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# **Criminal Justice Subcommittee**

**Tuesday, January 25, 2011**

**9:00 AM**

**404 HOB**

**Dean Cannon  
Speaker**

**Dennis Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, January 25, 2011 09:00 am

**End Date and Time:** Tuesday, January 25, 2011 11:00 am

**Location:** 404 HOB

**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 39 Controlled Substances by Adkins, Rouson

HB 63 Handbill Distribution by Crisafulli

HB 105 Open House Parties by Goodson

Presentation by the Office of Program Policy Analysis & Government Accountability on drug courts.

Presentation by the Office of Program Policy Analysis & Government Accountability on faith and character-based institutions.

**NOTICE FINALIZED on 01/18/2011 16:12 by hudson.jessica**



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A bill to be entitled  
 An act relating to controlled substances; amending s.  
 893.02, F.S.; defining the term "homologue" for purposes  
 of the Florida Comprehensive Drug Abuse Prevention and  
 Control Act; amending s. 893.03, F.S.; including certain  
 hallucinogenic substances on the list of controlled  
 substances in Schedule I; reenacting ss. 893.13(1), (2),  
 (4) and (5), 893.135(1)(1), and 921.0022(3)(b), (c), and  
 (e), F.S., relating to prohibited acts and penalties  
 regarding controlled substances and the offense severity  
 chart of the Criminal Punishment Code, to incorporate the  
 amendment to s. 893.03, F.S., in references thereto;  
 providing an effective date.

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

Section 1. Present subsections (11) through (22) of  
 section 893.02, Florida Statutes, are redesignated as  
 subsections (12) through (23), respectively, and a new  
 subsection (11) is added to that section, to read:

893.02 Definitions.—The following words and phrases as  
 used in this chapter shall have the following meanings, unless  
 the context otherwise requires:

(11) "Homologue" means a chemical compound in a series in  
 which each compound differs by one or more alkyl functional  
 groups on an alkyl side chain.

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

29 893.03 Standards and schedules.—The substances enumerated  
 30 in this section are controlled by this chapter. The controlled  
 31 substances listed or to be listed in Schedules I, II, III, IV,  
 32 and V are included by whatever official, common, usual,  
 33 chemical, or trade name designated. The provisions of this  
 34 section shall not be construed to include within any of the  
 35 schedules contained in this section any excluded drugs listed  
 36 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 37 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 38 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 39 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 40 Anabolic Steroid Products."

41 (1) SCHEDULE I.—A substance in Schedule I has a high  
 42 potential for abuse and has no currently accepted medical use in  
 43 treatment in the United States and in its use under medical  
 44 supervision does not meet accepted safety standards. The  
 45 following substances are controlled in Schedule I:

46 (c) Unless specifically excepted or unless listed in  
 47 another schedule, any material, compound, mixture, or  
 48 preparation which contains any quantity of the following  
 49 hallucinogenic substances or which contains any of their salts,  
 50 isomers, and salts of isomers, whenever the existence of such  
 51 salts, isomers, and salts of isomers is possible within the  
 52 specific chemical designation:

- 53 1. Alpha-ethyltryptamine.
- 54 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-  
 55 methylaminorex).
- 56 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).

- 57 | 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 58 | 5. 4-Bromo-2, 5-dimethoxyphenethylamine.
- 59 | 6. Bufotenine.
- 60 | 7. Cannabis.
- 61 | 8. Cathinone.
- 62 | 9. Diethyltryptamine.
- 63 | 10. 2,5-Dimethoxyamphetamine.
- 64 | 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 65 | 12. Dimethyltryptamine.
- 66 | 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
- 67 | analog of phencyclidine).
- 68 | 14. N-Ethyl-3-piperidyl benzilate.
- 69 | 15. N-ethylamphetamine.
- 70 | 16. Fenethylamine.
- 71 | 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 72 | 18. Ibogaine.
- 73 | 19. Lysergic acid diethylamide (LSD).
- 74 | 20. Mescaline.
- 75 | 21. Methcathinone.
- 76 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 77 | 23. 4-methoxyamphetamine.
- 78 | 24. 4-methoxymethamphetamine.
- 79 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 80 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 81 | 27. 3,4-Methylenedioxyamphetamine.
- 82 | 28. N-Methyl-3-piperidyl benzilate.
- 83 | 29. N,N-dimethylamphetamine.
- 84 | 30. Parahexyl.

- 85           31. Peyote.
- 86           32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
- 87 analog of phencyclidine).
- 88           33. Psilocybin.
- 89           34. Psilocyn.
- 90           35. Salvia divinorum, except for any drug product approved
- 91 by the United States Food and Drug Administration which contains
- 92 Salvia divinorum or its isomers, esters, ethers, salts, and
- 93 salts of isomers, esters, and ethers, whenever the existence of
- 94 such isomers, esters, ethers, and salts is possible within the
- 95 specific chemical designation.
- 96           36. Salvinorin A, except for any drug product approved by
- 97 the United States Food and Drug Administration which contains
- 98 Salvinorin A or its isomers, esters, ethers, salts, and salts of
- 99 isomers, esters, and ethers, whenever the existence of such
- 100 isomers, esters, ethers, and salts is possible within the
- 101 specific chemical designation.
- 102           37. Tetrahydrocannabinols.
- 103           38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
- 104 (Thiophene analog of phencyclidine).
- 105           39. 3,4,5-Trimethoxyamphetamine.
- 106           40. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
- 107 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
- 108 homologue.
- 109           41. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
- 110 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
- 111 also known as HU-210.
- 112           42. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.

113 43. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.

114 Section 3. For the purpose of incorporating the amendment  
 115 made by this act to section 893.03, Florida Statutes, in  
 116 references thereto, subsections (1), (2), (4), and (5) of  
 117 section 893.13, Florida Statutes, are reenacted to read:

118 893.13 Prohibited acts; penalties.—

119 (1) (a) Except as authorized by this chapter and chapter  
 120 499, it is unlawful for any person to sell, manufacture, or  
 121 deliver, or possess with intent to sell, manufacture, or  
 122 deliver, a controlled substance. Any person who violates this  
 123 provision with respect to:

124 1. A controlled substance named or described in s.  
 125 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 126 commits a felony of the second degree, punishable as provided in  
 127 s. 775.082, s. 775.083, or s. 775.084.

128 2. A controlled substance named or described in s.  
 129 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 130 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 131 the third degree, punishable as provided in s. 775.082, s.  
 132 775.083, or s. 775.084.

133 3. A controlled substance named or described in s.  
 134 893.03(5) commits a misdemeanor of the first degree, punishable  
 135 as provided in s. 775.082 or s. 775.083.

136 (b) Except as provided in this chapter, it is unlawful to  
 137 sell or deliver in excess of 10 grams of any substance named or  
 138 described in s. 893.03(1)(a) or (1)(b), or any combination  
 139 thereof, or any mixture containing any such substance. Any  
 140 person who violates this paragraph commits a felony of the first



141 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 142 775.084.

