the compact by all states and territories
 572 of the United States.

573 (3) The Interstate Commission may propose amendments to
 574 the compact for enactment by the compacting states. No amendment
 575 shall become effective and binding upon the Interstate
 576 Commission and the compacting states unless and until it is
 577 enacted into law by unanimous consent of the compacting states.

578 ARTICLE XI

579 WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL
 580 ENFORCEMENT.—

581 Section A. Withdrawal.—

582 (1) Once effective, the compact shall continue in force
 583 and remain binding upon each and every compacting state;
 584 provided that a compacting state may withdraw from the compact
 585 by specifically repealing the statute that enacted the compact
 586 into law.

587 (2) The effective date of withdrawal is the effective date
 588 of the repeal.

589 (3) The withdrawing state shall immediately notify the
 590 chairperson of the Interstate Commission in writing upon the
 591 introduction of legislation repealing this compact in the
 592 withdrawing state. The Interstate Commission shall notify the
 593 other compacting states of the withdrawing state's intent to
 594 withdraw within 60 days after its receipt thereof.

595 (4) The withdrawing state is responsible for all
 596 assessments, obligations, and liabilities incurred through the
 597 effective date of withdrawal, including any obligations the
 598 performance of which extends beyond the effective date of
 599 withdrawal.

600 (5) Reinstatement following withdrawal of any compacting
 601 state shall occur upon the withdrawing state's reenacting the
 602 compact or upon such later date as determined by the Interstate
 603 Commission.

604 Section B. Technical assistance, fines, suspension,
 605 termination, and default.—

606 (1) If the Interstate Commission determines that any
 607 compacting state has at any time defaulted in the performance of
 608 any of its obligations or responsibilities under this compact,
 609 or the bylaws or duly adopted rules, the Interstate Commission
 610 may impose any or all of the following penalties:

611 (a) Remedial training and technical assistance as directed
 612 by the Interstate Commission;

613 (b) Alternative dispute resolution;

614 (c) Fines, fees, and costs in such amounts as are deemed
 615 to be reasonable as fixed by the Interstate Commission; or

616 (d) Suspension or termination of membership in the

617 compact, which shall be imposed only after all other reasonable
 618 means of securing compliance under the bylaws and rules have
 619 been exhausted and the Interstate Commission has therefore
 620 determined that the offending state is in default. Immediate
 621 notice of suspension shall be given by the Interstate Commission
 622 to the Governor, the Chief Justice or the Chief Judicial Officer
 623 of the state, the majority and the minority leaders of the
 624 defaulting state's legislature, and the state council. The
 625 grounds for default include, but are not limited to, failure of
 626 a compacting state to perform such obligations or
 627 responsibilities imposed upon it by this compact, the bylaws, or
 628 duly adopted rules and any other ground designated in commission
 629 bylaws and rules. The Interstate Commission shall immediately
 630 notify the defaulting state in writing of the penalty imposed by
 631 the Interstate Commission and of the default pending a cure of
 632 the default. The commission shall stipulate the conditions and
 633 the time period within which the defaulting state must cure its
 634 default. If the defaulting state fails to cure the default
 635 within the period specified by the commission, the defaulting
 636 state shall be terminated from the compact upon an affirmative
 637 vote of a majority of the compacting states and all rights,
 638 privileges, and benefits conferred by this compact shall be
 639 terminated from the effective date of termination.

640 (2) Within 60 days after the effective date of termination
 641 of a defaulting state, the Interstate Commission shall notify
 642 the Governor, the Chief Justice or Chief Judicial Officer, the
 643 majority and minority leaders of the defaulting state's
 644 legislature, and the state council of such termination.

645 (3) The defaulting state is responsible for all
 646 assessments, obligations, and liabilities incurred through the
 647 effective date of termination, including any obligations the
 648 performance of which extends beyond the effective date of
 649 termination.

650 (4) The Interstate Commission shall not bear any costs
 651 relating to the defaulting state unless otherwise mutually
 652 agreed upon in writing between the Interstate Commission and the
 653 defaulting state.

654 (5) Reinstatement following termination of any compacting
 655 state requires both a reenactment of the compact by the
 656 defaulting state and the approval of the Interstate Commission
 657 pursuant to the rules.

658 Section C. Judicial enforcement.—The Interstate Commission
 659 may, by majority vote of the members, initiate legal action in
 660 the United States District Court for the District of Columbia
 661 or, at the discretion of the Interstate Commission, in the
 662 federal district where the Interstate Commission has its
 663 offices, to enforce compliance with the provisions of the
 664 compact and its duly adopted rules and bylaws against any
 665 compacting state in default. In the event judicial enforcement
 666 is necessary, the prevailing party shall be awarded all costs of
 667 such litigation, including reasonable attorney's fees.

