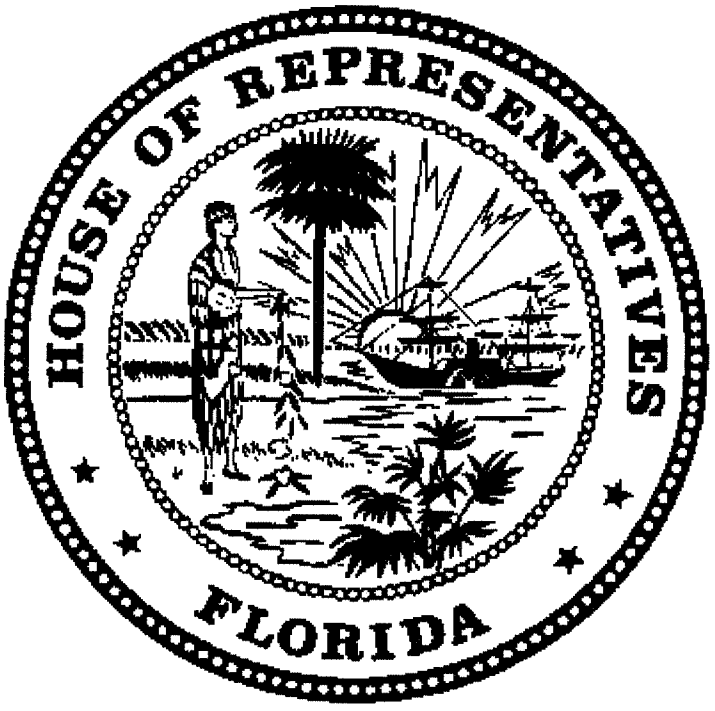

Criminal Justice Subcommittee

March 29th, 2011

8:00 AM

404 HOB

Dean Cannon
Speaker

Dennis Baxley
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 29, 2011 08:00 am

End Date and Time: Tuesday, March 29, 2011 11:00 am

Location: 404 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 17 Military Veterans Convicted of Criminal Offenses by Nelson, Abruzzo
CS/HB 125 Animal Cruelty by Agriculture & Natural Resources Subcommittee, Kiar
HB 369 Faith- and Character-Based Correctional Institution Programs by Rouson
HB 821 Eyewitness Identification by Thurston
HB 1277 Sexual Offenders and Predators by Glorioso
HB 1279 Costs of Prosecution by Kreegel
HB 1379 Pretrial Programs by Dorworth
HB 4035 Misdemeanor Pretrial Substance Abuse Programs by Waldman
HB 4157 Department of Juvenile Justice by Thurston

NOTICE FINALIZED on 03/25/2011 16:17 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 17 Military Veterans Convicted of Criminal Offenses
SPONSOR(S): Nelson, Abruzzo and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 138

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

SUMMARY ANALYSIS

HB 17 requires a judge to hold a pre-sentencing hearing for a convicted veteran when: (1) the defendant would otherwise be sentenced to county jail or state prison and (2) the defendant alleges that he or she committed the offense because of Post Traumatic Stress Disorder (PTSD), substance abuse, or psychological problems stemming from service with the United States military in a combat theater.

Although the defendant must allege the crime was committed "because of" any of the listed conditions stemming from service in a combat theater, the court's inquiry does not require any finding that the allegation is true or established by the evidence. The purpose of the hearing is to determine whether the defendant:

- Was a member of the United States military who served in combat; and
- Suffers from Post Traumatic Stress Disorder (PTSD), substance abuse, or psychological problems as a result of that service.

Under the bill a judge may place a defendant who satisfies the above criteria on probation or community control and order the defendant to participate in a treatment program. The court must give preference to a treatment program that has had success in treating veterans who suffer from PTSD, substance abuse problems, or psychological problems relating to their military service.

On March 2, 2011, the Criminal Justice Impact Conference determined that this bill would have no impact on the state prison population.

The bill is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Corrections does not have statistics of how many of the 152,000 offenders on community supervision are military veterans. However, it reports that 6,864 state prison inmates (approximately 6.7% of the total prison population) identified themselves as a military veteran as of December 20, 2010. This claim of veteran status was verified for 1,273 of these inmates by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:[1]

Primary Offense	Claimed Veteran Status	%	Verified Veteran Status	%
Murder/Manslaughter	1,079	15.7	353	27.7
Sexual/Lewd Behavior	1,773	25.8	501	39.4
Robbery	593	8.6	97	7.6
Aggravated Battery/Assault, Kidnapping, Other Violent Crimes Against Persons	747	10.9	84	6.6
Burglary	677	9.9	98	7.7
Property Theft/Fraud/Damage	579	8.4	36	2.8
Drugs	860	12.5	62	4.9
Weapons	165	2.4	17	1.3
Other	391	5.7	25	2.0
Total	**6,864**		**1,273**	

The above table indicates that the overwhelming majority of veteran inmates in Florida are incarcerated for violent crimes while less than 8% are imprisoned for property and drug offenses. There is no comprehensive data on how many veterans are among the approximately 59,000 persons either serving sentences or awaiting trial or hearing in county jails throughout Florida.

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.[2] The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries and Post-Traumatic Stress Disorder (PTSD),[3] substance abuse and depression."[4] The study also estimated at that time that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.[5]

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[1] Department of Corrections Analysis of House Bill 17 – Military Veterans Convicted of Criminal Offenses, December 21, 2010, p. 1.

[2] Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan, January 2009, p. 5.

[3] According to the National Institute for Mental Health, "Post-Traumatic Stress Disorder," is an anxiety disorder that can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. Traumatic events that may trigger PTSD include violent personal assaults, natural or human-caused disasters, accidents, or military combat.

[4] Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan, January 2009.

[5] *Id.*

A Rand Center report in 2008 indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with Traumatic Brain Injury (TBI).[6] A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.[7]

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet treatment needs.[8]

Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma.[9] The National Association of Drug Court Professionals website indicates that there are veterans' courts in 47 cities or counties nationwide.[10] "Veterans' courts" have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions.

Some veterans who have committed criminal offenses may be eligible for treatment services provided and funded by the United States Department of Veterans Affairs (VA). An American Bar Association (ABA) study indicates that 82 percent of veterans in jail nationwide are eligible for services from the VA based on the character of their discharge.[11]

Veterans Courts in Florida

Currently, there are some veterans' court and veterans' jail diversion initiatives around the state. Okaloosa County has begun referring veterans' cases to a court docket with special knowledge of veterans and veterans' issues. This was established through the cooperation of the local State Attorney's Office, the court, and local treatment professionals. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants. Access to VA treatment facilities is sought for eligible veterans in the program.

Palm Beach County started a veterans' court program in December 2010. A feature of the program is assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment. This is compatible with the VA's national Veteran's Justice Outreach Initiative that will assign staff and trained volunteer resources to facilitate veterans' court programs.[12]

In October 2009, the Department of Children and Families Mental Health Program Office was awarded over $1.8 million from SAMHSA over the next five years to provide services and support for Florida's

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[6] Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom*, April 2008, p. xxi. A "Traumatic Brain Injury" occurs when an external force traumatically injures the brain.

[7] *Id.* at 127.

[8] GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions,* August 2008, page 6, at www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf. The observation was based upon information provided by the VA.

[9] Interim Report 2011-131, Veterans' Courts, Florida Senate Committee on Military Affairs and Domestic Security, October 2011, p. 1.

[10] National Association of Drug Court Professionals website at http://www.nadcp.org/JusticeForVets.

[11] ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA_Policy_on_Vets_Treatment_Courts_FINAL.authcheckdam.pdf,

[12] The Veteran's Justice Outreach Initiative website is http://www.va.gov/HOMELESS/VJO.asp.

returning veterans who served in Iraq and Afghanistan and who suffer with PTSD and other behavioral health disorders.[13]

The Prison Diversion Program

Florida currently has a program to divert offenders who would otherwise be sentenced to prison by authorizing a judge to sentence a defendant to a non-state prison sanction if the following conditions are met:

- The offender's primary offense is a felony of the third degree.
- The offender's total sentence points score, as provided in s. 921.0024, F.S., is not more than 48 points, or the offender's total sentence points score is 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.
- The offender has not been convicted or previously convicted of a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under Chapter 810, F.S.
- The offender's primary offense does not require a minimum mandatory sentence.

If the court elects to sentence a defendant under the prison diversion program the court must sentence the offender to a term of 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.[14] The prison diversion programs are designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.[15]

Contrast to the Drug Courts Program

By way of comparison, s. 397.334, F.S., authorizes the establishment of drug courts that divert eligible persons to county-funded treatment programs in lieu of state prison. The drug courts program is available to a person whose prison sentence is 18 months or less, whose crime was a "non-violent felony,"[16] who is amenable to treatment, and who is otherwise qualified under s. 397.334(3), F.S. To be otherwise qualified under s. 397.334(4), F.S., entry into the program must be based on the sentencing judge's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services, the total sentence points, the recommendation of the State Attorney and the victim (if any), and the defendant's agreement to enter the program.[17]

Effect of Proposed Changes

Veteran Status Hearing

HB 17 requires a judge to hold a pre-sentencing hearing for a convicted veteran when: (1) the defendant would otherwise be sentenced to county jail or state prison[18] and (2) the defendant alleges that he or she committed the offense because of PTSD, substance abuse, or psychological problems stemming from service with the United States military in a combat theater.

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[13] Florida Department of Children and Families' description of the Veterans Jail Diversion Grant can be viewed at http://www.dcf.state.fl.us/ programs/samh/mentalhealth/consumerfamilyaffairs/currinitiatives.shtml.

[14] This program was created in 2009 and established two pilot programs. One in Pinellas and Pasco counties (6th Judicial Circuit) and the other Hillsborough county (13th Judicial Circuit). The Legislature appropriated 1.4 million over the last two years to the Department of Corrections for the programs. In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reported 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. The program in the 6th Judicial Circuit ceased operation in August 2010 due to a lack of referrals. HB 7127 is currently pending before the House and expands eligibility criteria for the program.

[15] Section 921.00241, F.S.

[16] For purposes of the program a "nonviolent felony" means a third degree felony violation of Chapter 810, F.S., (relating to burglary and trespass), or any felony that is not a forcible felony as defined in s. 776.08, F.S.

[17] Section 397.334(3)(a), F.S.

[18] Although the bill specifically uses the term "state correctional system," it is clear from the intent and context of the bill that what is contemplated is a state prison sentence.

Although the defendant must allege the crime was committed "because of" any of the listed conditions stemming from service in a combat theater, the court's inquiry does not require any finding that the allegation is true or established by the evidence. In other words, the court need not find a nexus between the commission of the crime and the fact that the veteran suffers from any of the specific conditions. Instead the purpose of the hearing is to determine whether the defendant:

- Was a member of the United States military who served in combat; and
- Suffers from PTSD, substance abuse, or psychological problems as a result of that service.

The term "psychological problems" is not defined. If the court determines that the defendant satisfies both of the above criteria, the defendant is eligible for probation or community control and the court may place the defendant on probation or community control. As a condition of community supervision, the court can order the defendant to participate in a local, state, federal, or private non-profit treatment program, for a period that is no more than the length of time which they would have been incarcerated. In order for the court to exercise this option, the defendant must agree to participate and the court must determine that there is an appropriate treatment program. The court must give preference to a treatment program that has had success in treating veterans who suffer from PTSD, substance abuse problems, or psychological problems relating to their military service.

The Criminal Punishment Code and HB 17

With respect to felony level offenses, HB 17 seeks to provide a mechanism for courts to sentence veterans who have been convicted of crimes and who meet specified criteria from being sentenced under the Criminal Punishment Code (Code). The Code establishes the sentencing range for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"[19] from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. The points are added in order to determine the "lowest permissible sentence" for the offense.

The provisions of HB 17 apply when a veteran convicted of a crime "would otherwise be sentenced to" incarceration in a county jail or state prison. However, the bill also provides that, for defendants who are veterans meeting the established criteria, "*if the defendant is otherwise eligible for probation and community control,*" the court may place the defendant on probation or community control and order the defendant into a treatment program. Under the Code, defendants scoring a prison sentence are not eligible for placement on probation or community control in lieu of the prescribed state prison sentence. Absent scoring a nonstate prison sanction, a judge may sentence someone who would otherwise receive a prison sentence under the Code to probation or community control only by imposing a sentence that is a downward departure from the lowest permissible sentence.

A judge cannot impose a downward departure sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."[20] The imposition of a downward departure sentence is subject to appellate review.[21] Mitigating circumstances which may reasonably justify a downward departure sentence include but are not limited to:

- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.
- The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024, F.S., are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.[22]

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[19] Section 921.0022, F.S.

[20] Downward departure sentences are prohibited, however, when the offense is subject to a minimum mandatory prison sentence.

[21] Section 921.0026(1), F.S.

[22] Section 921.0026(2), F.S. This is a partial list of mitigating circumstances specifically listed in the statute.

HB 17 is silent as to whether the new section of statute would operate within the bounds of a judge considering a downward departure sentence when authorized by the Code, or whether it is independent of it. If the bill is construed to operate independently of the sentencing structure of the Code, then the section will operate in a manner which not is patterned after current mechanisms to impose sentences that avoid incarceration in state prison in order to place defendants into appropriate treatment programs. Unlike the current drug court program and prison diversion program, which are restricted to lower level non-forcible felons, HB 17 does not establish any qualifying or disqualifying factors relating to the type of offense charged, the prior designation of the offender as statutorily defined repeat offender, or other legal status of the defendant. Under HB 17, all felony offenses, except capital felonies, are within the scope of inclusion into the veterans' court program.[23] It is unclear whether offenses subject to minimum mandatory prison sentences, such as 10-20-Life, would also be included in the program.[24] Unlike downward departure sentences imposed pursuant to the s. 926.0026, F.S., HB 17 does not expressly authorize a state's right to appeal from a sentence imposed under its provisions.

Credit For Time Served

Under HB 17, a veteran who is ordered into a residential treatment program as a result of the hearing will earn sentence credits for the time he or she actually serves in the treatment program. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision. Under current law, an offender cannot receive credit against prison sentence for any time served in a treatment or rehabilitation program when the defendant violates the terms of that community supervision.[25]

Current law allows a court to require an offender to participate in treatment programs as a special condition of probation or community control. However, HB 17 (1) awards sentencing credit for time that the offender who is a veteran spends in an inpatient treatment program without requiring successful compliance with terms of supervision; and (2) requires the court to give preference to placing the offender who is a veteran into a treatment program that has a history of dealing with veterans' issues.

B. SECTION DIRECTORY:

Section 1. Creates s. 921.00242, F.S., relating to convicted military veterans; posttraumatic stress disorder, substance abuse, or psychological problems from service; treatment services.

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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

[23] Section 948.01(1), F.S., specifically disqualifies persons convicted of capital felonies from eligibility for probation.
[24] Section 775.087, F.S.
[25] *See State v. Cregan*, 908 So.2d 387 (Fla. 2005).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would have an impact on the private sector to the extent that participants are diverted from incarceration into private treatment programs.

D. FISCAL COMMENTS:

On March 2, 2011, the Criminal Justice Impact Conference determined that the bill would have no impact on the state prison population. If the bill diverts some defendants from incarceration to community-based treatment programs, in those instances where the defendant is eligible for veteran's services, it is anticipated that the cost of such programming would be provided by the Veterans Administration.

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:

HB 17 provides that the veteran must claim that he or she performed military service in a combat theater but requires the court to determine whether the defendant served in combat. These are not equivalent terms and there is some ambiguity as to what type of service is required.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to military veterans convicted of criminal offenses; creating s. 921.00242, F.S.; providing that persons convicted of criminal offenses who allege that the offenses resulted from posttraumatic stress disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military may have a hearing on that issue before sentencing; providing that defendants found to have committed offenses due to such causes and who are otherwise eligible for probation or community control may be placed in treatment programs for an equal period of time in certain circumstances; providing for sentence credit for such defendants placed in treatment; providing a preference for treatment programs with histories of successfully treating such combat veterans; providing an effective date.

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

Section 1. Section 921.00242, Florida Statutes, is created to read:

921.00242 Convicted military veterans; posttraumatic stress disorder, substance abuse, or psychological problems from service; treatment services.—

(1) In the case of any person convicted of a criminal offense who would otherwise be sentenced to county jail or the state correctional system and who alleges that he or she committed the offense as a result of posttraumatic stress

disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military, the court shall, before sentencing, hold a hearing to determine whether the defendant was a member of the military forces of the United States who served in combat and shall assess whether the defendant suffers from posttraumatic stress disorder, substance abuse, or psychological problems as a result of that service.

(2) If the court concludes that a defendant convicted of a criminal offense is a person described in subsection (1), and if the defendant is otherwise eligible for probation or community control and the court places the defendant on probation or community control, the court may order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that which the defendant would have served in the state correctional system or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

(3) A defendant granted probation or community control under this section and committed to a residential treatment program shall earn sentence credits for the actual time he or she served in residential treatment.

(4) The court, in making an order under this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating combat veterans who suffer from posttraumatic stress disorder, substance abuse, or psychological problems as a result of that service.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 125 Animal Cruelty
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Kiar and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Kaiser	Blalock
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1971, the Florida Supreme Court held that Florida's law criminalizing bestiality was unconstitutionally vague. The statute was subsequently repealed. As a result, current Florida law does not specifically prohibit sexual activities involving animals and people.

The bill creates subsection (5) in s. 828.12, F.S., which makes it a 1st degree misdemeanor for a person to knowingly:

- Engage in sexual conduct or sexual contact with an animal;
- Cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;
- Permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

The bill exempts accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices from the provisions of the bill.

The bill also defines the terms "animal," "sexual conduct," and "sexual contact."

The bill may impact local jails and is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to the Humane Society of the United States, animal sexual abuse, often referred to as bestiality, is the sexual molestation of an animal by a human. This type of animal abuse includes a wide range of behaviors that may result in killing or injuring an animal for sexual gratification.

Not all cases of animal sexual abuse involve physical injury to the animal, but sexual molestation of an animal by a human is classified as abuse. Psychologists have found that bestiality is harmful even in cases when physical harm to an animal does not occur.[1]

Research indicates a connection between animal sexual abuse and other types of violent crimes. Forty percent of the perpetrators of sexually motivated homicides who had been sexually abused as children also reported that they sexually abused animals.[2] In 2007, a sexual behavior research project[3] found that individuals who participated in sexually problematic behaviors such as bestiality, fetishism, voyeurism, having affairs, and using pornography had an elevated likelihood of starting to sexually abuse children. The study found bestiality as the strongest predictor of child sexual abuse, and that the younger a person is when they begin having sex with animals, the greater the risk that they will start to sexually abuse children at a later point in time.