143 (c) Except as authorized by this chapter, it is unlawful  
 144 for any person to sell, manufacture, or deliver, or possess with  
 145 intent to sell, manufacture, or deliver, a controlled substance  
 146 in, on, or within 1,000 feet of the real property comprising a  
 147 child care facility as defined in s. 402.302 or a public or  
 148 private elementary, middle, or secondary school between the  
 149 hours of 6 a.m. and 12 midnight, or at any time in, on, or  
 150 within 1,000 feet of real property comprising a state, county,  
 151 or municipal park, a community center, or a publicly owned  
 152 recreational facility. For the purposes of this paragraph, the  
 153 term "community center" means a facility operated by a nonprofit  
 154 community-based organization for the provision of recreational,  
 155 social, or educational services to the public. Any person who  
 156 violates this paragraph with respect to:

157 1. A controlled substance named or described in s.  
 158 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 159 commits a felony of the first degree, punishable as provided in  
 160 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
 161 sentenced to a minimum term of imprisonment of 3 calendar years  
 162 unless the offense was committed within 1,000 feet of the real  
 163 property comprising a child care facility as defined in s.  
 164 402.302.

165 2. A controlled substance named or described in s.  
 166 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 167 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 168 the second degree, punishable as provided in s. 775.082, s.

169 775.083, or s. 775.084.

170 3. Any other controlled substance, except as lawfully  
 171 sold, manufactured, or delivered, must be sentenced to pay a  
 172 \$500 fine and to serve 100 hours of public service in addition  
 173 to any other penalty prescribed by law.

174  
 175 This paragraph does not apply to a child care facility unless  
 176 the owner or operator of the facility posts a sign that is not  
 177 less than 2 square feet in size with a word legend identifying  
 178 the facility as a licensed child care facility and that is  
 179 posted on the property of the child care facility in a  
 180 conspicuous place where the sign is reasonably visible to the  
 181 public.

182 (d) Except as authorized by this chapter, it is unlawful  
 183 for any person to sell, manufacture, or deliver, or possess with  
 184 intent to sell, manufacture, or deliver, a controlled substance  
 185 in, on, or within 1,000 feet of the real property comprising a  
 186 public or private college, university, or other postsecondary  
 187 educational institution. Any person who violates this paragraph  
 188 with respect to:

189 1. A controlled substance named or described in s.  
 190 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 191 commits a felony of the first degree, punishable as provided in  
 192 s. 775.082, s. 775.083, or s. 775.084.

193 2. A controlled substance named or described in s.  
 194 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 195 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 196 the second degree, punishable as provided in s. 775.082, s.

197 775.083, or s. 775.084.

198 3. Any other controlled substance, except as lawfully  
 199 sold, manufactured, or delivered, must be sentenced to pay a  
 200 \$500 fine and to serve 100 hours of public service in addition  
 201 to any other penalty prescribed by law.

202 (e) Except as authorized by this chapter, it is unlawful  
 203 for any person to sell, manufacture, or deliver, or possess with  
 204 intent to sell, manufacture, or deliver, a controlled substance  
 205 not authorized by law in, on, or within 1,000 feet of a physical  
 206 place for worship at which a church or religious organization  
 207 regularly conducts religious services or within 1,000 feet of a  
 208 convenience business as defined in s. 812.171. Any person who  
 209 violates this paragraph with respect to:

210 1. A controlled substance named or described in s.  
 211 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 212 commits a felony of the first degree, punishable as provided in  
 213 s. 775.082, s. 775.083, or s. 775.084.

214 2. A controlled substance named or described in s.  
 215 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 216 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 217 the second degree, punishable as provided in s. 775.082, s.  
 218 775.083, or s. 775.084.

219 3. Any other controlled substance, except as lawfully  
 220 sold, manufactured, or delivered, must be sentenced to pay a  
 221 \$500 fine and to serve 100 hours of public service in addition  
 222 to any other penalty prescribed by law.

223 (f) Except as authorized by this chapter, it is unlawful  
 224 for any person to sell, manufacture, or deliver, or possess with

225 intent to sell, manufacture, or deliver, a controlled substance  
 226 in, on, or within 1,000 feet of the real property comprising a  
 227 public housing facility at any time. For purposes of this  
 228 section, the term "real property comprising a public housing  
 229 facility" means real property, as defined in s. 421.03(12), of a  
 230 public corporation created as a housing authority pursuant to  
 231 part I of chapter 421. Any person who violates this paragraph  
 232 with respect to:

233 1. A controlled substance named or described in s.  
 234 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 235 commits a felony of the first degree, punishable as provided in  
 236 s. 775.082, s. 775.083, or s. 775.084.

237 2. A controlled substance named or described in s.  
 238 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 239 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 240 the second degree, punishable as provided in s. 775.082, s.  
 241 775.083, or s. 775.084.

242 3. Any other controlled substance, except as lawfully  
 243 sold, manufactured, or delivered, must be sentenced to pay a  
 244 \$500 fine and to serve 100 hours of public service in addition  
 245 to any other penalty prescribed by law.

246 (g) Except as authorized by this chapter, it is unlawful  
 247 for any person to manufacture methamphetamine or phencyclidine,  
 248 or possess any listed chemical as defined in s. 893.033 in  
 249 violation of s. 893.149 and with intent to manufacture  
 250 methamphetamine or phencyclidine. If any person violates this  
 251 paragraph and:

252 1. The commission or attempted commission of the crime

253 occurs in a structure or conveyance where any child under 16  
 254 years of age is present, the person commits a felony of the  
 255 first degree, punishable as provided in s. 775.082, s. 775.083,  
 256 or s. 775.084. In addition, the defendant must be sentenced to a  
 257 minimum term of imprisonment of 5 calendar years.

258 2. The commission of the crime causes any child under 16  
 259 years of age to suffer great bodily harm, the person commits a  
 260 felony of the first degree, punishable as provided in s.  
 261 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
 262 must be sentenced to a minimum term of imprisonment of 10  
 263 calendar years.

264 (h) Except as authorized by this chapter, it is unlawful  
 265 for any person to sell, manufacture, or deliver, or possess with  
 266 intent to sell, manufacture, or deliver, a controlled substance  
 267 in, on, or within 1,000 feet of the real property comprising an  
 268 assisted living facility, as that term is used in chapter 429.  
 269 Any person who violates this paragraph with respect to:

270 1. A controlled substance named or described in s.  
 271 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 272 commits a felony of the first degree, punishable as provided in  
 273 s. 775.082, s. 775.083, or s. 775.084.

274 2. A controlled substance named or described in s.  
 275 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 276 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 277 the second degree, punishable as provided in s. 775.082, s.  
 278 775.083, or s. 775.084.

279 (2)(a) Except as authorized by this chapter and chapter  
 280 499, it is unlawful for any person to purchase, or possess with

281 | intent to purchase, a controlled substance. Any person who  
 282 | violates this provision with respect to:

283 |       1. A controlled substance named or described in s.  
 284 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 285 | commits a felony of the second degree, punishable as provided in  
 286 | s. 775.082, s. 775.083, or s. 775.084.

