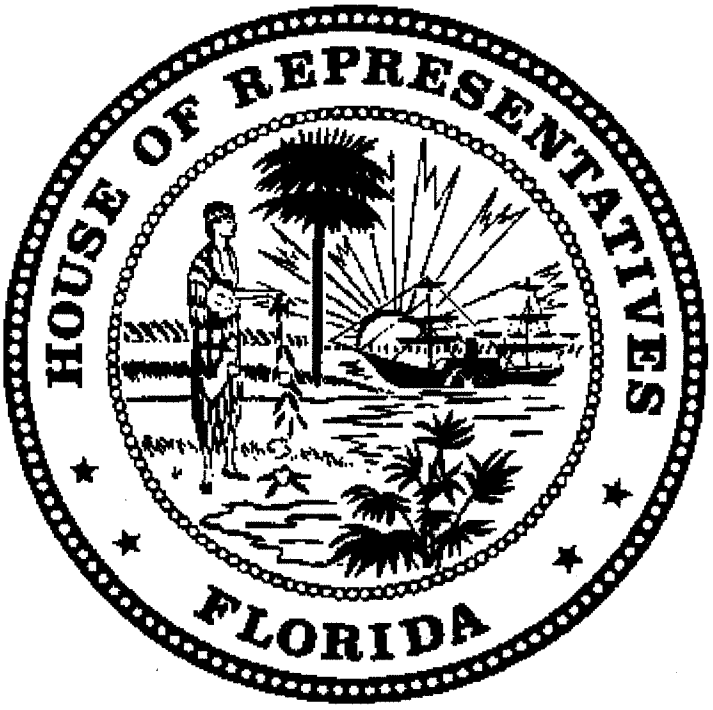

Criminal Justice Subcommittee

March 22nd, 2011

8:30 AM

404 HOB

Dean Cannon
Speaker

Dennis Baxley
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 22, 2011 08:30 am

End Date and Time: Tuesday, March 22, 2011 11:30 am

Location: 404 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 75 Sexting by Abruzzo
CS/HB 283 Seaport Security by Transportation & Highway Safety Subcommittee, Young
HB 443 Electronic Filing and Receipt of Court Documents by Boyd
HB 563 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence by Jones
HB 575 Pretrial Proceedings by Caldwell
HB 917 Sentencing of Inmates by Porth
HB 997 Juvenile Civil Citations by Pilon
HB 1039 Controlled Substances by Patronis
HB 1233 Juvenile Justice by Van Zant
HB 4159 State Attorneys by Ray

Consideration of the following proposed committee bill(s):

PCB CRJS 11-01 -- Prison Diversion Program
PCB CRJS 11-02 -- Seat Requirements
PCB CRJS 11-03 -- Failing to Assist Officers at Polls
PCB CRJS 11-04 -- Cotton or Leaf Tobacco
PCB CRJS 11-05 -- County Operated Boot Camp Programs
PCB CRJS 11-06 -- Levying War Against People of the State
PCB CRJS 11-07 -- Adulterated Syrup
PCB CRJS 11-08 -- Lavatories
PCB CRJS 11-09 -- Unlawful Use of Insignia
PCB CRJS 11-10 -- Water Hyacinths
PCB CRJS 11-11 -- Correctional Policy Advisory Council

NOTICE FINALIZED on 03/18/2011 16:15 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 75 Sexting
SPONSOR(S): Abruzzo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 888

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

SUMMARY ANALYSIS

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

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

The bill creates s. 847.0146, F.S., relating to the offense of sexting. It specifies that a minor commits sexting if he or she knowingly:

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

The bill provides the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service and a $25 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of community service.
- A second violation is a 2nd degree misdemeanor punishable by up to 60 days in jail and a $500 fine.
- A third violation is a 1st degree misdemeanor punishable by up to one year in jail and a $1,000 fine.
- A fourth or subsequent violation is a 3rd degree felony punishable by up to five years imprisonment and a $5,000 fine.

The bill may have a positive fiscal impact to the state in that it subjects minors who commit the offense of sexting to fines ranging from $25 to $5,000, depending on the number of times the minor has committed the offense.

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 also creates new misdemeanor offenses which could impact local jails.

The bill is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Child Pornography Laws

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

Sexual Performance by a Child

Section 827.071(5), F.S., makes it a 3rd degree felony[1] for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct[2] by a child. The statute specifies that each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials

Section 847.011(1)(a), F.S., makes it a 1st degree misdemeanor[3] for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute; or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute; specified obscene items, including pictures, photographs, and images. It is a 3rd degree felony if the obscene item used depicts a minor[4] engaged in any act or conduct that is harmful to minors.[5]

Section 847.011(2), F.S., makes it a 2nd degree misdemeanor[6] for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell such items. It is a 3rd degree felony if the obscene item used depicts a minor engaged in any act or conduct that is harmful to minors.

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

Protection of Minors

Section 847.0133, F.S., makes it a 3rd degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene[8] material to a minor.[9] The term "material" includes pictures, photographs, and images.

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

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

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

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

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

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

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

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

[7] Section 847.011(5), F.S.

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

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

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

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct[10] with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography
Section 847.0137(2), F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography[11] to another person commits a 3rd degree felony.

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

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

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

There are no statutes that specifically address sexting. Under current law, a person who "sexts" another could be charged with one of the above-described offenses, depending on the nature of the image sexted and the age of the person to whom the image was sent. Additionally, a person who receives and possesses an image that is the result of sexting could be charged with one of the above-described offenses, depending on the nature of the image sexted. For example, in 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after he sent a nude photograph of his then 16-year old girlfriend to his girlfriend's friends and family after an argument. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

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

[9] Section 847.011, F.S., defines the term "minor" as any person under the age of 18 years.

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

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

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

[13] *Id.*

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

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

Effect of the Bill

The bill creates s. 847.0146, F.S., relating to the offense of sexting. It specifies that a minor commits sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity[17] and is harmful to minors; or
(b) Possesses a photograph or video that was transmitted or distributed by another minor as described in paragraph (a).

The bill provides the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service and a $25 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of community service.
- A second violation is a 2nd degree misdemeanor punishable by up to 60 days in jail and a maximum $500 fine.[18]
- A third violation is a 1st degree misdemeanor punishable by up to one year in jail and a maximum $1,000 fine.[19]
- A fourth or subsequent violation is a 3rd degree felony punishable by up to five years imprisonment and a maximum $5,000 fine.[20]

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

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement,[21] and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

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[14] Amanda Lenhart, *Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging*, Pew Research Ctr., 3 (Dec. 15, 2009), *available at* http://www.pewinternet.org/~/media//Files/Reports/2009/PIP_Teens_and_Sexting.pdf (last visited Jan. 24, 2011).

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

[16] Lenhart, *supra* note 14, at 3.

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

[18] *See* ss. 775.082 and 775.083, F.S.

[19] *Id.*

[20] *See* ss. 775.082, 775.083, and s. 775.084, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 847.0146, F.S., relating to sexting; prohibited acts; penalties.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive fiscal impact to the state in that it subjects minors who commit the offense of sexting to fines ranging from $25 to $5,000, depending on the number of times the minor has committed the offense; however, the exact fiscal impact is unknown at this time.

2. Expenditures:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

The bill does not define the term "conviction." Unless expressly provided for by statute, juveniles who have been adjudicated delinquent are not deemed to have been convicted.[22] To ensure that the term applies to juveniles, "conviction" could be defined as follows:

> "A determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or adjudicatory hearing, regardless of whether adjudication is withheld."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[22] *See* s. 985.35(6), F.S., and *M.A.R. v. State*, 2D09-5200 (Fla. 2nd DCA 2010).

A bill to be entitled

An act relating to sexting; creating s. 847.0146, F.S.; providing that a minor commits the offense of sexting if he or she knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity and is harmful to minors, or knowingly possesses such a photograph or video that was transmitted or distributed to the minor from another minor; providing noncriminal and criminal penalties; providing that the transmission or distribution of multiple photographs or videos is a single offense if such photographs and videos were transmitted or distributed in the same 24-hour period; providing that the possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if such photographs and videos were transmitted or distributed by the minor in the same 24-hour period; providing that the act does not prohibit prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement or for stalking; providing an effective date.

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

Section 1. Section 847.0146, Florida Statutes, is created to read:

847.0146 Sexting; prohibited acts; penalties.—

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

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity and is harmful to minors; or

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

(2) A minor who violates subsection (1):

(a) Commits a noncriminal violation for a first offense, punishable by 8 hours of community service and a $25 fine. The court may order the minor to participate in suitable training or instruction in lieu of community service.

(b) Commits a misdemeanor of the second degree for a second offense, punishable as provided in s. 775.082 or s. 775.083.

(c) Commits a misdemeanor of the first degree for a third offense, punishable as provided in s. 775.082 or s. 775.083.

(d) Commits a felony of the third degree for a fourth or subsequent offense, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) For purposes of this section:

(a) The transmission or distribution of multiple photographs or videos described in paragraph (1)(a) is a single offense if such photographs or videos were transmitted or distributed in the same 24-hour period.

(b) The possession of multiple photographs or videos that were transmitted or distributed by a minor as described in

paragraph (1)(a) is a single offense if such photographs or videos were transmitted or distributed by the minor in the same 24-hour period.

(4) This section does not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement and does not prohibit the prosecution of a minor for stalking under s. 784.048.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 283 Seaport Security
SPONSOR(S): Transportation & Highway Safety Subcommittee; Young and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 524

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

SUMMARY ANALYSIS

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

- Repeals the statewide minimum seaport security standards.
- Provides seaports may implement security standards more stringent than the federal standards.
- Removes the authority for Florida Department of Law Enforcement (FDLE) to exempt all or part of a seaport from the state's seaport security requirements, if FDLE determines that it is not vulnerable to criminal activity or terrorism.
- Revises the requirements for seaports to update their security plans, consistent with federal requirements.
- Deletes FDLE's Access Eligibility Reporting System.
- Prohibits seaports form charging a fee for an access control credential in addition to the fee for the Federal Transportation Worker Identification Credential (TWIC), except for a seaport specific access credential, where a seaport may charge a fee no greater than its administrative cost to produce and issue the credential.
- Removes the state criminal history screening and the state specific disqualifying offenses for working in a seaport.
- Removes the ability for the Office of Drug Control and FDLE to waive state-specific seaport security requirements.
- Repeals the Seaport Security Standards Advisory Council.

FDLE will see a decrease in revenue due to the removal of the requirements that FDLE operate the access eligibility reporting system and run state background checks on seaport workers.

Seaports, port tenants, and port employees should see a reduction in costs due to the elimination of the state's seaport security requirements.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

Security requirements for Florida's fourteen deepwater public ports[2] are regulated under ch. 311, F.S. Florida law requires public seaports to conform to statewide minimum security standards.[3] Through inspections, the Florida Department of Law Enforcement (FDLE) has the primary responsibility for determining whether each seaport is in conformity with these standards.

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

Florida's Minimum Seaport Security Standards

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

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

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

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

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

[3] Section 311.12, F.S.

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

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

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

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

[8] Ibid, p. 18.

corresponding federal regulations for sea cargo vessels and seaport and marine terminals."[9]

Second, the Governor's Office of Drug Control[10] commissioned a Statewide Security Assessment of Florida Seaports. The report, which came to be known as the Camber Report,[11] concluded that there was no supervisory agency with oversight of the seaports of the state, no federal or state security standards that governed the seaports' operation, and only limited background checks were conducted on employees at the docks, thus allowing convicted felons, some with arrests for drug-related charges, to work at the seaports.

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

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

In response, the 2000 Legislature passed CS/CS/CS/SB 1258.[14] This legislation provided additional regulations for money laundering and created s. 311.12, F.S., relating to seaport security. In creating s. 311.12, F.S., the Legislature introduced regulation of seaports that benefited from public financing and provided for:

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

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

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[9] Ibid, p. 46.
[10] The Governor's Office recently eliminated the Office of Drug Control.
[11] Camber Corporation for the Office of Drug Control, Executive Office of the Governor, "Statewide Security Assessment of Florida Seaports," September 2000.
[12] Fifteenth Statewide Grand Jury Report, "An Analysis of Florida's Drug Control Efforts," December 14, 2000.
[13] Ibid.
[14] Ch. 2000-360, Laws of Florida (L.O.F.).
[15] Ch. 2001-112, L.O.F.

Post-9/11 Federal Seaport Security Standards

Prior to 9/11, there was no comprehensive federal law relating to seaport security. The MTSA was enacted in November 2002[16] and the USCG subsequently adopted regulations to implement the provisions of MTSA.[17] The MTSA laid out the federal structure for defending U.S. ports against acts of terrorism. In passing MTSA, Congress set forth direction for anti-terrorism activities but also recognized in its finding that crime on ports in the late 1990's including drug smuggling, illegal car smuggling, fraud, and cargo theft had been a problem. In laying out a maritime security framework, MTSA established a requirement for development and implementation of national and area maritime transportation security plans, vessel and facility security plans, and a transportation security card along with requirements to conduct vulnerability assessments for port facilities and vessels and establish a process to assess foreign ports, from which vessels depart on voyages to the United States.

Title 33 CFR provides for review and approval of Facility Security Plans[18] by the Captain of the Port responsible for each seaport area. The USCG also acknowledged Presidential Executive Order 13132 regarding the principle of Federalism and preemption of state law in drafting MTSA rules.[19] Under this provision, Florida has the right to exercise authority over its public seaports that are also regulated by federal authority when there is no conflict between state and federal regulations.[20]

Port Access Identification Credentials

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

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

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

Criminal History Checks

The 2000 legislation established the requirement for a fingerprint-based criminal history check of current employees and future applicants for employment at Florida's seaports. This law was further

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

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

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

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

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

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

amended in 2001 to disqualify persons who have been convicted of certain offenses within the previous seven years from gaining initial employment within or regular access to a seaport or port restricted access area. Current disqualifying offenses relate to terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use of weapons or firearms.

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

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

Seaport Access Eligibility Reporting System

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

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

TranSystems Report

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

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

Following the issuance of the report, the Office of Drug Control responded that "the study echoed many of the same unfounded grievances concerning security inspections the ports have voiced since 2001,

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

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

[24] Correspondence with FDLE, March 8, 2011.

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

but failed to provide any recommended improvements to seaport security," and that the study was strongly biased toward the ports without balancing security needs. The letter points out that the study recommends that security responsibility be transferred to the Coast Guard using the less stringent federal standards. The letter argues that complying with the standards in state law "has caused no discernable economic hardship for the ports, nor is there any substantial evidence that conforming to s. 311.12 has caused a loss of business to non-Florida seaports. . . .FDLE reports that seaports have seen significant decreases in cargo theft and pilfering."[26]

Differences between Federal and State Standards

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

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

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

Proposed Changes

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

Statewide Minimum Security Standards

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

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

Exemption from Security Requirements

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

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

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

[28] 33 C.F.R. s. 105.305

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

Security Plans

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

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

Secure and Restricted Areas

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

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

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

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

Access Eligibility Reporting System

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

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

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

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

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

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

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

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

Access to Secure and Restricted Areas on Seaports

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

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

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

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

The bill prohibits a seaport from charging a fee for the administration or production of an access control credential that requires a fingerprint-based background check, beyond the fee for the federal TWIC. However, the bill authorizes a seaport to issue its own seaport-specific access credential and to charge a fee that is no greater that the actual administrative costs for the production and issuance of the credential.

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

Criminal History Checks

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

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

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

Waiver from Security Requirements

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

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

Inspections

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

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

Reports

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

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

Funding

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

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

Seaport Security Standards Advisory Council

Section 311.115, F.S., creates the Seaport Security Standards Advisory Council under the Office of Drug Control. The council consists of 14 unpaid council members who represent a wide range of interests as it relates to the security of Florida's seaports. The council convenes at least every 4 years to review the minimum security standards referenced in s. 311.12(1), F.S., for applicability to and effectiveness in combating current narcotics and terrorism threats to Florida's seaports. The recommendations and findings of the council must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill repeals the Seaport Security Standards Advisory Council.

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

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

B. SECTION DIRECTORY:

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

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

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

Section 4. Repeals s. 311.115, F.S., relating to the Seaport Security Standards Advisory Council.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

The elimination of the requirement for the state background check will result in a decrease in trust fund revenues to FDLE of $521,880. These revenues are used to support the State's criminal history system. According to FDLE, fees from criminal history checks generated approximately $44 million in revenue in fiscal year 2009-2010. The amount of revenue attributable to background checks associated with the state's seaport security law is less than 1.2 percent of the total revenue.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

Financial Impact of Florida Seaport Security Laws[32]

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

Individuals who hold a valid TWIC* (obtained through a TSA waiver) or are not required to obtain a TWIC under federal law	
• FDLE State of Florida criminal history check	**$24**
• FBI national criminal history check	**$19.25**
• Fingerprint retention and FDLE seaport access eligibility reporting system	**$50**
• Local port fees (approximate)	**$35**
• **Total**	**$130**
* The fee for the TWIC is not included in these fee amounts. The current fee to obtain a TWIC is $132.50 and it is valid for 5 years.	

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

The analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to seaport security; amending s. 311.12, F.S.; deleting provisions relating to statewide minimum standards for seaport security; deleting provisions authorizing the Department of Law Enforcement to exempt all or part of a seaport from specified requirements in certain circumstances; revising provisions relating to seaport security plans; revising requirements for certain secure or restricted areas; revising provisions relating to when a part of a seaport property may temporarily be designated as a secure or restricted area; deleting provisions requiring that the Department of Law Enforcement administer a statewide seaport access eligibility reporting system; deleting provisions requiring that persons seeking authorization to access secure and restricted areas of a seaport execute an affidavit; prohibiting a seaport from charging any fee for administration or production of access control credentials that require or are associated with a fingerprint-based background check, in addition to the fee for the federal TWIC; providing for issuance of seaport-specific access credentials; deleting provisions requiring fingerprint-based state criminal history checks on seaport employee applicants, current employees, and other authorized persons; deleting provisions authorizing waivers from security requirements in certain circumstances; revising provisions relating to inspections; revising reporting requirements; revising the parties that determine the

allocation of appropriated funds for security project needs; amending ss. 311.121, 311.123, and 311.124, F.S.; conforming provisions to changes made by the act; repealing s. 311.115, F.S., relating to the Seaport Security Standards Advisory Council; providing an effective date.

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

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

311.12 Seaport security.—

(1) SECURITY STANDARDS.—

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

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

~~subsection~~.

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

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

(2) ~~(3)~~ SECURITY PLAN.—

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

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

105.305 ~~the minimum security standards established under subsection (1)~~.

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

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

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

1. All seaport employees and other persons working at the seaport who have regular access to secure or restricted areas

must comply with federal access control regulations ~~and state criminal history checks~~ as prescribed in this section.

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

3. Persons found in these areas without the proper permission are subject to the trespass provisions of ss. 810.08 and 810.09.

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

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

writing.