Florida's Bestiality / Cruelty to Animals Statutes

Generally, state laws prohibiting sexual activities involving animals are very old. Many of these laws have been repealed on grounds that the wording is no longer relevant to society or understandable to the average citizen. In 1971, the Florida Supreme Court[4] invalidated Florida's then-existing law[5] criminalizing bestiality on grounds that it was unconstitutionally vague. The statute, which was drafted in 1868,[6] read as follows:

> "Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the state prison not exceeding twenty years."

This statute was repealed in 1974.[7] As a result, current Florida law does not specifically prohibit sexual activities involving animals and people.

Section 828.12, F.S., entitled "cruelty to animals," currently prohibits a person from intentionally committing an act to an animal that results in the cruel death or excessive or repeated infliction of unnecessary pain or suffering. This offense is punishable as a 3rd degree felony.[8] Due to the elements of the offense, it can be difficult to charge persons who commit bestiality with a violation of s. 828.12, F.S. Such persons are generally charged with crimes such as disorderly conduct,[9] trespassing[10] or exposure of sexual organs.[11]

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[1] Ascione, Frank R., Ph.D.; (1993). Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychology. Anthrozoos, 6 (4): 226-247.

[2] Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A. (1986). Murderers Who Rape and Mutilate. Journal of Interpersonal Violence, 1: 273-287.

[3] *Sexual Behavior Predictors of Sexual Abuse of Children.* Association for the Treatment of Sexual Abusers, 26th Annual Conference, San Diego, California (2007).

[4] *Franklin v. State*, 257 So.2d 21 (Fla. 1971).

[5] Section 800.01, F.S.

[6] Laws 1868, c. 1637, subc. 8, § 17.

[7] Ch. 74-121, L.O.F.

[8] 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.

[9] Section 877.03, F.S., provides that whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such

Effect of the Bill

The bill creates subsection (5) in s. 828.12, F.S., which makes it a 1st degree misdemeanor[12] for a person to knowingly:

- Engage in sexual conduct or sexual contact with an animal;
- Cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;
- Permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

The bill exempts accepted animal husbandry[13] practices, conformation judging practices, or accepted veterinary medical practices from the provisions of the bill.

The bill also defines the following terms:

- "Animal" is defined as "any living or dead dumb creature."
- "Sexual conduct" is defined as "any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person."
- "Sexual contact" is defined as "any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person."

B. SECTION DIRECTORY:

Section 1. Amends s. 828.12, F.S., relating to cruelty to animals.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.

[10] Trespass offenses are in ch. 810, F.S.

[11] Section 800.03, F.S., entitled "exposure of sexual organs," provides It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083, F.S. A mother's breastfeeding of her baby does not under any circumstance violate this section.

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

[13] "Animal husbandry" is defined as "a branch of agriculture concerned with the production and care of domestic animals." http://www.merriam-webster.com/dictionary/animal%20husbandry (last accessed March 23, 2011).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates a 1st degree misdemeanor offense punishable by up to one year in county jail and a $1,000 fine. This may impact county 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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Moved the provisions of the bill into s. 828.12(5), F.S., relating to animal cruelty, as opposed to creating a new section of statute as provided in the original bill.
- Defined "animal," as it relates to s. 828.12(5), F.S., to mean any living or dead dumb creature.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to animal cruelty; amending s. 828.12, F.S.; providing definitions; prohibiting knowing sexual conduct or sexual contact with an animal; prohibiting specified related activities; providing penalties; providing that the act does not apply to certain husbandry, conformation judging, and veterinary practices; providing an effective date.

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

Section 1. Subsection (5) is added to section 828.12, Florida Statutes, to read:

828.12 Cruelty to animals.—

(5)(a) For the purposes of this subsection, the term:

1. "Animal" means any living or dead dumb creature.

2. "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.

3. "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.

(b) A person may not:

1. Knowingly engage in any sexual conduct or sexual contact with an animal;

2. Knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;

3. Knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or

4. Knowingly organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

(c) This subsection does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.

(d) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369 Faith- and Character-Based Correctional Institution Programs
SPONSOR(S): Rouson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2010

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

HB 369 rewords the "faith-based programs for inmates" section of statute to add secular language.

This bill removes:

- Obsolete requirements that the Department of Corrections establish and operate six new faith-based programs.
- Provisions that require 80% of the inmates participating in the faith-based/self improvement dormitory program to be within 36 months of release.
- Faith- and character-based program priority assignments given to inmates who have shown an indication for substance abuse.
- Requirements regarding chaplain assignments in correctional institutions, dormitories, and community correctional centers.

This bill does not appear to have a fiscal impact on state or local governments and is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Faith- and Character-Based Initiative

Section 944.803, F.S., enacted in 1997, required the Department of Corrections (department) to have six faith-based programs. The faith- and character-based (FCB) initiative within the department is currently found within 11 different facilities across the state. There are two ways the faith- and character-based program operates within the department, through the use of:

- Faith- and Character-Based Institutions[1] and
- Faith-Based/Self Improvement Dormitories.[2,3]

FCB programs are run entirely through a volunteer staff with no state funds spent on the initiative and allow inmates to participate in both religious and secular programming. Inmates participating in FCB programs have the opportunity to take classes on different topics such as writing, marriage and parenting, money management, interview and job skills, computer literacy, personal faith, and other various religious and secular topics.[4]

FCB institutions have no statutory requirements on program length or criteria regarding inmates' sentences. Unless an inmate commits a serious infraction, he or she can be housed in a FCB institution until the completion of his or her sentence or permanently if sentenced to life. Participation in the FCB program is voluntary and inmates are not required to have any religious beliefs to be eligible for either program.[5] However, priority is given to inmates who have shown an indication for substance abuse.[6] Department procedures further require that in order to be eligible for a FCB program, inmates must:

- Have received no disciplinary reports that resulted in disciplinary confinement during the previous ninety (90) days;
- Be in general population housing status; not in work-release, reception or transit status;
- Fit the parameters of the institutional profile; and
- Volunteer to be placed in the program.[7]

Inmates can be removed from a FCB program for:

- The purposes of population management,
- Inmate conduct that may subject the inmate to disciplinary confinement or loss of gain time,
- Physical or mental health concerns, or
- Security or safety concerns.[8]

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[1] There are currently four FCB Institutions – Glades C.I., Lawtey C.I., Wakulla C.I., and Hillsborough C.I. (female).

[2] FCB dormitories are currently located at Everglades C.I., Polk C.I., Tomoka C.I., Union C.I., Gulf C.I., Lancaster C.I. (youthful offender), and Lowell C.I. (female). Inmates can only spend one year in a FCB dormitory.

[3] The faith-based/self improvement dormitory program invites secular and religious charitable organizations to mentor inmates and offer programming designed to effect an inner transformation of inmates. The faith-based dormitory program incorporates the inmate's personal faith into the learning process, whereas the self-improvement dormitory takes a secular approach to personal change. Programming for both dormitory types is comparable to what is available at the faith- and character-based institutions. Faith-Based/Self Improvement Dormitories. The Department of Corrections. http://www.dc.state.fl.us/oth/faith/dorms.html (Last accessed March 23, 2011.)

[4] Department of Corrections 2011 Analysis of HB 369.

[5] Section 944.803(3), F.S.

[6] *Id.*

[7] "Eligibility Requirements." Department of Corrections Faith- and Character-Based Initiative, November 2010 Update, http://www.dc.state.fl.us/oth/faith/ci.html (Last accessed March 23, 2011.)

[8] Section 944.803(3), F.S.

Section 944.803, F.S., requires that 80% of the inmates assigned to a FCB dormitory be within 36 months of their release date.[9] However, the Office of Program Policy Analysis and Governmental Accountability recommended that the Legislature amend this requirement to allow the department to place more than 20% of inmates with more than 36 months left on their sentence in FCB dormitories.[10]

Section 944.803, F.S., requires the department to assign a chaplain and a full-time clerical support person to each FCB dormitory to implement and monitor the FCB program and to strengthen volunteer participation and support. The department is also required to assign chaplains to community correctional centers who must strengthen volunteer participation by recruiting volunteers in the community to assist inmates in transition.[11]

As of November 2010, the state-wide waiting list is at 471 inmates for the faith-based dormitories, 452 inmates for the self improvement dormitories, and 6,785 inmates for the faith- and character-based institutions.[12]

Effect of Proposed Changes

HB 369 amends the legislative intent provisions of s. 944.803, F.S., to add secular language:

- The term "Faith- and character-based" replaces "faith-based" throughout the section;
- Volunteers from secular institutions are specifically mentioned; and
- The development of community linkages with secular institutions is encouraged.

The bill removes the following requirements regarding chaplain assignments:

- A general requirement that the department fund an adequate number of chaplains and staff to operate faith-based programs in correctional institutions.

- A specific requirement that a chaplain and a full-time clerical support person be assigned to each faith-based dormitory.

- A specific requirement that chaplains be assigned to community correctional centers, or work release centers, authorized pursuant to s. 945.091(1)(b), F.S. These chaplain's duties include recruiting community volunteers, assisting inmates with transition, and placing inmates who requested assistance in a mentoring program. These chaplains are also required to work with the institutional transition assistance specialist to help place inmates who requested assistance in a contracted substance abuse housing program upon release.

The department states that statutory requirement of funding an adequate number of chaplains and staff to operate faith-based programs is obsolete.[13] In addition, requirements relating to dedicated full-time clerical support staff have been eliminated through budget reductions over the years and the institutional transition assistance specialist position no longer exists.[14] The department reports that there is currently insufficient funding to place a chaplain in each community correctional center, or work release center.[15]

This bill removes the outdated requirement that the department establish and operate six new FCB programs.

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[9] *Id.*

[10] "Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest," Report No. 09-38, The Office of Program Policy Analysis and Governmental Accountability, October 2009.

[11] Authorized pursuant to s. 945.091(1)(b), F.S.

[12] Department of Corrections Faith- and Character-Based Initiative, November 2010 Update, http://www.dc.state.fl.us/oth/faith/stats.html (Last accessed March 23, 2011.)

[13] Department of Corrections 2011 Analysis of HB 369.

[14] *Id.*

[15] *Id.*

The bill deletes provisions that require 80% of inmates participating in the program to be within 36 months of their release. By removing the requirement, more inmates may be eligible to be placed in FCB programs.

The bill deletes a provision giving inmates who have shown an indication for substance abuse priority for placement in an FCB program.

B. SECTION DIRECTORY:

Section 1. Amends s. 944.803, F.S., relating to faith-based programs for inmates.

Section 2. Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department reports that this bill will not have a fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to faith- and character-based correctional institution programs; amending s. 944.803, F.S.; revising legislative findings; providing requirements for faith- and character-based programs; deleting provisions relating to funding; revising requirements for participation; deleting provisions relating to assignment of chaplains; providing an effective date.

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

Section 1. Section 944.803, Florida Statutes, is amended to read:

944.803 Faith- and character-based ~~Faith-based~~ programs ~~for inmates~~.—

(1) The Legislature finds and declares that faith- and character-based ~~faith-based~~ programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.

(2) It is the intent of the Legislature that the department ~~of Corrections~~ and the private vendors operating private correctional facilities ~~shall~~ continuously:

(a) Measure recidivism rates for inmates who have participated in faith- and character-based ~~religious~~ programs.~~;~~

(b) Increase the number of volunteers who minister to inmates from various faith-based and secular institutions in the community.~~;~~

(c) Develop community linkages with secular institutions as well as churches, synagogues, mosques, and other faith-based institutions to assist inmates in their release back into the community.~~; and~~

~~(d) Fund through the use of annual appropriations, in department facilities, and through inmate welfare trust funds pursuant to s. 945.215, in private facilities, an adequate number of chaplains and support staff to operate faith-based programs in correctional institutions.~~

(3)(a) ~~The department must have at least six new programs fully operational. These six programs shall be similar to and in addition to the current faith-based pilot program. The six new programs shall be a joint effort with the department and faith-based service groups within the community.~~ The department shall ensure that an inmate's faith orientation, or lack thereof, will not be considered in determining admission to a faith- and character-based ~~faith-based~~ program and that the program does not attempt to convert an inmate toward a particular faith or religious preference.

(b) The programs shall operate 24 hours a day within the existing correctional facilities and~~. The programs~~ must emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

(c) Participation in a ~~the faith-based dormitory~~ program shall be voluntary. ~~However, at least 80 percent of the inmates participating in this program must be within 36 months of release.~~ Assignment to a program ~~these programs~~ shall be based on evaluation and the length of time the inmate is projected to

be assigned to that particular institution. ~~In evaluating an inmate for this program, priority shall be given to inmates who have shown an indication for substance abuse. A right to substance abuse program services is not stated, intended, or otherwise implied by this subsection.~~ The department may not remove an inmate once assigned to a ~~the~~ program except for the purposes of population management, for inmate conduct that may subject the inmate to disciplinary confinement or loss of gain-time, for physical or mental health concerns, or for security or safety concerns. ~~To support the programming component, the department shall assign a chaplain and a full-time clerical support person dedicated to each dormitory to implement and monitor the program and to strengthen volunteer participation and support.~~

~~(4) The Department of Corrections shall assign chaplains to community correctional centers authorized pursuant to s. 945.091(1)(b). These chaplains shall strengthen volunteer participation by recruiting volunteers in the community to assist inmates in transition, and, if requested by the inmate, placement in a mentoring program or at a contracted substance abuse transition housing program. When placing an inmate in a contracted program, the chaplain shall work with the institutional transition assistance specialist in an effort to successfully place the released inmate.~~

(4) ~~(5)~~ The department shall ensure that any faith component of any program authorized in this chapter is offered on a voluntary basis and, an offender's faith orientation, or lack thereof, will not be considered in determining admission to

such a ~~faith-based~~ program and that the program does not attempt to convert an offender toward a particular faith or religious preference.

(5) ~~(6)~~ The department shall ensure that state funds are not expended for the purpose of furthering religious indoctrination, but rather, that state funds are expended for purposes of furthering the secular goals of criminal rehabilitation, the successful reintegration of offenders into the community, and the reduction of recidivism.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821 Eyewitness Identification
SPONSOR(S): Thurston
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1206

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

SUMMARY ANALYSIS

Florida statutes do not currently set forth requirements for law enforcement officers to follow when conducting photographic and live lineups with eyewitnesses to crimes during criminal investigations. At least three other states, including North Carolina, Maryland, and Ohio have enacted statutes regarding eyewitness identification procedures.

HB 821 creates a procedure that law enforcement officers must follow when they are conducting photographic and live lineups with eyewitnesses to crimes. The bill provides:

- The eyewitness identification procedures to be utilized when conducting a photographic or live eyewitness line up.
- Procedures for using an alternative method for identification that has been approved by the Criminal Justice Standards and Training Commission.
- Remedies for a defendant when the specified eyewitness identification procedures are not followed.
- The education and training requirements of law enforcement officers on the eyewitness identification procedures provided for in the bill.

The bill may have a fiscal impact on law enforcement agencies. See Fiscal Section.

This bill is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Eyewitness misidentification has been a factor in 75 percent of the 267 cases nationwide in which DNA evidence has helped prove wrongful convictions. According to Gary Wells, an Iowa State University psychologist who has studied the problems with eyewitness identification for more than 20 years, it is the number one reason innocent people are wrongfully convicted.[1] According to the Innocence Project of Florida, the same percentage applies in the 12 Florida cases, nine of which involved issues of eyewitness misidentification.[2]

Eyewitness Identification Procedure

Florida statutes do not currently set forth requirements for law enforcement officers to follow when conducting photographic and live lineups with eyewitnesses to crimes during criminal investigations. At least three other states, including North Carolina, Maryland, and Ohio have enacted statutes regarding eyewitness identification procedures.

There are many variables in eyewitness identification procedures. First, there are different ways to conduct them. For example, in the presentation of photo lineups, there are two main methods: sequential (one photo is shown at the time) and simultaneous (photo array shows all photos at once). Then there are the variables such as what an officer should or shouldn't say to an eyewitness about the procedure, whether the procedure should be videotaped or otherwise recorded, and whether officers have been trained to control body language or other suggestive actions during the procedure.

Some law enforcement agencies, although not statutorily required to follow a particular procedure, have included eyewitness identification procedures in their agency's Standard Operating Procedures. A survey of 230 Florida agencies, conducted by the Innocence Project of Florida, indicated that 37 of those agencies had written eyewitness identification policies while 193 did not.[3]

As Dr. Roy Malpass, a professor in Legal Psychology at the University of Texas at El Paso, and an expert in the field of eyewitness identification, explained during his presentation to the Florida Innocence Commission (Innocence Commission)[4] during its January 2011 meeting, it is important to have protocol compliance.[5] Dr. Malpass also recommended videotaping the identification procedure.[6]

Dr. Malpass made further recommendations and offered certain opinions during his presentation to the Innocence Commission in January. These included:

- There is no definitive study showing that sequential or simultaneous photo lineups is the superior method of presentation, although he believes that sequential photo lineups suppresses all identifications.
- A "confidence statement" from the witness is not a good predictor of accuracy.

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[1] Presentation to Innocence Commission, November 22, 2010. Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later, Wells, Quinlivan, *Law Hum Behav* (2009) 33:1-24. See also, (http://articles.orlandosentinel.com/2011-03-21/news/os-innocence-commission-vote-20110321-19_1_lineups-florida-s-innocence-commission-florida-innocence-commisssion) (last accessed March 25, 2011).

[2] E-mail correspondence with Seth Miller, Executive Director, Innocence Project of Florida, March 23, 2011 (on file with House Criminal Justice Subcommittee staff).

[3] Survey on file with House Criminal Justice Subcommittee staff.

[4] On July 2, 2010, Chief Justice Charles T. Canady established, by Administrative Order AOSC10-39, the Florida Innocence Commission. The primary objective of the Florida Innocence Commission is to make recommendations to the Supreme Court which reduce or eliminate the possibility of the wrongful conviction of an innocent person. *See* Florida State Courts, Florida Innocence Commission: Mission and Objectives. (http://www.flcourts.org/gen_public/innocence.shtml) (last accessed March 25, 2011).

[5] Innocence Commission meeting Minutes, January 2011 meeting (on file with House Criminal Justice Subcommittee staff).