287 |       2. A controlled substance named or described in s.  
 288 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 289 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 290 | the third degree, punishable as provided in s. 775.082, s.  
 291 | 775.083, or s. 775.084.

292 |       3. A controlled substance named or described in s.  
 293 | 893.03(5) commits a misdemeanor of the first degree, punishable  
 294 | as provided in s. 775.082 or s. 775.083.

295 |       (b) Except as provided in this chapter, it is unlawful to  
 296 | purchase in excess of 10 grams of any substance named or  
 297 | described in s. 893.03(1)(a) or (1)(b), or any combination  
 298 | thereof, or any mixture containing any such substance. Any  
 299 | person who violates this paragraph commits a felony of the first  
 300 | degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 301 | 775.084.

302 |       (4) Except as authorized by this chapter, it is unlawful  
 303 | for any person 18 years of age or older to deliver any  
 304 | controlled substance to a person under the age of 18 years, or  
 305 | to use or hire a person under the age of 18 years as an agent or  
 306 | employee in the sale or delivery of such a substance, or to use  
 307 | such person to assist in avoiding detection or apprehension for  
 308 | a violation of this chapter. Any person who violates this

309 provision with respect to:

310 (a) A controlled substance named or described in s.  
 311 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 312 commits a felony of the first degree, punishable as provided in  
 313 s. 775.082, s. 775.083, or s. 775.084.

314 (b) A controlled substance named or described in s.  
 315 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 316 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 317 the second degree, punishable as provided in s. 775.082, s.  
 318 775.083, or s. 775.084.

319

320 Imposition of sentence may not be suspended or deferred, nor  
 321 shall the person so convicted be placed on probation.

322 (5) It is unlawful for any person to bring into this state  
 323 any controlled substance unless the possession of such  
 324 controlled substance is authorized by this chapter or unless  
 325 such person is licensed to do so by the appropriate federal  
 326 agency. Any person who violates this provision with respect to:

327 (a) A controlled substance named or described in s.  
 328 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 329 commits a felony of the second degree, punishable as provided in  
 330 s. 775.082, s. 775.083, or s. 775.084.

331 (b) A controlled substance named or described in s.  
 332 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 333 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 334 the third degree, punishable as provided in s. 775.082, s.  
 335 775.083, or s. 775.084.

336 (c) A controlled substance named or described in s.

337 893.03(5) commits a misdemeanor of the first degree, punishable  
 338 as provided in s. 775.082 or s. 775.083.

339 Section 4. For the purpose of incorporating the amendment  
 340 made by this act to section 893.03, Florida Statutes, in  
 341 references thereto, paragraph (1) of subsection (1) of section  
 342 893.135, Florida Statutes, is reenacted to read:

343 893.135 Trafficking; mandatory sentences; suspension or  
 344 reduction of sentences; conspiracy to engage in trafficking.-

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

347 (1)1. Any person who knowingly sells, purchases,  
 348 manufactures, delivers, or brings into this state, or who is  
 349 knowingly in actual or constructive possession of, 1 gram or  
 350 more of lysergic acid diethylamide (LSD) as described in s.  
 351 893.03(1)(c), or of any mixture containing lysergic acid  
 352 diethylamide (LSD), commits a felony of the first degree, which  
 353 felony shall be known as "trafficking in lysergic acid  
 354 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 355 775.083, or s. 775.084. If the quantity involved:

356 a. Is 1 gram or more, but less than 5 grams, such person  
 357 shall be sentenced to a mandatory minimum term of imprisonment  
 358 of 3 years, and the defendant shall be ordered to pay a fine of  
 359 \$50,000.

360 b. Is 5 grams or more, but less than 7 grams, such person  
 361 shall be sentenced to a mandatory minimum term of imprisonment  
 362 of 7 years, and the defendant shall be ordered to pay a fine of  
 363 \$100,000.

364 c. Is 7 grams or more, such person shall be sentenced to a



365 mandatory minimum term of imprisonment of 15 calendar years and  
 366 pay a fine of \$500,000.

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

377 Section 5. For the purpose of incorporating the amendment  
 378 made by this act to section 893.03, Florida Statutes, in  
 379 references thereto, paragraphs (b), (c), and (e) of subsection  
 380 (3) of section 921.0022, Florida Statutes, are reenacted to  
 381 read:

382 921.0022 Criminal Punishment Code; offense severity  
 383 ranking chart.—

384 (3) OFFENSE SEVERITY RANKING CHART

385 (b) LEVEL 2

386

Florida Statute	Felony Degree	Description
379.2431(1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle

387

388			Protection Act.
	379.2431(1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
389			
	403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
390			
	517.07	3rd	Registration of securities and furnishing of prospectus required.
391			
	590.28(1)	3rd	Intentional burning of lands.
392			
	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
393			
	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
394			
	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
395			

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396	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
397	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
398	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
399	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
400	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
401	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
402	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
403	817.52(3)	3rd	Failure to redeliver hired vehicle.

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

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404	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
405	817.60(5)	3rd	Dealing in credit cards of another.
406	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
407	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
408	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
409	831.01	3rd	Forgery.
410	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
411	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
412	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
	831.09	3rd	Uttering forged notes, bills, checks,

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413			drafts, or promissory notes.
414	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
415	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
416	843.08	3rd	Falsely impersonating an officer.
417	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs other than cannabis.
418	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
419	(c)	LEVEL 3	
420	Florida	Felony	
421	Statute	Degree	Description
422	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
	316.066	3rd	Unlawfully obtaining or using

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423	(4) (b) - (d)		confidential crash reports.
424	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
425	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
426	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
427	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
428	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
429	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
430	327.35 (2) (b)	3rd	Felony BUI.
431	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.

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432	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
433	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
434	379.2431(1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
435	379.2431(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
436	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
437	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

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438	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
439	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
440	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
441	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
442	697.08	3rd	Equity skimming.
443	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
444	796.05(1)	3rd	Live on earnings of a prostitute.
445	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
446	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.



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447	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
448	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
449	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
450	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
451	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
452	817.233	3rd	Burning to defraud insurer.
453	817.234(8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
454	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
	817.236	3rd	Filing a false motor vehicle insurance

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			application.
455	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
456	817.413 (2)	3rd	Sale of used goods as new.
457	817.505 (4)	3rd	Patient brokering.
458	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
459	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
460	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
461	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
462	843.19	3rd	Injure, disable, or kill police dog or horse.
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- 464 860.15 (3) 3rd Overcharging for repairs and parts.
- 465 870.01 (2) 3rd Riot; inciting or encouraging.
- 466 893.13 (1) (a) 2. 3rd Sell, manufacture, or deliver cannabis  
(or other s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
(2)(c)7., (2)(c)8., (2)(c)9., (3), or  
(4) drugs).
- 467 893.13 (1) (d) 2. 2nd Sell, manufacture, or deliver s.  
893.03(1)(c), (2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9., (3), or (4) drugs  
within 1,000 feet of university.
- 468 893.13 (1) (f) 2. 2nd Sell, manufacture, or deliver s.  
893.03(1)(c), (2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9., (3), or (4) drugs  
within 1,000 feet of public housing  
facility.
- 469 893.13 (6) (a) 3rd Possession of any controlled substance  
other than felony possession of  
cannabis.