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

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

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

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

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

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

~~4. A means to communicate to seaports when a person's authorization to enter a secure or restricted area of a seaport~~

~~has been suspended or revoked.~~

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

~~(c) Upon determining that a person is eligible to enter a secure or restricted area of a port pursuant to subsections (6) and (7), the seaport shall, within 3 business days, report the determination to the department for inclusion in the system.~~

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

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

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

~~2. A $50 fee to cover the initial cost of entering the~~

~~person into the system and an additional $50 fee every 5 years thereafter to coincide with the issuance of the federal Transportation Worker Identification Credential described in subsection (6). The fee covers all costs for entering or maintaining the person in the system including the retention and use of the person's fingerprint, other biometric data, or other identifying information.~~

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

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

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

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

~~2. A business entity's failure to report a change in an employee's work status within 7 days after the change may result~~

~~in revocation of the business entity's access to the seaport.~~

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

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

~~(j) The submission of information known to be false or misleading to the department for entry into the system is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(4)~~(6)~~ ACCESS TO SECURE AND RESTRICTED AREAS.—

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

(b) A seaport may not charge any fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the federal TWIC. A seaport may issue its own seaport-specific access credential and may charge a fee no greater than its actual administrative costs for the production and issuance of the credential. ~~and execute an affidavit under oath which provides TWIC identification information and indicates the following:~~

~~1. The TWIC is currently valid and in full force and effect.~~

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

~~3. He or she has not, in any jurisdiction, civilian or military, been convicted of, entered a plea of guilty or nolo contendere to, regardless of adjudication, or been found not guilty by reason of insanity, of any disqualifying felony under subsection (7) or any crime that includes the use or possession of a firearm.~~

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

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

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

~~(e) Any affidavit form created for use under this~~

~~subsection must contain the following statement in conspicuous type: "SUBMISSION OF FALSE INFORMATION ON THIS AFFIDAVIT IS A FELONY UNDER FLORIDA LAW AND WILL, UPON CONVICTION, RESULT IN DISQUALIFICATION FOR ACCESS TO A SECURE OR RESTRICTED AREA OF A SEAPORT."~~

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

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

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

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

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

~~(b) Disqualifying offenses include:~~

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

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

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

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

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

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

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

~~8. Dealing in stolen property as provided in s. 812.019.~~

~~9. Money laundering as provided in s. 896.101.~~

~~10. Criminal use of personal identification as provided in s. 817.568.~~

~~11. Bribery as provided in s. 838.015.~~

~~12. A violation of s. 316.302, relating to the transport of hazardous materials.~~

~~13. A forcible felony as defined in s. 776.08.~~

~~14. A violation of s. 790.07.~~

~~15. Any crime that includes the use or possession of a firearm.~~

~~16. A felony violation for theft as provided in s. 812.014.~~

~~17. Robbery as provided in s. 812.13.~~

~~18. Burglary as provided in s. 810.02.~~

~~19. Any violation involving the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance.~~

~~20. Any offense under the laws of another jurisdiction that is similar to an offense listed in this paragraph.~~

~~21. Conspiracy or attempt to commit any of the offenses listed in this paragraph.~~

~~(c) Each individual who is subject to a criminal history check shall file a complete set of fingerprints taken in a manner acceptable to the Department of Law Enforcement for state processing. The results of the criminal history check must be reported to the requesting seaport and may be shared among seaports.~~

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

~~(e) The Department of Law Enforcement shall establish a waiver process for a person who does not have a TWIC, obtained a TWIC though a federal waiver process, or is found to be unqualified under paragraph (a) and denied employment by a seaport or unescorted access to secure or restricted areas. If the person does not have a TWIC and a federal criminal history record check is required, the Department of Law Enforcement may~~

~~forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The cost of the national check must be paid by the seaport, which may collect it as reimbursement from the person.~~

~~1. Consideration for a waiver shall be based on the circumstances of any disqualifying act or offense, restitution made by the individual, and other factors from which it may be determined that the individual does not pose a risk of engaging in any act within the public seaports regulated under this chapter that would pose a risk to or threaten the security of the seaport and the public's health, safety, or welfare.~~

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

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

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

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

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

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

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

~~(8) WAIVER FROM SECURITY REQUIREMENTS. The Office of Drug Control and the Department of Law Enforcement may modify or waive any physical facility requirement or other requirement contained in the minimum security standards upon a determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver.~~

~~An alternate means of compliance must not diminish the safety or security of the seaport and must be verified through an extensive risk analysis conducted by the seaport director.~~

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

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

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

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

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

(a) The Department of Law Enforcement, or any entity designated by the department, may ~~shall~~ conduct ~~at least one~~

~~annual~~ unannounced inspections ~~inspection~~ of each seaport to determine whether the seaport is meeting the requirements under 33 C.F.R. s. 105.305 ~~minimum security standards established pursuant to subsection (1)~~ and to identify seaport security changes or improvements needed or otherwise recommended.

(b) The Department of Law Enforcement, or any entity designated by the department, may conduct additional announced or unannounced inspections or operations within or affecting any seaport to test compliance with, or the effectiveness of, security plans and operations at each seaport, to determine compliance with physical facility requirements and standards~~, or to assist the department in identifying changes or improvements needed to bring a seaport into compliance with minimum security standards~~.

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

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

(e) All seaports shall allow the Department of Law Enforcement, or an entity designated by the department,

unimpeded access to affected areas and facilities for the purpose of plan or compliance inspections or other operations authorized by this section.

(6) ~~(10)~~ REPORTS.—The Department of Law Enforcement~~, in consultation with the Office of Drug Control,~~ shall annually complete a report indicating the observations and findings of all reviews, inspections, or other operations relating to the seaports conducted during the year and any recommendations resulting from such reviews, inspections, and operations. A copy of the report shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, the governing body of each seaport or seaport authority, and each seaport director. The report must include each director's response indicating what actions, if any, have been taken or are planned to be taken pursuant to the observations, findings, and recommendations reported by the department.

(7) ~~(11)~~ FUNDING.—

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

(b) The Legislature shall regularly review the ongoing costs of operational security on seaports, the impacts of this section on those costs, mitigating factors that may reduce costs without reducing security, and the methods by which seaports may

implement operational security using a combination of sworn law enforcement officers and private security services.

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

(d) If funds are appropriated for seaport security, ~~the Office of Drug Control,~~ the Department of Law Enforcement~~,~~ and the Florida Seaport Transportation and Economic Development Council shall mutually determine the allocation of such funds for security project needs identified in the approved seaport security plans. Any seaport that receives state funds for security projects must enter into a joint participation agreement with the appropriate state entity and use the seaport security plan as the basis for the agreement.

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

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

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

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

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

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

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

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

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

311.123 Maritime domain security awareness training program.—

(1) The Florida Seaport Transportation and Economic Development Council, in conjunction with the Department of Law Enforcement ~~and the Office of Drug Control within the Executive Office of the Governor~~, shall create a maritime domain security awareness training program to instruct all personnel employed within a seaport's boundaries about the security procedures

required of them for implementation of the seaport security plan required under s. 311.12(2)~~(3)~~.

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

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

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

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

Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 443 Electronic Filing and Receipt of Court Documents
SPONSOR(S): Boyd and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 170

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

SUMMARY ANALYSIS

In 2009, the Legislature passed SB 1718, which required each clerk of the court to implement a statewide, uniform electronic filing process for court documents using standards to be specified by the Supreme Court. The Legislature's intent for requiring the implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."

HB 443 creates ss. 27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill expresses the intent of the Legislature that the offices of the state attorney and the public defender design and implement a system by which each office can file electronic court documents with the clerk of court and receive court documents from the clerk of court.

The bill specifies that electronic filing and receipt of court documents is expected by the Legislature to:

- Reduce costs for the offices of the state attorney and the public defender, the clerk of circuit court, and the judiciary;
- Increase timeliness in the processing of cases; and
- Provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

The bill defines the term "court documents" to include pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

The bill also requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made in implementing the electronic filing and receipt system.

This bill may have a fiscal impact on counties. See "Fiscal Impact On Local Governments."

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - Electronic Filing of Court Documents

The clerks and courts have been collaborating on e-filing for many years. While many individual efforts have been made by some clerks' offices, there has been a move in the last four years toward a statewide approach to implement e-filing.[1]

In February 2006, the Florida Supreme Court (Court) issued Administrative Order SC06-3, establishing the Electronic Filing Committee as an ad hoc committee of the Florida Courts Technology Commission.[2] The purpose of the committee was, "to assist the Supreme Court and the Office of the State Courts Administrator by evaluating proposed plans submitted by clerks of courts, pursuant to Rule 2.090, Florida Rules of Judicial Administration, to implement the electronic filing of documents as well as subsequent documentation submitted prior to the discontinuation of follow-up filings."[3]

Meetings held resulted in the E-filing Operational Policies for Florida Statewide Electronic Filing Portal document, developed by the Florida Association of Court Clerks (FACC) and the Office of the State Courts Administrator (OSCA).[4] On April 30, 2008, the Court, in conference, approved the "E-filing Operational Policies, Florida Statewide Electronic Filing Portal" (E-Portal) document.[5] At the committee's request, FACC submitted a proposal to build a portal based on the Court's and National Center for State Courts' (NCSC) standards under the Court's jurisdiction on November 1, 2006. In 2007, FACC began development of the E-Portal.[6]

SB 1718

In 2009, the Legislature passed SB 1718, requesting that, no later than July 1, 2009, the Court set statewide standards for electronic filing of court documents and requiring each clerk of the court to implement a statewide, uniform electronic filing process using the standards specified by the Court.[7] The standards should specify the required information for the duties of the clerks of court and the judiciary for case management.[8] The Legislature's intent for requiring the implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."[9]

The federal court system already uses an electronic filing system called PACER (Public Access to Court Electronic Records).[10] Additionally, there are 13 states and the District of Columbia using statewide electronic filing systems.[11] Those states are: Alabama, Arizona, California, Colorado,

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[1] Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). (www.flccoc.org/reportsforms/CCOCEFilingReport.pdf) (last accessed March 18, 2011).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Florida Supreme Court, Standards for Electronic Access to the Courts, (June 2009). (http://www.flcourts.org/gen_public/technology/bin/Standards-ElectronicAccess.pdf) (last accessed March 17, 2011).
[6] Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). (www.flccoc.org/reportsforms/CCOCEFilingReport.pdf) (last accessed March 18, 2011).
[7] Chapter 2009-61, L.O.F.
[8] *Id.*
[9] *Id.*
[10] PACER, *PACER Home*, (http://www.pacer.gov/) (last accessed March 17, 2011).
[11] American Bar Association, *Electronic Filing Resource Page*, (http://www.abanet.org/tech/ltrc/research/efiling/home.html) (last accessed March 17, 2011).

Connecticut, Delaware, New Jersey, New York, North Carolina, North Dakota, Ohio, Texas, and Washington.[12]

Supreme Court Standards

In response to SB 1718, the Court promulgated statewide standards for electronic filing on July 1, 2009.[13] The Court specified that electronic filing would be implemented through "a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts."[14] All electronic filing systems were required to be compatible with the Florida Courts E-Portal.[15] The Court specified that electronic court records submitted to the portal must be "capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance."[16] Such records will constitute the official record and be equivalent to court records filed in paper.[17]

E-Portal

As noted above, FACC began development of an E-Portal in 2007. The development of the E-Portal was completed in the fall of 2009.[18] Currently, E-Portal provides e-filing and e-recording capability to users with a single statewide login. Users may utilize the E-Portal web interface to submit documents to clerks and recorders. The E-Portal also supports automated interfaces with other submitter systems and supports transmissions to and from the local case and recording systems using national XML standards. The E-Portal also provides electronic notifications and service on behalf of filers.[19]

Status of Implementation

Proviso language from the fiscal year 2010-11 General Appropriations Act, required the state courts system to "accelerate the implementation of the electronic filing requirements of section 16 of chapter 2009-61, Laws of Florida, by implementing five of the ten trial court divisions by January 1, 2011."[20]

The E-Portal is currently functional, with nine counties signed on for the initial program.[21] Clerks in these counties are currently working with volunteer attorneys to use the portal on a pilot basis before the portal opens to all attorneys.[22] A second set of counties was recently approved to be added over time.[23] By motion of the Florida E-filing Authority, an entity made up of eight circuit court clerks and the clerk of the Florida Supreme Court provides governance for the e-filing portal.[24] The portal is currently programmed for the following five civil divisions: circuit civil, county civil, family, probate, and juvenile dependency.[25]

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[12] *Id.*

[13] Supreme Court of Florida. *Statewide Standards for Electronic Access to the Courts,* Administrative Order AOSC09-30, (Fla. July 1, 2009). (http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-30.pdf) (last accessed March 17, 2011).

[14] *Id.*

[15] *Id.*

[16] Florida Supreme Court, *Standards for Electronic Access to the Courts*, (June 2009). (http://www.flcourts.org/gen_public/technology/bin/Standards-ElectronicAccess.pdf) (last accessed March 17, 2011).

[17] *Id.*

[18] Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). (www.flccoc.org/reportsforms/CCOCEFilingReport.pdf) (last accessed March 18, 2011).

[19] http://www.flclerks.com/eFiling_faq.html (last accessed March 18, 2011).

[20] s. 7 ch. 2010-152, L.O.F., proviso accompany specific appropriation 3238.

[21] The nine counties currently signed on to use the e-filing program are: Lake, Columbia, Duval, Gulf, Holmes, Lee, Miami-Dade, Putnam, and Walton. Gary Blankenship, *E-filing open for business: The new service is being phased in slowly*, THE FLORIDA BAR NEWS, Jan. 15, 2011. (http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/0a29309ae461bfdc85257810006684b5!OpenDocument) (last accessed March 17, 2011).

[22] *E-filing is underway*, THE FLORIDA BAR NEWS, Feb. 1, 2011. (http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/a3867c4f16e4e48c852578220047644a!OpenDocument) (last accessed March 17, 2011).

[23] New counties are: Broward, Orange, Marion, Collier, Franklin, Jackson, and Leon. *Id.*

[24] Florida E-filing Authority, *E-filing Authority Home*, http://www.flclerks.com/eFiling_authority.html (last accessed March 17, 2011).

[25] Minutes from the Florida E-filing Authority meeting (Dec. 8, 2010) (on file with House Criminal Justice Subcommittee staff).

Although the portal is not yet programmed for e-filing for criminal divisions, as of March 4, 2011, 28 counties have been granted approval by the Florida Courts Technology Commission[26] to implement e-filing in criminal divisions, and an additional six counties have applied and are pending approval.[27] Some of these counties have requested approval for e-filing in criminal divisions for systems they are currently using on the local level, while others may have requested approval in anticipation of the statewide portal's expansion into all divisions.

Other Electronic Filing Efforts

Distinct from the statewide portal, there have been other e-filing efforts in Florida for several years. For example, the Manatee County Clerk of Court received approval from the Florida Supreme Court in 2005 to utilize e-filing in all cases.[28] E-filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.[29] On the appellate level, the First District Court of Appeal (First DCA) began implementing an e-filing program in 2009 at the direction of the Legislature.[30]

When the program first began, attorneys had the option of filing documents electronically or in paper. However, effective September 1, 2010, all attorneys were required and non-attorneys were encouraged to file all pleadings electronically.[31] The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA;[32] attorneys in the appellate division currently file electronically in accordance with the court's requirements.

Effect of the Bill

HB 443 creates ss.27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill expresses the intent of the Legislature that the offices of the state attorney and the public defender design and implement a system by which each office can file electronic court documents with the clerk of court and receive court documents from the clerk of court.

The bill specifies that electronic filing and receipt of court documents is expected by the Legislature to:

- Reduce costs for the offices of the state attorney and the public defender, the clerk of circuit court, and the judiciary;
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- Provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

The bill defines the term "court documents" to include pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

The bill also requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of Representatives

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[26] The Florida Courts Technology Commission has been tasked with evaluating electronic filing applications "to determine whether they comply with the technology policies established by the supreme court." *In Re: Amendments to the Florida Rules of Judicial Administration—Rule 2.236*, 41 So. 3d 128,133 (Fla. 2010). (http://www.floridasupremecourt.org/decisions/2010/sc10-241.pdf) (last accessed March 17, 2011).

[27] Counties granted approval for at least one criminal division: Alachua, Broward, Calhoun, Clay, Dixie, Duval, Flagler, Gadsden, Glades, Gulf, Holmes, Jackson, Lake, Lee, Leon, Manatee, Monroe, Okaloosa, Orange, Palm Beach, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, and Volusia; counties pending approval for at least one criminal division: Bay, Brevard, Citrus, Pinellas, Sumter, and Taylor. Florida State Courts, *Electronic Initiatives as of January 21, 2011*, http://www.flcourts.org/gen_public/technology/bin/efilingchart.pdf (last accessed March 17, 2011).

[28] Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, http://www.manateeclerk.com/Services/EFiling.aspx (last accessed March 17, 2011).

[29] *Id.*

[30] Section 17, Ch. 2009-61, L.O.F.

[31] *In Re: Electronic Filing of Pleadings in the First District Court of Appeal,* AO10-3 (Fla. 1st DCA 2010) (http://www.1dca.org/orders/10-3.pdf) (last assessed March 17, 2011).

[32] Florida State Courts, *Florida's District Courts*, http://www.flcourts.org/courts/dca/dca.shtml (last accessed March 17, 2011).

by March 1, 2012, on the progress made in implementing the electronic filing and receipt system. The bill requires state attorney and public defender offices that have not implemented an electronic filing and receipt system by March 1, 2012 to include in the report a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

B. SECTION DIRECTORY:

Section 1. Creates s. 27.341, F.S., relating to electronic filing and receipt of court documents.

Section 2. Creates s. 27.5112, F.S., relating to electronic filing and receipt of court documents.

Section 3. Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill expresses the legislative expectation that once electronic filing is implemented, it will reduce costs associated with paper filing, increase timeliness in the processing of cases, and provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill expresses the legislative expectation that once electronic filing is implemented, it will reduce costs associated with paper filing, increase timeliness in the processing of cases, and provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

2. Expenditures:

Counties are required by Article V, Section 14 of the Florida Constitution to fund the cost of communications services for public defenders' offices and state attorneys' offices. The Legislature by general law has prescribed that communications services include "all computer networks, systems and equipment."[33]

The bill expresses the intent of the Legislature that the offices of the state attorney and the public defender design and implement a system by which each office can file electronic court documents with the clerk of court and receive court documents from the clerk of court. The bill does not require such offices to implement such program; however, if implemented, counties would be required to provide any funds associated with implementation of the electronic filing process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[33] Section 29.008(2)(f), F.S.

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:

As drafted, the bill expresses the intent of the Legislature that the offices of the state attorney and the public defender design and implement a system by which each office can file electronic court documents with the clerk of court and receive court documents from the clerk of court. The bill does not require such offices to design and implement such systems, nor does it specify that such systems be compatible with the clerks' statewide portal (E-Portal). This could result in multiple electronic filing systems being developed and used throughout the state.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to electronic filing and receipt of court documents; creating ss. 27.341 and 27.5112, F.S.; providing legislative intent; requiring that each state attorney and public defender implement a system by which the state attorney and public defender can electronically file court documents with the clerk of the court and receive court documents from the clerk of the court; defining the term "court documents"; requiring that the Florida Prosecuting Attorneys Association and the Florida Public Defender Association report to the President of the Senate and the Speaker of the House of Representatives by a specified date on the progress made in implementing the electronic filing and receipt system; providing an effective date.

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

Section 1. Section 27.341, Florida Statutes, is created to read:

27.341 Electronic filing and receipt of court documents.—

(1)(a) It is the intent of the Legislature that each office of the state attorney design and implement a system by which the state attorney electronically files court documents with the clerk of the court and receives court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will reduce costs for the office of the state attorney, the clerk of

circuit court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.

(b) As used in this section, the term "court documents" includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

(2) The Florida Prosecuting Attorneys Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office of the state attorney has made to implement an electronic filing and receipt system. For any office of the state attorney that has not fully implemented an electronic filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

Section 2. Section 27.5112, Florida Statutes, is created to read:

27.5112 Electronic filing and receipt of court documents.—

(1)(a) It is the intent of the Legislature that each office of the public defender design and implement a system by which the public defender electronically files court documents with the clerk of the court and receives court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will

reduce costs for the office of the public defender, the clerk of circuit court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.

(b) As used in this section, the term "court documents" includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

(2) The Florida Public Defender Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office of the public defender has made to implement an electronic filing and receipt system. For any office of the public defender that has not fully implemented an electronic filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 563 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence
SPONSOR(S): Jones and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 438

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

SUMMARY ANALYSIS

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

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

HB 563 amends ss. 741.30 and 784.046, F.S., to require a sheriff to notify a petitioner, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent, that the respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, if the petitioner has requested such notification and has registered a telephone number or e-mail address with the sheriff.

The bill also requires the sheriff to enter information relating to the service of the injunction into the Victim Information and Notification Everyday system.

This bill may have a fiscal impact on sheriff's. See "Fiscal Comments."

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions

Current law provides the following in relation to the service of injunctions for protection against domestic violence,[1] repeat violence, sexual violence, or dating violence[2]:

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

Victim Notification

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

Victims[5] of specific offenses[6] must be notified within 4 hours by the chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility concerning:

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

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

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

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

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

[3] *See* ss. 741.30 and 784.046, F.S.

[4] Section 960.001(1)(a), F.S.