[6] *Id.*

- With regard to training on eyewitness identification, much depends upon the "buy-in" of the people being trained.
- Appropriate instructions regarding the procedure should be developed and given to witnesses. For example: the suspect may or may not be in the line-up; there is no requirement to identify a particular person; and if an identification is not made, the investigation will continue.
- There should be no extraneous comments made by law enforcement officers because informal interaction has the potential to create bias.
- The quality of the photo spread is very important.
- "Blind" administration, where the officer conducting the procedure is unaware of the identity of the suspect, is a good method for use in both sequential and simultaneous photo lineups.[7]

If an agency has a particular eyewitness identification protocol in place and the protocol is not followed, the issue becomes ripe for a challenge on the issue of reliability and therefore, admissibility, of the identification evidence at trial. This possibility provides an incentive for eyewitness identification protocol compliance. Conversely, if the eyewitness identification protocol is followed, motions to suppress should rarely be filed as there is likely no good-faith basis for filing them.

The Florida Supreme Court has ruled on the admissibility of eyewitness identifications at trial as follows:

> The test for suppression of an out-of-court identification is two-fold: (1) whether the police used an unnecessarily suggestive procedure to obtain the out-of-court identification; and (2) if so, considering all the circumstances, whether the suggestive procedure gave rise to a substantial likelihood of irreparable misidentification. *See Thomas v. State,* 748 So.2d 970, 981 (Fla.1999); *Green v. State,* 641 So.2d 391, 394 (Fla.1994); *Grant v. State,* 390 So.2d 341, 343 (Fla.1980). The factors to be considered in evaluating the likelihood of misidentification include:
>
> [T]he opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. *Grant,* 390 So.2d at 343 (quoting *Neil v. Biggers,* 409 U.S. 188, 199-200, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972)). If the procedures used by the police in obtaining the out-of-court identification were not unnecessarily suggestive, however, the court need not consider the second part of the test. *See Thomas,* 748 So.2d at 981; *Green,* 641 So.2d at 394; *Grant,* 390 So.2d at 344.[8]

Effect of the Bill

HB 821 creates a new section of Florida Statutes relating to eyewitness identifications in criminal cases. It is a comprehensive bill that sets forth specific procedures that state, county, municipal, and other law enforcement agencies must implement when conducting lineups.

Definitions

The bill provides definitions for the following terms relating to eyewitness identification procedures:

- "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.
- "Filler" means a person or a photograph of a person who is not suspected of an offense but is included in a lineup.
- "Independent administrator" means a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect.
- "Lineup" means a photo lineup or live lineup.
- "Lineup administrator" means the person who conducts a lineup.

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[7] *Id.*

[8] *Rimmer v. State,* 825 So.2d 304 (Fla. 2002).

- "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
- "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

Procedures to be Followed
Prior to the lineup, officers are required to instruct the eyewitness that:

1) The perpetrator might or might not be in the lineup;
2) The lineup administrator does not know the suspect's identity;
3) The eyewitness should not feel compelled to make an identification;
4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
5) The investigation will continue with or without an identification.

The eyewitness must also be given a copy of these instructions. If he or she refuses to sign a document acknowledging receipt of the instructions, the lineup administrator is directed to sign it and make a notation of the eyewitness's refusal.

An independent administrator must conduct the lineup. This is sometimes referred to as a "blind" administrator. The independent administrator is not participating in the investigation and does not know the identity of the suspect. This is one element of the scientific studies on eyewitness identification that is most agreed upon by the scholars in the area of study as being critical to untainted suspect identification.

Sequential presentation of individuals or photos is required. This means that one person or photo (depending on whether it is a live lineup or photo lineup) is presented to the eyewitness at a time, then removed before the next is presented in a predetermined order.

The bill requires that six photos or people be included in a lineup. The number of photos or people included in the lineup must be documented. The "fillers" (the five photos or people who are included in the lineup who are not suspects) should resemble the suspect and they should not be used more than once with a particular eyewitness. If a photo of the suspect is used in a photo lineup it should be a contemporary one. Information regarding any prior arrests or other involvement of the suspect in the criminal justice system should not be made known to the witness viewing a lineup.

A witness's confidence level of the identification, if one is made, must be documented. Witnesses must not be allowed to confer with one another before or during the identification procedure. No one may be present during the identification procedure who knows the suspect's identity except counsel as required by law and the eyewitness.

If more than one eyewitness views a lineup, the suspect must be placed in a different position in the lineup for each witness and the eyewitness may not be told anything regarding the suspect's position in the lineup nor anything else that might influence the identification procedure. The eyewitness may not see any participants in a live lineup prior to the lineup being conducted. If persons in a lineup perform identifying speech, gestures or movements, all lineup participants must do them.

A video recording of a live lineup must be made. If this procedure is not practical, an audio recording may be substituted for the video. If audio recording is not practical, the lineup may proceed and be documented by the lineup administrator. In any case where the video recording is not made, the reasons for the impracticality must be noted. The same requirement applies if audio recording is impractical. The eyewitness must sign the results, or if the witness refuses the administrator shall sign. All of the persons present at the lineup must be noted along with the date, time, and place where the lineup is conducted. The sources of photos or persons being used and the photos themselves, or a photo or other visual recording of the participants in a live lineup must be made a part of the record.

Statements as to certainty of the identification ("confidence statements") or any other statements or words used by the eyewitness in any identification procedure must be recorded by the means being utilized by the administrator.

Alternative Methods for Identification Procedures
The bill provides that in lieu of using an independent administrator, a photo lineup procedure may be conducted using an alternative method specified and approved by the Criminal Justice Standards and Training Commission. The procedure should prevent the administrator from knowing which photo is being presented to the eyewitness during the procedure. The use of a computer program or of a random, shuffled folder method of photo presentation is provided for.

Remedies as Consequence of not Following Statutory Procedures
The court may consider noncompliance with the statutory suspect identification procedures when deciding a motion to suppress the identification from being presented as evidence at trial. The court may allow the jury to hear evidence of noncompliance in support of claims of eyewitness misidentification raised by the defendant.

When evidence of compliance or non-compliance has been presented at trial, the bill requires the jury to be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

Education and Training
The Criminal Justice Standards and Training Commission (Commission),[9] in consultation with the Florida Department of Law Enforcement, is required to develop educational materials and conduct training programs for law enforcement on the eyewitness identification procedures set forth in the bill.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of the Florida Statutes related to eyewitness identification.

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:

   The bill requires the Commission, in consultation with the Florida Department of Law Enforcement, to create educational materials and conduct training programs for law enforcement on the eyewitness identification procedures. This may have a fiscal impact on the Commission.

[9] In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers. Every prospective law enforcement officer, correctional officer, and correctional probation officer must successfully complete a CJSTC-developed Basic Recruit Training Program in order to receive their certification. (http://www.fdle.state.fl.us/Content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/CJSTC-Home-Page.aspx) (last accessed March 28, 2011).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The use of lineups with eyewitnesses to crimes occurs on a limited basis in most law enforcement organizations. Nonetheless, smaller law enforcement agencies, in particular, may experience some fiscal impact from the implementation of the requirements of this bill.

Agencies that have few officers on a shift at any given time may have to call in additional officers anytime a lineup that requires an independent administrator is conducted due to the fact that all or most officers on the shift are a part of the investigation. An officer who has knowledge of the identification of a suspect would not be eligible to conduct the lineup under the provisions of the bill. It should be noted, however, that alternative methods of conducting eyewitness identification procedures are provided in the bill. The alternative methods should allow the smaller agencies flexibility since an independent administrator is not required.

Additionally, a fiscal impact may result for many smaller agencies that are not equipped to videotape lineups conducted in the field as they do not have that capability in the agency's patrol cars.

The Florida Sheriffs Association reports that HB 821 will force significant increased costs upon law enforcement agencies, not only in overtime costs, but in training and court costs.[10]

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 law enforcement agencies are obligated to expend funds in order to meet the requirements of the eyewitness identification procedures provided 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 2010 census report,[11] a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1.8 million would be characterized as a mandate. It is unknown at this time how much law enforcement agencies would be required to spend in order to meet the requirements of the eyewitness identification procedures provided by the bill. If the fiscal

[10] Email from Frank Messersmith, Florida Sheriff's Association. March 25, 2011 (on file with House Criminal Justice Subcommittee staff).

[11] http://www.edr.state.fl.us/Content/population-demographics/2010-census/index.cfm (last accessed March 28, 2011).

impact is less than $1.8 million, the impact is insignificant, and an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the jury to be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications. Jury instructions must be adopted by the Florida Supreme Court, therefore, this part of the bill will require action by the court after it is presented with a proposed instruction for consideration. Standard Jury Instructions for criminal cases are often proposed and adopted based upon the Legislature's revision of the criminal statutes, soon after the end of each legislative session. However, in the meantime, an attorney could present his or her own proposed instruction to the trial court and it could be given to the jury. The trial court has the prerogative to give instructions outside the Standard Jury Instructions, however the court runs the risk of that issue being raised on appeal.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to eyewitness identification; providing a short title; defining terms; requiring state, county, municipal, and other law enforcement agencies that conduct lineups to follow certain specified procedures; requiring the eyewitness to sign an acknowledgement that he or she received the instructions about the lineup procedures from the law enforcement agency; providing for an alternative method of identification of suspects; requiring the Criminal Justice Standards and Training Commission to specify and approve any alternative method used for eyewitness identification; requiring that any such method be neutral in its administration; specifying remedies for failing to adhere to the eyewitness identification procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and conduct training programs on how to conduct lineups in compliance with the act; providing an effective date.

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

Section 1. Eyewitness identification.—

(1) SHORT TITLE.—This section may be cited as the "Eyewitness Identification Reform Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

(b) "Filler" means a person or a photograph of a person who is not suspected of an offense but is included in a lineup.

(c) "Independent administrator" means a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect.

(d) "Lineup" means a photo lineup or live lineup.

(e) "Lineup administrator" means the person who conducts a lineup.

(f) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(g) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted in this state by state, county, municipal, and other law enforcement agencies must meet all of the following requirements:

(a) A lineup must be conducted by an independent administrator or by an alternative method as provided by subsection (4).

(b) Individuals or photos must be presented to witnesses sequentially, with each individual or photo presented to the witness in a previously determined order. Thereafter, the live lineup or photo lineup must be removed before the next live lineup or photo lineup is presented.

(c) Before a lineup, the eyewitness shall be instructed that:

1. The perpetrator might or might not be in the lineup;

2. The lineup administrator does not know the suspect's identity;

3. The eyewitness should not feel compelled to make an identification;

4. It is as important to exclude innocent persons as it is to identify the perpetrator; and

5. The investigation will continue with or without an identification.

The eyewitness shall acknowledge, in writing, having received a copy of the lineup instructions. If an the eyewitness refuses to sign a document acknowledging receipt of the instructions, the lineup administrator shall document the refusal of the eyewitness to sign the writing and then sign the acknowledgement himself or herself.

(d) In a photo lineup, the photograph of the suspect must be contemporary and, to the extent practicable, resemble the suspect's appearance at the time of the offense.

(e) The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:

1. In a photo or live lineup at least five fillers must be included in the lineup, in addition to the suspect.

2. If the eyewitness has previously viewed a photo or live

lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates must be different from the fillers used in any previous lineup.

(f) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.

(g) In any lineup, writings or information concerning any previous arrest, indictment, or conviction of the suspect may not be visible or made known to the eyewitness.

(h) In a live lineup, any identifying actions of the suspect, such as speech, gestures, or other movements, must be performed by all lineup participants.

(i) In a live lineup, all lineup participants must be out of view of the eyewitness before the lineup.

(j) Only one suspect shall be included in a lineup.

(k) An eyewitness may be told nothing regarding the suspect's position in the lineup or anything that might influence the eyewitness's identification.

(l) The lineup administrator shall seek and document a clear statement from the eyewitness at the time of the identification, and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one another before or during the identification procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.

(m) If the eyewitness identifies a person as the perpetrator, the eyewitness may not be provided any information concerning the person before the lineup administrator obtains the eyewitness's statement of confidence regarding the identification of the suspect. There may not be anyone present during the live lineup or photographic identification procedures who knows the suspect's identity, except the eyewitness and counsel as required by law.

(n) Unless it is not practical, a video record of a live identification procedure shall be made. If a video record is not practical, the reason for the impracticality must be documented, and an audio record shall be made in its place. If neither a video or audio record is practical, the reasons for the impracticality must be documented and the lineup administrator shall make a written record of the lineup.

(o) The record, by whatever means recorded, must include all of the following information:

1. All identification and nonidentification results, including the eyewitness's statement of confidence, obtained during the identification procedure.

2. The signature of the eyewitness. If the eyewitness refuses to sign the record, the lineup administrator shall document the refusal of the eyewitness to sign the results and sign the record.

3. The names of all persons present at the lineup.

4. The date, time, and location of the lineup.

5. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of

identification.

6. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

7. The sources of all photographs or persons used.

8. In a photo lineup, the photographs themselves.

9. In a live lineup, a photo or other visual recording of the lineup which includes all persons who participated in the lineup.

(4) ALTERNATIVE METHOD FOR IDENTIFICATION.—In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the Criminal Justice Standards and Training Commission. Any alternative method must be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. The alternative methods may include:

(a) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the lineup administrator from seeing which photo the witness is viewing until after the procedure is completed; or

(b) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(5) REMEDIES.—All of the following remedies are available as consequence of a person not complying with the requirements

of this section:

(a)1. A failure on the part of a person to comply with any requirements of this section shall be considered by the court when adjudicating motions to suppress eyewitness identification.

2. A failure on the part of a person to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.

(b) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

(6) EDUCATION AND TRAINING.—The Criminal Justice Standards and Training Commission, in consultation with the Department of Law Enforcement, shall create educational materials and conduct training programs on how to conduct lineups in compliance with this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1277 Sexual Offenders and Predators
SPONSOR(S): Glorioso
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1890

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

SUMMARY ANALYSIS

HB 1277 amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add the offense of incest, where the victim is a minor and the defendant is 18 years of age or older, to the list of offenses that, upon conviction, qualify a person as a sexual offender.

The bill also amends the definition of the term sexual offender in s. 943.0435, F.S., to include a person who has been released on or after October 1, 2011, from any sanction imposed for any felony conviction or similar offense in another jurisdiction, and who has a prior qualifying sexual conviction. Similarly, the bill amends the definition of the term "sexual offender" in s. 944.607, F.S., to include a person who is in the custody or control of, or under the supervision of, DOC on or after October 1, 2011, as a result of committing any felony, if the offender has a prior conviction for committing, or attempting, soliciting, or conspiring to commit, a prior qualifying sexual conviction.

These changes to the definitions of "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S. will have the effect of expanding the number of persons who qualify as sexual offenders. Such persons will immediately be subject to the sexual offender registration requirements contained in ss. 943.0435, 944.606, and 944.607, F.S.

The bill also:

- Requires sexual offenders to report to the sheriff of the county of current residence within 21 days before the offender's planned departure if the intended residence of 7 days or more is outside the United States.
- Requires sexual predators and offenders to provide the sheriff and FDLE any Internet identifier the offender uses. The bill defines "Internet identifier" as "any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or PIN number."
- Requires state agencies and governmental subdivisions to search the name of people hired to work in specified locations through the Dru Sjodin National Sex Offender Public Website.
- Provides an additional way in which sexual predators and offenders can have the requirement to register as a sexual predator or offender removed.
- Creates s. 847.0141, F.S., which makes it unlawful for a minor to:
    - Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors.
    - Intentionally or knowingly posses a visual depiction of another minor that depicts nudity and is harmful to minors.
- Specifies that s. 948.31, F.S., which mandates that the court require sex offender treatment as a term or condition of supervision in certain instances for any person who is required to register as a sexual predator or sexual offender, is a standard condition of supervision and does not require oral pronouncement at the time of sentencing.

The bill may have a significant fiscal impact on state government (see Fiscal Impact on State Government) and is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Qualifying Offenses (Sections 3, 7 and 8)
Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender" as a person who:

1. 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:
   - Section 787.01, F.S. (kidnapping)
   - Section 787.02, F.S. (false imprisonment)
   - Section 787.025(2)(c), F.S., (luring or enticing a child) where the victim is a minor and the defendant is not the victim's parent or guardian
   - Section 794.011, F.S., (sexual battery) excluding s. 794.011(10), F.S.[1]
   - Section 794.05, F.S. (unlawful activity with certain minors)
   - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
   - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
   - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.)
   - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
   - Section 827.071, F.S. (sexual performance by a child)
   - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
   - Section 847.0135, F.S., (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.[2]
   - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
   - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
   - Section 847.0145, F.S. (selling or buying of minors)
   - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender)

   And has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described above. A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

2. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

3. Establishes or maintains a residence in this state and who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed above or a similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed above; or

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[1] Section 794.011(1), F.S., relates to falsely accusing specified persons of sexual battery.
[2] Section 947.0135(6), F.S., provides that it is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of s. 947.0135, F.S.

4. On or after July 1, 2007, has been adjudicated delinquent for 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 when the juvenile was 14 years of age or older at the time of the offense:
    - Section 794.011, F.S., (sexual battery) excluding s. 794.011(10), F.S.;
    - Section 800.04(4)(b), F.S., (encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;
    - Section 800.04(5)(c)1., F.S., (related to lewd and lascivious molestation) where the court finds molestation involving unclothed genitals; or
    - Section 800.04(5)(d), F.S., (related to lewd and lascivious molestation) where the court finds the use of force or coercion and unclothed genitals.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the list of offenses enumerated above.

Effect of the Bill

HB 1277 amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add the offense of incest,[3] where the victim is a minor and the defendant is 18 years of age or older, to the list of offenses that, upon conviction, qualify a person as a sexual offender.

The bill amends the definition of the term sexual offender in s. 943.0435, F.S., to add a fifth category of persons who qualify as a sexual offender. This fifth category includes a person who has been released on or after October 1, 2011, from any sanction imposed[4] for any felony conviction or similar offense in another jurisdiction, and;

- Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses enumerated above in this state or similar offenses in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in above; or
- Has been adjudicated delinquent for 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 when the juvenile was 14 years of age or older at the time of the offense:
    - Section 794.011, F.S., excluding s. 794.011(10), F.S.;
    - Section 800.04(4)(b), F.S., where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;
    - Section 800.04(5)(c)1., F.S., where the court finds molestation involving unclothed genitals; or
    - Section 800.04(5)(d), F.S., where the court finds the use of force or coercion and unclothed genitals.