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- 470 893.13(7)(a)8. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
- 471 893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
- 472 893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.
- 473 893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.
- 474 893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
- 475 893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

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476	893.13 (8) (a) 3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
477	893.13 (8) (a) 4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
478	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
479	944.47 (1) (a) 1.- 2.	3rd	Introduce contraband to correctional facility.
480	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
481	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
482	(e) LEVEL 5		
483	Florida	Felony	
484	Statute	Degree	Description

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485	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
486	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
487	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
488	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
489	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
490	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
491	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
492	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
	624.401(4)(b)2.	2nd	Transacting insurance without a

			certificate or authority; premium collected \$20,000 or more but less than \$100,000.
493	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
494	790.01 (2)	3rd	Carrying a concealed firearm.
495	790.162	2nd	Threat to throw or discharge destructive device.
496	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
497	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
498	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
499	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
500	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
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502	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
503	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
504	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
505	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
506	812.131(2)(b)	3rd	Robbery by sudden snatching.
507	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
508	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
509	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341(1),	3rd	Filing false financial statements,



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510	(2) (a) & (3) (a)		making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
511	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
512	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
513	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
514	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
	827.071 (5)	3rd	Possess any photographic material, motion picture, etc., which includes

			sexual conduct by a child.
515	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
516	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
517	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
518	847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
519	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
520	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
521	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
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- 523 893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis  
(or other s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
(2)(c)7., (2)(c)8., (2)(c)9., (3), or  
(4) drugs) within 1,000 feet of a child  
care facility, school, or state, county,  
or municipal park or publicly owned  
recreational facility or community  
center.
- 524 893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine  
(or other s. 893.03(1)(a), (1)(b),  
(1)(d), (2)(a), (2)(b), or (2)(c)4.  
drugs) within 1,000 feet of university.
- 525 893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis  
or other drug prohibited under s.  
893.03(1)(c), (2)(c)1., (2)(c)2.,  
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
(2)(c)8., (2)(c)9., (3), or (4) within  
1,000 feet of property used for  
religious services or a specified  
business site.
- 893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine  
(or other s. 893.03(1)(a), (1)(b),  
(1)(d), or (2)(a), (2)(b), or (2)(c)4.

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526 drugs) within 1,000 feet of public  
housing facility.

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



527 893.1351(1) 3rd Ownership, lease, or rental for  
trafficking in or manufacturing of  
controlled substance.

528

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

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 39 Controlled Substances  
**SPONSOR(S):** Adkins and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 204

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

**SUMMARY ANALYSIS**

Synthetic cannabinoids are chemically engineered substances containing one or more synthetic compounds that behave similarly to the primary psychoactive constituent of marijuana. The compound most commonly found in these products is the chemical JWH-018, developed in a Clemson University lab by researcher John W. Huffman, PhD., to study neuronal receptors found in the body and brain. In recent years, synthetic cannabinoids often referred to as "K2" or "Spice," have begun to be used as recreational drugs. Florida does not currently regulate the sale, purchase, possession, or manufacture of synthetic cannabinoids.

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.

HB 39 adds the following synthetic cannabinoids and synthetic cannabinoid-mimicking compounds to Schedule I:

- 2-[ (1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [ c ] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.

This will make possession of synthetic cannabinoids a third degree felony in conformity with other Schedule I hallucinogens. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The offense of purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

The United States Drug Enforcement Administration recently indicated its intent to temporarily place several synthetic cannabinoids into Schedule I of the federal controlled substance schedules. The effect of the federal scheduling is that the substances can no longer be legally sold by retailers and possession and sale of these substances would be a federal crime. Likewise, the effect of Florida scheduling is that arrests and prosecutions under Florida law may be made for possession and sale of these substances.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of the bill. However, due to penalties provided in s. 893.13, F.S., for various drug related offenses, the bill will likely have a prison bed impact.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

*Synthetic cannabinoids:* Synthetic cannabinoids (also known as "K2" or "Spice") are chemically engineered substances, similar to tetrahydrocannabinol (THC)—the active ingredient in marijuana—that, when smoked or ingested, can produce a high similar to marijuana.<sup>1</sup> Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for these synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.<sup>2</sup>

The active compounds found in Spice and K2 include the synthetic cannabinoids JWH-018 (developed in a Clemson University lab by researcher John W. Huffman, PhD.), JWH-073, HU-210 and/or CP 47,497.<sup>3</sup> It is believed that manufacturers used Huffman's research in order to reproduce chemicals to produce these synthetic cannabinoids and market them for commercial distribution.

*Substance Abuse:* In recent years, synthetic cannabinoids have begun to be used as recreational drugs. The most common route of administration of synthetic cannabinoids is by smoking, using a pipe, water pipe, or rolling the drug-spiked plant material in cigarette papers. The primary abusers of synthetic cannabinoids are youth, who purchase these substances from internet websites, gas stations, convenient stores, tobacco shops and head shops.<sup>4</sup>

The United States Drug Enforcement Administration (DEA) stated that "products containing these THC-like synthetic cannabinoids are marketed as 'legal' alternatives to marijuana and are being sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores."<sup>5</sup> Further, "a number of the products and synthetic cannabinoids appear to originate from foreign sources and are manufactured in the absence of quality controls and devoid of regulatory oversight."<sup>6</sup> "The

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<sup>1</sup> "Synthetic Cannabinoids (K2)," National Conference of State Legislatures, updated November 23, 2010 (<http://www.ncsl.org/?tabid=21398>) (last accessed on January 18, 2011).

<sup>2</sup> "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I," Federal Register, Vol. 75, No. 226, November 24, 2010 (<http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=A2yMds/0/2/0&WASAction=retrieve>) (last accessed on January 18, 2011).

<sup>3</sup> "Comprehensive Drug Information on Spice and K2 (Synthetic Cannabinoids)," Hunterdon Drug Awareness Program, (<http://www.hdap.org/spice.html>) (last accessed on January 18, 2011).

<sup>4</sup> "Drugs and Chemicals of Concern," U.S. Dept. of Justice Drug Enforcement Administration, Office of Diversion Control, November 2010. ([http://www.deadiversion.usdoj.gov/drugs\\_concern/spice/spice\\_jwh018.htm](http://www.deadiversion.usdoj.gov/drugs_concern/spice/spice_jwh018.htm)) (last accessed on January 18, 2011).

<sup>5</sup> "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I," Federal Register, Vol. 75, No. 226, November 24, 2010 (<http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=A2yMds/0/2/0&WASAction=retrieve>) (last accessed on January 18, 2011).