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

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

[7] Section 960.001(1)(f), F.S.

[8] Section 960.001(1)(p), F.S.

[9] *Id.*

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

The department provides victim notification services using the Victim Information and Notification Everyday (VINE) system.[14] The VINE service is a toll-free automated inmate information and notification service that is available 24-hours a day, seven days a week.[15] Anyone, not only victims, may call the toll-free number[16] and receive an inmate's current location and tentative release date. Automated notification is also sent when an inmate is:

- Released,
- Transferred,
- Escapes,
- Placed in a work release facility,
- Transferred to another jurisdiction,
- Returned to the department's custody, or
- Dies while in custody.[17]

The department has been the contract manager of the VINE service since 1999. In 2001, the Legislature authorized funding to expand this service to all of Florida's county jails.[18]

Florida VINELink is an online resource which can be used to search for information regarding offenders in the custody of the department and in 62 participating county jails. This free, confidential service allows a victim to register and be notified, by phone, e-mail, or TTY,[19] about changes in the custody status of inmates.[20]

Effect of Proposed Changes

HB 563 ss. 741.30 and 784.046, F.S., to require a sheriff to notify a petitioner, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent (and the sheriff has been so notified), that the respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, if the petitioner has requested such notification and has registered a telephone number or e-mail address with the sheriff. The notification is required to include the date, time, and location in which the protective injunction was served.

The bill also requires the sheriff to enter information relating to the service of the injunction into the VINE system. Currently, the contract the department has for the VINE system does not allow

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[10] Section 944.605(6), F.S.

[11] Section 944.605(1), F.S.

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

[13] Section 944.606(3)(b), F.S.

[14] This service is provided to the citizens of the state of Florida by the Florida Legislature, the Department of Corrections, and through the cooperation of the participating Sheriffs and County Commissions.

[15] Florida VINElink https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=10000 (last accessed on March 14, 2011.)

[16] 1-877-VINE-4-FL (1-877-846-3435).

[17] Department of Corrections, VINE Services, http://www.dc.state.fl.us/oth/victasst/#vine (last accessed on March 14, 2011.)

[18] Florida VINElink https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=10000 (last accessed on March 14, 2011.)

[19] A deaf or speech impaired person can make telephone calls using a **TTY**pewriter (**TTY**). ADCO Hearing Products, Inc. What is TTY? 1998 (http://www.adcohearing.com/tty_what_tty.html) (last accessed March 16, 2011).

[20] Florida VINElink https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=10000 (last accessed on March 14, 2011.)

information on injunctions to be submitted. The department reports that the department's contract would need to be renegotiated in order to allow this type of data to be received by the VINE system.

B. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

HB 563 requires the sheriff's office to notify the petitioner within 12 hours of an injunction being served. According to the Florida Sheriff's Association, HB 563 will result in an increased workload of sheriffs offices.[21]

The department reported that the contract it has with Appriss[22] for the VINE system is for approximately $1 million. Appriss reported that HB 563 would impact their contract with the department and it would need to be renegotiated at a higher rate. Appriss has not yet determined what the new contract cost would be.

[21] Email from Frank Messersmith, Florida Sherriff's Association. March 16, 2011(on file with House Criminal Justice Subcommittee staff).

[22] Appriss provides software-based services that help local, state, and Federal criminal justice agencies serve and protect their citizens. Appriss, Technology to Serve and Protect. (http://www.appriss.com/About.html) (last accessed March 14, 2011).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions (through the sheriff's department), are obligated to expend funds in order to provide the notification services required by the bill, the bill could constitute a mandate as defined in Article VII, Section 18 of the Florida Constitution for which no funding source is provided.

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2010,[23] a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1.87 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to provide the notification services required by the bill. If the fiscal impact is less than $1.87 million, the impact is insignificant, and an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill requires the sheriff to enter information relating to the service of the injunction into the VINE system, but it is unclear what, if anything, VINE is required to do with this information.

2. The bill specifies that the sheriff must notify a petitioner that the respondent has been served with an injunction. However, the bill does not specify how such notification must be made.

3. There are several statutes that provide public record exemptions for certain information concerning victims of domestic violence.[24] As drafted, this bill does not create a public records exemption. Therefore, information a petitioner discloses pursuant to the bill may be public record.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[23] http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf

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

A bill to be entitled

An act relating to injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence; amending ss. 741.30 and 784.046, F.S.; requiring that certain information be entered into the Victim Information and Notification Everyday (VINE) system; requiring the sheriff, after the sheriff or other law enforcement officer has served such an injunction upon a respondent, to notify the petitioner within a specified period that the respondent has been served if the petitioner has requested notification and has registered a telephone number or e-mail address with the sheriff; providing for the content of the notice; providing an effective date.

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

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

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

(8)

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

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

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

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

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department and must enter such information into the Victim Information and Notification Everyday (VINE) system.

5. If the petitioner has requested notification and has registered a telephone number or e-mail address with the sheriff, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff shall notify the petitioner that the respondent has been served with the injunction for protection against domestic violence. The notification must include the date, time, and location where the

injunction for protection against domestic violence was served.

6.~~5.~~ Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court and enter such action into the Victim Information and Notification Everyday (VINE) system.

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

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

(8)

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

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of

process to the sheriff with jurisdiction over the residence of the petitioner.

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

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department and must enter such information into the Victim Information and Notification Everyday (VINE) system.

5. If the petitioner has requested notification and has registered a telephone number or e-mail address with the sheriff, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff shall notify the petitioner that the respondent has been served with the injunction for protection against repeat violence, sexual violence, or dating violence. The notification must include the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served.

6.~~5.~~ Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is

lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court and enter such information into the Victim Information and Notification Everyday (VINE) system.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 575 Pretrial Proceedings
SPONSOR(S): Caldwell and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 844

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

SUMMARY ANALYSIS

Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation. Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation:

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation.

- A probation officer may file an affidavit with the court alleging a violation of probation based upon the existence of the new arrest. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer's arrest or in some instances, a notice to appear.

The bill provides a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court's finding of probable cause that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer or offender has therefore violated his or her probation in a material respect.

The bill also allows the court to consider the likelihood of a prison sanction on the violation of probation based on the new law violation as a factor in determining bail.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probation

Section 948.01, F.S., provides the circumstances under which the trial court can place a person on probation[1] or community control[2] (probation). Any person who is found guilty by a jury, the court sitting without a jury, or enters a plea of guilty or nolo contendre may be placed on probation regardless of whether adjudication is withheld.[3]

The Department of Corrections supervises all probationers sentenced in circuit court.[4] Section 948.03, F.S., provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions to the probation that it deems proper.[5]

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.[6]

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.[7] Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation.[8] If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.[9]

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

Probation Violations – Bail

As noted above, probationers arrested for violating the terms and conditions of probation are arrested and brought before the sentencing court. Generally, if the probationer denies having violated the terms of probation, the court has the option to commit the probationer to jail, release the probationer with or without bail to await further hearing, or dismiss the charge.

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

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[1] Section 948.001(5), F.S., defines "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

[2] Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

[3] Section 948.01(1), F.S.

[4] *Id.*

[5] Section 948.03(2), F.S.

[6] Section 948.06(2)(a), F.S.

[7] Section 948.06(2)(c), F.S.

[8] Section 948.06(2)(d), F.S.

[9] Section 948.06(2)(e), F.S.

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

Courts are prohibited from granting pretrial release to probationers arrested for violating their terms of supervision (other than violations related to a failure to pay costs) who are:

- A violent felony offender of special concern;[10]
- On supervision for any offense committed on or after March 12, 2007, and who is arrested for any qualifying offense; [11] or
- On supervision, has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S., and who is arrested for committing a qualifying offense on or after March 12, 2007. [12,13]

Such persons must remain in custody pending the resolution of the violation.[14]

New Law Violations
Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation.

Two separate and distinct court cases are initiated when a probationer is arrested for committing a new offense. The first case (new offense case) involves the new offense that the probationer is alleged to have committed. The second case (VOP case) involves the violation of probation that that probationer is alleged to have committed. In most instances, the new offense case is initiated, and later, once the probationer's supervising officer is made aware that the probationer was arrested for committing a new crime, the VOP case is initiated.

As noted above, a judge handling a probationer's VOP case has the option of granting bail to a probationer arrested for violating the terms of probation (unless the probationer meets the criteria outlined above.) The judge handling the new offense case also has the option of granting bail to the probationer. In determining whether to grant such bail and what the bail amount should be, judges are permitted to consider a variety of factors, including whether the defendant is on probation, parole, or other release pending completion of a sentence.[15]

Authority to Arrest a Probationer for a Probation Violation
Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation.

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation.

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[10] The term "violent felony offender of special concern" is defined in s. 948.06(8)(b), F.S.
[11] The term "qualifying offense" is defined in s. 948.06(8)(c), F.S., and includes offenses that qualify someone as a sexual offender.
[12] Section 903.0351(2), F.S., provides that subsection (1) shall not apply where the alleged violation of felony probation or community control is based only on the probationer's failure to pay costs or fines or make restitution payments.
[13] Section 903.0351(1), F.S.
[14] Section 948.06(8)(d), F.S.
[15] Section 903.046, F.S.

- Alternatively, a probation officer may file an affidavit with the court alleging a violation of probation based upon the existence of the new arrest. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer's arrest or in some instances, a notice to appear.

Effect of the Bill

The bill amends s. 948.06, F.S., to provide a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court's finding of probable cause that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer has therefore violated his or her probation in a material respect.

The bill requires the court to advise the probationer of the charge of the violation upon arrest and at first appearance on the violation. If admitted, the probationer will be brought before the court that granted the probation. However, if the violation is not admitted, the court may commit the probationer or release him or her with or without bail to await further hearing. Current law contains similar provisions.[16]

The bill allows the court to consider whether the person will receive a prison sanction for violating the terms of probation based on the arrest for the new violation of law during bail determination on the violation. This provision is similar to what is already allowed by current law.[17]

The bill then specifies that upon the court's determination that probable cause exists for the new law violation and there exist reasonable grounds to believe that the probationer has violated his or her probation in a material respect, the court may order the probationer to be arrested and returned to the court granting such supervision.

The bill specifies that its provisions do not apply to a probationer or offender on community control who is subject to the hearing requirements under subsection 948.06(4) or paragraph 948.06(8)(e), F.S.

B. SECTION DIRECTORY:

Section 1.Provides this act may be cited as the "Officer Andrew Widman Act."

Section 2. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 3. Provides 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:

[16] These provisions are described above in "Background – Probation."

[17] *See* Section 903.046, F.S., which provides that the court may consider the defendant's past or present conduct and record of convictions in determining the bail amount for the new criminal offense.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pretrial proceedings; providing a short title; amending s. 948.06, F.S.; providing that at the first appearance of a probationer or an offender on community control arrested for a new offense for which the court finds the existence of probable cause, the court may determine the likelihood of a prison sanction for the violation based on the new arrest; providing that the court may order detention if it appears more likely than not that a prison sanction may be forthcoming on the violation; providing that the court may release the probationer or offender on community control with or without bail on the violation; exempting persons subject to hearings under specified provisions; providing an effective date.

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

Section 1. This act may be cited as the "Officer Andrew Widman Act."

Section 2. Present paragraphs (c) through (f) of subsection (1) of section 948.06, Florida Statutes, are redesignated as paragraphs (d) through (g), respectively, and a new paragraph (c) is added to that subsection to read:

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

(1)

(c) Notwithstanding s. 907.041, when a probationer or an offender on community control is arrested and alleged to have committed a new violation of law for which the court at first appearance finds probable cause, based upon the facts made known to the court:

1. If the probationer or offender has not been arrested under law enforcement's authority set forth in paragraph (a) prior to first appearance, the court may order the arrest of the probationer or offender on a violation of probation or community control, pursuant to the court's finding of probable cause that the probationer or offender has committed a new law violation and that there exist reasonable grounds to believe that the probationer or offender has therefore violated his or her probation or community control in a material respect.

a. Upon arrest and at first appearance on the violation, the court shall advise the probationer or offender of the charge of the violation and, if such charge is admitted, shall cause him or her to be brought before the court that granted the probation or community control.

b. If the violation is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing.

c. If the court reaches the issue of a bail determination on the violation of probation or community control, the court may consider as a factor whether it is more likely than not that the probationer or offender on community control will receive a prison sanction for violating the terms of community supervision based upon the arrest for the new violation of law; or

2. Upon its determination that probable cause exists for the new law violation and that there exist reasonable grounds to believe that the probationer or offender has violated his or her probation or community control in a material respect, the court may order that the probationer or offender be arrested and returned to the court granting such probation or community control.

This paragraph does not apply to a probationer or offender on community control who is subject to the hearing requirements under subsection (4) or paragraph (8)(e).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 Sentencing of Inmates
SPONSOR(S): Porth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1334

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

SUMMARY ANALYSIS

Florida's drug trafficking laws, found in s. 893.135, F.S., are applicable to "[a]ny person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession" of a specified amount of a controlled substance and contain minimum mandatory terms of imprisonment. Each controlled substance has a different threshold to trigger felony trafficking charges, and requires increasingly significant sentences for a greater volume of drug.

HB 917 removes the mandatory minimum terms of imprisonment related to all of the drug trafficking provisions listed in s. 893.135, F.S.

The bill also creates a new section of statute to authorize the Department of Corrections to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The bill may have a positive fiscal impact on the Department of Corrections and provides an effective date of October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drug Trafficking Mandatory Minimum Sentences

Florida's drug trafficking laws, found in s. 893.135, F.S., contain minimum mandatory terms of imprisonment. Each controlled substance has a different threshold to trigger felony trafficking charges, and requires increasingly significant sentences for a greater volume of drug.

The following controlled substances are listed with their associated minimum mandatory sentences:

Cannabis[1]
A person commits a first degree felony, known as "trafficking in cannabis," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of in excess of 25 pounds of cannabis or 300 or more cannabis plants[2].[3]

Trafficking in cannabis results in the following minimum mandatory sentences based on the following amounts:

- In excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, provides a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $25,000.
- 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, provides a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $50,000.
- 10,000 pounds or more, or is 10,000 or more cannabis plants, provides a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $200,000.[4]

Cocaine[5]
A person commits a first degree felony, known as "trafficking in cocaine," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 28 grams or more of cocaine or of any mixture[6] containing cocaine, but less than 150 kilograms of cocaine or any such mixture.[7]

Trafficking in cocaine results in the following minimum mandatory sentences based on the following amounts:

- 28 grams or more, but less than 200 grams, provides a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

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[1] Section 893.03(1)(c)7.,F.S., lists cannabis as a Schedule I drug. Section 893.02(3), F.S., defines "Cannabis" as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin."
[2] Section 893.135(1)(a), F.S., provides "For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph.
[3] Section 893.135(1)(a), F.S.
[4] *Id.*
[5] Section 893.03(2)(a)4., F.S, lists cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine as Schedule II drugs.
[6] Section 893.02(15), F.S., defines "mixture" as "any physical combination of two or more substances."
[7] Section 893.135(1)(b)1., F.S.

- 200 grams or more, but less than 400 grams, provides a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 400 grams or more, but less than 150 kilograms, provides a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[8]
- 150 kilograms or more is punishable by life imprisonment and the person is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.[9]

Morphine, Opium, Oxycodone, Hydrocodone, Hydromorphone, and Heroin[10]
A person commits a first degree felony, known as "trafficking in illegal drugs," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture.[11]

Trafficking in illegal drugs results in the following minimum mandatory sentences based on the following amounts:

- 4 grams or more, but less than 14 grams, provides a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 14 grams or more, but less than 28 grams, provides a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $100,000.
- 28 grams or more, but less than 30 kilograms, provides a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.[12]
- 30 kilograms or more or 30 kilograms or more of any mixture containing any such substance, is punishable by life imprisonment and the person is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.[13]

Phencyclidine[14]
A person commits a first degree felony, known as "trafficking in phencyclidine," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 28 grams or more of phencyclidine or of any mixture containing phencyclidine.[15]

Trafficking in phencyclidine results in the following minimum mandatory sentences based on the following amounts:

- 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

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[8] *Id.*
[9] Section 893.135(1)(b)2., F.S.
[10] Section 893.03(1)(b), F.S., lists heroin as a Schedule I drug. Section 893.03(2)(a), lists morphine, opium, oxycodone, hydrocodone, and hydromorphone as Schedule II drugs. Section 893.03(3)(c)3. and (3)(c)4., F.S. list specific amounts of hydrocodone in Schedule III.
[11] Section 893.135(1)(c)1., F.S.
[12] *Id.*
[13] Section 893.135(1)(c)2., F.S.
[14] Section 893.03(2)(b), F.S., lists phencyclidine as a Schedule II drug.
[15] Section 893.135(1)(d)1., F.S.

- 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[16]

Methaqualone[17]

A person commits a first degree felony, known as "trafficking in methaqualone," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 200 grams or more of methaqualone or of any mixture containing methaqualone.[18]

Trafficking in methaqualone results in the following minimum mandatory sentences based on the following amounts:

- 200 grams or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[19]

Amphetamine[20] ***and Methamphetamine***[21]

A person commits a first degree felony, known as "trafficking in amphetamine," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture[22] of amphetamine or methamphetamine.[23]

Trafficking in amphetamine results in the following minimum mandatory sentences based on the following amounts:

- 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[24]

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[16] *Id.*

[17] Section 893.03(1)(d), F.S., lists methaqualone as a Schedule I drug.

[18] Section 893.135(1)(e)1., F.S.,

[19] *Id.*

[20] Section 893.03(2)(c)2., F.S.. lists amphetamine as a Schedule II drug.

[21] Section 893.03(2)(c)4., F.S., lists methamphetamine as a Schedule II drug.

[22] Section 893.02(14)(a), F.S., defines "manufacture" as "the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale."

[23] Section 893.135(1)(f)1., F.S.

[24] *Id.*

Flunitrazepam[25]
A person commits a first degree felony, known as "trafficking in flunitrazepam," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 4 grams or more of flunitrazepam or any mixture containing flunitrazepam.[26]

Trafficking in flunitrazepamcan results in the following minimum mandatory sentences based on the following amounts:

- 4 grams or more but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 14 grams or more but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 28 grams or more but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and pay a fine of $500,000.[27]
- 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam is punishable by life imprisonment and the person is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.[28]

Gamma-hydroxybutyric Acid (GHB)[29]
A person commits a first degree felony, known as "trafficking in GHB," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of GHB or any mixture containing GHB.[30]

Trafficking in GHB results in the following minimum mandatory sentences based on the following amounts:

- 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[31]

Gamma-butyrolactone (GBL)[32]
A person commits a first degree felony, known as "trafficking in GBL," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of GHB or any mixture containing GBL.[33]

Trafficking in GBL results in the following minimum mandatory sentences based on the following amounts:

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[25] Section893.03(1)(a), F.S., lists flunitrazepam as a Schedule I drug.
[26] Section 893.135(1)(g)1., F.S.
[27] *Id.*
[28] Section 893.135(1)(g)2., F.S.
[29] Section 893.03(1)(d), F.S., lists GHB as a Schedule I drug.
[30] Section 893.135(1)(h)1., F.S.
[31] *Id.*
[32] Section 893.03(1)(d), F.S., lists GBL as a Schedule I drug.
[33] Section 893.135(1)(i)1., F.S.