The bill also amends the definition of the term "sexual offender" in s. 944.607, F.S., to include a person who is in the custody or control of, or under the supervision of, DOC or is in the custody of a private correctional facility on or after October 1, 2011, as a result of committing any felony, if the offender has a prior conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses enumerated above in this state or similar offenses in another jurisdiction or any similar offense committed in this state which has been redesignated from a former statute number to one listed above.

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[3] Currently, s. 826.04, F.S., provides that whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest. Incest is punishable as a 3rd degree felony.

[4] The bill specifies that any sanction imposed in this state or any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

The above changes to the definitions of "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S. will have the effect of expanding the number of persons who qualify as sexual offenders. Such persons will immediately be subject to the sexual offender registration requirements contained in ss. 943.0435, 944.606, and 944.607, F.S.

Sexual Predator / Offender Registration - Address (Sections 1 and 3)

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements.[5] Failure to comply with these requirements is a third or second degree felony, depending of the offense.

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.[6] During initial registration, a sexual predator or sexual offender is required to provide certain information, including the address of the predator or offender's permanent or temporary residence, to the sheriff's department.[7] The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.

A sexual predator or sexual offender is also required to report any changes to his or her registration information. For example, a sexual predator or offender who changes his or her residence must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office as well as the sheriff's office of the county in which the predator or offender is located.[8]

Effect of the Bill

As noted above, ss. 775.21 and 943.0435, F.S., require sexual predators and offenders who change residences to, within 48 hours after such change, report in person to a DHSMV driver license office. Failure to do so is a 3rd degree felony.[9] The bill amends these sections of statute to provide that a sexual predator or offender does not commit a 3rd degree felony if he or she reports an address or location change to the local sheriff's office within 48 hours after such change with proof that he or she also promptly reported such information to the DHSMV.

The bill also amends s. 943.0435(7), F.S., which requires a sexual offender who intends to establish a residence in another state or jurisdiction other than Florida to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state. The bill permits such offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of 7 days or more is outside of the United States.

Sexual Predator / Offender Registration - Instant Message Name (Sections 1, 3, 6, 7, and 8)

In addition to providing address information during initial registration, a sexual predator or sexual offender is required to provide the sheriff any instant message name the offender wants to use.[10] Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.[11]

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[5] *See* generally, ss. 775.21, 943.0435 and 944.607, F.S.

[6] Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively. Sections 775.21 and 944.607, F.S.

[7] *See* generally, ss. 775.21, 943.0435 and 944.607, F.S.

[8] *Id.*

[9] See ss. 775.21(10) and 943.0435(9), F.S. 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.

[10] *See* generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

[11] FDLE maintains an online system through which sexual predators and offenders can update their instant message name information. Sections 775.21 and 943.0435, F.S.

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term "instant message name" as "an identifier that allows a person to communicate in real time with another person using the Internet."

Effect of the Bill
The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term "instant message name" with "Internet identifier." The bill defines the term "Internet identifier" as "any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or PIN number." Sexual predators and offenders will now be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term "instant message name" with the term "Internet identifier" in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.[12]

Search of Registration Information (Section 4)
Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,[13] to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

Effect of the Bill
The bill amends s. 943.04351, F.S., to require states agencies and governmental subdivisions to also search the person's name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

Removal of the Requirement to Register as a Sexual Offender (Section 5)
Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.[14] However, there are ways in which the registration requirement can be removed.

Section 943.0435(11), F.S.
Sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and have not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction:

- For a violation of ss. 787.01 or 787.02, F.S.;
- For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- For a violation of s. 800.04(5)(b), F.S.;
- For a violation of s. 800.04(5)c.2., F.S., where the court finds the offense involved unclothed genitals or genital area;
- For any attempt or conspiracy to commit any such offense; or
- For a violation of similar law of another jurisdiction.[15]

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[12] Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.
[13] These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.
[14] Sections 775.21(6) and 943.0435(11), F.S.
[15] The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to

Sexual offenders defined in 943.0435(1)(a)1.b., F.S., can have the registration requirement removed if he or she provides FDLE with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued that states that such designation has been removed or demonstrates to FDLE that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of Florida.[16]

Section 943.04354, F.S.

A person can be considered for removal of the requirement to register as a sexual offender or sexual predator if the person:

- Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and
- Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

If a person meets the above critera, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or sexual predator.[17] At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement.[18]

A person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or sexual predator.[19] The court shall rule on the petition and, if the court determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.[20]

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public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. Section 943.0435(11)(a), F.S.

[16] Section 943.0435(11)(b), F.S.

[17] The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

[18] If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

[19] The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

[20] If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.

Effect of the Bill

The bill creates s. 943.04355, F.S., entitled "Juvenile and youthful sex offender and predator registration; exceptions." The statute provides an additional way in which sexual predators and offenders can have the registration requirement removed.

The bill provides that if a person obligated to register as a sexual offender or sexual predator was less than 22 years of age at the time he or she committed the act or acts giving rise to the requirement to register, the offender may petition the circuit court of the circuit in which he or she resides for the purpose of the removal of the registration obligation or for an exemption from community and public notification.

To be eligible for removal from the obligation to register as a sexual offender or sexual predator, the petitioner must show by clear and convincing evidence that all of the following criteria have been met:

- The requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or sexual predator or required to be met as a condition for the receipt of federal funds by the state and that the removal of the registration obligation requirement will not otherwise conflict with federal law.
- The petitioner was less than 22 years of age when he or she committed the sex offense subjecting him or her to the obligation to registration.
- The circumstances surrounding the crime requiring registration did not involve a child less than 13 years of age while the offender was 18 years of age or older but less than 22 years of age.
- The petitioner demonstrates to the satisfaction of the court that he or she does not pose a risk or danger to the community.
- The petitioner has not been arrested for any crime since being released from the sanctions relevant to the qualifying offense requiring registration.
- The petitioner has participated in and satisfactorily completed a sexual offender treatment program obtained from a qualified practitioner as defined in s. 948.001, F.S.
- The petitioner has paid restitution to either the victim or crimes compensation trust fund, if applicable.
- The petitioner successfully completed the terms of supervision and substantially complied with registration requirements.
- The petitioner is not required to register as a sexual offender or sexual predator in another state or jurisdiction as a result of committing a sexual offense in a jurisdiction outside of this state.

The bill requires that the state attorney in the circuit in which the petition is filed be given notice of the petition at least 3 weeks before the hearing on the matter. As soon as practicable after a petition has been filed, the state attorney must make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section. The bill authorizes the state attorney to present evidence in opposition to the requested relief or to otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender or sexual predator may again petition the court for relief, subject to the standards for relief provided in this section. A subsequent petition for relief may not be submitted unless a future date for eligibility to file such a petition is set by the court. The court must order removal of the sexual offender or sexual predator from classification as a sexual offender or sexual predator for the purpose of registration if the petition is granted. The court may also grant the petition, in part, and order nonpublic registration.

The bill defines the term "nonpublic registration" as an exemption from community and public notification." The bill specifies that an offender or predator is still obligated to report in person and register with the local sheriff's office and DHSMV pursuant to ss. 775.21 and 943.0435, F.S. The offender's or predator's registration information will not be visible on the public registry, but it will continue to be updated; however, the information will only be available for use by law enforcement agencies for investigative purposes.

The bill requires FDLE to remove an offender or predator from classification as a sexual offender or sexual predator for purposes of registration if he or she provides FDLE with a certified copy of the court's written findings or order that indicates that he or she is no longer required to comply with the requirements for registration as a sexual offender or sexual predator. If the sexual offender or sexual predator is granted nonpublic registration or a court order or findings exempt him or her from community and public notification, FDLE must promptly remove the offender's or predator's registration information from the public registry of sexual offenders and sexual predators maintained by FDLE. However, the removal of this information from the public registry of sexual offenders and sexual predators shall not prevent public access to information about the person's criminal history or record that is otherwise available as a public record.

The bill authorizes the court to order nonpublic registration for a juvenile sexual offender as defined in s. 985.475, F.S., at any time if he or she has completed a juvenile sexual offender commitment program or if the court is satisfied that he or she is not a current or potential threat to public safety. The court may revoke a nonpublic registration order made under this subsection for any reason.

Sexting (Section 2)

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.[21] Additionally, 39% of teens and 59% of young adults had sent sexually explicit text messages.[22]

There are no statutes that specifically address sexting. Under current law, a person who "sexts" another could be charged with a variety of offenses, such as transmission of pornography[23] or computer pornography,[24] 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 a criminal 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.

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.[25] Similar incidents have occurred in Massachusetts, Ohio, and Iowa.[26] As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors.

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

[22] *Id.*

[23] 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 to another person commits a 3rd degree felony.

[24] 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 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.

[25] 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).

[26] *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)

Effect of the Bill
The bill creates s. 847.0141, F.S., entitled "Unlawful electronic communication between minors; possession of visual depiction of another minor." The bill makes it unlawful for a minor to:

- Intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors.
- Intentionally or knowingly posses a visual depiction of another minor that depicts nudity and is harmful to minors.

The above-described acts are not unlawful if all of the following apply:

- The minor did not solicit the visual depiction.
- The minor took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the minor's parent or guardian or to a school or law enforcement official.
- The minor did not transmit or distribute the visual depiction to a third party.

Violations of the above-described prohibited acts are punishable as:

- A noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The bill authorizes the court to also order suitable training concerning such offenses and to prohibit the use or possession of electronic devices.[27]
- A 2nd degree misdemeanor[28] for a violation that occurs after being found to have committed a noncriminal sexting offense. The bill requires the court to order suitable training concerning such offenses and to prohibit the use or possession of electronic communication devices.
- A 1st degree misdemeanor[29] for a violation that occurs after being found to have committed a 2nd degree misdemeanor sexting offense. The court must order suitable training concerning such offenses or, if ordered by the court in lieu of training, counseling. The court must also prohibit the use or possession of electronic devices.
- A 3rd degree felony[30] for a violation that occurs after being found to have committed a 1st degree misdemeanor sexting offense. The court must order a mental health evaluation by a qualified practitioner, as defined in s. 948.001, F.S., and treatment, if recommended by the practitioner.

The bill requires a law enforcement officer who arrests any person charged with any offense described above to seize the prohibited material and take the material into his or her custody to await the sentence of the court. The bill requires the court to order the confiscation of the unlawful material and authorizes the law enforcement agency in which the material is held to destroy the unlawful material.

The bill specifies that the above provisions do not prohibit the prosecution of a minor for a violation of any law of this state if the electronic communication includes the depiction of sexual conduct or sexual excitement and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

Definition of Risk Assessment (Section 9)
Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

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[27] Electronic devices include but are not limited to cellular telephones, cameras, computers, or other electronic media devices.
[28] A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[29] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[30] 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.

Section 947.005, F.S., currently defines the term "risk assessment" as "an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child."

Effect of the Bill
The bill amends the definition of the term "risk assessment" to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

Conditions of Supervision – Sex Offender Treatment (section 10)
Section 948.03, F.S., sets forth the standard conditions of probation that offenders must comply with. Standard conditions of probation do not require oral pronouncement at sentencing.[31] In contrast, special conditions of probation, those conditions that are not specifically authorized by statute, must be imposed by oral pronouncement at sentencing and be included in the written sentencing order.[32]

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator or sexual offender.

Effect of the Bill
The bill specifies that the provisions of s. 948.31, F.S., are standard conditions of supervision and do not require oral pronouncement at the time of sentencing.

Severability Clause (Section 11)
The bill provides the following severability clause:

> If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 2. Creates s. 847.0141, F.S., relating to unlawful electronic communication between minors; possession of visual depiction of another minor.

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 5. Creates s. 943.04355, F.S., relating to juvenile and youthful sex offender and predator registration; exceptions.

Section 6. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 7. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

[31] Section 948.03(1), F.S.
[32] Section 948.039, F.S.

Section 8. Amends s. 944.607, F.S., relating to notification to the Department of Law Enforcement of information on sexual offenders.

Section 9. Amends s. 947.005, F.S., relating to definitions.

Section 10. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 11. Provides for severability.

Section 12. This bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Prison Bed Impact
   The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, the bill will likely have a prison bed impact on the Department of Corrections in that it:

   - Increases the number of people subject to sex offender registration requirements (failure to register is generally punishable as a 3rd degree felony).
   - Creates a 3rd degree felony related to sexting.

   FDLE Impact
   FDLE reports that because the bill expands the group of persons required to register as a sexual offender or predator, the bill will have a significant impact on the Sexual Offender/Predator Registry that will require the following funding.[33]

   - $317,977 in recurring dollars to fund 5 FTE ($298,487 in recurring dollars for FY 12-13 and FY 13-14) to process, research, and quality control the increased workload as well as to support law enforcement, state attorneys, and the courts in prosecuting case for failure of a sexual offender/predator to register.
   - $45,500 in non-recurring dollars to hire contract programming staff to complete the 580 hours of programming and testing necessary to implement the requirements of this bill.

   FDLE's analysis states the following:

   > Based upon a search of Florida's criminal history records on 3/11/2011, it was determined that there are 10,100 individuals with a criminal history record that includes a conviction for one of the listed qualifying offenses in Florida's Sexual Offender Registration statute, s. 943.0435, F.S., but currently do not meet the requirements to register as a sexual offender. If these individuals were convicted of a new felony and are serving sanctions for the new offenses on or after 10/1/2011, they would be subject to registration as sexual offenders under the retroactivity provision of this bill.
   >
   > Of the 10,100 individuals listed above, 2,200 may immediately qualify for registration upon implementation of the bill. FDLE will need to conduct a manual review of each of these individuals to determine whether they are currently under sanction.

[33] 2011 FDLE analysis of House Bill 1277 (on file with Criminal Justice Subcommittee staff).

Additionally, historical statistics from the Florida Sexual Offender/Predator Registry, estimate that 19% of offenders registered in Florida have out-of-state convictions. These are offenders who either have a requirement to register in another state or jurisdiction, or are required to register in Florida solely based on Florida's registration requirements. This population includes offenders registered and listed on the Dru Sjodin National Sexual Offender Site or a state sexual offender site, offenders not registered or listed on a public internet site, and offenders with federal convictions, military convictions, or convictions from another country. For the majority of these offenders, the Registry must request court documentation from the other state or jurisdiction. In many cases, these documents have been purged or there is a court cost to obtain the documents. In addition, arrest or incident reports are needed to compare the out-of-state crime with a Florida qualifying offense to determine registration eligibility, as well as documentation from the other state or jurisdiction's corrections or probation/parole agencies to determine the end of an individual's sanction from the qualifying crime that requires registration.

Although in most cases, the potential offenders listed will require a new felony conviction (exception would be those 2,200 individuals who already have a felony conviction who may qualify for registration on 10/1/2011, if they are still serving sanctions or are released from a sanction for that felony on or after the 10/1/2011) to meet the requirements of this bill, the volume of those who could meet the requirements of this bill and the time necessary to identify and research these populations by running criminal history records, requesting registration documentation from other state registries, gathering court documents (especially, in cases where the crime was committed 20 or 30 years ago), requesting arrest or incident reports, and other documents necessary to ensure that a subject meets the requirements to register as a sexual offender would pose a major additional responsibility for the Registry. In order to properly research and review offenders to determine their registration requirements in our state, the FORTS will need (5) GA I positions to process, research, and quality control the increased workload as well as supporting law enforcement, state attorneys, and the courts in prosecuting case for failure of a sexual offender/predator to register.

The Registration Information and Research Section of FORTS would need (3) GA I's to conduct the research necessary to ensure an individual's registration requirements by requesting court documents from Florida courts or courts from another jurisdiction to obtain the sentence/judgment, arrest or incident reports, contact other state registries to acquire registration documentation (if registered in another state or jurisdiction), corrections departments in Florida or another state, including probation/parole offices and states attorneys or prosecutors in Florida and in other jurisdictions. This research is necessary to ensure that FDLE is acting in good faith in verifying that an individual meets the requirements to register as a sexual offender. These GA's will also conduct the same quality assurance checks to research and review those individuals who are granted relief from registration as outlined in this bill under the juvenile and youthful sexual offender and sexual predator registration exceptions. This review will ensure that those individuals granted relief from registration under this provision meet the requirements of this provision and/or the requirements of the federal Adam Walsh Child Protection Act and are updated in the Registry and all related systems appropriately.

The Registration & Compliance Unit of FORTS will need (1) GA I to assist in researching incoming registrants provided by the Florida Department of Corrections and by registration with a local sheriff's office or police department. Currently, the Florida Registry adds, an average, 218 sexual offenders to the Registry on a monthly basis. Processing these offenders requires researching the criminal history of the individual, requesting/review of court documents, and following up with the Florida Department of Corrections, local law enforcement, and other state registries to ensure the offender

meets the requirements to register as a sexual offender under Florida's laws as well as notification to all related criminal justice agencies.

The Registration, Tracking & System Development Unit of FORTS will need (1) GA I to conduct quality control measures within the sexual offender database and working with the Information Resource Management programming staff in assisting with developing, testing, and implementing database changes.

Programming funding is necessary to hire contract programming staff to complete the 580 hours of programming and testing necessary to implement the requirements of this bill. FDLE recommends the effective date of this bill be moved to April 30, 2012 to allow time to complete previous legislatively mandated enhancements, to advertise, interview, hire and train the new programmer to perform the work, test and implement the system, and conduct a knowledge transfer.

Total Costs: $43,500 for programming costs + $2,000 for equipment = Total Estimate $45,500

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may impact local jails in that it creates new misdemeanor offenses related to sexting.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. FDLE stated in its analysis of this bill that they believe Section 5 of the bill (creating s. 943.04355, F.S., - entitled "Juvenile and youthful sex offender and predator registration; exceptions") will violate

the provisions of the federal Adam Walsh Child Protection and Safety Act by allowing relief from registration for individuals who are not eligible for relief or removal according to the provisions of the Adam Walsh Act and Florida's Sexual Offender/Predator Registration laws, ss 775.21 and 943.0435, F.S. FDLE states that this may jeopardize Florida's current status as being in substantial compliance with the federal Adam Walsh Act and could suffer a loss of federal Byrne Grant funds.

2. In its analysis of the bill, FDLE suggested that language be added to the definition of "Internet identifier" to prevent sexual offenders and predators from using his or her date of birth, social security number, or personal identification number as an Internet identifier to avoid the obligation to report the use of the Internet identifier. FDLE suggested the following language:

   > "Voluntary disclosure by the offender of his or her date of birth, social security number, or personal identification number (PIN) as an Internet identifier waives the disclosure exemption for such personal information."