<sup>6</sup> *Id.*

marketing of products that contain one or more of these synthetic cannabinoids is geared towards teens and young adults. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis tests will not typically detect the presence of these synthetic cannabinoids.”<sup>7</sup>

The DEA stated abuse of synthetic cannabinoids or products containing these substances “has been characterized by both acute and long term public health and safety problems.”<sup>8</sup>

- Synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. The DEA has been made aware that smoking synthetic cannabinoids for the purpose of achieving intoxication and experiencing the psychoactive effects is identified as a reason for emergency room visits and calls to poison control centers.<sup>9</sup>
- Health warnings have been issued by numerous state public health departments and poison control centers describing the adverse health effects associated with synthetic cannabinoids and their related products including agitation, anxiety, vomiting, tachycardia, elevated blood pressure, seizures, hallucinations and non-responsiveness. Case reports describe psychotic episodes, withdrawal, and dependence associated with use of synthetic cannabinoids, similar to syndromes observed in cannabis abuse. Emergency room physicians have reported admissions connected to the abuse of synthetic cannabinoids. Additionally, when responding to incidents involving individuals who have reportedly smoked synthetic cannabinoids, first responders report that these individuals suffer from intense hallucinations. Detailed chemical analysis by the DEA and other investigators has found synthetic cannabinoids spiked on plant material in products marketed to the general public. The risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoid(s) spiked on the plant material.<sup>10</sup>

Marilyn Huestis, Chief of Chemistry and Drug Metabolism at the National Institute on Drug Abuse, stated during an interview conducted by The Washington Post, that “these different, synthetic compounds are up to 100 times more potent than THC and have not been tested on humans. When people take it, they don't know how much they're taking or what it is they're taking.”<sup>11</sup>

*Drug schedules:* Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.

The distinguishing factors between the different drug schedules are the “potential for abuse”<sup>12</sup> of the substance contained therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.<sup>13</sup> Cannabis and heroin are examples of Schedule I drugs.

*Florida law:* Currently, synthetic cannabinoids are not listed in any of the controlled substances schedules in ch.893, F.S. As such, Florida does not currently regulate the sale, purchase, or possession of synthetic cannabinoids.<sup>14</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> “The growing buzz on 'spice' -- the marijuana alternative,” *The Washington Post*, July 10, 2010. (last accessed on January 18, 2011). (<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070903554.html?sid=ST2010071000029>)

<sup>12</sup> *See* s. 893.02(19), F.S.

<sup>13</sup> *See* s. 893.03, F.S.

<sup>14</sup> The Polk County Sheriff's Office recently arrested several retailers who sold synthetic cannabinoids for violating Florida's imitation controlled substance statute, s. 817.564, F.S. Curtis, Henry Pierson, “Imitation marijuana: More than dozen arrested in Polk County

*Other State Actions:* According to the National Conference of State Legislatures, as of November 23, 2010, at least 11 state legislatures have passed laws and at least seven state agencies have taken administrative action to ban synthetic cannabinoids.<sup>15</sup>

*Federal Actions:* On November 24, 2010, the DEA announced a Notice of Intent to Temporarily Control synthetic cannabinoids. The temporary control, which adds these substances to the list of Schedule I substances in the Federal Controlled Substances Act, will go into effect upon the issuance of a final order and will remain effective for at least 12 months.<sup>16</sup>

*Effect of bill:* HB 39 amends s. 893.02, F.S., the definitions section of ch. 893, F.S., to define the term "homologue" as "a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain." The term "homologue" appears in the scheduling nomenclature of one of the substances scheduled by the bill.

The bill amends s. 893.03, F.S., to add the following synthetic cannabinoids or synthetic cannabinoid-mimicking compounds to Schedule I of Florida's controlled substance schedules:

- 2-[ (1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue.
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [ c] chromen-1-ol, also known as HU-210.
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018.
- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073.

This will make possession of synthetic cannabinoids a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote.<sup>17</sup> The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart.<sup>18</sup> The purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.<sup>19</sup>

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to reflect changes made by the bill.

## B. SECTION DIRECTORY:

Section 1: Amends s. 893.02, F.S., relating to definitions.

Section 2: Amends s. 893.03, F.S., relating to standards and schedules.

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for selling 'legal weed',” *Orlando Sentinel*, November 18, 2010 ([http://articles.orlandosentinel.com/2010-11-18/news/os-fake-pot-arrests-polk-county-20101118\\_1\\_synthetic-marijuana-small-gasoline-stations-legal-weed](http://articles.orlandosentinel.com/2010-11-18/news/os-fake-pot-arrests-polk-county-20101118_1_synthetic-marijuana-small-gasoline-stations-legal-weed)) (last accessed on January 18, 2011).

<sup>15</sup> The National Conference of State Legislatures has reported the following states and state agencies have taken action to regulate synthetic cannabinoids: Alabama, Georgia, Illinois, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, Tennessee, the Arkansas Board of Health, the Hawaii Narcotics Enforcement Division, the Idaho Board of Pharmacy, the Iowa Pharmacy Board, the North Dakota Board of Pharmacy, the Oregon Pharmacy Board, and the Washington Board of Pharmacy. “Synthetic Cannabinoids (K2),” National Conference of State Legislatures, updated January 18, 2011. (<http://www.ncsl.org/?tabid=21398>) (last accessed on January 18, 2011).

<sup>16</sup> “Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I,” Federal Register, Vol. 75, No. 226, November 24, 2010 (<http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=A2yMds/0/2/0&WAIAction=retrieve>) (last accessed on January 18, 2011).

<sup>17</sup> s. 893.13(6)(a), F.S. Possession of less than 20 grams of cannabis is a first degree misdemeanor. s. 893.13(6)(b), F.S.

<sup>18</sup> s. 893.13(1)(a)2., F.S and s. 921.0022, F.S. Section 893.13, F.S. provides for enhanced penalties if the sale occurs within close proximity to certain locations such as a church or school.

<sup>19</sup> s. 893.13(2)(a)2., F.S.

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DATE: 1/11/2011



Section 3: Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 4: Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 5: Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6: 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.

2. Expenditures:

See "Fiscal Comments."

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would make it illegal to sell synthetic cannabinoids, which are currently sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. Therefore, the bill likely have a negative fiscal impact on such entities.

### D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of the bill. However, the bill adds several synthetic cannabinoids compounds to the list of controlled substances in Schedule I. Section 893.13, F.S., provides felony penalties for various drug related offenses. The type and quantity of the controlled substance sold, purchased, manufactured or trafficked dictates the penalties that apply. As such, this bill will likely have a prison bed impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill currently does not include 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole (JWH-200), which is a substance included in the DEA's proposed emergency scheduling of certain synthetic cannabinoids.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 39 (2011)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Criminal Justice Subcommittee  
2 Representative Adkins offered the following:

3  
4 **Amendment**

5 Between lines 113 and 114, insert:

6 44. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also  
7 known as JWH-200.