- 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[34]

1,4-Butanediol[35]

A person commits a first degree felony, known as "trafficking in 1,4-Butanediol," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of GHB or any mixture containing 1,4-Butanediol.[36]

Trafficking in 1,4-Butanediol results in the following minimum mandatory sentences based on the following amounts:

- 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000[37]

Substances Described in s. 893.03(1)(a) or (c), F.S.[38]

A person commits a first degree felony, known as "trafficking in Phenethylamines," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 10 grams or more of any of the following substances listed in s. 893.03(1)(a) or (c)a.-o., F.S., individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o.[39]

Trafficking in Phenethylamines results in the following minimum mandatory sentences based on the following amounts:

- 10 grams or more but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.[40]

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[34] *Id.*
[35] Section 893.03(1)(d), F.S., lists 1,4-Butanediol as a Schedule I drug.
[36] Section 893.135(1)(j)1., F.S.
[37] *Id.*
[38] Section 893.03(1)(a) or (c), F.S., lists the following drugs 3,4-Methylenedioxymethamphetamine (MDMA); 4-Bromo-2,5-dimethoxyamphetamine; 4-Bromo-2,5-dimethoxyphenethylamine; 2,5-Dimethoxyamphetamine; 2,5-Dimethoxy-4-ethylamphetamine (DOET); N-ethylamphetamine; N-Hydroxy-3,4-methylenedioxyamphetamine; 5-Methoxy-3,4-methylenedioxyamphetamine; 4-methoxyamphetamine; 4-methoxymethamphetamine; 4-Methyl-2,5-dimethoxyamphetamine; 3,4-Methylenedioxy-N-ethylamphetamine; 3,4-Methylenedioxyamphetamine; N,N-dimethylamphetamine; or 3,4,5-Trimethoxyamphetamine as Schedule I.
[39] Section 893.135(1)(k)1., F.S.
[40] *Id.*

Lysergic Acid Diethylamide (LSD)[41]

A person commits a first degree felony, known as "trafficking in LSD," when he or she knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1 gram or more of LSD or any mixture containing LSD.[42]

Trafficking in LSD results in the following minimum mandatory sentences based on the following amounts:

- 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.
- 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.
- 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.[43]

Notwithstanding the provisions of s. 948.01, F.S., with respect to any person who is found to have violated the drug trafficking provisions in s. 893.135, F.S., adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed. A person sentenced to a mandatory minimum term of imprisonment under s. 893.135, F.S., is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.[44]

The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S., and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency must be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.[45]

Effect of the Bill

HB 917 removes the minimum mandatory sentence requirements for trafficking of controlled substances listed above. The penalty for trafficking in each substance will still remain a first degree felony, which is punishable by up to 30 years in prison and up a $10,000 fine, in addition to the fines associated with the differing thresholds of drug volume.

The bill amends s. 893.135(3), F.S., to remove language that prohibits a person convicted of a drug trafficking offense from being eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, F.S., prior to serving the mandatory minimum term of imprisonment.

The bill allows a judge, upon motion of the state attorney, to defer a sentence or withhold the sentence or adjudication of guilt of a person convicted of a drug trafficking offense if the judge finds the defendant rendered substantial assistance.

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[41] Section 893.03(1)(c), F.S., lists LSD as a Schedule I drug.
[42] Section 893.135(1)(l)1., F.S.
[43] *Id.*
[44] Section 893.135(3), F.S.
[45] Section 893.135(4), F.S.

The Department of Corrections Re-entry Programming

Currently, the Department of Corrections (DOC) provides the following re-entry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.[46]

Also, DOC is statutorily mandated[47] to provide inmates who are within 12 months of their release with the 100-Hour Transition Training Program. This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.[48]

Drug Offender Probation

DOC is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which provides for supervision of offenders in accordance with a specific treatment plan.[49] This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.[50] These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.[51] In FY 2009-10, 9,928 offenders were on drug offender probation.[52]

Effect of the Bill

HB 917 authorizes the Department of Corrections to develop and administer a nonviolent offender re-entry program in a secure area within an institution or adjacent to an adult institution. This program is intended to divert nonviolent offenders[53] from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism. The program must include:

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[46] "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections. http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf (Last accessed on March 18, 2011).
[47] Section 944.7065, F.S.
[48] *Supra* "Recidivism Reduction Strategic Plan."
[49] Section 948.20(2), F.S.
[50] Section 948.20(1), F.S.
[51] Section 948.06 (2)(e), F.S.
[52] Department of Corrections, Community Supervision Admissions, 2008-2009 Agency Statistics, http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html (Last accessed on March 18, 2011).
[53] The bill defines nonviolent offenders as an offender who has been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, F.S., and has not been convicted of any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, F.S.

- Prison-based substance abuse treatment,
- General education development and adult basic education courses,
- Vocational training,
- Training in decisionmaking and personal development, and
- Other rehabilitation programs.

The bill requires that the nonviolent offender serve at least 120 days in the reentry program. Any portion of his or her sentence served before placement in the reentry program does not count as progress toward program completion.

The bill requires DOC to screen potential reentry program participants for eligibility criteria to participate in the program. In order to participate, a nonviolent offender must have:

- Served at least one-half of his or her original sentence, and
- Been identified as having a need for substance abuse treatment.

During the screening process, the bill requires DOC to consider the offender's criminal history and the possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

If a nonviolent offender is selected to participate in the program and if space is available in the reentry program, DOC must request the sentencing court to approve the offender's participation in the reentry program.

DOC must also notify the state attorney that the offender is being considered for placement in the reentry program. The notice must:

- Explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration.
- State that the state attorney may notify the sentencing court in writing of any objection he or she might have if the nonviolent offender is placed in the reentry program.[54]

The bill requires the sentencing court to notify DOC in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender into the re-entry program no later than 28 days after the court receives DOC's request to place the offender in the reentry program.[55]

The bill requires a nonviolent offender who had been admitted to the re-entry program to:

- Undergo a full substance abuse assessment to determine his or her substance abuse treatment needs.
- Have an educational assessment, using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education.
- Obtain a high school diploma if one has not already been obtained.

The bill requires that assessments of the offender's vocational skills and future career education be provided to the offender as needed and that a periodic reevaluation be made in order to assess the progress of each offender.

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[54] The bill requires that the state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

[55] The bill states that the court's failure to notify DOC of the decision within the 28-day period constitutes approval to place the offender into the reentry program.

If a nonviolent offender becomes unmanageable, the bill authorizes DOC to revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with DOC rule. The offender can be readmitted to the reentry program after completing the ordered discipline[56] unless:

- The offender commits or threatens to commit a violent act;
- DOC determines that the offender is unable to participate in the reentry program due to the offender's medical condition;
- The offender's sentence is modified or expires;
- DOC reassigns the offender's classification status; or
- DOC determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

The bill requires DOC to submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the bill requires the court to issue an order modifying the sentence imposed and place the offender on drug offender probation[57] subject to the offender's successful completion of the remainder of the reentry program.[58] If the nonviolent offender violates the conditions of drug offender probation, the bill authorizes the court to revoke probation and impose any sentence that it might have originally imposed.

The bill also authorizes DOC to:

- Implement the reentry program to the fullest extent feasible within available resources.
- Submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.
- Enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.
- Establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.
- Develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in its annual report of the program.
- Adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the reentry program.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 2. Creates the nonviolent reentry program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[56] The bill specifies that any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.

[57] The bill provides that if an offender being released intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, F.S., the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation.

[58] The bill provides that the term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Criminal Justice Impact Conference has not met to discuss the impact of HB 917. DOC reports that the removal of the mandatory minimum sentences for defendants trafficking in controlled substances will likely have an overall positive fiscal impact on the department.[59]

The bill also creates a new section of statute to authorize the Department of Corrections to develop and administer a nonviolent offender re-entry program. This program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by intensive substance abuse treatment may have the same effect, rehabilitate the offender, and reduce recidivism.

The bill provides that an inmate must serve at least half of his or her original sentence before being eligible for the re-entry program. An inmate who satisfactorily completes the reentry program will then be placed on drug offender probation. Because participation in the program hinges on an offender being eligible, DOC selection, and judicial approval, the precise impact of the bill is unknown. However, the bill will likely result in cost savings to the state.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

[59] The Department of Corrections 2011 Analysis of HB 917.

The bill authorizes DOC to adopt rules pursuant to ch. 120, F.S., to govern operation of the nonviolent offender re-entry program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Line 687 states that "If a nonviolent offender becomes unmanageable..." This line should be clarified to "If a nonviolent offender in the re-entry program becomes unmanageable..."

- Although the bill authorizes DOC the discretion to screen and select inmates for program participation, inmates who meet the eligibility criteria but are not selected for the program may have a cause of action against DOC.

  Adding the following may address this issue:

  > "This section does not create or confer any right to any inmate to placement in the re-entry program or any right to placement or early release under supervision of any type. No inmate shall have a cause of action against the department, a court, or the state attorney related to the re-entry program."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the sentencing of inmates; amending s. 893.135, F.S.; removing all references to imposing mandatory minimum sentences for defendants convicted of trafficking in controlled substances; defining the terms "department" and "nonviolent offender"; directing the Department of Corrections to develop and administer a reentry program for nonviolent offenders which is intended to divert nonviolent offenders from long periods of incarceration; requiring that the program include intensive substance abuse treatment and rehabilitative programming; providing for the minimum length of service in the program; providing that any portion of a sentence before placement in the program does not count as progress toward program completion; specifying eligibility criteria for a nonviolent offender to be placed into the reentry program; directing the department to notify the nonviolent offender's sentencing court to obtain approval before the nonviolent offender is placed into the reentry program; requiring the department to notify the state attorney; authorizing the state attorney to file objections to placing the offender into the reentry program within a specified period; requiring the sentencing court to notify the department of the court's decision to approve or disapprove the requested placement within a specified period; providing that failure of the court to timely notify the department of the court's decision constitutes approval by the requested placement; requiring the

nonviolent offender to undergo an education assessment and a full substance abuse assessment if admitted into the reentry program; requiring the offender to be enrolled in an adult education program in specified circumstances; requiring that assessments of vocational skills and future career education be provided to the offender; requiring that certain reevaluation be made periodically; providing that the nonviolent offender is subject to the disciplinary rules of the department; specifying the reasons for which the offender may be terminated from the reentry program; requiring that the department submit a report to the sentencing court at least 30 days before the nonviolent offender is scheduled to complete the reentry program; setting forth the issues to be addressed in the report; requiring the sentencing court to issue an order modifying the sentence imposed and place the nonviolent offender on drug offender probation if the nonviolent offender's performance is satisfactory; authorizing the court to revoke probation and impose the original sentence in specified circumstances; authorizing the court to require the offender to complete a postadjudicatory drug court program in specified circumstances; directing the department to implement the reentry program using available resources; requiring the department to submit an annual report to the Governor and Legislature detailing the extent of implementation of the reentry program and outlining future goals and recommendations; authorizing the department to enter into contracts with qualified

individuals, agencies, or corporations for services for the reentry program; authorizing the department to impose administrative or protective confinement as necessary; authorizing the department to establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities; directing the department to develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and to report on recidivism in its annual report of the program; directing the department to adopt rules; providing an effective date.

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

Section 1. Section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; ~~mandatory sentences;~~ suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as

"trafficking in cannabis," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense

under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. ~~A person who has been convicted of the first degree felony of trafficking in~~

~~cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149.~~ However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is

knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 25 calendar years and~~ pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or

more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. ~~A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149.~~ However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death

of any person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), and who knows that the probable result of such importation would be the death

of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(e)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), commits a felony of the first degree, which felony shall be known as "trafficking in methaqualone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 200 grams or more, but less than 5 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 5 kilograms or more, but less than 25 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 25 kilograms or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

2. Any person who knowingly brings into this state 50 kilograms or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), and who knows that the probable result of such importation would be the death

of any person commits capital importation of methaqualone, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(f)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 200 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(g)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more but less than 14 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 14 grams or more but less than 28 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment~~

~~of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 28 grams or more but less than 30 kilograms, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 25 calendar years and~~ pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. ~~A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149.~~ However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine

provided under subparagraph 1.

(h)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of gamma-hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-hydroxybutyric acid (GHB), a capital felony

punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(i)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-butyrolactone (GBL)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more but less than 5 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 5 kilograms or more but less than 10 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into the state 150 kilograms or more of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), and who knows that the probable result of

such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-butyrolactone (GBL), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(j)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of 1,4-Butanediol as described in s. 893.03(1)(d), or of any mixture containing 1,4-Butanediol, commits a felony of the first degree, which felony shall be known as "trafficking in 1,4-Butanediol," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 kilogram or more, but less than 5 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 5 kilograms or more, but less than 10 kilograms, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 10 kilograms or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of 1,4-Butanediol as described in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,

and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of 1,4-Butanediol, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. 893.03(1)(a) or (c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);
b. 4-Bromo-2,5-dimethoxyamphetamine;
c. 4-Bromo-2,5-dimethoxyphenethylamine;
d. 2,5-Dimethoxyamphetamine;
e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
f. N-ethylamphetamine;
g. N-Hydroxy-3,4-methylenedioxyamphetamine;
h. 5-Methoxy-3,4-methylenedioxyamphetamine;
i. 4-methoxyamphetamine;
j. 4-methoxymethamphetamine;
k. 4-Methyl-2,5-dimethoxyamphetamine;
l. 3,4-Methylenedioxy-N-ethylamphetamine;
m. 3,4-Methylenedioxyamphetamine;
n. N,N-dimethylamphetamine; or
o. 3,4,5-Trimethoxyamphetamine,

individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o., commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved:

a. Is 10 grams or more but less than 200 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $250,000.

3. Any person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. 893.03(1)(a) or (c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);

b. 4-Bromo-2,5-dimethoxyamphetamine;

c. 4-Bromo-2,5-dimethoxyphenethylamine;

d. 2,5-Dimethoxyamphetamine;

e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. 4-methoxyamphetamine;

j. 4-methoxymethamphetamine;

k. 4-Methyl-2,5-dimethoxyamphetamine;

l. 3,4-Methylenedioxy-N-ethylamphetamine;

m. 3,4-Methylenedioxyamphetamine;

n. N,N-dimethylamphetamine; or

o. 3,4,5-Trimethoxyamphetamine,

individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be~~ ordered to pay a fine of

$50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be ~~sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be~~ ordered to pay a fine of $100,000.

c. Is 7 grams or more, such person shall be ordered ~~sentenced~~ to ~~a mandatory minimum term of imprisonment of 15 calendar years and~~ pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(2) A person acts knowingly under subsection (1) if that person intends to sell, purchase, manufacture, deliver, or bring into this state, or to actually or constructively possess, any of the controlled substances listed in subsection (1), regardless of which controlled substance listed in subsection (1) is in fact sold, purchased, manufactured, delivered, or brought into this state, or actually or constructively possessed.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this

section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld~~, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment.~~

(4) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend, defer, or withhold the sentence or adjudication of guilt if the judge finds that the defendant rendered such substantial assistance.

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he or she had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of

this subsection and any violation of subsection (1).

(6) A mixture, as defined in s. 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

(7) For the purpose of further clarifying legislative intent, the Legislature finds that the opinion in *Hayes v. State*, 750 So. 2d 1 (Fla. 1999) does not correctly construe legislative intent. The Legislature finds that the opinions in *State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) correctly construe legislative intent.

Section 2. Nonviolent offender reentry program.—

(1) As used in this section, the term:

(a) "Department" means the Department of Corrections.

(b) "Nonviolent offender" means an offender who has:

1. Been convicted of a third-degree felony offense that is not a forcible felony as defined in s. 776.08, Florida Statutes; and

2. Not been convicted of any offense that requires a

person to register as a sexual offender pursuant to s. 943.0435, Florida Statutes.

(2)(a) The department shall develop and administer a reentry program for nonviolent offenders. The reentry program must include prison-based substance abuse treatment, general education development and adult basic education courses, vocational training, training in decisionmaking and personal development, and other rehabilitation programs.

(b) The reentry program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration followed by participation in intensive substance abuse treatment and rehabilitative programming could produce the same deterrent effect, rehabilitate the offender, and reduce recidivism.

(c) The nonviolent offender shall serve at least 120 days in the reentry program. The offender may not count any portion of his or her sentence served before placement in the reentry program as progress toward program completion.

(d) A reentry program may be operated in a secure area in or adjacent to an adult institution.

(3)(a) Upon receiving a potential reentry program participant, the department shall screen the nonviolent offender for eligibility criteria to participate in the reentry program. In order to participate, a nonviolent offender must have served at least one-half of his or her original sentence and must have been identified as having a need for substance abuse treatment. When screening a nonviolent offender, the department shall consider the offender's criminal history and the possible

rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

(b) If a nonviolent offender meets the eligibility criteria and space is available in the reentry program, the department shall request the sentencing court to approve the offender's participation in the reentry program.

(c)1. The department shall notify the state attorney that the offender is being considered for placement in the reentry program. The notice must explain to the state attorney that a proposed reduced period of incarceration, followed by participation in substance abuse treatment and other rehabilitative programming, could produce the same deterrent effect otherwise expected from a lengthy incarceration.

2. The notice must also state that the state attorney may notify the sentencing court in writing of any objection the state attorney might have if the nonviolent offender is placed in the reentry program. The state attorney must notify the sentencing court of his or her objections within 14 days after receiving the notice.

(d) The sentencing court shall notify the department in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender no later than 28 days after the court receives the department's request to place the offender in the reentry program. Failure to notify the department of the court's decision within the 28-day period constitutes approval to place the offender into the reentry program.

(4) After the nonviolent offender is admitted into the reentry program, he or she shall undergo a full substance abuse assessment to determine his or her substance abuse treatment needs. The offender shall also have an educational assessment, which shall be accomplished using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education. Each offender who has not obtained a high school diploma shall be enrolled in an adult education program designed to aid the offender in improving his or her academic skills and earn a high school diploma. Further assessments of the offender's vocational skills and future career education shall be provided to the offender as needed. A periodic reevaluation shall be made in order to assess the progress of each offender.

(5)(a) If a nonviolent offender becomes unmanageable, the department may revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. Except as provided in paragraph (b), the offender shall be readmitted to the reentry program after completing the ordered discipline. Any period of time during which the offender is unable to participate in the reentry program shall be excluded from the specified time requirements in the reentry program.

(b) The department may terminate an offender from the reentry program if:

1. The offender commits or threatens to commit a violent act;

2. The department determines that the offender is unable

to participate in the reentry program due to the offender's medical condition;

3. The offender's sentence is modified or expires;

4. The department reassigns the offender's classification status; or

5. The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the institution.

(6)(a) The department shall submit a report to the court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program. If the performance is satisfactory, the court shall issue an order modifying the sentence imposed and place the offender on drug offender probation subject to the offender's successful completion of the remainder of the reentry program. The term of drug offender probation may include placement in a community residential or nonresidential substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Family Services or any public or private entity providing such services. If the nonviolent offender violates the conditions of drug offender probation, the court may revoke probation and impose any sentence that it might have originally imposed.

(b) If an offender being released pursuant to paragraph (a) intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, Florida Statutes, the sentencing court may require the offender

to successfully complete the postadjudicatory drug court program as a condition of drug offender probation. The original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed. If transferred to a postadjudicatory drug court program, the offender shall comply with all conditions and orders of the program.

(7) The department shall implement the reentry program to the fullest extent feasible within available resources.

(8) The department shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and outlining future goals and any recommendation the department has for future legislative action.

(9) The department may enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.

(10) A nonviolent offender in the reentry program is subject to rules of conduct established by the department and may have sanctions imposed, including loss of privileges, restrictions, disciplinary confinement, alteration of release plans, or other program modifications in keeping with the nature and gravity of the program violation. Administrative or

protective confinement, as necessary, may be imposed.

(11) The department may establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

(12) The department shall develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in its annual report of the program.

(13) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer the reentry program.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

Civil Citation Programs (CCPs) are diversion programs, created by s. 985.12, F.S., that provide law enforcement with an alternative to taking youth into custody. Under a CCP, a law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and requiring participation in intervention services appropriate to identified needs of the juvenile. If the child fails to report timely for a work assignment, complete a work assignment, or comply with assigned intervention services within the prescribed time, the law enforcement officer must issue a report alleging the child has committed a delinquent act and a juvenile probation officer must commence the intake process pursuant to s. 985.145, F.S.

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

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

- A law enforcement agency;
- DJJ;
- A juvenile assessment center;
- A county or municipality; or
- An entity selected by a county or municipality.

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Justice Process

The juvenile justice process starts when a law enforcement agency charges a youth[1] with a law violation.[2] Depending on the seriousness of the offense and the law enforcement officer's view of what is needed to appropriately address the offense, the law enforcement officer may:

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

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

Civil Citation Program

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

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

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

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

[3] *Id.*

[4] Rule 63D-10.002(1) (2010), F.A.C.

[5] *Id.*

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

[7] Rule 63D-10.002(4) (2010), F.A.C.

[8] Section 985.12(1), F.S.