3. The bill's requirement that sexual offenders notify the sheriff's office within 21 days before the planned departure for international travel or relocation is only in s. 943.0435, F.S., and thus only applies to sexual offenders, and not to sexual predators. This provision would need to be added to s. 775.21, F.S., to apply to sexual predators. Additionally, FDLE suggests that the bill be amended to require the offender to provide "travel and immigration documents" during registration in order to comply with federal law.

4. FDLE provided the following comments regarding the bill's provisions that expand the number of people required to register as a sexual offender or predator:

   By extending the definition of "sexual offender" to include an offender serving a sanction on or after 10/1/2011, for any felony conviction or similar offense in another jurisdiction and who has a prior qualifying sexual conviction, the language would impose retroactivity of Florida's sexual offender registration requirements first enacted on 10/1/1997. The application of retroactivity of Florida's sexual offender registration laws could create complications for the Florida Registry and the law enforcement community to implement.

   a. As written, the retroactivity language may dramatically increase the volume of registrants added to the Florida Registry. FDLE could anticipate an initial 2,200 new offenders being added to the FDLE Sexual Offender database. Each one of these new offenders will need to be researched to verify they meet the criteria for sexual offender registration. The research of each of these new offenders will require obtaining court documentation, arrest reports, and probation information for those offenders who committed their crime in Florida and those in another state or jurisdiction.

   b. It should be noted that in the federal Sex Offender Sentencing, Monitoring, Apprehending, Registration and Tracking (SMART) Office with the United States Department of Justice, detailed description of Florida's Substantial Implementation of the federal Adam Walsh Child Protection and Safety Act, the SMART Office noted regarding the requirement for Retroactivity:

      > Florida meets SORNA requirements with respect to the retroactive registration of offenders, with one exception: Florida does not re-capture offenders who simply re-enter the system with a new non-sex offense. Because of Florida's long standing lifetime registration requirement for all registered offenders, the number of offenders who would evade re-capture under this exception does not substantially disserve the purposes of this SORNA requirements."

   c. As written, the retroactivity language may dramatically increase the volume of sexual offenders required to register at a Florida Sheriff's Office and DHSMV, thus, creating a significant increased workload for these agencies to register and conduct address verifications.

d. As written, the retroactivity language places additional responsibilities on the judicial system to obtain the conviction and other case information for the qualifying sexual offense to prove that an individual has a conviction for a qualifying sexual offense and is now required to register as a sexual offender. In many states, conviction information is purged after 10 years from the date of the conviction. This could be difficult to obtain on cases that were terminated 20 or 30 years ago. The fact that a person has an arrest and conviction listed in the individual's criminal history record is not necessarily proof that a person has a conviction for a qualifying sex crime that would require registration. The court documentation proving a conviction for a qualifying sex crime is necessary to determine the individual's requirement to register as a sexual offender.

e. As written, the retroactivity language also places additional requirements on the State Attorney's Office to have to argue the requirements of a person to register as a sexual offender for those cases terminated many years ago when the sexual offender registration laws were not in effect. Any case where there was a plea agreement to plea guilty to a crime that now, due to the new felony conviction, will require sexual offender registration, may increase the number of individuals filing court action to seek to have the original sex conviction set aside.

f. As written, the retroactivity language impacts those local city/county residency ordinances that restrict/prohibit where sexual offenders/predators can live. Many of the city/county ordinances are written based on the date of conviction or the date released from the sanction imposed for the qualifying sex offense that requires sexual offender/predator registration. The majority of these offenders now required to register retroactively may have convictions that pre-date the city/county ordinances, thus, offenders/predators may be allowed to live near schools, parks, playgrounds or where children congregate.

g. As written, the retroactivity language does not address circumstances where an individual originally required to register as a sexual offender but granted relief from registration by an application of the law or by court order/written finding, such as in a Romeo and Juliet type case or who received a pardon by the Governor, who now has a new felony conviction and is serving sanctions for this offense on or after 10/1/2011.

5. FDLE recommends extending the effective date of the bill to April 30, 2012, to provide time to implement the bill's provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sexual offenders and predators; amending s. 775.21, F.S.; replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; conforming provisions; providing that a sexual predator is not in violation of specified reporting provisions if he or she reports an address or location change to the local sheriff's office within a specified period of such change with proof that he or she also promptly reported such information to the Department of Highway Safety and Motor Vehicles; creating s. 847.0141, F.S.; prohibiting a minor's use of an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors; providing penalties; prohibiting a minor's intentional or knowing possession of a visual depiction of another minor that depicts nudity and is harmful to minors; providing an exception; providing penalties; providing duties for law enforcement officers; providing for prosecution of a minor under other provisions; amending s. 943.0435, F.S.; revising the definition of the term "sexual offender" to include additional offenses and persons released for sanctions for certain offenses after a specified date; replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; conforming provisions; providing that a sexual offender is not in violation of specified reporting

provisions if he or she reports an address or location change to the local sheriff's office within a specified period of such change with proof that he or she also promptly reported such information to the Department of Highway Safety and Motor Vehicles; providing additional requirements for offenders intending to reside outside of the United States; amending s. 943.04351, F.S.; requiring a specified national search of registration information regarding sexual predators and sexual offenders prior to appointment or employment of persons by state agencies and governmental subdivisions; creating s. 943.04355, F.S.; allowing persons required to register as sexual offenders or sexual predators who were under a specified age when they committed the act giving rise to the requirements to petition for the removal of the obligation for registration or for an exemption from community and public notification; providing eligibility requirements; providing duties of state attorneys; providing requirements for a subsequent petition if a petition is denied; providing a definition; providing duties for the Department of Law Enforcement if a petition is granted; providing for an order for nonpublic registration for a juvenile sexual offender at any time if certain conditions are met; providing for revocation of such an order for nonpublic registration; amending s. 943.0437, F.S.; replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; conforming provisions; amending ss. 944.606

and 944.607, F.S.; revising the definition of the term "sexual offender" to include additional offenses and persons released for sanctions for certain offenses after a specified date; replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; conforming provisions; amending s. 947.005, F.S.; revising the definition of the term "risk assessment"; amending s. 948.31, F.S.; providing that conditions imposed under that section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for certain offenders; providing severability; providing an effective date.

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

Section 1. Paragraph (i) of subsection (2), paragraphs (a), (e), and (g) of subsection (6), paragraph (a) of subsection (8), and paragraph (a) of subsection (10) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

(i) "Internet identifier ~~Instant message name~~" means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or PIN number ~~an identifier that allows a person to communicate in real time with another person using the Internet~~.

(6) REGISTRATION.—

(a) A sexual predator must register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to subparagraph (g)4.; home telephone number and any cellular telephone number; date and place of any employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel,

or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

b. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections if the sexual predator is in the custody or control of or under the supervision of the Department of Corrections, within 48 hours after any change in status. The sheriff or the Department of Corrections shall promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(e)1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change in the sexual predator's permanent or temporary residence, name, or any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to subparagraph (g)4., after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1., shall be accomplished in the manner provided in paragraphs (g), (i), and (j). When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(g)1. Each time a sexual predator's driver's license or identification card is subject to renewal, and, without regard to the status of the predator's driver's license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver's license office and shall be subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs

and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator is not in violation of this paragraph if he or she reports an address or location change to the local sheriff's office within 48 hours after such change with proof that he or she also promptly reported such information to the Department of Highway Safety and Motor Vehicles.

2. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required under paragraph (a). The sexual predator must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did

vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. A sexual predator must register any electronic mail address or Internet identifier ~~instant message name~~ with the department prior to using such electronic mail address or Internet identifier ~~instant message name on or after October 1, 2007~~. The department shall establish an online system through which sexual predators may securely access and update all electronic mail address and Internet identifier ~~instant message name~~ information.

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections and shall report to the department any failure by a sexual predator to comply with

registration requirements. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections. Local law enforcement agencies shall report to the department any failure by a sexual predator to comply with registration requirements.

(a) A sexual predator must report in person each year during the month of the sexual predator's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The sheriff's office may determine the appropriate times and days for reporting by the sexual predator, which shall be consistent with the reporting requirements of this paragraph. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to subparagraph (6)(g)4.; home telephone number and any cellular telephone number; date and place of any employment; vehicle

make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

2. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status.

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information, electronic mail address information, Internet

identifier ~~instant message name~~ information, home telephone number and any cellular telephone number, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 847.0141, Florida Statutes, is created to read:

847.0141 Unlawful electronic communication between minors; possession of visual depiction of another minor.—

(1) It is unlawful for a minor to intentionally or knowingly use an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself that depicts nudity and is harmful to minors.

(2)(a) It is unlawful for a minor to intentionally or knowingly posses a visual depiction of another minor that depicts nudity and is harmful to minors.

(b) A minor does not violate paragraph (a) if all of the following apply:

1. The minor did not solicit the visual depiction.

2. The minor took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the minor's parent or guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the visual depiction to a third party.

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

(a) Commits a noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order suitable training concerning such offenses and may prohibit the use or possession of electronic devices, which may include, but are not limited to, cellular telephones, cameras, computers, or other electronic media devices. The court shall order the confiscation of such unlawful material and authorize the law enforcement agency in which the material is held to destroy the unlawful material.

(b) Commits a misdemeanor of the second degree for a violation that occurs after being found to have committed a noncriminal violation under paragraph (a), punishable as provided in s. 775.082 or s. 775.083. The court must order suitable training concerning such offenses and prohibit the use or possession of electronic communication devices, which may include, but are not limited to, cellular telephones, cameras, computers, or other electronic media devices. The court shall order the confiscation of such unlawful material and authorize the law enforcement agency in which the material is held to destroy the unlawful material.

(c) Commits a misdemeanor of the first degree for a violation that occurs after being found to have committed a misdemeanor of the second degree under paragraph (b), punishable as provided in s. 775.082 or s. 775.083. The court must order

suitable training concerning such offenses or, if ordered by the court in lieu of training, counseling and prohibit the use or possession of electronic devices, which may include, but are not limited to, cellular telephones, cameras, computers, or other electronic media devices. The court shall order confiscation of such unlawful material and authorize the law enforcement agency in which the material is held to destroy the unlawful material.

(d) Commits a felony of the third degree for a violation that occurs after being found to have committed a misdemeanor of the first degree under paragraph (c), punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The court must order a mental health evaluation by a qualified practitioner, as defined in s. 948.001, and treatment, if recommended by the practitioner. The court shall order confiscation of such unlawful material and authorize the law enforcement agency in which the material is held to destroy the unlawful material.

(4) Whenever any law enforcement officer arrests any person charged with any offense under this section, the officer shall seize the prohibited material and take the material into his or her custody to await the sentence of the court upon the trial of the offender.

(5) This section does not prohibit the prosecution of a minor for a violation of any law of this state if the electronic communication 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 3. Paragraphs (a) and (g) of subsection (1), subsection (2), paragraphs (a) and (d) of subsection (4),

subsection (7), and paragraph (c) of subsection (14) of section 943.0435, Florida Statutes, are amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(a)1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., ~~or~~ sub-subparagraph d., or sub-subparagraph e., as follows:

a.(I) 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. 826.04 where the victim is a minor and the defendant is 18 years of age or older; 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 sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine,

probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense 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; <u>s. 826.04 where the victim is a minor and the defendant is 18 years of age or older;</u> 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 sub-subparagraph; ~~or~~

d. On or after July 1, 2007, has been adjudicated delinquent for 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 when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(b) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals; or

e. Has been released on or after October 1, 2011, from any sanction imposed for any felony conviction or similar offense in another jurisdiction, and:

(I) 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. 826.04 where the victim is a minor and the defendant is 18 years of age or older; 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 sub-sub-subparagraph; or

(II) Has been adjudicated delinquent for 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 when the juvenile was 14 years of age or older at the time of the offense:

(A) Section 794.011, excluding s. 794.011(10);

(B) Section 800.04(4)(b) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(C) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or

(D) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

For purposes of this sub-subparagraph, a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

2. For all qualifying offenses listed in sub-subparagraph (1)(a)1.d., the court shall make a written finding of the age of

the offender at the time of the offense.

For each violation of a qualifying offense listed in this subsection, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall additionally make a written finding indicating that the offense did or did not involve sexual activity and indicating that the offense did or did not involve force or coercion. For a violation of s. 800.04(5), the court shall additionally make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

(g) "Internet identifier ~~Instant message name~~" has the same meaning as provided in s. 775.21 ~~means an identifier that allows a person to communicate in real time with another person using the Internet~~.

(2) A sexual offender shall:

(a) Report in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for

registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence, name, any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to paragraph (4)(d), after the sexual offender reports in person at the sheriff's office, shall be accomplished in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; occupation and place of employment; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; home telephone number and any cellular telephone number; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to paragraph (4)(d); date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a

physical residential address.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department through the sheriff's office the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, within 48 hours after any change in status. The sheriff shall promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status.

When a sexual offender reports at the sheriff's office, the

sheriff shall take a photograph and a set of fingerprints of the offender and forward the photographs and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)(a) Each time a sexual offender's driver's license or identification card is subject to renewal, and, without regard to the status of the offender's driver's license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process, the offender shall report in person to a driver's license office, and shall be subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. A sexual offender is not in violation of this paragraph if he or she reports an address or location change to the local sheriff's office within 48 hours after such change with proof that he or she also promptly reported such information to the Department of Highway Safety and Motor Vehicles.

(d) A sexual offender must register any electronic mail

address or Internet identifier ~~instant message name~~ with the department prior to using such electronic mail address or Internet identifier ~~instant message name on or after October 1, 2007~~. The department shall establish an online system through which sexual offenders may securely access and update all electronic mail address and Internet identifier ~~instant message name~~ information.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or within 21 days before his or her planned departure date if the intended residence of 7 days or more is outside of the United States. The notification must include the address, municipality, county, ~~and~~ state, and country of intended residence. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(14)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which shall be consistent with the reporting requirements of this

subsection. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to paragraph (4)(d); home telephone number and any cellular telephone number; date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme,

of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, or who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence or who fails to report electronic mail addresses or Internet identifiers ~~instant message names~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 943.04351, Florida Statutes, is amended to read:

943.04351 Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.—A state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043. The agency or governmental subdivision may conduct

the search using the Internet site maintained by the Department of Law Enforcement. Also, a national search must be conducted through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice. This section does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

Section 5. Section 943.04355, Florida Statutes, is created to read:

943.04355 Juvenile and youthful sex offender and predator registration; exceptions.—

(1) If a person obligated to register as a sexual offender or sexual predator was less than 22 years of age at the time he or she committed the act or acts giving rise to the requirement to register as such, he or she may petition the criminal division of the circuit court of the circuit in which he or she resides for the purpose of the removal of the registration obligation or for an exemption from community and public notification.

(2) To be eligible for removal from the obligation to register as a sexual offender or sexual predator, the petitioner must show by clear and convincing evidence that all of the following criteria have been met:

(a) The requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or sexual predator or required to be met as a condition for the receipt of

federal funds by the state and that the removal of the registration obligation requirement will not otherwise conflict with federal law.

(b) The petitioner was less than 22 years of age when he or she committed the sex offense subjecting him or her to the obligation to registration.

(c) The circumstances surrounding the crime requiring registration did not involve a child less than 13 years of age while the offender was 18 years of age or older but less than 22 years of age.

(d) The petitioner demonstrates to the satisfaction of the court that he or she does not pose a risk or danger to the community.

(e) The petitioner has not been arrested for any crime since being released from the sanctions relevant to the qualifying offense requiring registration.

(f) The petitioner has participated in and satisfactorily completed a sexual offender treatment program obtained from a qualified practitioner as defined in s. 948.001.

(g) The petitioner has paid restitution to either the victim or crimes compensation trust fund, if applicable.

(h) The petitioner successfully completed the terms of supervision and substantially complied with registration requirements.

(i) The petitioner is not required to register as a sexual offender or sexual predator in another state or jurisdiction as a result of committing a sexual offense in a jurisdiction outside of this state.

(3)(a) The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. As soon as practicable after a petition has been filed under this section, the state attorney shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section. Also, the state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender or sexual predator may again petition the court for relief, subject to the standards for relief provided in this section. A subsequent petition for relief may not be submitted under this section unless a future date for eligibility to file such a petition is set by the court. The court shall order removal of the sexual offender or sexual predator from classification as a sexual offender or sexual predator for the purpose of registration if the petition is granted. The court may also grant the petition, in part, and order nonpublic registration.

(b) For the purpose of this section, the term "nonpublic registration" means an exemption from community and public notification. The offender or predator is still obligated to report in person and register with the local sheriff's office and the Department of Highway Safety and Motor Vehicles pursuant to s. 775.21 and s. 943.0435. The offender's or predator's registration information will not be visible on the public registry, but it will continue to be updated; however, the

information will only be available for use by law enforcement agencies for investigative purposes.

(4) The department shall remove an offender or predator from classification as a sexual offender or sexual predator for purposes of registration if he or she provides the department with a certified copy of the court's written findings or order that indicates that he or she is no longer required to comply with the requirements for registration as a sexual offender or sexual predator. If the sexual offender or sexual predator is granted nonpublic registration or a court order or findings exempting him or her from community and public notification, the department must promptly remove the offender's or predator's registration information from the public registry of sexual offenders and sexual predators maintained by the department. However, the removal of this information from the public registry of sexual offenders and sexual predators shall not prevent public access to information about the person's criminal history or record that is otherwise available as a public record.

(5) The court may order nonpublic registration for a juvenile sexual offender as defined in s. 985.475 at any time if he or she has completed a juvenile sexual offender commitment program or if the court is satisfied that he or she is not a current or potential threat to public safety. The court may revoke a nonpublic registration order made under this subsection for any reason.

Section 6. Subsection (2) and paragraph (a) of subsection (3) of section 943.0437, Florida Statutes, are amended to read:

943.0437 Commercial social networking websites.—

(2) The department may provide information relating to electronic mail addresses and Internet identifiers ~~instant message names~~ maintained as part of the sexual offender registry to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers ~~instant message names~~ provided by the department.

(3) This section shall not be construed to impose any civil liability on a commercial social networking website for:

(a) Any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or Internet identifier ~~instant message name~~ contained in the sexual offender registry.

Section 7. Paragraphs (b) and (d) of subsection (1) and paragraph (a) of subsection (3) of section 944.606, Florida Statutes, are amended to read:

944.606 Sexual offenders; notification upon release.—

(1) As used in this section:

(b) "Sexual offender" means 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. 826.04 where the victim is a minor and the defendant is 18 years of age or older; 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, when the department has received verified information regarding such conviction; an offender's computerized criminal history record is not, in and of itself, verified information.