1                                   A bill to be entitled  
 2           An act relating to handbill distribution; providing a  
 3           short title; amending s. 509.144, F.S.; revising  
 4           definitions; providing additional penalties for the  
 5           offense of unlawfully distributing handbills in a public  
 6           lodging establishment; specifying that certain items used  
 7           in committing such offense are subject to seizure and  
 8           forfeiture under the Florida Contraband Forfeiture Act;  
 9           amending s. 901.15, F.S.; authorizing a law enforcement  
 10          officer to arrest a person without a warrant when there is  
 11          probable cause to believe the person violated s. 509.144,  
 12          F.S., and the owner or manager of the public lodging  
 13          establishment signs an affidavit containing information  
 14          supporting the determination of probable cause; amending  
 15          s. 932.701, F.S.; revising the definition of the term  
 16          "contraband"; providing that this act does not affect or  
 17          impede the provisions of a specified state statute or any  
 18          protection or right guaranteed by the Second Amendment to  
 19          the United States Constitution; providing an effective  
 20          date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1.   This act may be cited as the "Tourist Safety  
 25           Act of 2011."

26           Section 2.   Section 509.144, Florida Statutes, is amended  
 27           to read:

28           509.144   Prohibited handbill distribution in a public

29 lodging establishment; penalties.—

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

31 (a) "Handbill" means a flier, leaflet, pamphlet, or other  
 32 written material that advertises, promotes, or informs persons  
 33 about a person ~~an individual~~, business, company, or food service  
 34 establishment, but does ~~shall~~ not include employee  
 35 communications permissible under the National Labor Relations  
 36 Act or other communications protected by the First Amendment to  
 37 the United States Constitution.

38 (b) "Without permission" means without the expressed  
 39 written ~~or oral~~ permission of the owner, manager, or agent of  
 40 the owner or manager of the public lodging establishment where a  
 41 sign is posted prohibiting advertising or solicitation in the  
 42 manner provided in subsection (5) ~~(4)~~.

43 (c) "At or in a public lodging establishment" means any  
 44 property under the sole ownership or control of a public lodging  
 45 establishment.

46 (2) Any person ~~individual~~, agent, contractor, or volunteer  
 47 who is acting on behalf of a person ~~an individual~~, business,  
 48 company, or food service establishment and who, without  
 49 permission, delivers, distributes, or places, or attempts to  
 50 deliver, distribute, or place, a handbill at or in a public  
 51 lodging establishment commits a misdemeanor of the first degree,  
 52 punishable as provided in s. 775.082 or s. 775.083.

53 (3) Any person who, without permission, directs another  
 54 person to deliver, distribute, or place, or attempts to deliver,  
 55 distribute, or place, a handbill at or in a public lodging  
 56 establishment commits a misdemeanor of the first degree,

57 punishable as provided in s. 775.082 or s. 775.083. Any person  
 58 sentenced under this subsection shall be ordered to pay a  
 59 minimum fine of \$1,000 ~~\$500~~ in addition to any other penalty  
 60 imposed by the court.

61 (4) In addition to any other penalty imposed by the court,  
 62 a person who violates subsection (2) or subsection (3):

63 (a) A second time shall be ordered to pay a minimum fine  
 64 of \$2,000.

65 (b) A third or subsequent time shall be ordered to pay a  
 66 minimum fine of \$3,000.

67 (5)-(4) For purposes of this section, a public lodging  
 68 establishment that intends to prohibit advertising or  
 69 solicitation, as described in this section, at or in such  
 70 establishment must comply with the following requirements when  
 71 posting a sign prohibiting such solicitation or advertising:

72 (a) There must appear prominently on any sign referred to  
 73 in this subsection, in letters of not less than 2 inches in  
 74 height, the terms "no advertising" or "no solicitation" or terms  
 75 that indicate the same meaning.

76 (b) The sign must be posted conspicuously.

77 (c) If the main office of the public lodging establishment  
 78 is immediately accessible by entering the office through a door  
 79 from a street, parking lot, grounds, or other area outside such  
 80 establishment, the sign must be placed on a part of the main  
 81 office, such as a door or window, and the sign must face the  
 82 street, parking lot, grounds, or other area outside such  
 83 establishment.

84 (d) If the main office of the public lodging establishment

85 is not immediately accessible by entering the office through a  
 86 door from a street, parking lot, grounds, or other area outside  
 87 such establishment, the sign must be placed in the immediate  
 88 vicinity of the main entrance to such establishment, and the  
 89 sign must face the street, parking lot, grounds, or other area  
 90 outside such establishment.

91 (6) Any personal property, including, but not limited to,  
 92 any vehicle of any kind, item, object, tool, device, weapon,  
 93 machine, money, security, book, or record, that is used or  
 94 attempted to be used as an instrumentality in the commission of,  
 95 or in aiding and abetting in the commission of, a person's third  
 96 or subsequent violation of this section, whether or not  
 97 comprising an element of the offense, is subject to seizure and  
 98 forfeiture under the Florida Contraband Forfeiture Act.

99 Section 3. Subsection (16) is added to section 901.15,  
 100 Florida Statutes, to read:

101 901.15 When arrest by officer without warrant is lawful.—A  
 102 law enforcement officer may arrest a person without a warrant  
 103 when:

104 (16) The officer has determined that he or she has  
 105 probable cause to believe that a violation of s. 509.144 has  
 106 been committed and the owner or manager of the public lodging  
 107 establishment in which the violation occurred signs an affidavit  
 108 containing information that supports the officer's determination  
 109 of probable cause.

110 Section 4. Paragraph (a) of subsection (2) of section  
 111 932.701, Florida Statutes, is amended to read:

112 932.701 Short title; definitions.—



113 (2) As used in the Florida Contraband Forfeiture Act:

114 (a) "Contraband article" means:

115 1. Any controlled substance as defined in chapter 893 or  
 116 any substance, device, paraphernalia, or currency or other means  
 117 of exchange that was used, was attempted to be used, or was  
 118 intended to be used in violation of any provision of chapter  
 119 893, if the totality of the facts presented by the state is  
 120 clearly sufficient to meet the state's burden of establishing  
 121 probable cause to believe that a nexus exists between the  
 122 article seized and the narcotics activity, whether or not the  
 123 use of the contraband article can be traced to a specific  
 124 narcotics transaction.

125 2. Any gambling paraphernalia, lottery tickets, money,  
 126 currency, or other means of exchange which was used, was  
 127 attempted, or intended to be used in violation of the gambling  
 128 laws of the state.

129 3. Any equipment, liquid or solid, which was being used,  
 130 is being used, was attempted to be used, or intended to be used  
 131 in violation of the beverage or tobacco laws of the state.

132 4. Any motor fuel upon which the motor fuel tax has not  
 133 been paid as required by law.