[9] Section 985.12(5), F.S.

[10] Section 985.12(3), F.S.

[11] *Id.*

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

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

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

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

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

Effect of the bill

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

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

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Civil citation programs are designed to prevent youth from formally entering the juvenile justice system. By requiring that CCPs be established at the local level, the bill will likely have a positive

[12] Section 985.12(4), F.S.
[13] Upon receiving the citation, DJJ must enter the information into the juvenile offender information system. s. 985.12(1), F.S.
[14] Section 985.12(2), F.S.
[15] Section 985.12(1), F.S.
[16] March 18, 2011 e-mail from DJJ employee Theda Roberts (on file with Criminal Justice Subcommittee staff).

fiscal impact on DJJ and the courts. However, the precise impact of the bill will depend on how many additional civil citations would result and the success rate of the program.

2. Expenditures:

The bill requires DJJ to develop a model civil citation program. DJJ's analysis does not indicate that there will be a fiscal impact associated with this requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2010,[17] a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1.87 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to establish CCPs required by the bill. If the fiscal impact is less than $1.87 million, the impact is insignificant, and an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

[17] http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

985.12 Civil citation.—

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1039 Controlled Substances
SPONSOR(S): Patronis
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1886

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

SUMMARY ANALYSIS

3,4-Methylenedioxymethcathinone, (Methylone), 3,4-Methylenedioxypyrovalerone (MDPV), 4-Methylmethcathinone (Mephedrone), 3-Methoxymethcathinone, 3-Fluoromethcathinone, and 4-Fluoromethcathinone, are psychoactive substances that, when used improperly, offer alternatives to illegal drugs. Much like the marketing of Synthetic Cannabinoids (Spice/K2) as incense, these substances are commercially available and are being marketed as "bath salts".

In recent years, the abuse of bath salts, predominately by the youth population, has been increasing. Law enforcement and medical professionals have indicated that bath salts are becoming increasingly popular due to the perception that they pose a seemingly safer alternative to illegal methods of getting "high" and can easily be obtained at convenience stores, pawnshops, and gas stations. Some abusers describe the effects as similar to methamphetamine, ecstasy, and cocaine, and have referred to bath salts as "complete crank" and "fake cocaine."

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. Currently, Florida Statutes do not regulate the sale, purchase, possession, or manufacture of bath salts.

HB 1039 amends s. 893.03, F.S., to add the following substances to Schedule I of Florida's controlled substance schedules:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypyrovalerone (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).

As a result, anyone in possession of these substances will be guilty of a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The purchase of these substances will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of the bill. However, due to penalties provided in s. 893.13, F.S., for various drug related offenses, the bill will likely have a prison bed impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Bath Salts

3,4 - Methylenedioxymethcathinone (Methylone), 3,4 - Methylenedioxypyrovalerone (MDPV), 4 - Methylmethcathinone (Mephedrone), 3 - Methoxymethcathinone, 3 - Fluoromethcathinone, and 4 - Fluoromethcathinone, are psychoactive substances that, when used improperly, offer alternatives to illegal drugs.[1] Much like the marketing of Synthetic Cannabinoids (Spice/K2) as incense, these substances are commercially available and are being marketed as "bath salts".[2] While bath salts are comprised of the different unregulated chemical substances listed above, MDPV appears to be the substance most commonly referred to as bath salts.[3]

MDVP

MDVP is a central nervous system stimulant which was first seized in Germany in 2007.[4] MDPV is structurally related to cathinone, an active alkaloid found in the khat plant,[5] methamphetamine[6], and methylenedioxymethamphetamine,[7] and has not been approved for medical use in the United States.[8]

Bath salts are known by a variety of names, including "Red Dove," "Blue Silk," "Zoom," "Bloom," "Cloud Nine," "Ocean Snow," "Lunar Wave," "Vanilla Sky," "Ivory Wave," "White Lightning," "Scarface" "Purple Wave," "Blizzard," "Star Dust," "Lovey, Dovey," "Snow Leopard," "Aura," and "Hurricane Charlie." While they have become popular under the guise of being sold as bath salts, they are sometimes sold as other products such as insect repellant, or plant food with names like "Bonsai Grow" among others.[9]

Substance Abuse

In recent years, the abuse of bath salts has been increasing. Law enforcement and medical professionals have indicated that bath salts are becoming increasingly popular due to the perception that they pose a seemingly safer alternative to illegal methods of getting "high" and can easily be obtained.[10]

While the abuse of the substance MDPV has increased, particularly in Europe and Australia, in recent years, it has also begun to be increasingly used as a recreational drug in the U.S.[11] User population

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[1] Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence. "Bath Salts" Receive Emergency Drug Scheduling. Brief # 10-194 Public, January 26, 2011. (http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf) (last accessed March 19, 2011).

[2] Hunterdon Drug Awareness Program, Comprehensive Drug Information on MDPV, Mephedrone ("Bath Salts"). (http://www.hdap.org/mdpv.html) (last accessed March 19, 2011).

[3] *Id.*

[4] Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

[5] "Khat" is a stimulant drug derived from a shrub that is native to East Africa and southern Arabia. The leaves of this plant contain the alkaloids cathine and cathinone, and are chewed for the stimulant effects. U.S. Drug Enforcement Administration. KHAT AKA: Catha Edulis. (http://www.justice.gov/dea/pubs/pressrel/pr072606a.html) (last accessed March 19, 2011).

[6] "Methamphetamine" is a central nervous system stimulant drug that is similar in structure to amphetamine. National Institutes of Health. *NIDA InfoFacts: Methamphetamine*. March 2010. (http://www.nida.nih.gov/infofacts/methamphetamine.html) (last accessed March 19, 2011).

[7] "Methylenedioxymethamphetamine" (MDMA) is a synthetic, psychoactive drug that is chemically similar to the stimulant methamphetamine and the hallucinogen mescaline. National Institutes of Health. *NIDA InfoFacts: MDMA (Ecstasy).* December 2010. (http://www.drugabuse.gov/Infofacts/ecstasy.html) (last accessed March 19, 2011).

[8] Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

[9] *Id.*

[10] Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence. "Bath Salts" Receive Emergency Drug Scheduling. Brief # 10-194 Public, January 26, 2011. (http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf) (last accessed March 19, 2011).

[11] Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

information in the U.S. is very limited; however, there have been reports of MDVP being used predominantly by the youth population.[12] The Drug Enforcement Administration's (DEA) National Forensic Laboratory Information System indicates that state and local law enforcement officials encountered MDPV in 2009 and 2010 in Iowa, Kansas, Kentucky, Minnesota, North Dakota, Oklahoma, Texas, and Wisconsin.[13]

Bath salts are readily available at convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, and truck stops, among other locations.[14] Bath salts are sold in 50mg to 500mg packets that usually contain a disclaimer, such as "not for human consumption."[15] The costs of these substances range from $25 - $50 per 50mg packet. Bath salts are abused typically by injection, smoking, snorting, and less often, by the use of an atomizer.[16] Some abusers describe the effects as similar to methamphetamine, ecstasy, and cocaine, and have referred to the substance as "complete crank" and "fake cocaine."[17]

Reports of the side effects of MDPV include tachycardia, hypertension, vasoconstriction, and sweating.[18] However, higher doses of MDPV have caused intense, prolonged panic attacks in stimulant-intolerant users.[19] The duration of the subjective effects is about 3 to 4 hours and the side effects continuing a total of 6 to 8 hours after administration.[20]

There have been numerous calls to poison control centers throughout the U.S. concerning the abuse of bath salts. Poison control centers in Florida have reported 61 calls of bath salts abuse, making the state the second-highest in call volume after Louisiana.[21] Most of Florida's cases have come from Central and Northern Florida, but disoriented users have also arrived in Broward County hospitals with high blood pressure and hallucinations, according to Nabil El Sanadi, Chief of Emergency Medicine at Broward Health.[22] According to Panama City Beach police, one of the most shocking cases of bath salts abuse involved a woman who burst into her 71-year-old mother's room swinging a machete.[23]

Drug Schedules

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.

The distinguishing factors between the different drug schedules are the "potential for abuse"[24] of the substance contained therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.[25] Cannabis and heroin are examples of Schedule I drugs.

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[12] *Id.*
[13] *Id.*
[14] National Drug Intelligence Center. U.S. Department of Justice. DRUG WATCH: Increasing abuse of bath salts. December 2010.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).
[19] *Id.*
[20] *Id.*
[21] Alexia Campbell and Aaron Deslatte, Sun Sentinel, *Florida bans 'bath salt' drugs after violent outbursts.* January 27, 2011. (http://articles.sun-sentinel.com/2011-01-27/news/fl-bath-salts-florida-20110126_1_salts-fake-cocaine-bath) (last accessed March 19, 2011).
[22] *Id.*
[23] *Id.*
[24] *See* s. 893.02(19), F.S.
[25] *See* s. 893.03, F.S.

Florida law
Currently, Florida Statutes do not regulate the sale, purchase, possession, or manufacture of bath salts. However, current law authorizes the Attorney General, by means of an emergency rule,[26] to schedule a substance on a temporary basis if it is found that scheduling the substance is necessary to avoid an imminent hazard to the public safety.[27]

On January 26, 2011, Attorney General Pam Bondi, issued an emergency rule to add bath salts to Schedule I of Florida's controlled substance schedules.[28] Attorney General Bondi stated that ""due to the violent nature of the side effects involved in taking these drugs, the emergency rule will provide law enforcement with the tools necessary to take this dangerous substance off the shelves and protect the abusers from themselves as well as others. These are dangerous drugs that should not be confused with any type of common bath product."[29] If the Legislature fails to take legislative action, the emergency rule scheduling bath salts will expire on June 30, 2011.[30]

Other State Actions
Several states, including Hawaii, Michigan, Louisiana, Kentucky, and North Dakota, have introduced legislation to ban bath salts. In addition, several counties, cities, and local municipalities have also taken action to ban bath salts.[31]

Federal Actions
Currently, bath salts are not scheduled drugs under the Federal Controlled Substances Act.[32] However, the DEA has MDPV and Mephedrone listed as drugs and chemicals of concern.[33]

On February 1, 2011, Gil Kerlikowske, Director of National Drug Control Policy, released the following statement following recent reports indicating the emerging threat of synthetic stimulants, including MDPV and mephedrone:

> *"I am deeply concerned about the distribution, sale, and use of synthetic stimulants – especially those that are marketed as legal substances. Although we lack sufficient data to understand exactly how prevalent the use of these stimulants are, we know they pose a serious threat to the health and well-being of young people and anyone who may use them. At a time when drug use in America is increasing, the marketing and sale of these poisons as "bath salts" is both unacceptable and dangerous. As public health officials work to address this emerging threat, I ask that parents and other adult influencers act immediately to discuss with young people the severe harm that can be caused by the use of both legal and illegal drugs and to prevent drug use before it starts."*[34]

Effect of Bill
HB 1039 amends s. 893.03, F.S., to add the following substances to Schedule I of Florida's controlled substance schedules:

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[26] Section 120.54, F.S.
[27] Section 893.035(7), F.S.
[28] Office of the Attorney General of Florida Pam Bondi, New Release: *Attorney General Bondi Files Emergency Rule Banning the Dangerous Synthetic Drug Marketed as "Bath Salts"* January 26, 2011. (http://www.myfloridalegal.com/newsrel.nsf/newsreleases/81CC463863D88DC4852578240077FD45) (last accessed March 19, 2011).
[29] *Id.*
[30] Section 893.035(9), F.S.
[31] Nora D. Volkow, M.D., National Institute of Drug Abuse, Message from the Director on "Bath Salts" - Emerging and Dangerous Products. (http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html) (last accessed March 19, 2011).
[32] Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).
[33] U.S. Department of Justice drug Administration. Drugs and Chemicals of Concern. (http://www.deadiversion.usdoj.gov/drugs_concern/index.html) (last accessed March 19, 2011).
[34] Office of National Drug Control Policy, Press Release: Statement from White House Drug Policy Director on Synthetic Stimulants, a.k.a "Bath Salts". February 1, 2011. (http://www.whitehousedrugpolicy.gov/news/press11/020111.html) (last accessed March 19, 2011).

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypyrovalerone (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).

As a result, anyone in possession of these substances will be guilty of a third degree felony[35] in conformity with other Schedule I hallucinogens such as LSD and peyote. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart.[36] The purchase of these substances will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.[37]

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 893.03, F.S., relating to standards and schedules.

Section 2: Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3: Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 4: Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 5: 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:

   The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of the bill. However, the bill adds several substances to the list of controlled substances in Schedule I. The manufacture, sale, and possession of Schedule I substances are felony offenses. Thus, this bill will likely have a prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[35] 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.

[36] Sections 893.13(1)(a)2 and 921.0022, F.S. Section 893.13, F.S. provides for enhanced penalties if the sale occurs within close proximity to certain locations such as a church or school.

[37] Section 893.13(2)(a)2., F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would make it illegal to sell bath salts, which are currently sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. Therefore, the bill could have a negative fiscal impact on such entities.

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

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; including certain hallucinogenic substances on the list of controlled substances in Schedule I; reenacting ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., relating to prohibited acts and penalties regarding controlled substances and the offense severity chart of the Criminal Punishment Code, to incorporate the amendment to s. 893.03, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances or which contains any of their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Alpha-ethyltryptamine.

2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex).

3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).

4. 4-Bromo-2,5-dimethoxyamphetamine.

5. 4-Bromo-2, 5-dimethoxyphenethylamine.

6. Bufotenine.

7. Cannabis.

8. Cathinone.

9. Diethyltryptamine.

10. 2,5-Dimethoxyamphetamine.

11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).

12. Dimethyltryptamine.

13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine analog of phencyclidine).

14. N-Ethyl-3-piperidyl benzilate.

15. N-ethylamphetamine.
16. Fenethylline.
17. N-Hydroxy-3,4-methylenedioxyamphetamine.
18. Ibogaine.
19. Lysergic acid diethylamide (LSD).
20. Mescaline.
21. Methcathinone.
22. 5-Methoxy-3,4-methylenedioxyamphetamine.
23. 4-methoxyamphetamine.
24. 4-methoxymethamphetamine.
25. 4-Methyl-2,5-dimethoxyamphetamine.
26. 3,4-Methylenedioxy-N-ethylamphetamine.
27. 3,4-Methylenedioxyamphetamine.
28. N-Methyl-3-piperidyl benzilate.
29. N,N-dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. Salvia divinorum, except for any drug product approved by the United States Food and Drug Administration which contains Salvia divinorum or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
36. Salvinorin A, except for any drug product approved by

the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

37. Tetrahydrocannabinols.

38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP) (Thiophene analog of phencyclidine).

39. 3,4,5-Trimethoxyamphetamine.

40. 3,4-Methylenedioxymethcathinone (Methylone).

41. 3,4-Methylenedioxypyrovalerone (MDPV).

42. 4-Methylmethcathinone (Mephedrone).

43. 3-Methoxymethcathinone.

44. 3-Fluoromethcathinone.

45. 4-Fluoromethcathinone (Flephedrone).

Section 2. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, subsections (1), (2), (4), and (5) of section 893.13, Florida Statutes, are reenacted to read:

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in

s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. For the purposes of this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational,

social, or educational services to the public. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, it is unlawful

for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s.

893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. For purposes of this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(g) Except as authorized by this chapter, it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If any person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child under 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance

in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to purchase in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Except as authorized by this chapter, it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in 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) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, nor shall the person so convicted be placed on probation.

(5) It is unlawful for any person to bring into this state

any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in 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) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in references thereto, paragraph (l) of subsection (1) of section 893.135, Florida Statutes, is reenacted to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(l)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in s.

893.03(1)(c), or of any mixture containing lysergic acid diethylamide (LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 7 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 4. For the purpose of incorporating the amendment made by this act to section 893.03, Florida Statutes, in

references thereto, paragraphs (b), (c), and (e) of subsection (3) of section 921.0022, Florida Statutes, are reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07	3rd	Registration of securities and furnishing of prospectus required.

590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.

812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.

831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	Falsely impersonating an officer.
893.13(2)(a)2.	3rd	Purchase of any 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 other than cannabis.

893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (4)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.

379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida

		Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with

		intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	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).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver 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 university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver 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 public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47	3rd	Introduce contraband to correctional

(1)(a)1.-2.		facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

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 serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing

			HIV positive.
475			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
476			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
477			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
478			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
479			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
480			
	790.01(2)	3rd	Carrying a concealed firearm.
481			
	790.162	2nd	Threat to throw or discharge destructive device.
482			
	790.163(1)	2nd	False report of deadly explosive or

		weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.

812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
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.
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.

817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
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, motion picture, etc., which includes sexual conduct by a child.
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.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137	3rd	Transmission of pornography by

(2) & (3)		electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
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. drugs).
893.13(1)(c)2.	2nd	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.
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.
510			
	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.
511			
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (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.
512			
	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).
513			
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
514			

515 Section 5. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1233 Juvenile Justice
SPONSOR(S): Van Zant
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1850

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

SUMMARY ANALYSIS

This bill makes various changes to ch. 985, F.S., relating to juvenile justice, as well as changes to the "Children and Families in Need of Services" (CINS/FINS) statutes and the "Comprehensive Child and Adolescent Mental Health Services Act." Specifically, the bill:

- Amends the definition of "child or adolescent at risk of emotional disturbance" to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act." This change will expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.

- Encourages specified entities to establish prearrest and postarrest diversion programs and provides that youth taken into custody for first-time misdemeanor offenses and youth 9 years of age or younger should be given the opportunity to participate in such programs.

- Requires juvenile probation officers to make a referral to the appropriate CINS/FINS shelter if a child taken into custody for a domestic violence offense is ineligible for secure detention.

- Prohibits a child alleged to have committed a delinquent from being placed in detention due to a misdemeanor charge of domestic violence if the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect.

- Prohibits a child 9 years of age or younger from being placed into secure detention unless the child is charged with a capital felony, life felony, or a first degree felony.

- Requires that a risk assessment instrument, that is effective at predicting risk and avoiding the unnecessary use of secure detention, be developed by the Department of Juvenile Justice (DJJ) in consultation with representatives appointed by specified associations.

- Authorizes the court to commit a child who has been adjudicated delinquent to the Department for placement in a mother-infant program.

- Requires DJJ to submit an annual Comprehensive Accountability Report to the Governor and Legislature detailing the effectiveness of DJJ programs.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child and Adolescent Mental Health System of Care – Eligibility

Chapter 394, F.S., entitled the "Comprehensive Child and Adolescent Mental Health Services Act," requires the Department of Children and Families (DCF) to establish a child and adolescent mental health system of care that that provides an array of services to meet the individualized service and treatment needs of children[1] and adolescents[2] who are members of specified target populations. Currently, only individuals who fall within the following categories are eligible to be served through the child and adolescent mental health system of care:

- Children and adolescents who are experiencing an acute mental or emotional crisis.
- Children and adolescents who have a serious emotional disturbance or mental illness.
- Children and adolescents who have an emotional disturbance.
- Children and adolescents who are at risk of emotional disturbance.[3]

Section 394.492(4), F.S., currently defines a "child or adolescent at risk of emotional disturbance" as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of risk factors that include, but are not limited to:

- Being homeless.
- Having a family history of mental illness.
- Being physically or sexually abused or neglected.
- Abusing alcohol or other substances.
- Being infected with human immunodeficiency virus (HIV).
- Having a chronic and serious physical illness.
- Having been exposed to domestic violence.
- Having multiple out-of-home placements.

Effect of the Bill

The bill amends the definition of "child or adolescent at risk of emotional disturbance" to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act." This change will expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.

Legislative Intent

Section 985.02, F.S., sets forth the Legislature's intent for the juvenile justice system. Subsection (3) of the statute provides that it is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

- Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.[4]

Subsection (4) of the statute, relating to juvenile detention, specifies that the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior.[5]

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[1] Section 394.492(3), F.S., defines the term "child" as "a person from birth until the person's 13th birthday."
[2] Section 394.492(1), F.S., defines the term "adolescent" as "a person who is at least 13 years of age but under 18 years of age."
[3] Each of these groups is defined in s. 394.492, F.S.
[4] Section 985.02(3), F.S.
[5] Section 985.02(4), F.S.