(d) "Internet identifier ~~Instant message name~~" has the same meaning as provided in s. 775.21 ~~means an identifier that allows a person to communicate in real time with another person using the Internet~~.

(3)(a) The department must provide information regarding any sexual offender who is being released after serving a period of incarceration for any offense, as follows:

1. The department must provide: the sexual offender's name, any change in the offender's name by reason of marriage or other legal process, and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description,

and dates of any known future temporary residence within the state or out of state; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to s. 943.0435(4)(d); and home telephone number and any cellular telephone number. The department shall notify the Department of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and provide this photograph to the Department of Corrections and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this paragraph and any information specified in subparagraph 2. that the Department of Law Enforcement requests.

2. The department may provide any other information deemed necessary, including criminal and corrections records, nonprivileged personnel and treatment records, when available.

Section 8. Paragraphs (a) and (f) of subsection (1), paragraph (a) of subsection (4), and paragraph (c) of subsection

(13) of section 944.607, Florida Statutes, are amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(a) "Sexual offender" means a person who is in the custody or control of, or under the supervision of, the department or is in the custody of a private correctional facility:

1. On or after October 1, 1997, as a result of a conviction for 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. 826.04 where the victim is a minor and the defendant is 18 years of age or older; 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 subparagraph ~~paragraph~~; ~~or~~

2. On or after October 1, 2011, as a result of committing any felony, if the offender has a prior conviction for 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. 826.04 where the victim is a minor and the defendant is 18 years of age or older; 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 subparagraph; or

3.~~2.~~ Who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard as to whether the person otherwise meets the criteria for registration as a sexual offender.

(f) "Internet identifier ~~Instant message name~~" has the same meaning as provided in s. 775.21 ~~means an identifier that allows a person to communicate in real time with another person using the Internet~~.

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated must register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to s. 943.0435(4)(d); permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(13)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which shall be consistent with the reporting requirements of this subsection. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or

temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any Internet identifier ~~instant message name~~ required to be provided pursuant to s. 943.0435(4)(d); date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as

required at the sheriff's office, or who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, or who fails to report electronic mail addresses or Internet identifiers ~~instant message names~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 9. Subsection (11) of section 947.005, Florida Statutes, is amended to read:

947.005 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

(11) "Risk assessment" means an assessment completed by a ~~an independent~~ qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

Section 10. Section 948.31, Florida Statutes, is amended to read:

948.31 Evaluation and treatment of sexual predators and offenders on probation or community control.—Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section. The court shall require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that a need therefor is established by the evaluation process, the court shall require sexual offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator under s. 775.21 or sexual offender under s. 943.0435, s. 944.606, or s.

944.607. Such treatment shall be required to be obtained from a qualified practitioner as defined in s. 948.001. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I). The court shall impose a restriction against contact with minors if sexual offender treatment is recommended. The evaluation and recommendations for treatment of the probationer or community controllee shall be provided to the court for review.

Section 11. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 12. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1279 Costs of Prosecution
SPONSOR(S): Kreegel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1508

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

Clerks of the circuit court (clerk) must establish and maintain a system of accounts receivable for court-related fees, charges, and costs. The clerk is responsible for collecting these funds in addition to the costs of prosecution. When a partial payment is collected, the clerk distributes these funds in a specific priority, with each tier being paid in full before moving down the list.

HB 1279 requires that when partial payments are received by the clerk of court, the costs of prosecution will be remitted to the State Attorneys Revenue Trust Fund in the top priority tier which presently is limited to the General Revenue Fund of the state.

The bill makes defendants liable for payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court for the successful completion of a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

The bill adds "costs of prosecution" to the list of:

- Items the clerk may refer to a private attorney or collection agent.
- Costs a clerk is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.
- The costs of prosecution to be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill appears to have a positive fiscal impact on state attorneys and a negative fiscal impact on the state, the clerk of court, and public defenders.

This bill is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prosecution Costs

Section 938.27, F.S., provides that costs of prosecution may be imposed at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases unless the prosecutor proves that costs are higher in the particular case before the court.[1] The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.[2]

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.[3] Conviction, for this purpose, includes 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]

Certain defendants facing conviction may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention[5] or treatment-based drug court.[6] Defendants who successfully complete these programs have the charges against them dismissed by the court.[7] Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution.

Effect of the Bill

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

Distribution of Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.[8] The clerk may enter into a payment plan[9] when an individual is determined to be indigent for costs by the court.[10]

When partial payments are received as part of a payment plan, the clerks distribute the funds in a specific priority, with each tier being paid in full before moving down the list. The received portion of fees, service charges, court costs, and fines are remitted in the following order:

1) The state for deposit into the General Revenue Fund.

2) The clerk of court or the Clerks of the Court Trust Fund within the Justice Administrative Commission.[11]

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[1] Section 938.27(8), F.S.
[2] *Id.*
[3] Section 938.27(1), F.S.
[4] *Id.*
[5] Sections 948.16 and 948.08(6), F.S., respectively.
[6] Section 948.08(6), F.S. *See* s. 397.334, F.S.
[7] Sections 948.16(2) and 948.08(6)(c), F.S.
[8] Section 28.246(4), F.S.
[9] A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12.
[10] *Id.*
[11] Section 213.131, F.S.

3) Various state trust funds including the State Attorneys Revenue Trust Fund and the Indigent Criminal Defense Trust Fund for public defenders.[12,13]

4) Counties and municipalities, or other local entities.[14,15]

Accounts unpaid after 90 days are referred to a private attorney[16] or a collection agent[17] to collect any remaining fees, charges, fines, court costs,[18] and liens for the payment of defense attorney's fees and costs.[19]

Effect of the Bill
The bill requires that the portion of costs of prosecution be remitted to the State Attorneys Revenue Trust Fund in the top priority tier.

The bill adds "costs of prosecution" to the list of unpaid fees, charges, fines, and costs that can be referred to a private attorney or collection agent for collection.

Costs Converted into Community Service
Section 938.30(2), F.S., authorizes a judge to convert any statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.

In FY 09-10, $8,610,731in court-related fees, charges, costs, fines, and other monetary penalties were converted into community service under s. 938.30, F.S.[20]

Effect of the Bill
Notwithstanding any other provision or law, court rule, or administrative order, the bill requires the court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.

Cash Bonds
Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent[21] to pay the following:

- Court fees,
- Court costs, and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

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[12] Section 27.525, F.S., to be used for the purposes of indigent criminal defense as appropriated by the Legislature to the public defender or the office of criminal conflict and civil regional counsel.
[13] If the total collection amount is insufficient to fully pay all the entities within this payment distribution tier, the funds are distributed on a pro rata basis. Section 28.246(5), F.S.
[14] *Id.*
[15] Section 28.246(5), F.S.
[16] The private attorney must be a member in good standing of The Florida Bar. Section 28.246(6), F.S.
[17] The collection agent must be registered and in good standing pursuant to ch. 559, F.S. Section 28.246(6), F.S.
[18] Pursuant to s. 938.29, F.S.
[19] Section 28.246(6), F.S.
[20] "PAYMENT OF COURT-RELATED FEES, CHARGES, COSTS, FINES and OTHER MONETARY PENALTIES, Section 28.246(1), Florida Statutes ANNUAL REPORT." The Florida Association of Court Clerks and Comptrollers. FISCAL YEAR: October 1, 2009 to September 30, 2010.
[21] Licensed pursuant to ch. 648, F.S.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Effect of the Bill
The bill adds the "costs of prosecution" to the list of costs:

- A clerk is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent.
- A clerk may obtain payment from a defendant or, if sufficient funds are not available, require the defendant to enroll in a payment plan.
- That must be displayed on the notice of all cash bond forms.

Delinquency Cases
Currently juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

Effect of the Bill
The bill requires that costs of prosecution[22] be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

B. SECTION DIRECTORY:

Section 1. Amends s. 28.246, F.S., relating to payment of court-related fees, charges, and costs; partial payments; distribution of funds.

Section 2. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 3. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 4. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 5. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a positive impact on state attorneys for many reasons:

1) Partial payments collected by the clerk of court from defendants on payment plans will be paid to the state attorneys in the first tier priority instead of their previous third tier level. This will result in the state attorney receiving payment faster and before of the clerk of court, an entity it was previously behind.

2) The costs of prosecution will now be able to be collected by private attorneys or collection agents when payment plan accounts remain unpaid for 90 days. This may result in more costs of prosecution being collected and paid to state attorneys.

3) The costs of prosecution and investigation will be prohibited from being converted into court-ordered community service. This may result in more costs of prosecution being collected and paid to state attorneys.

[22] As provided in s. 938.27, F.S.

4) The costs of prosecution are now allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact as the cost of prosecution will be deducted from any cash bonds posted on behalf of a criminal defendant.

5) The costs of prosecution will now be assessed from defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

Partial payments collected by the clerk of court from defendants on payment plans are currently paid first to the state, second to the clerk of court, third to state trust funds, including trust funds for the state attorney and the public defender. By moving the State Attorneys Revenue Trust Fund up to the top tier of the distribution schedule with the state, payments will first be split between the state and the state attorneys. Until those two entities are paid, none of the entities below them will receive funds from the partial payments.

This will have a negative fiscal impact on the state, the clerk of court, and public defenders.

The Association of Court Clerks and Comptrollers states that the conflict between the General Revenue Fund and the State Attorneys Revenue Trust Fund will have an indeterminate negative fiscal impact on the state. In addition, the clerk of court will incur an indeterminate negative fiscal impact as it will now receive funds after the state attorney.[23]

The Florida Public Defender Association states that while 60 percent of collections paid to the Indigent Criminal Defense Trust Fund come from the public defender application fee,[24] this change in the clerk's distribution of partial payments could reduce collections paid to the trust fund by $3 million to as much as $5 million statewide.[25]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution.

The bill prohibits costs of prosecution from being converted into court-ordered community service. Defendants may now be responsible for paying this cost as oppose to working the debt off through community service.

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[23] Phone conversation with Randy Long. Florida Association of Court Clerks and Comptrollers. March 25, 2011.
[24] Section 27.52, F.S.
[25] E-mail from Sheldon Gusky. Florida Public Defender Association, Inc. March 24, 2011. (On file with Criminal Justice Subcommittee staff).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill requires that when partial payments of fees, charges, costs, and fines are received by the clerk of court, costs of prosecution will be remitted to the State Attorneys Revenue Trust Fund in the top priority tier. The top tier is currently occupied by the state with payments deposited into the General Revenue fund.

  Language will need to be added to specify how the portion of fees, charges, costs, and fines will be divided between the two entities. Current language in statute for tiers occupied by two or more entities requires that the portions be:

  "allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law."

- Section 938.27, F.S., is amended to prohibit the costs of prosecution and investigation from being converted into any form of court-ordered community service in lieu of the financial obligation. This change may be more aptly made in s. 938.30, F.S., which provides the court with this kind of discretion.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to costs of prosecution; amending s. 28.246, F.S.; providing for remittance of the costs of prosecution to a specified trust fund; providing for collection of costs of prosecution; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; providing liability for the cost of prosecution for persons whose cases are disposed of under specified provisions; requiring courts to impose the costs of prosecution and investigation; requiring that costs of prosecution and investigation not be converted to any form of court-ordered community service; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 28.246, Florida Statutes, are amended to read:

28.246 Payment of court-related fees, charges, and costs; partial payments; distribution of funds.—

(5) When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds

according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund and that portion of costs of prosecution to be remitted to the State Attorneys Revenue Trust Fund.

(b) That portion of fees, service charges, court costs, and fines which are required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Justice Administrative Commission.

(c) Except as provided in paragraph (a), that portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(26)(b) or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(c).

(6) A clerk of court shall pursue the collection of any fees, service charges, fines, court costs, costs of prosecution, and liens for the payment of attorney's fees and costs pursuant

to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection. The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 2. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid <u>costs of prosecution,</u> court fees, court costs, and criminal penalties. If sufficient funds are not available to pay

all unpaid costs of prosecution, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 3. Subsections (1) and (2) 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 and persons whose cases are disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) 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.

(2)(a) Notwithstanding any other provision of law, court rule, or administrative order, the court shall impose the costs of prosecution and investigation. Costs of prosecution and investigation shall not be converted to any form of court-ordered community service in lieu of this statutory financial obligation.

(b)~~(a)~~ The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(c)~~(b)~~ The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(d)~~(c)~~ If not otherwise provided by the court under this section, costs shall be paid immediately.

Section 4. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.—

(1) For cases arising under this chapter, the state attorney shall represent the state.

(2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

Section 5. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1379 Pretrial Programs
SPONSOR(S): Dorworth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 372

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

SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. The primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process. Generally, pretrial release can be granted in one of three ways – released on one's own recognizance, by posting a bond, or through a pretrial release program.

Pretrial release programs, which are primarily funded by the county, actively supervise approved defendants through phone contacts, visits, electronic monitoring. etc., until the defendant's case is disposed or until the defendant's supervision is revoked. There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible.

The bill creates an unnumbered section of statute entitled "Eligibility criteria for the enrollment of a defendant in a pretrial release program." The bill provides that a defendant is eligible to participate in a pretrial release program only by order of the court after the court finds in writing, upon consideration of the defendant's affidavit of insolvency:

- That the defendant is indigent pursuant to Rule 3.111, Florida Rules of Criminal Procedure; and
- That the defendant has not previously failed to appear at any required court proceeding.

The bill specifies that pretrial release programs are subject to the eligibility criteria outlined above, and that such criteria supersede and preempt all conflicting statutes, local ordinances, orders, or practices.

The bill also requires:

- Pretrial release programs to disclose in writing to each defendant, at the defendant's initial interview, each and every fee that will be assessed for the defendant's supervision.
- That defendants who seek to post a surety bond pursuant to a predetermined bond schedule be permitted to do so without any interference or restriction by a pretrial release program.
- Pretrial release programs to certify annually, in writing to the chief circuit court judge, that the program has complied with the reporting requirements in s. 907.043(4), F.S.

The bill may have a fiscal impact on local government and is effective October 1, 2011. See "Fiscal Comments."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Release
Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[1] Pretrial release is a constitutional right for most people arrested for a crime.[2] The primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process.[3]

Presumption in Favor of Non-Monetary Release
The Legislature has established a presumption in favor of pretrial release on *nonmonetary conditions*. Section 907.041(3)(a), F.S., provides the following:

> It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in subsection (4).[4] Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

Types of Pretrial Release
Generally, pretrial release can be granted in one of the following three ways:[5]

Release on Own Recognizance
Release on own recognizance allows defendants to be released from jail based on their promise to return for mandatory court appearances.[6] Defendants released on recognizance are not required to post a bond and are not supervised.

Bond
Posting bond is a monetary requirement to ensure that defendants appear in court when required. A defendant whom the court approves for this release must post a cash bond to the court or arrange for a surety bond through a private bondsman. Defendants typically pay a nonrefundable fee to the bondsman of 10% of the bond required by the court for release. If the defendant does not appear, the bondsman is responsible for paying the entire amount. As such, bondsmen have a vested interest in ensuring that their clients attend their court dates and do not abscond. Bondsmen are not required to supervise a defendant.

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[1] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.
[2] Article I, Section 14, of the Florida Constitution provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.
[3] *Id. See also*, section 907.041(1), F.S.
[4] Section 907.041(4), F.S., defines the term "dangerous crime" to include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking or aggravated stalking; act of domestic violence; home invasion robbery; act of terrorism; manufacturing any substances in violation of ch. 893; and attempting or conspiring to commit any of the aforementioned crimes.
[5] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.
[6] Some defendants can also be released at the time of arrest with a notice to appear in court.

Pretrial Release Programs

Pretrial release programs[7] actively supervise approved defendants. The programs do so through phone contacts, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Defendants can be released into a pretrial release program with or without paying a bond.[8] Defendants may be assigned to the program by a judge or selected for participation by the program.

There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible for its pretrial release program. However, prior to a defendant being released to a pretrial release program, the program must certify to the court that it has investigated or otherwise verified:

- The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
- The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
- Other facts necessary to assist the court in its determination of the indigency of the accused and whether the accused should be released under the supervision of the program.[9]

According to a January 2010, report by the Office of Program Policy Analysis and Government Accountability (OPPAGA), Florida has 28 pretrial release programs, which are administered on a county basis by sheriffs, jails, or county government divisions. Pretrial release programs are primarily funded by the county and by fees charged to defendants who participate in the program.[10]

Pretrial Release Programs in Florida

There are currently 28 county pretrial release programs in Florida.[11] Section 907.044, F.S., requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct annual studies to evaluate the effectiveness and cost efficiency of pretrial release programs in the state. The county pretrial release programs are required to submit annual reports to OPPAGA by March 31 of every year which OPPAGA uses to gather the data for OPPAGA's annual evaluation of the programs. The OPPAGA report issued in December of 2010[12] analyzed the programs' performance for the 2009 calendar year and answered four primary questions.

1. *How are Florida's Pretrial Release Programs Funded?*

None of the 28 county pretrial release programs receive state general revenue funding.[13] The programs are initiated, administrated, and funded at the county government level. The counties that operate these programs determine their budgets, funding sources and the scope of the programs' services.[14]

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[7] Section 907.043(2)(b), F.S., defines the term "pretrial release program" as an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. The term does not apply to any program in the Florida Department of Corrections. *See s.* 907.043(2)(b), F.S.

[8] Judges in 23 of the 28 counties that have pretrial release programs may require defendants to post a bond in addition to participating in a pretrial release program. Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[9] Section 907.041(3)(b), F.S.

[10] Osceola county's pretrial release program is permitted to charge participating defendants a $2.70 fee per day for electronic monitoring, a $4.90 fee per day for GPS, a $4.75 fee for an alcohol monitoring device, a $30.80 fee for a drug test, and a $13.20 fee for an alcohol test. *See* "Osceola County Corrections Department Proposed Legislation Impact Analysis" for House Bill 445.

[11] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[12] Five of the 28 programs have sought and received grant funding. *Id.*

[13] *Id.*

[14] *Id.*

Twelve programs charge fees to defendants participating in the program. Two of those counties (Leon and Palm Beach) require payment of cost of supervision which is used to help pay for the pretrial release programs. Some counties collect fees for urinalysis, electronic monitoring, GPS monitoring or telephone monitoring. These fees and costs are paid to vendors such as laboratories or other service providers and some portion of the funds may be deposited as county general revenue.[15]

2. *What is the nature of the criminal charges of defendants in pretrial release programs?*

Section 907.044, F.S., requires OPPAGA to report data regarding the nature of the criminal charges of defendants in county pretrial programs. However, such data is not generally collected by the pretrial programs in either the content or the form that s. 907.044, F.S., requires OPPAGA to analyze.