134 5. Any personal property, including, but not limited to,  
 135 any vessel, aircraft, item, object, tool, substance, device,  
 136 weapon, machine, vehicle of any kind, money, securities, books,  
 137 records, research, negotiable instruments, or currency, which  
 138 was used or was attempted to be used as an instrumentality in  
 139 the commission of, or in aiding or abetting in the commission  
 140 of, any felony, whether or not comprising an element of the

141 felony, or which is acquired by proceeds obtained as a result of  
 142 a violation of the Florida Contraband Forfeiture Act.

143 6. Any real property, including any right, title,  
 144 leasehold, or other interest in the whole of any lot or tract of  
 145 land, which was used, is being used, or was attempted to be used  
 146 as an instrumentality in the commission of, or in aiding or  
 147 abetting in the commission of, any felony, or which is acquired  
 148 by proceeds obtained as a result of a violation of the Florida  
 149 Contraband Forfeiture Act.

150 7. Any personal property, including, but not limited to,  
 151 equipment, money, securities, books, records, research,  
 152 negotiable instruments, currency, or any vessel, aircraft, item,  
 153 object, tool, substance, device, weapon, machine, or vehicle of  
 154 any kind in the possession of or belonging to any person who  
 155 takes aquaculture products in violation of s. 812.014(2)(c).

156 8. Any motor vehicle offered for sale in violation of s.  
 157 320.28.

158 9. Any motor vehicle used during the course of committing  
 159 an offense in violation of s. 322.34(9)(a).

160 10. Any photograph, film, or other recorded image,  
 161 including an image recorded on videotape, a compact disc,  
 162 digital tape, or fixed disk, that is recorded in violation of s.  
 163 810.145 and is possessed for the purpose of amusement,  
 164 entertainment, sexual arousal, gratification, or profit, or for  
 165 the purpose of degrading or abusing another person.

166 11. Any real property, including any right, title,  
 167 leasehold, or other interest in the whole of any lot or tract of  
 168 land, which is acquired by proceeds obtained as a result of

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169 Medicaid fraud under s. 409.920 or s. 409.9201; any personal  
 170 property, including, but not limited to, equipment, money,  
 171 securities, books, records, research, negotiable instruments, or  
 172 currency; or any vessel, aircraft, item, object, tool,  
 173 substance, device, weapon, machine, or vehicle of any kind in  
 174 the possession of or belonging to any person which is acquired  
 175 by proceeds obtained as a result of Medicaid fraud under s.  
 176 409.920 or s. 409.9201.

177 12. Any personal property, including, but not limited to,  
 178 any vehicle of any kind, item, object, tool, device, weapon,  
 179 machine, money, security, book, or record, that is used or  
 180 attempted to be used as an instrumentality in the commission of,  
 181 or in aiding and abetting in the commission of, a person's third  
 182 or subsequent violation of s. 509.144, whether or not comprising  
 183 an element of the offense.

184 Section 5. This act does not affect or impede the  
 185 provisions of s. 790.251, Florida Statutes, or any other  
 186 protection or right guaranteed by the Second Amendment to the  
 187 United States Constitution.

188 Section 6. This act shall take effect October 1, 2011.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 63 Handbill Distribution  
**SPONSOR(S):** Crisafulli and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 366

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

### SUMMARY ANALYSIS

Section 509.144, F.S., prohibits persons from distributing handbills, or directing another to distribute handbills, at or in a public lodging establishment without permission. "Without permission" is defined as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation." Violations are punishable as 1<sup>st</sup> degree misdemeanors, and persons who direct another to distribute handbills without permission are also subject to a \$500 fine.

The bill amends the definition of the term "without permission" to remove "oral permission." The bill also increases the fine for persons who direct another to distribute handbills from \$500 to \$1,000. Additionally, the bill provides the following fines for subsequent violations of the handbill statute:

- For a second violation, a minimum fine of \$2,000
- For a third or subsequent violation, a minimum fine of \$3,000.

The bill amends the definition of the term "contraband article" in the Florida Contraband Forfeiture Act to specify that property used as an instrumentality in the commission of a person's third or subsequent violation of the handbill distribution statute is subject to seizure and forfeiture.

The bill also adds another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the bill provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., has been committed; and
- If the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

This bill takes effect October 1, 2011, and may have a positive fiscal impact on local governments. See fiscal section.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Handbill Distribution

Section 509.144(2), F.S., prohibits persons acting on behalf of another to, without permission, deliver, distribute, or place a handbill at or in a public lodging establishment.<sup>1</sup> Subsection (3) of the statute also prohibits persons to, without permission, direct another person to deliver, distribute, or place a handbill in a public lodging establishment. Both crimes are punishable as 1<sup>st</sup> degree misdemeanors.<sup>2</sup> In addition to the 1<sup>st</sup> degree misdemeanor penalty, persons who violate subsection (3) of the statute are required to pay a minimum fine of \$500.<sup>3</sup>

Currently, s. 509.144, F.S., defines the term "without permission" as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (4)."<sup>4</sup> The term "handbill" is defined as "a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act."<sup>5</sup>

##### *Effect of the Bill*

The bill, entitled the "Tourist Safety Act of 2011," amends the definition of the term "without permission" to remove "oral permission." Thus, a person who distributes handbills must have the written permission of the public lodging establishment's owner or manager. The bill also amends the definition of the term "handbill" to specify that the term does not include communications protected by the First Amendment to the United States Constitution.

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<sup>1</sup> Section 509.013, F.S., defines the term "public lodging establishment" as a transient public lodging establishment or a non-transient public lodging establishment. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. "Non-transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

<sup>2</sup> A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>3</sup> s. 509.144(3), F.S.

<sup>4</sup> Section 509.144(4), F.S., sets forth the manner in which public lodging establishments who intend to prohibit advertising or solicitation must post signs prohibiting such behavior.

<sup>5</sup> s. 509.144, F.S.

The bill increases the fine for violating subsection (3) of the handbill statute from \$500 to \$1,000. Additionally, the bill provides the following fines for subsequent violations of subsections (2) and (3) of the handbill statute:

- For a second violation, a minimum fine of \$2,000
- For a third or subsequent violation, a minimum fine of \$3,000.

The bill also specifies that it does not affect or impede the provisions of s. 790.251, F.S.,<sup>6</sup> or any other protection or right guaranteed by the 2<sup>nd</sup> Amendment to the United States Constitution.<sup>7</sup>

#### Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (Act)<sup>8</sup> provides that any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Act, or in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Act. Section 932.701, F.S., defines the term "contraband article" to include:

- Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
- Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.
- Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
- Any motor fuel upon which the motor fuel tax has not been paid as required by law.
- Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.
- Any motor vehicle offered for sale in violation of s. 320.28., F.S.
- Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a), F.S.
- Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s.

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<sup>6</sup> Section 790.251, F.S., relates to the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

<sup>7</sup> The 2<sup>nd</sup> Amendment to the United States Constitution sets forth the right of the people to keep and bear arms.

<sup>8</sup> Sections 932.701 – 932.706, F.S., contain the Florida Contraband Forfeiture Act.

810.145, F.S., and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.