668 Section D. Dissolution of compact.—

669 (1) The compact dissolves effective upon the date of the
 670 withdrawal or default of the compacting state which reduces
 671 membership in the compact to one compacting state.

672 (2) Upon the dissolution of the compact, the compact

673 becomes null and void and shall be of no further force or
 674 effect, the business and affairs of the Interstate Commission
 675 shall be concluded, and any surplus funds shall be distributed
 676 in accordance with the bylaws.

677 ARTICLE XII

678 SEVERABILITY AND CONSTRUCTION.—

679 (1) The provisions of this compact are severable, and if
 680 any phrase, clause, sentence, or provision is deemed
 681 unenforceable, the remaining provisions of the compact shall be
 682 enforceable.

683 (2) The provisions of this compact shall be liberally
 684 construed to effectuate its purposes.

685 ARTICLE XIII

686 BINDING EFFECT OF COMPACT AND OTHER LAWS.—

687 Section A. Other laws.—

688 (1) Nothing herein prevents the enforcement of any other
 689 law of a compacting state which is not inconsistent with this
 690 compact.

691 (2) All compacting states' laws other than state
 692 constitutions and other interstate compacts conflicting with
 693 this compact are superseded to the extent of the conflict.

694 Section B. Binding effect of the compact.—

695 (1) All lawful actions of the Interstate Commission,
 696 including all rules and bylaws adopted by the Interstate
 697 Commission, are binding upon the compacting states.

698 (2) All agreements between the Interstate Commission and
 699 the compacting states are binding in accordance with their
 700 terms.

701 (3) Upon the request of a party to a conflict over meaning
 702 or interpretation of Interstate Commission actions, and upon a
 703 majority vote of the compacting states, the Interstate
 704 Commission may issue advisory opinions regarding such meaning or
 705 interpretation.

706 (4) In the event any provision of this compact exceeds the
 707 constitutional limits imposed on any compacting state, the
 708 obligations, duties, powers, or jurisdiction sought to be
 709 conferred by such provision upon the Interstate Commission shall
 710 be ineffective and such obligations, duties, powers, or
 711 jurisdiction shall remain in the compacting state and shall be
 712 exercised by the agency thereof to which such obligations,
 713 duties, powers, or jurisdiction are delegated by law in effect
 714 at the time this compact becomes effective.

715 Section 2. Notwithstanding the repeal of this section by
 716 section 4 of chapter 2005-80, Laws of Florida, effective 2 years
 717 after the effective date of the act, section 985.8025, Florida
 718 Statutes, is reenacted to read:

719 985.8025 State Council for Interstate Juvenile Offender
 720 Supervision.—

721 (1) Pursuant to Article IX of the Interstate Compact for
 722 Juveniles in s. 985.802, the State Council for Interstate
 723 Juvenile Offender Supervision is created. The purpose of the
 724 council is to oversee state participation in the activities of
 725 the Interstate Commission for Juveniles.

726 (2) The council shall consist of seven members and the
 727 secretary of the Department of Juvenile Justice or his or her
 728 designee, who shall serve as the chair of the council and may

729 | vote only to break a tie. The compact administrator or his or
 730 | her designee and the executive director of the Department of Law
 731 | Enforcement or his or her designee shall serve as members of the
 732 | council. The remaining members shall be appointed by the
 733 | Governor for terms of 4 years; however, the Governor may, in
 734 | writing and on an individual basis for each appointee, delegate
 735 | the power of appointment to the Secretary of Juvenile Justice.
 736 | Of the initial appointees, one shall be appointed for a term of
 737 | 1 year, one shall be appointed for a term of 2 years, one shall
 738 | be appointed for a term of 3 years, and two shall be appointed
 739 | for terms of 4 years each.

740 | (3) Appointees shall be selected from individuals with
 741 | personal or professional experience in the juvenile justice
 742 | system and may include a victim's advocate, employees of the
 743 | Department of Children and Family Services, employees of the
 744 | Department of Law Enforcement who work with missing and
 745 | exploited children, and a parent who, at the time of
 746 | appointment, does not have a child involved in the juvenile
 747 | justice system.

748 | (4) Council members shall serve without compensation, but
 749 | they are entitled to reimbursement for per diem and travel
 750 | expenses as provided in s. 112.061.

751 | (5) The provisions of s. 24, Art. I of the State
 752 | Constitution and of chapter 119 and s. 286.011 apply to
 753 | proceedings and records of the council. Minutes, including a
 754 | record of all votes cast, must be maintained for all meetings.

755 | (6) If the council is abolished, its records must be
 756 | appropriately stored, within 30 days after the effective date of

HB 1029

2011

757 | its abolition, by the Department of Juvenile Justice or its
758 | successor agency. Any property assigned to the council must be
759 | reclaimed by the department or its successor agency. The council
760 | may not perform any activities after the effective date of its
761 | abolition.

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