Section 907.043, F.S., requires that data be gathered and reported on a *weekly* basis by the pretrial release programs in a register held in the office of the local clerk of the circuit court. Section 907.043(3)(b)6., F.S., requires weekly program reporting of "*the charges* filed against and the case numbers of defendants accepted into the pretrial release program."

Subsection (4) of s. 907.043, F.S., which contains the *annual* reporting requirements to OPPAGA by the programs, does not contain a component that is similar to either the weekly component or the component OPPAGA must analyze.[16]

Due to the dissimilarity in reporting requirements, OPPAGA has only been able to report on seven county programs regarding this particular measure. Of those seven, one county reported that approximately 70 percent of its participants had prior violent felonies. The other six counties reported a much larger number of participants with no prior violent felonies.[17]

3. *How many defendants served by pretrial release programs were issued warrants for failing to appear in court or were arrested while in the program?*

Two counties reported that no warrants were issued for defendants participating in their programs for failure to appear in court. At the other end of the spectrum, Miami-Dade reported that of 16,342 participants, 1,861 (11.4%) had warrants issued for their failure to appear.[18]

It should be noted that because of the ambiguity in the statutory language, persons who were arrested for failure to appear might be counted in both of the two categories this question is meant to analyze: a warrant may have been issued for failure to appear *and* the person may have been *arrested* on that warrant for failure to appear.

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[15] *Id.*

[16] Section 907.043(4)(b), F.S. requires the following:
1. The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program. 2. The operating and capital budget of each pretrial release program receiving public funds. 3. The percentage of the pretrial release program"s total budget representing receipt of public funds; the percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program; the amount of fees paid by defendants to the pretrial release program. 4. The number of persons employed by the pretrial release program. 5. The number of defendants assessed and interviewed for pretrial release. 6. The number of defendants recommended for pretrial release. 7. The number of defendants for whom the pretrial release program recommended against nonsecured release. 8. The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release. 9. The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court. 10. The name and case number of each person granted nonsecured release who: failed to attend a scheduled court appearance; was issued a warrant for failing to appear; was arrested for any offense while on release through the pretrial release program; and any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

[17] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[18] *Id.*

4. *Are pretrial release programs complying with statutory reporting requirements?*

Due to the ambiguous and problematic statutory language (discussed above), OPPAGA has had challenges collecting the data that Office needs to complete a thorough analysis as to whether pretrial programs are complying with statutory reporting requirements.

All of the data elements do not apply to all of the pretrial programs. There is variation among the county pretrial programs in areas such as whether the program selects its participants, whether the program makes release recommendations to the court, or even whether pretrial services personnel attend First Appearance. Therefore, data elements like "the number of defendants recommended for pretrial release"[19] simply may not have a response.

Another problem encountered in the reporting process has been the restrictions by federal law on public access to national criminal history records and the Florida Department of Law Enforcement's (FDLE) determination that the statute cannot authorize the dissemination of that information. This restriction resulted in most programs not providing the criminal history information required by s. 907.043(3)(b)7., F.S.[20]

OPPAGA's latest report suggests statutory revisions that should lead to better data reporting and analysis. OPPAGA also noted that they could not determine whether pretrial programs are more effective than other forms of pretrial release (bond and ROR) as there is no comparative statewide data on the outcomes of those release mechanisms.[21]

Determination of Indigency

In Florida, a person who is arrested and before the court at First Appearance is likely to have the public defender appointed to represent him or her, if only temporarily for the purposes of the First Appearance hearing, unless the arrest is on a minor misdemeanor offense which is unlikely to result in a loss of liberty.

With the defendant placed under oath, a court generally inquires about whether the defendant can afford to hire a lawyer, and may question the defendant regarding employment and property ownership. If the court is satisfied that the defendant is most likely indigent based upon the answers given, an application seeking appointment of the public defender is signed by the defendant at that time. Some jurisdictions may complete the application process in a different manner, but if the defendant is incarcerated it is the responsibility of the public defender to assist the defendant in the application process.[22]

The application seeking appointment of the public defender is submitted to the clerk of the court, with a $50 application fee, for verification of the information required in the application.[23] The clerk also considers the following:

- A person is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans" benefits, or Supplemental Security Income (SSI).
- There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of $2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding $5,000.

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[19] Section 907.043(4)(b)6., F.S.

[20] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[21] *Id.*

[22] Section 27.52(1), F.S.

[23] Section 27.52(1)(a), F.S.

- The clerk conducts a review of the property records for the county in which the applicant resides and the motor vehicle title records of the state to identify any property interests of the applicant.[24]

The clerk then determines whether the applicant is indigent or not indigent. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk by Florida Statute.[25]

As previously mentioned, if the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a public defender, most likely at First Appearance or possibly Arraignment, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender, the office of criminal conflict and civil regional counsel, or private counsel on an interim basis.[26]

The Florida Rules of Criminal Procedure define indigency and set forth the procedures the court must follow in appointing counsel to represent the indigent.

> "Indigent" shall mean a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; "partially indigent" shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.
>
> Before appointing a public defender, the court shall: (A) inform the accused that, if the public defender or other counsel is appointed, a lien for the services rendered by counsel may be imposed as provided by law; (B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established by section 27.52, Florida Statutes. The accused shall respond to the inquiry under oath; (C) require the accused to execute an affidavit of insolvency as required by section 27.52, Florida Statutes.[27]

Indigency is not a requirement for participation in Florida's pretrial release programs.

Effect of the Bill

As noted above, there are currently no pretrial release program eligibility criteria in the Florida Statutes. Instead, each county develops its own criteria for determining who is eligible for its pretrial release program. The bill creates an unnumbered section of statute entitled "Eligibility criteria for the enrollment of a defendant in a pretrial release program." The bill provides that it is the policy of this state that:

- Only defendants who are indigent and who qualify for the services of a public defender are eligible to participate in a pretrial release program.
- To the greatest extent possible, the resources of the private sector be used to assist in the pretrial release of defendants.

The bill provides that it is the intent of the Legislature that the bill's provisions not be interpreted to limit the discretion of courts with respect to imposing reasonable conditions for pretrial release on a defendant.

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[24] Section 27.52(2)(a), F.S.
[25] Section 27.52(2)(d), F.S.
[26] Section 27.52(3), F.S.
[27] Rule 3.111(b)(4)-(5), Fla. R. Crim. Proc.

The bill provides that a defendant is eligible to participate in a pretrial release program only by order of the court after the court finds in writing, upon consideration of the defendant's affidavit of insolvency:

- That the defendant is indigent pursuant to Rule 3.111, Florida Rules of Criminal Procedure; and
- That the defendant has not previously failed to appear at any required court proceeding.

The bill specifies that pretrial release programs[28] are subject to the eligibility criteria outlined above, and that such criteria supersede and preempt all conflicting statutes, local ordinances, orders, or practices.

The bill also requires:

- Pretrial release programs to disclose in writing to each defendant, at the defendant's initial interview, each and every fee that will be assessed for the defendant's supervision.
- That defendants who seek to post a surety bond pursuant to a predetermined bond schedule be permitted to do so without any interference or restriction by a pretrial release program.
- Pretrial release programs to certify annually, in writing to the chief circuit court judge, that the program has complied with the reporting requirements in s. 907.043(4), F.S.

The bill specifies that the above provisions do not prohibit a court from:

- Releasing a defendant on the defendant's own recognizance; or
- Imposing upon the defendant any reasonable condition of release, including, but not limited to, electronic monitoring, drug testing, substance abuse treatment, and domestic violence counseling.

The bill provides that in lieu of using a governmental program to ensure the court appearance of a defendant, a county may reimburse a licensed surety agent for the premium costs of surety bail bond that secures the appearance of an indigent defendant at all court proceedings if the court establishes a bail bond amount for the indigent defendant.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute relating to the eligibility criteria for the enrollment of a defendant in a pretrial release program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   This bill has yet to be heard by the Criminal Justice Impact Conference (CJIC). However, on April 15, 2010, CJIC determined that Senate Bill 782 from the 2010 Session, which is similar to this bill, would have an indeterminate prison bed impact on the Department of Corrections. CJIC commented that the state prison bed impact was based on an anticipated increase in the county jail population, which they found was also indeterminate.

[28] The bill includes pretrial release programs established by an ordinance of the county commission, an administrative order of the court, or by any other means in order to assist in the release of defendants from pretrial custody.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Jail Population May Be Impacted

According to OPPAGA, jail population and occupancy rates vary widely throughout the state and there appears to be no correlation between a counties' occupancy rate and whether or not they have a local pretrial release program. The potential impact of this bill on the state's local jail population is difficult to predict in any scientific way or with any measure of certainty because of a multitude of factors.

As a result of this bill, defendants who are ineligible to participate in pretrial release programs will instead have to post a bond to gain pretrial release. Some defendants will have the ability to immediately post a bond. Others may ultimately post a bond, but may spend additional time in jail while accumulating the funds to do so. For these reasons, counties may see an increase in their jail population and need for jail beds. The potential jail impact is indeterminant and highly dependent upon what portion of the non-indigent defendants have the resources to post bond and how long they stay in jail until they are able to make the financial arrangements for their release.

According to the Association of Counties, all of the 28 pretrial release programs in the state serve non-indigent defendants.[29] It can be expected that the greatest impact from this bill may be experienced in the counties that have pretrial programs who admit a large percentage of non-indigents like Okaloosa, Broward and Sarasota.

It is important to note that the Pasco County jail population did not increase after it abolished its pretrial program in February of 2009.[30] Advocates of the bill point to the Pasco County experience as an indicator that this bill will not cause an increase in county jail populations. Despite the Pasco County experience, the counties and some representatives from law enforcement predict that this bill could potentially lead to an indeterminate but significant number of more pretrial detainees remaining incarcerated for longer periods of time in local jails.

This bill has yet to be heard by the Criminal Justice Impact Conference (CJIC). However, on April 15, 2010, CJIC determined that Senate Bill 782 from the 2010 Session, which is similar to this bill, would have an indeterminate prison bed impact on the Department of Corrections. CJIC commented that the state prison bed impact was based on an anticipated increase in the county jail population, which they found was also indeterminate.

Collection of Participant Fees That Support Pretrial Program Budgets and Provide Support and Surveillance Services Will Decline

Of the 28 pretrial release programs in Florida, twelve[31] charge fees to program participants to support program budgets and to pay vendors for services to defendants, primarily electronic monitoring services. If this bill becomes law, it is estimated that the number of participants in the pretrial release program will decline and the collection of fees associated with their participation will be reduced since the remaining indigent defendants will be less likely to be able to pay such fees.

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[29] The percentage of pretrial release participants who are non-indigent varies from program to program, with a high of 56% in Sarasota county to a low of 10% in Escambia county.

[30] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[31] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Demand For Private Surety Bond Services Will Likely Increase

Currently, local pretrial release programs in this state are available to defendants regardless of their financial status. The bill limits participation in such program to indigent defendants. This will likely increase the number of pretrial detainees who pay for a commercial bond in order to be released from jail. Consequently, bail bondsmen are likely to see an increase in revenue if the bill becomes law.

More Non-Indigent Defendants Will Pay the Private Sector Rather Than the Public Sector For Release from Jail

Non-indigent defendants who were previously eligible for a local pretrial release program will not be eligible under the bill and must post a commercial bond to be released from jail. If these non-indigent defendants are unable to post a bond, then they will remain incarcerated until the disposition of their criminal charges. For those defendants who do post a bond, insufficient information on the cost of bonds, participant fees, and program costs makes it difficult to ascertain whether the total costs to the affected defendants will be higher or lower as a result of this bill.

Vendors Who Provide Supervision Services to Pretrial Release Participants Will Lose Revenue

Six of the 28 pretrial release programs contract with vendors for GPS and electronic monitoring, drug and alcohol testing, kiosk reporting, and other services rendered to defendants.[32] These services are fully or partially supported by program participant fees. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to only indigents, these contractual services will likely decline because the number of participants will be less and because indigent defendants will be less likely to afford these types of supervision and support services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires that one's financial status be a factor in determining whether a person is eligible to participate in pretrial release programs. However, the primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process.

As noted above, pretrial release programs actively supervise participating defendants. The programs do so through phone contacts, drug and alcohol testing services, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Bail bondsmen are generally not required to supervise defendants, but do have a vested interest in making sure their

[32] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

clients keep their court dates and do not abscond. Judges in many circuits require defendants who post bond to also be supervised by a pretrial release program and receive these contractual services as an added layer of accountability. Effective pretrial release programs supervise defendants and decrease the likelihood of reoffending and enhance public safety. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to indigents, this additional layer of accountability and public safety will not be available to the judge for those non-indigent defendants.

The bill is unclear as to the role of the clerk of the court in the declaration of indigency procedures going forward. It appears that the intent of the bill is that the onus be on the court to find a person indigent pursuant to the applicable court rule, for purposes of pretrial release determinations. If it is the intent that the court's (First Appearance) determination be the final order on the matter, that needs to be clarified. If it is the bill's intent that a preliminary or temporary finding of indigency by the court at First Appearance will suffice for the "court order" as required for pretrial release program participation, that, too, needs clarification.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pretrial programs; providing state policy and legislative intent; requiring each pretrial release program established by ordinance of a county commission, by administrative order of a court, or by any other means in order to assist in the release of a defendant from pretrial custody to conform to the eligibility criteria set forth by the act; preempting any conflicting statutes, local ordinances, orders, or practices; requiring that the defendant satisfy certain eligibility criteria in order to be assigned to a pretrial release program; permitting a defendant to post a surety bond pursuant to a predetermined bond schedule; requiring disclosure of certain fees; providing that the act does not prohibit a court from releasing a defendant on the defendant's own recognizance or imposing any other reasonable condition of release on the defendant; authorizing a county to reimburse a licensed surety agent for the premium costs of a bail bond for the pretrial release of an indigent defendant under certain circumstances; providing an effective date.

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

Section 1. Eligibility criteria for the enrollment of a defendant in a pretrial release program.—

(1) It is the policy of this state that only defendants who are indigent and who qualify for the services of a public

defender are eligible to participate in a pretrial release program. Further, it is the policy of this state that, to the greatest extent possible, the resources of the private sector be used to assist in the pretrial release of defendants. It is the intent of the Legislature that this section not be interpreted to limit the discretion of courts with respect to imposing on a defendant reasonable conditions for pretrial release.

(2) A pretrial release program established by an ordinance of the county commission, an administrative order of the court, or by any other means in order to assist in the release of defendants from pretrial custody is subject to the eligibility criteria set forth in this section. These eligibility criteria for admission into a pretrial release program supersede and preempt all conflicting statutes, local ordinances, orders, or practices. Each pretrial release program shall certify annually, in writing to the chief circuit court judge, that it has complied with the reporting requirements of s. 907.043(4), Florida Statutes.

(3) A defendant is eligible to participate in a pretrial release program only by order of the court after the court finds in writing upon consideration of the defendant's affidavit of insolvency that the defendant is indigent as set forth in Rule 3.111, Florida Rules of Criminal Procedure, and that the defendant has not previously failed to appear at any required court proceeding.

(4) If a defendant seeks to post a surety bond pursuant to a predetermined bond schedule, the defendant shall be permitted to do so without any interference or restriction by a pretrial

release program. Each pretrial release program shall disclose in writing to each defendant at his or her initial interview each and every fee that will be assessed for his or her supervision.

(5) This section does not prohibit the court from:

(a) Releasing a defendant on the defendant's own recognizance.

(b) Imposing upon the defendant any reasonable condition of release, including, but not limited to, electronic monitoring, drug testing, substance abuse treatment, and domestic violence counseling.

(6) In lieu of using a governmental program to ensure the court appearance of a defendant, a county may reimburse a licensed surety agent for the premium costs of a surety bail bond that secures the appearance of an indigent defendant at all court proceedings if the court establishes a bail bond amount for the indigent defendant.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4035 Misdemeanor Pretrial Substance Abuse Programs
SPONSOR(S): Waldman and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 104

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

SUMMARY ANALYSIS

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, F.S., and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

HB 4035 expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

The bill may have a fiscal impact on local governments. See "Fiscal Comments."

This bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,[1] and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,[2] for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.[3]

Participants in the program are subject to a coordinated strategy[4] developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.[5]

At the end of the pretrial intervention period, the court must:

- Consider the recommendation of the treatment program;
- Consider the recommendation of the state attorney as to disposition of the pending charges; and
- Determine, by written finding, whether the defendant successfully completed the pretrial intervention program.[6]

If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.[7] The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.[8]

Effect of the Bill

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not previously been convicted of a felony *nor been admitted to a pretrial program*, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

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[1] Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act.

[2] Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and sets criteria for such programs.

[3] Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program. s. 948.16(10(a), F.S.

[4] The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. s. 948.16(1)(b), F.S.

[5] Section 948.16(1)(b), F.S.

[6] Section 948.16(2), F.S.

[7] *Id.*

[8] Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S. *See* s. 948.16(1)(b), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. There may be a positive fiscal impact on treatment providers if more people are eligible to participate in such programs.

D. FISCAL COMMENTS:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. Persons who successfully complete such programs have their criminal charges dismissed. This may have a positive fiscal impact on local governments. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate.

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 misdemeanor pretrial substance abuse programs; amending s. 948.16, F.S.; providing that a person who has previously been admitted to a pretrial program may still qualify for voluntary admission to a program; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.—

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony ~~nor been admitted to a pretrial program~~, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the

defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4157 Department of Juvenile Justice
SPONSOR(S): Thurston
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 618

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

SUMMARY ANALYSIS

HB 4157 repeals and amends numerous sections of ch. 985, F.S., to remove obsolete language and to more accurately reflect current practices of the Department of Juvenile Justice (DJJ). Specifically the bill:

- Repeals s. 985.445, F.S., relating to cases involving grand theft of a motor vehicle, to delete the obsolete references to the sheriff's training and respect program.
- Removes the definition of "training school" from s. 985.03, F.S.
- Repeals s. 985.636, F.S., which authorizes the Secretary of the DJJ to designate inspectors holding a law enforcement certification as law enforcement officers within the Inspector General's Office.
- Amends ss. 985.48 and 985.66, F.S., to delete obsolete references to the Juvenile Justice Standards and Training Commission, and to authorize the DJJ to continue providing staff development and training to department program staff.