Subsection (5) of the statute, relating to serious or habitual juvenile offenders, provides the following:

> The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders. Recidivism rates for each of these classes of offenders exceed those tolerated by the Legislature and by the citizens of this state.[6]

Effect of the Bill
The bill amends s. 985.02(3), F.S., to specify that it is the policy of the state to:

- Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, deep-end commitment, *and secure detention.*

The bill replaces the language in s. 985.02(4), F.S., specifying that secure detention "is appropriate to provide punishment that discourages further delinquent behavior" with language specifying that secure detention "is appropriate to ensure public safety and guarantee court appearance.

The bill deletes legislative intent language in s. 985.02(5), F.S., relating to serious or habitual juvenile offenders, in its entirety.

The bill also creates two new subsections under s. 985.02, F.S., entitled "children nine years of age or younger" and "restorative justice." The new subsections provide the following:

- Children 9 Years of Age or Younger
  - The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger may be diverted into prearrest or postarrest programs, civil citation programs, or children-in-need-of-services and families-in-need-of-services programs, or other programs, as appropriate. If, based upon a needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the Department of Children and Family Services, as appropriate, to identify the most appropriate services and supports and available funding sources to meet the needs of the child.[7]

- Restorative Justice
  - It is the intent of the Legislature that the juvenile justice system advance the principles of restorative justice. The department shall focus on repairing the harm to victims of delinquent behavior by ensuring that the child understands the effects of his or her delinquent behavior on the victim and the community and that the child restores the losses of his or her victim.
  - Offender accountability is one of the principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage, or injury perpetrated upon the victim and the

[6] Section 985.02(5), F.S.
[7] The Department of Juvenile Justice reports that it communicates with DCF regularly about youth who are served by both agencies. According to a FY 07-8 analysis of youth IDs, DCF had contact with approximately 30 percent of the youth age 9 and younger who were referred to the Department for a delinquent act.

community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others; and when the offender makes amends for the harm, loss or damage through restitution, community service, or other appropriate repayment.

Pre-Arrest and Post-Arrest Diversion Programs

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to establish prearrest or postarrest diversion programs for children who have committed or been alleged to have committed a delinquent act. Diversion is a process designed to keep a youth from entering the juvenile justice system through the legal process. Diversion programs include community arbitration, Juvenile Alternative Services Program (JASP), teen court, civil citation, boy scouts and girl scouts, boys and girls clubs, mentoring programs, and alternative schools.

Effect of the Bill

The bill specifies that the above-described entities are *encouraged* to establish prearrest or postarrest diversion programs and adds counties, municipalities, and the Department of Juvenile Justice (DJJ) to the list of entities that may establish such programs. The bill also specifies that youth who are taken into custody for first-time misdemeanor offenses and youth 9 years of age or younger should be given the opportunity to participate in a prearrest or postarrest diversion program.

Intake

Section 985.14, F.S., requires the Department to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by DJJ through a case management system, and a child's assigned juvenile probation officer serves as the primary case manager.[8]

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument which establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Effect of the Bill

The bill amends s. 985.145(1)(d), F.S., to require a juvenile probation officer to make a referral to the appropriate CINS/FINS shelter if a child is ineligible for secure detention due to a misdemeanor charge of domestic violence if the child lives with a family with a history of domestic violence or if the child has been a victim of abuse or neglect.

Detention – Initial Assessment

Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.[9]

[8] *See* ss. 985.14 and 985.145, F.S.

[9] Section 985.24(2), F.S.

Effect of the Bill
The bill amends s. 985.24(2), F.S., to specify that a child alleged to have committed a delinquent act may not be placed in detention:

- Due to a misdemeanor charge of domestic violence if the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect, and the decision to place in secure detention is mitigated by the history of trauma faced by the child, unless the child would otherwise be subject to secure detention based on his or her prior history.

The bill also prohibits children 9 years of age or younger from being placed into secure detention unless the child is charged with a capital felony, life felony, or a first degree felony.

Risk Assessment Instrument
Section 985.245(2)(a), F.S., requires a detention risk assessment instrument (RAI) be developed by DJJ in agreement with representatives appointed by the following associations:

- Conference of Circuit Judges of Florida
- Prosecuting Attorneys Association
- Public Defenders Association
- Florida Sheriff's Association
- Florida Association of Chiefs of Police

The parties involved are required to evaluate and revise the RAI as is considered necessary using the method for revision as agreed by the parties.[10]

Section 985.245(2)(b), F.S., requires the RAI to take into consideration, but need not be limited to:

- Prior history of failure to appear;
- Prior offenses;
- Offenses committed pending adjudication;
- Any unlawful possession of a firearm;
- Theft of a motor vehicle or possession of a stolen motor vehicle; and
- Probation status at the time the child is taken into custody.

Effect of the Bill
The bill amends s. 985.245(2)(a), F.S., to require that the RAI be developed by DJJ *in consultation with* representatives appointed by above-listed associations. The requirement that the parties involved evaluate and revise the RAI is removed and replaced with language requiring the RAI to be effective at predicting risk and avoiding the unnecessary use of secure detention.

The bill also amends s. 985.245(2)(b), F.S., to require the RAI to accurately predict a child's risk of rearrest or failure to appear. The bill removes "theft of a motor vehicle or possession of a stolen motor vehicle" as a factor that the RAI can consider.

Continued Detention
Section 985.255, F.S., provides criteria the court may use in determining whether to continue to detain a child prior to a detention hearing. Section 985.255(1)(d), F.S., provides the court may continue to detain a child if the child is charged with domestic violence. Additionally, subsection (2) of the statute provides that a child who is charged with committing an offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

[10] Section 985.245(2)(a), F.S.

Effect of the Bill
The bill amends s. 985.255(1)(d), F.S., to provide the court may consider only whether the child is charged with *felony* domestic violence when determining whether to continue to detain a child prior to a detention hearing. The bill also amends subsection (2) of the statute to specify that a child who is charged with committing a *felony* offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

Commitment – Mother-Infant Programs
Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to:

- A licensed child-caring agency willing to receive the child.
- The Department at a restrictiveness level defined in s. 985.03, F.S.
- The Department for placement in a program/facility for serious or habitual juvenile offenders.
- The Department for placement in a program or facility for juvenile sexual offenders.

The Department currently operates a 20-bed mother-infant program in Miami-Dade county that serves pregnant and postpartum females ages 14-19. The goal of the program is to return the women back to their communities with skills necessary to lead productive lives and successfully parent their children. At this time, there is no statutory provision allowing a court to commit a child who has been adjudicated delinquent to a mother-infant program.

Effect of the Bill
The bill amends s. 985.441, F.S., to authorize the court to commit a child to the Department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The bill requires the Department's mother-infant program to be licensed as a childcare facility under s. 402.308, F.S., and requires the program to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants who, upon agreement of the mother, may accompany them in the program. The bill also requires the Department to adopt rules to govern the program.

Comprehensive Accountability Report
Legislative Intent
Section 985.632(1), F.S., provides that it is the intent of the Legislature that the Department:

- Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs of the department which achieve desired performance levels.
- Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.
- Provide information to aid in developing related policy issues and concerns.
- Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.
- Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.
- Improve service delivery to clients.
- Modify or eliminate activities that are not effective.

Effect of the Bill
The bill adds to the above list that it is the intent of the Legislature that the Department:

- Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

The bill also deletes the definition of the term "program effectiveness" and creates the following definitions in s. 985.632(2), F.S.:

- "Program" means any facility, service, or program for youth which is operated by the department or by a provider under contract with the department.
- "Program group" means a collection of programs having sufficient similarity of functions, services, and population to allow appropriate comparison among programs within the group.

Comprehensive Accountability Report

Section 985.632(3), F.S., requires the Department to annually collect and report cost data for every program operated or contracted by the Department. The cost data must conform to a format approved by the Department and the Legislature and must be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The statute also requires the Department to ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. Further, the Department must submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year.[11]

Effect of the Bill

The bill deletes s. 985.632(3), F.S., in its entirety and replaces it with language requiring the Department to:

- Use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.
- Submit a Comprehensive Accountability Report to the appropriate committees of the Legislature and the Governor no later than January 15 of each year.
- Notify the Office of Program Policy Analysis and Government Accountability (OPPAGA) and contract service providers of substantive changes to the methodology.

The bill specifies that the standard methodology must:

- Define common terminology and operational definitions and methods by which the performance of program outputs and outcomes may be measured.
- Specify program outputs for each program and for each program group within the juvenile justice continuum.
- Report cost data for each program operated or contracted by the Department for the fiscal year corresponding to the program outputs and outcomes being reported.

Cost-Effectiveness Model

Section 985.632(4), F.S., currently requires the Department to develop a cost-effectiveness model and apply it to each commitment program. The statute also requires the Department to rank commitment programs based on the cost-effectiveness model and submit a report to specified entities. The Department is also required to develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance based program budgeting measures approved by the Legislature to the extent the Department deems appropriate.

Effect of the Bill

The bill makes several amendments to s. 985.632(4), F.S. The amendments:

- Replace references to the "cost effectiveness model" with references to the "program accountability measures analysis."
- Require the Department to apply the program accountability measure analysis to each commitment program and include the results in the comprehensive accountability report.
- Requires the program accountability measures analysis to compare program costs to expected and actual youth recidivism rates.
- Remove the language requiring the Department to rank commitment programs based on the cost-effectiveness model.

[11] Section 985.632(3), F.S.

- Replaces the language requiring the Department to develop a work plan to refine the cost-effectiveness model with language requiring the Department to notify OPPAGA and contract service providers of substantive changes to the program accountability measures analysis.

Quality Assurance

Section 985.632(5), F.S., requires the Department to establish a comprehensive quality assurance system for each program operated by the Department or operated by a provider under contract with the Department. The statute also requires the Department to submit an annual report relating to quality assurance to specified entities. The annual report must include specified information about each program component.

Effect of the Bill

The bill removes the requirement that the Department submit the annual quality assurance report and instead requires the Department to include quality assurance information in the Comprehensive Accountability Report.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.492, F.S., relating to definitions.

Section 2. Amends s. 984.14, F.S., relating to shelter placement; hearing.

Section 3. Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

Section 4. Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 5. Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 6. Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 7. Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 8. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 9. Amends s. 985.441, F.S., relating to commitment.

Section 10. Amends s. 985.45, F.S., relating to liability and remuneration for work.

Section 11. Amends s. 985.632, F.S., relating to quality assurance and cost effectiveness.

Section 12. Reenacts s. 984.13, F.S., relating to taking into custody a child alleged to be from a family in need of services or to be a child in need of services.

Section 13. This bill takes effect July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DJJ reports that SB 1850, which contains similar provisions to this bill, will not have a fiscal impact.[12]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department to adopt rules pursuant to ch. 120, F.S., to govern operation of mother-infant programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[12] 2011 DJJ Analysis of SB 1850 (on file with Criminal Justice Subcommittee Staff).

A bill to be entitled

An act relating to juvenile justice; amending s. 394.492, F.S.; including children 9 years of age or younger at the time of referral for a delinquent act within the definition of those children who are eligible to receive comprehensive mental health services; amending s. 984.14, F.S.; prohibiting placement of a child into a shelter before a court hearing unless the child is taken into custody for a misdemeanor domestic violence charge and is ineligible to be held in secure detention; amending s. 985.02, F.S.; revising legislative intent concerning delinquency prevention and detention; deleting provisions relating to serious and habitual juvenile offenders; providing legislative intent concerning children 9 years of age or younger and restorative justice; amending s. 985.125, F.S.; encouraging law enforcement agencies, school districts, counties, municipalities, and the department to establish prearrest or postarrest diversion programs and to give first-time misdemeanor offenders and offenders who are 9 years of age or younger an opportunity to participate in the programs; amending s. 985.145, F.S.; requiring a juvenile probation officer to make a referral to the appropriate shelter if the completed risk assessment instrument shows that the child is ineligible for secure detention; amending s. 985.24, F.S.; prohibiting a child alleged to have committed a delinquent act or violation of law from being placed into secure, nonsecure, or home detention care because of a misdemeanor

charge of domestic violence if the child lives in a family that has a history of family violence or if the child is a victim of abuse or neglect unless the child would otherwise be subject to secure detention based on prior history; prohibiting a child 9 years of age or younger from being placed into secure detention care unless the child is charged with a capital felony, a life felony, or a felony of the first degree; amending s. 985.245, F.S.; revising the development process for the risk assessment instrument; revising factors to be considered in assessing a child's risk of rearrest or failure to appear; amending s. 985.255, F.S.; providing that a child may be placed in home detention care or detained in secure detention care under certain circumstances; providing that a child who is charged with committing a felony offense of domestic violence and who does not meet detention criteria may nevertheless be held in secure detention care if the court makes certain specific written findings; amending s. 985.441, F.S.; authorizing a court to commit a female child adjudicated as delinquent to the department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents; requiring the department to adopt rules to govern the operation of the mother-infant program; amending s. 985.45, F.S.; providing that whenever a child is required by the court to participate in any juvenile justice work program, the child is considered an employee of the state for the purpose of

workers' compensation; amending s. 985.632, F.S.; establishing legislative intent that the Department of Juvenile Justice collect and analyze available statistical data for the purpose of ongoing evaluation of all juvenile justice programs; redefining terms; requiring the department to use a standard methodology to annually measure, evaluate, and report program outputs and youth outcomes for each program and program group; requiring that the department submit an annual report to the appropriate committees of the Legislature and the Governor; requiring that the department notify specified parties of substantive changes to the standard methodology used in its evaluation; requiring that the department apply a program accountability measures analysis to each commitment program; deleting obsolete provisions; reenacting s. 984.13(3), F.S., relating to taking a child into custody, to incorporate the amendment made to s. 984.14, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (i) is added to subsection (4) of section 394.492, Florida Statutes, to read:

394.492 Definitions.—As used in ss. 394.490-394.497, the term:

(4) "Child or adolescent at risk of emotional disturbance" means a person under 18 years of age who has an increased

likelihood of becoming emotionally disturbed because of risk factors that include, but are not limited to:

(i) Being 9 years of age or younger at the time of referral for a delinquent act.

Section 2. Subsection (1) of section 984.14, Florida Statutes, is amended to read:

984.14 Shelter placement; hearing.—

(1) Unless ordered by the court pursuant to ~~the provisions of~~ this chapter, or upon voluntary consent to placement by the child and the child's parent, legal guardian, or custodian, a child taken into custody may ~~shall~~ not be placed in a shelter prior to a court hearing unless a determination has been made that ~~the provision of~~ appropriate and available services will not eliminate the need for placement and that such placement is required:

(a) To provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement; or

(b) Because a parent, custodian, or guardian is unavailable to take immediate custody of the child.

Section 3. Paragraph (b) of subsection (3), paragraph (b) of subsection (4), and subsection (5) of section 985.02, Florida Statutes, are amended, subsections (6) through (8) are redesignated as subsections (5) through (7), respectively, and new subsections (8) and (9) are added to that section, to read:

985.02 Legislative intent for the juvenile justice

system.—

(3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

(b) Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, ~~and~~ deep-end commitment, and secure detention.

The Legislature intends that detention care, in addition to providing secure and safe custody, will promote the health and well-being of the children committed thereto and provide an environment that fosters their social, emotional, intellectual, and physical development.

(4) DETENTION.—

(b) The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. Therefore, the Legislature finds that secure detention is appropriate to ensure public safety and guarantee court appearance ~~provide punishment that discourages further delinquent behavior~~. The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the

intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.

~~(5) SERIOUS OR HABITUAL JUVENILE OFFENDERS.—The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders. Recidivism rates for each of these classes of offenders exceed those tolerated by the Legislature and by the citizens of this state.~~

(8) CHILDREN 9 YEARS OF AGE OR YOUNGER.—The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger may be diverted into prearrest or postarrest programs, civil citation programs, or children-in-need-of-services and families-in-need-of-services programs, or other programs, as appropriate. If, based upon a needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the

Department of Children and Family Services, as appropriate, to identify the most appropriate services and supports and available funding sources to meet the needs of the child.

(9) RESTORATIVE JUSTICE.—

(a) It is the intent of the Legislature that the juvenile justice system advance the principles of restorative justice. The department shall focus on repairing the harm to victims of delinquent behavior by ensuring that the child understands the effect of his or her delinquent behavior on the victim and the community and that the child restores the losses of his or her victim.

(b) Offender accountability is one of the principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage, or injury perpetrated upon the victim and the community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others, and when the offender makes amends for the harm, loss, or damage through restitution, community service, or other appropriate repayment.

Section 4. Subsection (1) of section 985.125, Florida Statutes, is amended to read:

985.125 Prearrest or postarrest diversion programs.—

(1) A law enforcement agency, ~~or~~ school district, county, municipality, or the department, in cooperation with the state attorney, is encouraged to ~~may~~ establish ~~a~~ prearrest or postarrest diversion programs. Youth who are taken into custody

for first-time misdemeanor offenses or offenders who are 9 years of age or younger should be given an opportunity to participate in prearrest or postarrest diversion programs ~~program~~.

Section 5. Paragraph (d) of subsection (1) of section 985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of juvenile probation officer during intake; screenings and assessments.—

(1) The juvenile probation officer shall serve as the primary case manager for the purpose of managing, coordinating, and monitoring the services provided to the child. Each program administrator within the Department of Children and Family Services shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the assigned juvenile probation officer shall be responsible for the following:

(d) *Completing risk assessment instrument.*—The juvenile probation officer shall ensure that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court. If, upon completion of the risk assessment instrument, the child is ineligible for secure detention based on the criteria in s. 985.24(2)(e), the juvenile probation officer shall make a referral to the appropriate shelter for a child in need of services or family in need of services.

Section 6. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of secure, nonsecure, or home detention must ~~shall~~ be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;

(c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure, nonsecure, or home detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(e) Due to a misdemeanor charge of domestic violence if the child lives in a family that has a history of family

violence, as defined in s. 741.28, or if the child is a victim of abuse or neglect, as defined in s. 39.01, and the decision to place the child in secure detention care is mitigated by the history of trauma faced by the child, unless the child would otherwise be subject to secure detention based on his or her prior history.

(3) A child alleged to be dependent under chapter 39 may not, under any circumstances, be placed into secure detention care.

(4) A child 9 years of age or younger may not be placed into secure detention care unless the child is charged with a capital felony, a life felony, or a felony of the first degree.

(5) ~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 7. Subsection (2) of section 985.245, Florida Statutes, is amended to read:

985.245 Risk assessment instrument.—

(2)(a) The risk assessment instrument for detention care placement determinations and court orders shall be developed by the department in consultation ~~agreement~~ with representatives appointed by the following associations: the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, the Public Defenders Association, the Florida Sheriffs Association, and the Florida Association of Chiefs of Police. Each association shall appoint two individuals, one representing an urban area and one representing a rural area.

The ~~parties involved shall evaluate and revise the~~ risk assessment instrument must be effective at predicting risk and avoiding the unnecessary use of secure detention ~~as is considered necessary using the method for revision as agreed by the parties~~.

(b) The risk assessment instrument shall accurately predict a child's risk of rearrest or failure to appear and may take the following factors ~~take~~ into consideration, but need not be limited to them:~~,~~ prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, ~~theft of a motor vehicle or possession of a stolen motor vehicle,~~ and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure, nonsecure, or home detention care.

Section 8. Section 985.255, Florida Statutes, is amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into ~~nonsecure or~~ home detention care or detained in secure detention care before ~~prior to~~ a detention hearing may continue to be detained by the court if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing a felony ~~an~~ offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings

after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on home detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, for an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(j) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on

the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(2) A child who is charged with committing a felony ~~an~~ offense of domestic violence as defined in s. 741.28 and who does not meet detention criteria may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

(3)(a) A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into

custody. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the juvenile probation officer and, based on the criteria in subsection (1), shall determine the need for continued detention. A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court.

(b) If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or in s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4).

Section 9. Paragraph (e) is added to subsection (1) of section 985.441, Florida Statutes, to read:

985.441 Commitment.—

(1) The court that has jurisdiction of an adjudicated

delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(e) Commit the child to the department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The department's mother-infant program must be licensed as a child care facility in accordance with s. 402.308, and must provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of their infants who, upon agreement of the mother, may accompany them in the program. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the operation of such programs.

Section 10. Subsection (1) of section 985.45, Florida Statutes, is amended to read:

985.45 Liability and remuneration for work.—

(1) Whenever a child is required by the court to participate in any work program under this part or whenever a child volunteers to work in a specified state, county, municipal, or community service organization supervised work program or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or probation program, the child is an employee of the state for the purposes of chapter 440 ~~liability~~.

Section 11. Section 985.632, Florida Statutes, is amended to read:

985.632 Program review and reporting requirements ~~Quality assurance and cost-effectiveness~~.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature that the department:

(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs that ~~of the department which~~ achieve desired performance levels.

(b) Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

(c) ~~(b)~~ Provide information about the cost of such programs and their differential effectiveness so that program ~~the~~ quality may ~~of such programs can~~ be compared and improvements made continually.

(d) ~~(c)~~ Provide information to aid in developing related policy issues and concerns.

(e) ~~(d)~~ Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.

(f) ~~(e)~~ Provide a basis for a system of accountability so that each youth ~~client~~ is afforded the best programs to meet his or her needs.

(g) ~~(f)~~ Improve service delivery to youth ~~clients~~.

(h) ~~(g)~~ Modify or eliminate activities that are not effective.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Program" means any facility, service, or program for youth which is operated by the department or by a provider under contract with the department.

(b) ~~(b)~~ "Program component" means an aggregation of generally related objectives which, because of their special

character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

(c) "Program group" means a collection of programs having sufficient similarity of functions, services, and population to allow appropriate comparisons between programs within the group.

(d) ~~(a)~~ "Youth" ~~"Client"~~ means any person who is being provided treatment or services by the department or by a provider under contract with the department.

~~(c) "Program effectiveness" means the ability of the program to achieve desired client outcomes, goals, and objectives.~~

(3) COMPREHENSIVE ACCOUNTABILITY REPORT.—The department shall use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group. The department shall submit a report to the appropriate committees of the Legislature and the Governor by January 15 of each year. The department shall notify the Office of Program Policy Analysis and Government Accountability and each contract service provider of substantive changes to the methodology. The standard methodology must:

(a) Define common terminology and operational definitions and methods by which the performance of program outputs and outcomes may be measured.

(b) Specify program outputs for each program and for each program group within the juvenile justice continuum.

(c) Report cost data for each program operated or contracted by the department for the fiscal year corresponding

to the program outputs and outcomes being reported. ~~The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

(4) PROGRAM ACCOUNTABILITY MEASURES.—

(a) The department~~, in consultation with the Office of Economic and Demographic Research and contract service providers,~~ shall ~~develop a cost-effectiveness model and~~ apply the program accountability measures analysis ~~model~~ to each

commitment program and include the results in the comprehensive accountability report. ~~Program recidivism rates shall be a component of the model.~~ The program accountability measures analysis ~~cost-effectiveness model~~ shall compare program costs to expected and actual youth recidivism rates ~~client outcomes and program outputs~~. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the program accountability measure analysis ~~cost-effectiveness model~~.

~~(b) The department shall rank commitment programs based on the cost-effectiveness model and shall submit a report to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year.~~

(b) ~~(c)~~ Based on ~~reports of the department on client outcomes and program outputs and on~~ the department's most recent program accountability measures analysis ~~cost-effectiveness~~ rankings, the department may terminate its contract with or discontinue a commitment program ~~operated by the department or a provider~~ if the program has failed to achieve a minimum threshold of recidivism and program accountability ~~program effectiveness~~. This paragraph does not preclude the department from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

(c) ~~(d)~~ The department shall notify the Office of Program Policy Analysis and Government Accountability and each contract service provider of substantive changes to the program accountability measures analysis. ~~In collaboration with the~~

~~Office of Economic and Demographic Research, and contract service providers, the department shall develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance-based program budgeting measures approved by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.~~

(d) ~~(c)~~ Contingent upon specific appropriation, the department, in consultation with the Office of Economic and Demographic Research, and contract service providers, shall:

1. Construct a profile of each commitment program which ~~that~~ uses the results of the quality assurance report required by this section, the program accountability measure analysis ~~cost-effectiveness report~~ required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, youth ~~client~~ outcomes and program outputs, provider contracts, quality assurance standards, and the program accountability measure analysis ~~cost-effectiveness model~~.

(5) QUALITY ASSURANCE.—The department shall:

(a) Establish a comprehensive quality assurance system for

each program operated by the department or operated by a provider under contract with the department. Each contract entered into by the department must provide for quality assurance and include the results in the comprehensive accountability report.

(b) Provide operational definitions of and criteria for quality assurance for each specific program component.

(c) Establish quality assurance goals and objectives for each specific program component.

(d) Establish the information and specific data elements required for the quality assurance program.

(e) Develop a quality assurance manual of specific, standardized terminology and procedures to be followed by each program.

(f) Evaluate each program operated by the department or a provider under a contract with the department and establish minimum thresholds for each program component. If a provider fails to meet the established minimum thresholds, such failure shall cause the department to cancel the provider's contract unless the provider achieves compliance with minimum thresholds within 6 months or unless there are documented extenuating circumstances. In addition, the department may not contract with the same provider for the canceled service for a period of 12 months. If a department-operated program fails to meet the established minimum thresholds, the department must take necessary and sufficient steps to ensure and document program changes to achieve compliance with the established minimum thresholds. If the department-operated program fails to achieve

compliance with the established minimum thresholds within 6 months and if there are no documented extenuating circumstances, the department must notify the Executive Office of the Governor and the Legislature of the corrective action taken. Appropriate corrective action may include, but is not limited to:

1. Contracting out for the services provided in the program;

2. Initiating appropriate disciplinary action against all employees whose conduct or performance is deemed to have materially contributed to the program's failure to meet established minimum thresholds;

3. Redesigning the program; or

4. Realigning the program.

~~The department shall submit an annual report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than February 1 of each year. The annual report must contain, at a minimum, for each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the~~

~~information contained in the report.~~

~~(6) The department shall collect and analyze available statistical data for the purpose of ongoing evaluation of all programs. The department shall provide the Legislature with necessary information and reports to enable the Legislature to make informed decisions regarding the effectiveness of, and any needed changes in, services, programs, policies, and laws.~~

Section 12. For the purpose of incorporating the amendment made by this act to section 984.14, Florida Statutes, in a reference thereto, subsection (3) of section 984.13, Florida Statutes, is reenacted to read:

984.13 Taking into custody a child alleged to be from a family in need of services or to be a child in need of services.—

(3) If the child is taken into custody by, or is delivered to, the department, the appropriate representative of the department shall review the facts and make such further inquiry as necessary to determine whether the child shall remain in custody or be released. Unless shelter is required as provided in s. 984.14(1), the department shall:

(a) Release the child to his or her parent, guardian, or legal custodian, to a responsible adult relative, to a responsible adult approved by the department, or to a department-approved family-in-need-of-services and child-in-need-of-services provider; or

(b) Authorize temporary services and treatment that would allow the child alleged to be from a family in need of services to remain at home.

673 Section 13. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4159 State Attorneys
SPONSOR(S): Ray
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1092

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

SUMMARY ANALYSIS

Current law requires state attorneys to document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to various criminal statutes and, in some cases, report to the Legislature, Governor, and the Florida Prosecuting Attorneys Association about such deviations.

HB 4159:

- Removes the requirement that state attorneys document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to the "10-20-Life" statute and eliminates the requirement that state attorneys submit an annual report to the Legislature and the Governor regarding the prosecution and sentencing of defendants pursuant to that statute;
- Removes the requirement that state attorneys document in the case file why "prison releasee reoffenders" did not receive the minimum mandatory sentence and report such information to the Florida Prosecuting Attorneys Association;
- Repeals a statute requiring state attorneys to adopt uniform criteria when deciding to pursue habitual felony offender, habitual violent felony offender, or violent career criminal sanctions and to report such criteria to the Florida Prosecuting Attorneys Association; and
- Repeals a statute that requires state attorneys to develop written policies and guidelines to govern determinations for filing an information on a juvenile and submit those guidelines to the Legislature and the Governor.

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will still be documented in a defendant's case file and will still be available to the public.

Current law also authorizes courts to assess prosecution and investigative costs against convicted defendants.

The bill eliminates the requirement that an investigating law enforcement agency must request authorized costs of investigation. The bill also eliminates the requirement that a defendant prove his or her financial need if a dispute over the assessment of these costs arises.

This bill may have a positive fiscal impact on state attorneys and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Explanation and Reporting Requirements for State Attorneys

In certain criminal prosecutions, if mandatory or enhanced sentences are not pursued, the state attorney must document why that decision was made and report those decisions. For example, s. 27.366, F.S., sets forth the Legislature's intent that defendants eligible for enhanced minimum mandatory sentences receive them under subsections 775.087(2) and (3), F.S., commonly known as the "10-20-Life" law.[1] In each case in which a defendant qualified for the minimum mandatory sentences under the "10-20-Life" law but did not receive the sentence, prosecutors are required to write memoranda explaining the sentencing deviation.[2] Section 27.366 ,F.S., requires that the memorandum be kept in the defendant's file and requires the state attorney to submit the memorandum quarterly to the Legislature, Governor, and the Florida Prosecuting Attorneys Association, Inc. (Association) with a copy being retained for 10 years by the Association, and made available to the public upon request.[3]

The same statutory requirements to keep sentencing deviation memoranda in a defendant's case file and submit such memorandums to the Association exists in cases where the defendant meets the criteria for being sentenced as a "prison releasee reoffender"[4] under s. 775.082(9), F.S. In those cases, the memoranda are forwarded from the prosecutors to the Association on an annual basis.[5] The Association must also retain these records for 10 years and make these documents available to the public.[6]

Effect of the Bill

This bill amends ss. 27.366 and 775.087, F.S., to eliminate the requirement that state attorneys report sentencing deviations from minimum mandatory sentences related to the "10-20-Life" law on a quarterly basis to the Legislature and Governor and file them with the Association regarding deviations.

The bill also eliminates the annual reporting requirement to the Association regarding defendants who meet the criteria as a "prison releasee reoffender."

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will still be documented in a defendant's case file and will still be available to the public.[7]

Habitual Offender Requirements

Section 775.08401, F.S., requires state attorneys to adopt criteria to be used by the state attorney's office when deciding whether to pursue the enhanced sanctions provided in s. 775.084(4), F.S., for defendants who meet the statutory criteria for sentencing as "habitual felony offenders" and "habitual violent felony offenders."[8] The statute specifies that the criteria be designed to ensure fair and impartial application of those sentencing enhancements. Deviations from the criteria are to be memorialized for the case files.[9]

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[1] *See* s. 775.087(5), F.S.

[2] Section 775.087(5), F.S.

[3] Section 27.366, F.S.

[4] Sections 775.082 (9)(a)1. and 2., F.S., define a "prison release reoffender" as any defendant who commits or attempts to commit certain crimes, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state, within 3 years after being released from prison or within 3 years after being released from a prison of another state; or while the defendant was serving a prison sentence or on escape status from prison in Florida or another state.

[5] Section 775.082(9)(d)2., F.S.

[6] *Id.*

[7] Representatives of the Association state that such information will continue to be available to the public as the bill only eliminates the necessity of creating reports. E-mail from Bill Cervone, Florida Prosecuting Attorneys Association, March 16, 2010. (On file with Criminal Justice Subcommittee staff.)

[8] Section 775.08401, F.S. The criteria for designation as a "habitual felony offender" and a "habitual violent felony offender" are set forth in s. 775.084(1)(a) and (b), F.S.

[9] Section 775.08401(3), F.S.

Effect of the Bill
This bill repeals s. 775.08401, F.S., and amends s. 775.0843, F.S., to remove a reference to this repealed statute.

Juvenile Cases in Adult Court
Subsection 985.557(4), F.S., requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court. It further requires that the state attorneys submit these policies and guidelines to the Legislature and the Governor no later than January 1 of each year.[10]

Effect of the Bill
This bill repeals subsection 985.557(4), F.S.

Collection of Prosecution and Investigative Costs
Courts are authorized to assess costs against convicted defendants.[11] In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.[12] Costs of prosecution may be imposed at the rate of $50 in misdemeanor cases and $100 in felony cases unless the prosecutor proves that costs are higher in the particular case before the court.[13] However, investigative costs must be separately and specifically requested by the investigating agency.[14] Ultimately the costs of prosecution and investigative costs are deposited into state attorney and agency trust funds, respectively.[15]

If a dispute arises as to the proper amount or type of the costs of prosecution or the investigative costs, the court must resolve the dispute by a preponderance of the evidence.[16] The burden of demonstrating the amount of costs incurred is on the state attorney. The defendant bears the burden of demonstrating his or her financial resources, as well as financial need.[17] The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.[18]

Effect of the Bill
The bill eliminates the requirement that the investigating agency must specifically request the recovery of investigative costs. However, current law does not provide a "default" amount of investigative costs to be recovered as it does with costs of prosecutions. Therefore, it is unclear what amount a court would assess as investigative costs without a request from an agency for a specific amount.

The bill eliminates the requirement that the defendant prove his or her financial need and resources if costs become a disputed issue. The bill also eliminates language in current law providing that the burden of proving other matters related to the assessment of these costs is upon the party designated by the court.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Repeals s. 775.08401, F.S., relating to habitual offenders and habitual violent felony offenders; violent career criminals; eligibility criteria.

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[10] Section 985.557(4), F.S.
[11] Part IV of ch. 938, F.S.
[12] Section 938.27(1), F.S.
[13] Section 938.27(8), F.S.
[14] Section 938.27(1), F.S.
[15] Section 938.27(7) and (8), F.S.
[16] Section 938.27(4), F.S.
[17] *Id.*
[18] *Id.*

Section 3. Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

Section 4. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 5. Amends s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 6. Amends s. 775.0843, F.S., relating to policies to be adopted for career criminal cases.

Section 7. Provides effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill would relieve the state attorneys of duties relating to preparing reports and documenting some charging and sentencing information in the file. The fiscal impact, if any, of this change is not known.

   In addition, the operating budgets (grants and donations trust funds) of the state attorneys offices may see an increase due to increased collection of investigative costs.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state attorneys; amending s. 775.082, F.S.; deleting provisions requiring each state attorney to submit certain deviation memoranda to the president of the association and requiring the association to maintain such information for a specified period; repealing s. 775.08401, F.S., relating to criteria to be used when state attorneys decide to pursue habitual felony offenders, habitual violent felony offenders, or violent career criminals; amending s. 775.087, F.S.; deleting provisions requiring each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain offenses; transferring, renumbering, and amending s. 27.366, F.S.; deleting a provision requiring each state attorney to submit certain deviation memoranda to the President of the Florida Prosecuting Attorneys Association, Inc., and to report annually to the Governor and Legislature; deleting a provision requiring the association to maintain such information for a specified period; transferring provisions relating to the intent of s. 775.087, F.S., to that section; amending s. 938.27, F.S.; providing that convicted persons are liable for certain costs of prosecution; deleting provisions regarding the burden of establishing financial resources of the defendant and demonstrating other matters; amending s. 985.557, F.S.; deleing provisions relating to direct-file policies and guidelines for juveniles; amending s.

775.0843, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (d) of subsection (9) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(9)

(d)1. It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. ~~On an annual basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such~~

~~information, and make such information available to the public upon request, for at least a 10-year period.~~

Section 2. Section 775.08401, Florida Statutes, is repealed.

Section 3. Present subsections (5) and (6) of section 775.087, Florida Statutes, are amended, and section 27.366, Florida Statutes, is transferred, renumbered as a new subsection (6) of that section and amended, to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

~~(5) In every case in which a law enforcement agency based a criminal charge on facts demonstrating that the defendant met the criteria in subparagraph (2)(a)1., subparagraph (2)(a)2., or subparagraph (2)(a)3. or subparagraph (3)(a)1., subparagraph (3)(a)2., or subparagraph (3)(a)3. and in which the defendant did not receive the mandatory penalty, the state attorney must place in the court file a memorandum explaining why the minimum mandatory penalty was not imposed.~~

(5)~~(6)~~ This section does not apply to law enforcement officers or to United States military personnel who are performing their lawful duties or who are traveling to or from their places of employment or assignment to perform their lawful duties.

~~27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3); report.—~~

(6)~~(1)~~ It is the intent of the Legislature that convicted criminal offenders who meet the criteria in subsections ~~s. 775.087~~(2) and (3) be sentenced to the minimum mandatory prison

terms provided in this section ~~herein~~. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. For every case in which the offender meets the criteria in subsections (2) and (3) ~~this act~~ and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. ~~On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this act to the President of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information and make such information available to the public upon request for at least a 10-year period.~~

~~(2) Effective July 1, 2000, each state attorney shall annually report to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor regarding the prosecution and sentencing of offenders who met the criteria in s. 775.087(2) and (3). The report must categorize the defendants by age, gender, race, and ethnicity. Cases in which a final disposition has not yet been reached~~

~~shall be reported in a subsequent annual report.~~

Section 4. Subsections (1) and (4) of section 938.27, Florida Statutes, are amended to read:

938.27 Judgment for costs on conviction.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission~~, if requested by such agencies~~. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. ~~The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.~~

Section 5. Subsection (5) of section 985.557, Florida Statutes, is renumbered as subsection (4), and present subsection (4) of that section is amended to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

~~(4) DIRECT-FILE POLICIES AND GUIDELINES.—Each state attorney shall develop written policies and guidelines to govern determinations for filing an information on a juvenile, to be submitted to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than January 1 of each year.~~

Section 6. Subsection (5) of section 775.0843, Florida Statutes, is amended to read:

775.0843 Policies to be adopted for career criminal cases.—

(5) Each career criminal apprehension program shall concentrate on the identification and arrest of career criminals and the support of subsequent prosecution. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be made in accordance with written target selection criteria selected by the individual law enforcement agency and state attorney consistent with the provisions of this section and s. ~~ss. 775.08401 and~~ 775.0842.

Section 7. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-01 Prison Diversion Program
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol TK	Cunningham

SUMMARY ANALYSIS

In 2009, the Legislature enacted HB 1722, which created s. 921.00241, F.S., entitled "Prison Diversion Program." The section was created in an effort to reduce state costs, and save prison beds for more serious offenders by allowing judges to divert nonviolent, prison-bound offenders to a non-state prison sanction.

The Legislature has appropriated $1.4 million over the last two years to the Department of Corrections to fund pilot prison diversion programs. The Department of Corrections established two pilot prison diversion programs in the 6th and 13th Judicial Circuits.

In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a research memorandum to the Legislature regarding the status of the prison diversion program. OPPAGA found that one program was serving offenders who may not have been prison bound. The other program had ceased operation due to a lack of referrals.

The proposed committee bill adopts recommendations made by OPPAGA to increase judicial referrals to the programs.

Specifically, the proposed committee bill:

- Expands program eligibility criteria by raising the upper threshold of the allowed Criminal Punishment Code score from 48 to 60 points (or 66 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new law violation.)
- Gives judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allows the program to require electronic monitoring to enhance oversight of offenders placed in the program.

The proposed committee bill may have a positive fiscal impact on the state and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sentencing

The Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.[1] Each non-capital felony offense is assigned a level ranking that reflects its seriousness.[2] There are ten levels, and Level 10 is the most serious level.[3] The primary offense, additional offenses and prior offenses are assigned level rankings.[4] Points accrue based on the offense level, with higher level accruing a greater number of points. The primary offense is worth more points than additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on other aggravating factors such as whether the offense resulted in victim injury and the legal status of the defendant.[5]

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence:

- If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction.[6]
- If the sentence point total exceeds 44 points, a prison sentence is the lowest permissible sentence.[7]

Prison Diversion Program

In 2009, the Legislature enacted HB 1722, which created s. 921.00241, F.S., entitled "Prison Diversion Program." The section was created in an effort to reduce state costs, and save prison beds for more serious offenders by allowing judges to divert nonviolent, prison-bound offenders to a non-state prison sanction.[8]

Section 921.00241(1), F.S., provides an offender is eligible for the program if he or she meets all of the following criteria:

- The offense(s) occurred on or after July 1, 2009.
- The primary offense is a third degree felony.
- The Criminal Punishment Code score is not more than 48 points (or 54 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law).
- The offender has not been convicted or previously convicted of a forcible felony.[9]
- The offender's primary offense does not require a minimum mandatory sentence.[10]

The court may sentence such an offender to a term of probation,[11] community control,[12] or community supervision with mandatory participation in a prison diversion program if such program is funded and exists in the sentencing judicial circuit.[13]

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[1] Section 921.002, F.S.