DJJ has reported that this bill will have no fiscal impact to the department.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

HB 4157 repeals and amends numerous sections of ch. 985, F.S., to remove obsolete language and to more accurately reflect current practices of the Department of Juvenile Justice (DJJ or department). The specific provisions which the bill repeals and amends are as follows:

Sheriff's Training and Respect (STAR) Program

In 2006, the legislature passed HB 5019, creating to Martin Lee Anderson Act of 2006.[1] This bill repealed s. 985.309, F.S., which authorized boot camps for juvenile offenders and created s. 985.3091, F.S., which authorized a county or municipal law enforcement agency, under contract with DJJ, to implement and operate a STAR program. The purposes of these programs were to provide intensive education, physical training, and rehabilitation for children between 14 and 18 years of age who met certain eligibility requirements.[2] Only one STAR program became effective in 2006, and on June 30, 2008, the Sherriff terminated the contract.[3] According to the DJJ, there have been no operational STAR programs since 2008.[4] Section 985.3091, F.S., was repealed in 2010.[5]

Section 985.445, F.S., authorizes the court to place a child adjudicated for a grand theft of a motor vehicle offense into a STAR program.[6]

Effect of the Bill

HB 4157 repeals s. 985.445, F.S., to delete the obsolete references to the STAR program.

The bill also makes conforming changes to ss. 985.0301, F.S., (Jurisdiction), 985.47, F.S., (Serious or habitual juvenile offender), 985.483 F.S., (Intensive residential treatment program for offenders less than 13 years of age), and 985.565, F.S., (Sentencing powers; procedures; alternatives for juveniles prosecuted as adults) to delete references to s. 985.445, F.S.

Training Schools

Section 985.03(56), F.S. defines "training school" as the Arthur G. Dozier School or the Eckerd Youth Develop Center. The Arthur G. Dozier School for Boys (currently known as North Florida Youth Development Center)[7] and Eckerd Youth Develop Center (currently known as Okeechobee Youth Development Center),[8] are residential programs that serve male youths who are 13-20 years of age. According to the DJJ, residential programs are no longer classified as training schools, but by restrictiveness levels.[9]

Effect of the Bill

HB 4157 removes the definition of "training school" from s. 985.03(56), F.S.

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[1] Ch. 2006-62, L.O.F.

[2] *Id.*

[3] 2011 Department of Juvenile Justice Legislative Priority Paper, updated on March 4, 2011 (on file with the House Criminal Justice Subcommittee staff).

[4] *Id.*

[5] Ch. 2010-113, L.O.F. (prior to its repeal, s. 985.3091, F.S., was renumbered as s. 985.4891, F.S.)

[6] Upon a first adjudication for a grand theft of a motor vehicle, the court *may place the child in a sheriff's training and respect program* and shall order the child to complete a minimum of 50 hours of community service. Upon a second adjudication for grand theft of a motor vehicle which is separate and unrelated to the previous adjudication, the court *may place the child in a sheriff's training and respect program* and shall order the child to complete a minimum of 100 hours of community service. Upon a third adjudication for grand theft of a motor vehicle which is separate and unrelated to the previous adjudications, the court *shall place the child in a sheriff's training and respect program* or other treatment program and shall order the child to complete a minimum of 250 hours of community service. s. 985.445, F.S.

[7] http://www.djj.state.fl.us/Residential/facilities/north_facilities/North_Florida_Youth_Development_Center.html

[8] http://www.djj.state.fl.us/Residential/facilities/south_facilities/Okeechobee_Youth_Development_Center.html

[9] Department of Juvenile Justice 2011 Agency Proposal (on file with the House Criminal Justice Subcommittee staff).

Inspector General

Section 985.636, F.S., authorizes the Secretary of the DJJ to designate inspectors holding a law enforcement certification as law enforcement officers within the Inspector General's Office. This designation is only for the purpose of enforcing any criminal law and conducting any investigation involving a state-operated program or facility that falls under the department's jurisdiction. However, according to the DJJ, this law is unnecessary and duplicative to provisions provided in s. 20.055(6)(c), F.S.[10,11] Currently, none of the inspectors in DJJ's Office of Inspector General have been designated as law enforcement officers.[12]

Effect of the Bill

HB 4157 repeals s. 985.636, F.S., which allows certain inspectors within the DJJ's Inspector General's Office to be designated as certified law enforcement officers by DJJ's Secretary.

Juvenile Justice Standards and Training Commission (Commission)

Section 985.66, F.S., prescribes standards for the juvenile justice training academies, establishes the Juvenile Justice Training Trust Fund, and creates the Juvenile Justice Standards and Training Commission (Commission) under the DJJ. The legislative purpose of the statute is to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff.[13] Section 985.48(8), F.S., also requires the Commission to establish a training program to manage and provide services to juvenile sexual offenders in juvenile sexual offender programs. However, the Commission expired on June 30, 2001 because it was not reenacted by the Legislature.[14] After that, the DJJ took over the training duties of the Commission.[15]

Effect of the Bill

HB 4157 amends ss. 985.48 and 985.66, F.S., to delete obsolete references to the Commission, and to authorize the DJJ to continue providing staff development and training to department program staff.

B. SECTION DIRECTORY:

Section 1. Repeals s. 985.445, F.S., relating to cases involving grand theft of a motor vehicle.

Section 2. Amends s. 985.03, F.S., relating to definitions.

Section 3. Repeals s. 985.636, F.S., relating to inspector general; inspectors.

Section 4. Amends s. 985.48, F.S., relating to juvenile sexual offender commitment programs; sexual abuse intervention networks.

Section 5. Amends s. 985.66, F.S., relating to juvenile justice training academies; Juvenile Justice Standards and Training Commission; Juvenile Justice Training Trust Fund.

Section 6. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 7. Amends s. 985.47, F.S., relating to serious or habitual juvenile offender.

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[10] Section 20.055(6), F.S. provides that each inspector general shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. Each inspector general shall report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law shall. s. 20.055(6)(c), F.S.

[11] Department of Juvenile Justice 2011 Agency Proposal (on file with the House Criminal Justice Subcommittee staff).

[12] 2011 Department of Juvenile Justice Legislative Priority Paper, updated on March 4, 2011 (on file with the House Criminal Justice Subcommittee staff).

[13] Section 985.66(1), F.S.

[14] Section 985.66(9), F.S.

[15] Department of Juvenile Justice 2011Agency Proposal (on file with the House Criminal Justice Subcommittee).

Section 8. Amends s. 985.483, F.S., relating to intensive residential treatment program for offenders less than 13 years of age.

Section 9. Amends s. 985.565, F.S., relating to sentencing powers; procedures; alternatives for juveniles prosecuted as adults.

Section 10. 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:

   DJJ has reported that this bill will have no fiscal impact to the department.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[16] Department of Juvenile Justice 2011Agency Proposal (on file with the House Criminal Justice Subcommittee staff).

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 4157 amends s. 985.03, F.S., to remove the definition of "training school". However, s. 985.652, F.S., relating to participation of certain programs in the state risk management trust fund, references a training school. This statute may need to delete this reference.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Juvenile Justice; repealing s. 985.445, F.S., relating to cases involving grand theft of a motor vehicle; amending s. 985.03, F.S.; deleting the definition of the term "training school"; repealing s. 985.636, F.S., relating to authority of the secretary to designate persons holding law enforcement certification within the Office of the Inspector General as law enforcement officers; amending ss. 985.48 and 985.66, F.S.; conforming provisions to the termination of the Juvenile Justice Standards and Training Commission; amending ss. 985.0301, 985.47, 985.483, and 985.565, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 985.445, Florida Statutes, is repealed.

Section 2. Subsections (57) and (58) of section 985.03, Florida Statutes, are renumbered as subsections (56) and (57), respectively, and present subsection (56) of that section is amended to read:

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

~~(56) "Training school" means one of the following facilities: the Arthur G. Dozier School or the Eckerd Youth Development Center.~~

Section 3. Section 985.636, Florida Statutes, is repealed.

Section 4. Subsections (9) through (14) of section 985.48, Florida Statutes, are renumbered as subsections (8) through (13), respectively, and present subsection (8) of that section is amended to read:

985.48 Juvenile sexual offender commitment programs; sexual abuse intervention networks.—

~~(8) The Juvenile Justice Standards and Training Commission shall establish criteria for training all contract and department staff or provide a special training program for contract and department staff to effectively manage and provide services and treatment to a juvenile sexual offender in a juvenile sexual offender program.~~

Section 5. Section 985.66, Florida Statutes, is amended to read:

985.66 Juvenile justice training academies; staff development and training ~~Juvenile Justice Standards and Training Commission~~; Juvenile Justice Training Trust Fund.—

(1) LEGISLATIVE PURPOSE.—In order to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff that will meet the needs of such persons in their discharge of duties while at the same time meeting the requirements for the American Correction Association accreditation by the Commission on Accreditation for Corrections, it is the purpose of the Legislature to require the department to establish, maintain, and oversee the operation of juvenile justice training academies in the state. The purpose of

the Legislature in establishing staff development and training programs is to foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs; to positively impact the recidivism of children in the juvenile justice system; and to afford greater protection of the public through an improved level of services delivered by a professionally trained juvenile justice program staff to children who are alleged to be or who have been found to be delinquent.

(2) STAFF DEVELOPMENT AND TRAINING ~~JUVENILE JUSTICE STANDARDS AND TRAINING COMMISSION~~.—

~~(a) There is created under the Department of Juvenile Justice the Juvenile Justice Standards and Training Commission, hereinafter referred to as the commission. The 17-member commission shall consist of the Attorney General or designee, the Commissioner of Education or designee, a member of the juvenile court judiciary to be appointed by the Chief Justice of the Supreme Court, and 14 members to be appointed by the Secretary of Juvenile Justice as follows:~~

~~1. Seven members shall be juvenile justice professionals: a superintendent or a direct care staff member from an institution; a director from a contracted community-based program; a superintendent and a direct care staff member from a regional detention center or facility; a juvenile probation officer supervisor and a juvenile probation officer; and a director of a day treatment or conditional release program. No fewer than three of these members shall be contract providers.~~

~~2. Two members shall be representatives of local law~~

~~enforcement agencies.~~

~~3. One member shall be an educator from the state's university and community college program of criminology, criminal justice administration, social work, psychology, sociology, or other field of study pertinent to the training of juvenile justice program staff.~~

~~4. One member shall be a member of the public.~~

~~5. One member shall be a state attorney, or assistant state attorney, who has juvenile court experience.~~

~~6. One member shall be a public defender, or assistant public defender, who has juvenile court experience.~~

~~7. One member shall be a representative of the business community.~~

~~All appointed members shall be appointed to serve terms of 2 years.~~

~~(b) The composition of the commission shall be broadly reflective of the public and shall include minorities and women. The term "minorities" as used in this paragraph means a member of a socially or economically disadvantaged group that includes blacks, Hispanics, and American Indians.~~

~~(c) The Department of Juvenile Justice shall provide the commission with staff necessary to assist the commission in the performance of its duties.~~

~~(d) The commission shall annually elect its chairperson and other officers. The commission shall hold at least four regular meetings each year at the call of the chairperson or upon the written request of three members of the commission. A~~

~~majority of the members of the commission constitutes a quorum. Members of the commission shall serve without compensation but are entitled to be reimbursed for per diem and travel expenses as provided by s. 112.061 and these expenses shall be paid from the Juvenile Justice Training Trust Fund.~~

(a) ~~(c)~~ The department ~~powers, duties, and functions of the commission~~ shall ~~be to~~:

1. Designate the location of the training academies; develop, implement, maintain, and update the curriculum to be used in the training of juvenile justice program staff; establish timeframes for participation in and completion of training by juvenile justice program staff; develop, implement, maintain, and update job-related examinations; develop, implement, and update the types and frequencies of evaluations of the training academies; approve, modify, or disapprove the budget for the training academies, and the contractor to be selected to organize and operate the training academies and to provide the training curriculum.

2. Establish uniform minimum job-related training courses and examinations for juvenile justice program staff.

3. Consult and cooperate with the state or any political subdivision; any private entity or contractor; and with private and public universities, colleges, community colleges, and other educational institutions concerning the development of juvenile justice training and programs or courses of instruction, including, but not limited to, education and training in the areas of juvenile justice.

4. ~~With the approval of the department, make and~~ Enter

into ~~such~~ contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as ~~the commission determines~~ are necessary in the execution of the department's ~~its~~ powers or the performance of its duties.

~~5. Make recommendations to the Department of Juvenile Justice concerning any matter within the purview of this section.~~

(3) JUVENILE JUSTICE TRAINING PROGRAM.—The department ~~commission~~ shall establish a certifiable program for juvenile justice training pursuant to this section, and all department program staff and providers who deliver direct care services pursuant to contract with the department shall be required to participate in and successfully complete the department-approved ~~commission-approved~~ program of training pertinent to their areas of responsibility. Judges, state attorneys, and public defenders, law enforcement officers, and school district personnel may participate in such training program. For the juvenile justice program staff, the department ~~commission~~ shall, based on a job-task analysis:

(a) Design, implement, maintain, evaluate, and revise a basic training program, including a competency-based examination, for the purpose of providing minimum employment training qualifications for all juvenile justice personnel. All program staff of the department and providers who deliver direct-care services who are hired after October 1, 1999, must meet the following minimum requirements:

1. Be at least 19 years of age.

2. Be a high school graduate or its equivalent as determined by the department ~~commission~~.

3. Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after September 30, 1999, pleads guilty or nolo contendere to or is found guilty of any felony or a misdemeanor involving perjury or false statement is not eligible for employment, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subparagraph, any person who pled nolo contendere to a misdemeanor involving a false statement before October 1, 1999, and who has had such record of that plea sealed or expunged is not ineligible for employment for that reason.

4. Abide by all the provisions of s. 985.644(1) regarding fingerprinting and background investigations and other screening requirements for personnel.

5. Execute and submit to the department an affidavit-of-application form, adopted by the department, attesting to his or her compliance with subparagraphs 1.-4. The affidavit must be executed under oath and constitutes an official statement under s. 837.06. The affidavit must include conspicuous language that the intentional false execution of the affidavit constitutes a misdemeanor of the second degree. The employing agency shall retain the affidavit.

(b) Design, implement, maintain, evaluate, and revise an advanced training program, including a competency-based examination for each training course, which is intended to

enhance knowledge, skills, and abilities related to job performance.

(c) Design, implement, maintain, evaluate, and revise a career development training program, including a competency-based examination for each training course. Career development courses are intended to prepare personnel for promotion.

(d) The department ~~commission~~ is encouraged to design, implement, maintain, evaluate, and revise juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

(4) JUVENILE JUSTICE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Juvenile Justice Training Trust Fund to be used by the department ~~of Juvenile Justice~~ for the purpose of funding the development and updating of a job-task analysis of juvenile justice personnel; the development, implementation, and updating of job-related training courses and examinations; and the cost of department-approved ~~commission-approved~~ juvenile justice training courses~~; and reimbursement for expenses as provided in s. 112.061 for members of the commission and staff~~.

(b) One dollar from every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b) and 318.18 shall be deposited into the Juvenile Justice Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget

cycle or through a supplemental budget approved by the department shall revert to the trust fund.

(5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—The number, location, and establishment of juvenile justice training academies shall be determined by the department ~~commission~~.

(6) SCHOLARSHIPS AND STIPENDS.—

(a) By rule, the department ~~commission~~ shall establish criteria to award scholarships or stipends to qualified juvenile justice personnel who are residents of the state who want to pursue a bachelor's or associate in arts degree in juvenile justice or a related field. The department shall handle the administration of the scholarship or stipend. The Department of Education shall handle the notes issued for the payment of the scholarships or stipends. All scholarship and stipend awards shall be paid from the Juvenile Justice Training Trust Fund upon vouchers approved by the Department of Education and properly certified by the Chief Financial Officer. Prior to the award of a scholarship or stipend, the juvenile justice employee must agree in writing to practice her or his profession in juvenile justice or a related field for 1 month for each month of grant or to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period not to exceed 10 years. Repayment shall be made payable to the state for deposit into the Juvenile Justice Training Trust Fund.

(b) The department ~~commission~~ may establish the scholarship program by rule ~~and implement the program on or~~

~~after July 1, 1996~~.

(7) ADOPTION OF RULES.—The department ~~commission~~ shall adopt rules as necessary to carry out the provisions of this section.

(8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services is authorized to insure a private agency, individual, or corporation operating a state-owned training school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized herein shall be under the same general terms and conditions as the department is insured for its responsibilities under chapter 284.

~~(9) The Juvenile Justice Standards and Training Commission is terminated on June 30, 2001, and such termination shall be reviewed by the Legislature prior to that date.~~

Section 6. Paragraph (c) of subsection (5) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(5)

(c) Notwithstanding ss. 743.07 and 985.455(3), and except as provided in s. 985.47, the term of the commitment must be until the child is discharged by the department or until he or she reaches the age of 21 years. Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441, ~~985.445,~~ 985.455, and 985.513, and except as provided in this section and s. 985.47, a child may not be held under a commitment from a court under s. 985.439, s. 985.441(1)(a) or (b), ~~s. 985.445,~~ or s. 985.455

after becoming 21 years of age.

Section 7. Subsection (2) of section 985.47, Florida Statutes, is amended to read:

985.47 Serious or habitual juvenile offender.—

(2) DETERMINATION.—After a child has been adjudicated delinquent under s. 985.35, the court shall determine whether the child meets the criteria for a serious or habitual juvenile offender under subsection (1). If the court determines that the child does not meet such criteria, ss. 985.435, 985.437, 985.439, 985.441, ~~985.445,~~ 985.45, and 985.455 shall apply.

Section 8. Subsection (2) of section 985.483, Florida Statutes, is amended to read:

985.483 Intensive residential treatment program for offenders less than 13 years of age.—

(2) DETERMINATION.—After a child has been adjudicated delinquent under s. 985.35(5), the court shall determine whether the child is eligible for an intensive residential treatment program for offenders less than 13 years of age under subsection (1). If the court determines that the child does not meet the criteria, ss. 985.435, 985.437, 985.439, 985.441, ~~985.445,~~ 985.45, and 985.455 shall apply.

Section 9. Paragraph (b) of subsection (4) of section 985.565, Florida Statutes, is amended to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(b) Juvenile sanctions.—For juveniles transferred to adult court but who do not qualify for such transfer under s.

985.556(3) or s. 985.557(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, ~~985.445,~~ 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 10. This act shall take effect July 1, 2011.