[2] The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.

[3] Section 921.0022, F.S.

[4] Section 921.0024, F.S.

[5] *Id.*

[6] Unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. Section 924.0024(2), F.S.

[7] Section 924.0024(2), F.S.

[8] "Prison Diversion Programs." Research Memorandum. Office of Program Policy Analysis and Government Accountability. December 15, 2001.

[9] As defined in s. 776.08, F.S., but excluding any third degree felony violation under Ch. 810, F.S.

[10] Section 921.00241(1), F.S.

The prison diversion program may include:

- Residential, non-residential, or day-reporting requirements;
- Substance abuse treatment;
- Employment;
- Restitution;
- Academic, or vocational opportunities; or
- Community service work.[14]

The judge that sentences a defendant to the program must make written findings that the defendant meets the eligibility criteria and may order the offender to pay all or a portion of the program costs related to the prison diversion program if the offender has the ability to pay.[15]

The Legislature has appropriated $1.4 million over the last two years to the Department of Corrections to fund pilot prison diversion programs. The appropriation was intended to eliminate the need for 184 new prison beds for Fiscal Year 2009-10. At an average cost of $19,000 a year to fund a prison bed, it was anticipated that the diversion programs would save approximately $3.5 million in prison bed costs the first year.[16]

The Department of Corrections established two pilot prison diversion programs in the 6th and 13th Judicial Circuits[17].[18] The programs began in October 2009 and November 2009, respectively.[19]

OPPAGA's Prison Diversion Program Research Memorandum

In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a research memorandum to the Legislature regarding the status of the prison diversion program.

OPPAGA reports that the program in the 13th Judicial Circuit is fully operational, but is serving many offenders whose sentencing scores suggest they were not prison-bound.[20] The program in the 6th Judicial Circuit ceased operation in August 2010 due to a lack of referrals. Program staff, and other stakeholders, including the state attorney and circuit court judge, stated the statutory sentencing guideline point range was too narrow.[21] In addition, OPPAGA found that court officials may be more likely to use the diversion program if it included a short jail term or electronic monitoring.[22]

OPPAGA made the following recommendations to increase judicial referrals to the programs:

- Raise the upper threshold of the allowed Criminal Punishment Code score from 54 to 60 or 65 points to expand the pool of eligible offenders.
- Give judges the discretion to sentence offenders to a 90-day jail term as part of the program.

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[11] Section 948.001(5), F.S., defines "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

[12] Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

[13] Section 924.00241(2), F.S.

[14] *Id.*

[15] Section 924.00241(3), F.S.

[16] *Supra* Research Memorandum.

[17] Pinellas and Pasco counties, and Hillsborough county, respectively.

[18] *Supra* Research Memorandum.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

- Allow the program to require electronic monitoring to enhance oversight of offenders placed in the program.
- Create pilot programs in judicial circuits that do not have operating drug courts to eliminate the competition for program participants.[23]

Effect of the Proposed Committee Bill

The proposed committee bill adopts the above described recommendations made by the Office of Program Policy Analysis and Government Accountability. Specifically the proposed committee bill:

- Expands program eligibility criteria by raising the upper threshold of the allowed Criminal Punishment Code score from 48 to 60 points (or 66 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new law violation.)
- Gives judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allows the program to require electronic monitoring to enhance oversight of offenders placed in the program.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.00241, F.S., relating to prison diversion program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Because admission into the program is based on judicial discretion and the availability of a funded prison diversion program within the circuit, it is difficult to estimate the fiscal impact of this proposed committee bill. However, at an average cost of $19,000 a year to fund a prison bed, any offenders diverted from prison would result in cost savings to the state.

2. Expenditures:

   Including electronic monitoring as part of the prison diversion program may result in an increased fiscal cost to the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Allowing judges the discretion to sentence offenders to a 90-day jail term as part of the prison diversion program may have a negative fiscal impact to the counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Local community treatment providers in participating circuits that contract with the Department of Corrections to provide services to prison diversion participants may see an increase in revenue.

[23] *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to prison diversion programs; amending s. 921.00241, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a prison diversion program; authorizing the court to sentence the defendant to serve a term of jail not to exceed 90 days; providing a prison diversion program may require electronic monitoring; providing an effective date.

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

Section 1. Section 921.0024, Florida Statutes, is amended to read:

921.00241 Prison diversion program.—

(1) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, a court may divert from the state correctional system an offender who would otherwise be sentenced to a state facility by sentencing the offender to a nonstate prison sanction as provided in subsection (2). An offender may be sentenced to a nonstate prison sanction if the offender meets all of the following criteria:

(a) The offender's primary offense is a felony of the third degree.

(b) The offender's total sentence points score, as provided in s. 921.0024, is not more than 60 ~~48~~ points, or the offender's total sentence points score is 66 ~~54~~ points and 6 of those points are for a violation of probation, community

control, or other community supervision, and do not involve a new violation of law.

(c) The offender has not been convicted or previously convicted of a forcible felony as defined in s. 776.08, but excluding any third degree felony violation under chapter 810.

(d) The offender's primary offense does not require a minimum mandatory sentence.

(2) If the court elects to impose a sentence as provided in this section, the court shall sentence the offender to a term of jail not to exceed 90 days, probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program shall be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require electronic monitoring, residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.

(3) The court that sentences a defendant to a nonstate prison sanction pursuant to subsection (2) shall make written findings that the defendant meets the criteria in subsection (1); and the sentencing order must indicate that the offender was sentenced to the prison diversion program pursuant to subsection (2). The court may order the offender to pay all or a portion of the costs related to the prison diversion program if the court determines that the offender has the ability to pay.

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

PCB 11-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-02 Seat Requirements
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Williams	Cunningham

SUMMARY ANALYSIS

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

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

The proposed committee bill repeals s. 448.05, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 448.05, F.S., was created in 1899.[1] The statute provides the following

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

Section 448.05, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a $1,000 fine. In 1997,[4] the statute was amended again to remove gender-specific references.

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

Effect of the Proposed Committee Bill

The proposed committee bill repeals s. 448.05, F.S.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[1] Section 1, ch. 4762, 1899; GS 3235; RGS 5068; CGL 7170.
[2] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[3] Section 376, Ch. 71-136, L.O.F.
[4] Section 166, Ch. 97-103, L.O.F.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to seat requirements; repealing s. 448.05, F.S.; requiring employers who require employees to stand or walk during their duties to provide seats for such employees when not engaged in their active work; requiring employers to permit specified employees to use seats during business hours, for purposes of necessary rest, and when such use will not interfere with requirements of employment; providing penalties; providing an effective date.

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

Section 1. Section 448.05, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-03 Failing to Assist Officers at Polls
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Williams	Cunningham

SUMMARY ANALYSIS

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

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

The proposed committee bill repeals s. 104.101, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 104.101, F.S., was created in 1889.[1] The statute makes it a first degree misdemeanor[2] for any person summoned by the sheriff or deputy sheriff to fail or refuse to assist him or her in maintaining the peace at the polls.

Section 104.101, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a first degree misdemeanor from its original penalty. In 1995,[4] the statute was amended to remove gender-specific references.

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

Effect of the Proposed Committee Bill

The proposed committee bill repeals s. 104.101, F.S.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] Section 27, ch. 3879, 1889; RS 181.

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

[3] Section 29, ch. 71-136, L.O.F.

[4] Section 619, ch. 95-147L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to failing to assist officers at polls; repealing s. 104.101, F.S.; providing that any person summoned by the sheriff or deputy sheriff who fails or refuses to assist in maintaining the peace at the polls is guilty of a misdemeanor; providing an effective date.

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-04 Cotton or Leaf Tobacco
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol TK	Cunningham

SUMMARY ANALYSIS

Section 865.08, F.S., makes it a second degree misdemeanor for a person to trade, traffic, or buy any unpackaged cotton or leaf tobacco without written authorization from the producer of such crops.

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

The proposed committee bill repeals s. 865.08, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 865.08, F.S., was created in 1866.[1] It provides that it is a second degree misdemeanor[2] if a person does not trade, traffic, or buy cotton or leaf tobacco from a producer or a producer's authorized agent, unless the cotton or leaf tobacco is baled or boxed in the usual manner or exhibits evidence in writing that the producer has parted with his or her interest therein.

Section 865.08, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a $1,000 fine. Later in 1997,[4] the statute was amended again to remove gender-specific references.

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

Effect of the Proposed Committee Bill

The proposed committee bill repeals s. 865.08, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 865.08, F.S., relating to purchase of cotton or leaf tobacco.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] Section 11, ch. 1466, 1866; RS 2711; GS 3707; RGS 5658; CGL 7861.
[2] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[3] Section 1120, Ch. 71-136, L.O.F.
[4] Section 1396, Ch. 97-102, L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to cotton or leaf tobacco; repealing s. 865.08, F.S.; providing that whoever trades, traffics for, or buys, except from the producer or the producer's authorized agent, any cotton or leaf tobacco, unless the same be baled or boxed in the usual manner, or unless upon some exhibition of evidence in writing that the producer has parted with her or his interest therein, is guilty of a misdemeanor; providing an effective date.

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

Section 1. Section 865.08, Florida Statutes, is repealed.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-05 County Operated Boot Camp Programs
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cunningham	Cunningham

SUMMARY ANALYSIS

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

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

The proposed committee bill repeals s. 958.046, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

The Florida Association of Counties reports[1] that they are unaware of any counties that operate such programs.

Effect of the Proposed Committee Bill
The proposed committee bill repeals s. 958.046, F.S.

B. SECTION DIRECTORY:

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

Section 2. The proposed committee bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

[1] E-mail from Sarrah Carroll, Florida Association of Counties, dated March 14, 2011 (on file with Criminal Justice Subcommittee staff).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to county-operated boot camp programs; repealing s. 958.046, F.S., authorizing a court to sentence a youthful offender to a county-operated youthful offender boot camp program; providing an effective date.

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-06 Levying War Against People of the State
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Williams	Cunningham

SUMMARY ANALYSIS

Section 876.35, F.S., makes it a third degree felony for two or more persons to combine to levy war against any part of a people of this state, or to remove them forcibly out of this state, or to remove them from their habitations to any other part of the state by force.

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

The proposed committee bill repeals s. 876.35, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 876.35, F.S., was created in 1868.[1] The statute makes it a third degree felony[2] for two or more persons to combine to levy war against any part of a people of this state, or to remove them forcibly out of this state, to remove them from their habitations to any other part of the state by force, or assemble for such purposes.

Section 876.35, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a third degree felony from its original penalty of imprisonment not exceeding five years, or fines not exceeding $1,000. In 1974,[4] the statute was renumbered.

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

Effect of the Proposed Committee Bill

The proposed committee bill repeals s. 876.35, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 876.35, F.S., relating to combination against part of the people of the state.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] Section 6, ch. 1637, 1868; RS 2375; GS 3200; RGS 5030; CGL 7132.
[2] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[3] Section 705, ch. 71-136, L.O.F.
[4] Section 65, ch. 74-383, L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to levying war against people of the state; repealing s. 876.35, F.S.; providing that if two or more persons combine to levy war against any part of the people of this state, or to remove them forcibly out of this state, or to remove them from their habitations to any other part of the state by force, or assemble for that purpose, every person so offending is guilty of a felony; providing an effective date.

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

Section 1. Section 876.35, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-07 Adulterated Syrup
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol TK	Cunningham

SUMMARY ANALYSIS

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

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

The proposed committee bill repeals s. 865.07, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

Section 500.12(1)(a)4., F.S., provides that a food permit[2] is not needed by any person who sells sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. However, the statute still requires that such bottles contain:

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

Any person who violates the above provisions may have his or her food permit suspended[3] or revoked, in addition to a fine of up to $5,000 imposed by the Department of Agriculture and Consumer Services.

Section 865.07, F.S., was created in 1903.[4] The statute makes it a second degree misdemeanor[5] for any person to sell, offer for sale, or advertise for sale any adulterated or mixed syrups whatever, unless the percentage of such adulteration or mixture and the name and post office address of the manufacturer is clearly stamped or labeled on the barrel, can, case, bottle, or other receptacle containing such syrup or mixture.

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

Section 865.07, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[6] to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a $1,000 fine.

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

[2] *See* s. 500.12, F.S.

[3] Section 500.12(4)(a), F.S.

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

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

[6] Section 1119, ch. 71-136, L.O.F.

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to adulterated syrup; repealing s. 865.07 F.S.; providing that any person who sells, offers for sale, or advertises for sale any adulterated or mixed syrups, unless marked, is guilty of a misdemeanor; providing an effective date.

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-08 Lavatories
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol TK	Cunningham

SUMMARY ANALYSIS

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

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

The proposed committee bill repeals s. 381.009, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 381.009, F.S., was created in 1974.[1] It provides that it is a second degree misdemeanor[2] for a place of employment or place serving the public to make a charge for the use of any toilet which is required to be provided by regulation of the Department of Health.

Section 381.009, F.S., has not been amended in a substantive way since its creation. It was amended in 1977[3] to correct the title of the Department of Health. In 1991,[4] the statute was renumbered.[5] Later in 1997,[6] it was amended again to correct the title of the Department of Health.

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

Effect of the Proposed Committee Bill
The proposed committee bill repeals s. 381.009, F.S.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] Section 1, ch. 74-240, L.O.F.
[2] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[3] Section 98, ch. 77-147, L.O.F.
[4] Section 41, ch. 91-297, L.O.F.
[5] Formerly s. 381.522. F.S.
[6] Section 42, ch. 97-101, L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to lavatories; repealing s. 381.009, F.S., prohibiting places of employment from charging for the use of any toilet which is required to be provided by regulation of the Department of Health; providing penalties; providing an effective date.

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

Section 1. Section 381.009, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-09 Unlawful Use of Insignia
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Williams	Cunningham

SUMMARY ANALYSIS

Section 817.31, F.S., makes it a second degree misdemeanor for a person who is not a member of the American Legion to wear the badge, button or other insignia of the American Legion.

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

The proposed committee bill repeals s. 817.31, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 817.30, F.S., currently provides the following:

> Any person who willfully wears the badge or button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or of the Military Order of Foreign Wars of the United States, or of the Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of the Woodmen of the World, or of any society, order or organization of 5 years' standing in the state, or uses the same to obtain aid or assistance within this state, or willfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and bylaws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor of the second degree.[1]

Section 817.31, F.S., created in 1921,[2] contains a similar provision that makes it a misdemeanor of the second degree for a person who is not a member of the American Legion to wear the badge, button or other insignia of the American Legion.

Section 817.31, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a $1,000 fine.

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

Effect of the Proposed Committee Bill

The proposed committee bill repeals s. 817.31, F.S. Unauthorized persons who wear the badge, button or other insignia of the American Legion would likely still be able to be penalized pursuant to s. 817.30, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 817.31, F.S., relating to unlawful use of insignia of American Legion; penalty.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[1] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[2] Section 1, ch. 8464, 1921; CGL 7301.
[3] Section 861, ch. 71-136, L.O.F.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to unlawful use of insignia; repealing s. 817.31, F.S.; providing that any person who willfully wears the badge, button or other insignia of the American Legion is guilty of a misdemeanor; providing an effective date.

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

Section 1. Section 817.31, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-10 Water Hyacinths
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Krol TK	Cunningham

SUMMARY ANALYSIS

Section 861.04, F.S., makes it a second degree misdemeanor to place water hyacinths in any state streams or waters.

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

The proposed committee bill repeals s. 861.04, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 369.25, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to establish, by rule, a list of aquatic plants that can only be possessed if a permit is obtained. Currently Administrative Rule 5B-64.011 lists water hyacinth as a "Class I Prohibited Aquatic Plant," which under no circumstances may a person possess, collect, transport, cultivate, and import except when a permit is obtained through DACS.

Section 369.25, F.S., further states that no permit shall be issued until DACS determines that the proposed activity poses no threat or danger to the waters, wildlife, natural resources, or environment of the state.[1] Permit applications are evaluated and issued on the following standards and criteria:

- The ability of native aquatic vegetation in wild collection sites in sovereignty lands to maintain self-sustaining growth.
- No adverse impacts upon fish and wildlife resources including endangered species, threatened species, non-game species, species of special concern, and their habitat.
- No impairment of the public's access to, or use of, the waterbody.
- No adverse cumulative impacts upon the natural resources or the environment of the state.[2]

Any person who violates the above provisions commits a misdemeanor of the second degree[3].[4]

DACS reported that since 2003 there have been six forced destructions of water hyacinths at businesses.[5]

Section 861.04, F.S., was created in 1899.[6] It makes it a second degree misdemeanor[7] for any person to willfully place or cause to be placed any water hyacinths in any of the territorial waters of the state whether navigable or nonnavigable.

Section 861.04, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[8] to update the associated penalty to a second degree misdemeanor from its original penalty of up to 90 days imprisonment or up to a $200 fine.

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

The Effect of the Proposed Committee Bill

The proposed committee bill repeals s. 861.04, F.S. Persons who place water hyacinths in any state streams or waters would likely still be able to be penalized pursuant to s. 369.25, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 861.04, F.S., relating to placing water hyacinths in any of the streams or waters of the state.

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[1] Section 369.25(2), F.S.
[2] Department of Agriculture and Consumer Services, Administrative Rule 5B-64.003.
[3] Punishable as provided in ss. 775.082 or 775.083, F.S.
[4] Section 369.25(5)(b), F.S., provides that all law enforcement officers of the state and its agencies with power to make arrests for violations of state law are responsible for enforcing the provisions of this section.
[5] E-mail from Wayne Dixon, Division of Plant Industry, Florida of Department of Agriculture and Consumer Services. March 16, 2011. (On file with Criminal Justice Subcommittee staff.)
[6] Section 1, ch. 4752, 1899; GS 3667; RGS 5610; CGL 7799.
[7] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[8] Section 1103, ch. 71-136, L.O.F.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating water hyacinths; repealing s. 861.04, F.S.; providing that whoever willfully places or causes to be placed any water hyacinths in any of the territorial waters of the state is guilty of a misdemeanor; providing an effective date.

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

Section 1. Section 861.04, Florida Statutes, is repealed.

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

PCB 11-11

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 11-11 Correctional Policy Advisory Council
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cunningham	Cunningham

SUMMARY ANALYSIS

In 2008, Senate Bill 2000 was enacted, which created s. 921.0019, F.S. The statute creates a 10-member Correctional Policy Advisory Council (Council) within the Legislature to evaluate correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections. The statute requires the Council to meet quarterly and to report its findings and recommendations on an annual basis to the Governor, President of the Senate, and Speaker of the House of Representatives. Since its creation, the Council has not met.

The proposed committee substitute repeals s. 921.0019, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2008, Senate Bill 2000 was enacted, which created s. 921.0019, F.S. The statute creates a 10-member Correctional Policy Advisory Council (Council) within the Legislature to evaluate correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections. The statute requires the Council to meet quarterly and to report its findings and recommendations on an annual basis to the Governor, President of the Senate, and Speaker of the House of Representatives. The statute requires any recommendations to be consistent with specified goals.

The statute also contains provisions relevant to membership of the Council, selection of its chair, staffing, reimbursement for per diem and travel expenses, and required meetings. The Laws of Florida[1] contain a provision specifying that the Council will be abolished on July 1, 2011. Since its creation, the Council has not met.

Effect of the Bill

The proposed committee substitute repeals s. 921.0019, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 921.0019, F.S., relating to Correctional Policy Advisory Council.

Section 2. The proposed committee bill takes effect July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[1] Ch. 2008-54, L.O.F.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Correctional Policy Advisory Council; repealing s. 921.0019, F.S.; creating the Correctional Policy Advisory Council; creating a Justice Reinvestment Subcommittee within the Correctional Policy Advisory Council; providing for membership of the Council; providing for staffing of the Council; providing duties of the Council; providing an effective date.

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

Section 1. Section 921.0019, Florida Statutes, is repealed.

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