The current definition of the term "contraband article" does not include property that was used as an instrumentality in the commission of a violation of s. 509.144, F.S., relating to handbill distribution.

#### *Effect of the Bill*

The bill amends the definition of the term "contraband article" in s. 932.701, F.S., to include the following:

Any personal property, including, but not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, securities, books, or records, which was used or was attempted to be used as an instrumentality in the commission of, or aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

The bill also amends s. 509.144, F.S., to specify that the above-described property is subject to seizure and forfeiture under the Act.

#### Warrantless Arrest

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes, which are listed in s. 901.15, F.S., are:

- Violations of injunctions for protection in domestic violence, repeat violence, sexual violence, and dating violence situations.
- Violations of pretrial release conditions in domestic and dating violence cases
- Acts of domestic or dating violence.
- Luring or enticing a child.
- Aggravated assault upon a law enforcement officer, firefighter and other listed persons.
- Battery.
- Criminal mischief or graffiti-related offenses.
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.

For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest - they only need to have probable cause to believe the person committed the crime.<sup>9</sup>

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<sup>9</sup> s. 901.15, F.S.

*Effect of the Bill*

The bill adds another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the bill provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., (the handbill statute) has been committed; and
- If the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

**B. SECTION DIRECTORY:**

**Section 1.** Cites the bill as the "Tourist Safety Act of 2011."

**Section 2.** Amends s. 509.144, F.S., relating to prohibited handbill distribution in a public lodging establishment; penalties.

**Section 3.** Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

**Section 4.** Amends s. 932.701, F.S., relating to short title; definitions.

**Section 5.** Specifies that the bill does not affect or impede the provisions of s. 790.251, F.S., or any right guaranteed by the 2<sup>nd</sup> Amendment to the United States Constitution.

**Section 6.** This bill takes effect October 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such local governments may see increased revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



1    A bill to be entitled  
2           An act relating to open house parties; amending s.  
3           856.015, F.S.; providing that a person who violates the  
4           open house party statute a second or subsequent time  
5           commits a misdemeanor of the first degree; providing that  
6           a person commits a misdemeanor of the first degree if the  
7           violation of the open house party statute causes serious  
8           bodily injury or death of a minor; providing criminal  
9           penalties; providing an effective date.

10  
11   Be It Enacted by the Legislature of the State of Florida:

12  
13           Section 1. Subsections (2) and (4) of section 856.015,  
14           Florida Statutes, are amended, and subsection (5) is added to  
15           that section, to read:

16           856.015 Open house parties.—

17           (2) A ~~No~~ person having control of any residence may not  
18           ~~shall~~ allow an open house party to take place at the said  
19           residence if any alcoholic beverage or drug is possessed or  
20           consumed at the said residence by any minor where the person  
21           knows that an alcoholic beverage or drug is in the possession of  
22           or being consumed by a minor at the said residence and where the  
23           person fails to take reasonable steps to prevent the possession  
24           or consumption of the alcoholic beverage or drug.

25           (4) Any person who violates any of the provisions of  
26           subsection (2) commits a misdemeanor of the second degree,  
27           punishable as provided in s. 775.082 or s. 775.083. A person who  
28           violates subsection (2) a second or subsequent time commits a

HB 105

2011

29 | misdemeanor of the first degree, punishable as provided in s.  
30 | 775.082 or s. 775.083.

31 | (5) If a violation of subsection (2) causes serious bodily  
32 | injury, as defined in s. 316.1933, or death of the minor, it is  
33 | a misdemeanor of the first degree, punishable as provided in s.  
34 | 775.082 or s. 775.083.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 105 Open House Parties

SPONSOR(S): Goodson

TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

Section 856.015, F.S., states that a person in control of a residence who allows an open house party to take place commits a second degree misdemeanor if they know a minor has possession of or consumed any alcoholic beverage or drug at their residence and the person fails to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

HB 105 amends present law to make a second or subsequent violation of s. 856.015, F.S., a first degree misdemeanor.

This bill also provides that any violation of s. 856.015, F.S., which results in serious bodily injury or death of the minor, will be punishable by a first degree misdemeanor.

The bill does not appear to have a fiscal impact on state government; however, the bill could have an effect on county jails.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS

#### I. SUBSTANTIVE ANALYSIS

##### A. EFFECT OF PROPOSED CHANGES:

###### **Background**

In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.<sup>1</sup>

Section 856.015, F.S., states that a person<sup>2</sup> in control of a residence who allows an open house party<sup>3</sup> to take place commits a second degree misdemeanor if they know a minor<sup>4</sup> has possession of or consumed any alcoholic beverage<sup>5</sup> or drug<sup>6</sup> at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.<sup>7</sup> A second degree misdemeanor is punishable by up to 60 days in jail and/or a fine not exceeding \$500.<sup>8</sup>

The Florida Department of Law Enforcement reported the following arrests for a violation of s. 856.015, F.S.: 157 in 2008, 230 in 2009 and 174 for 2010.<sup>9</sup>

###### **Proposed Changes**

HB 105 amends present law to make a second or subsequent violation of s. 856.015, F.S., a first degree misdemeanor, which is punishable by up to 1 year in jail and/or a fine not to exceed \$1000.<sup>10</sup>

This bill also provides that any violation of s. 856.015, F.S., which results in serious bodily injury, as defined in s. 316.1933, F.S.,<sup>11</sup> or death of the minor, is a first degree misdemeanor.

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<sup>1</sup> Section 562.111, F.S.

<sup>2</sup> Section 856.015(1)(f), F.S., defines "person" as "an individual 18 years of age or older."

<sup>3</sup> Section 856.015(1)(e), F.S., defines "open house party" as "a social gathering at a residence."

<sup>4</sup> Section 856.015(1)(d), F.S., defines "minor" as "an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

<sup>5</sup> Section 856.015(1)(a), F.S., defines "alcoholic beverage" as "distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of s. 561.01(4)(b)."

<sup>6</sup> Section 856.015(1)(c), F.S., defines "drug" as "a controlled substance, as that term is defined in ss. 893.02(4) and 893.03, F.S."

<sup>7</sup> Section 856.015(3), F.S., provides an exemption for the use of alcoholic beverages at legally protected religious observances or activities.

<sup>8</sup> Sections 775.082, and 775.083, F.S., respectively.

<sup>9</sup> Florida Department of Law Enforcement's Statistical Analysis Center, extracted January 1, 2011.

<sup>10</sup> Sections 775.082, and 775.083, F.S., respectively.

<sup>11</sup> Section 316.1933(b), F.S., defines the term "serious bodily injury" as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

**B. SECTION DIRECTORY:**

Section 1. Amends s. 856.015, F.S., relating to open house parties.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

The bill creates the penalty of a first degree misdemeanor for a second or subsequent violation of s. 856.015, F.S. The change in penalty for a second or subsequent violation would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

The bill also creates a penalty of a first degree misdemeanor if a violation of s. 856.015, F.S., results in seriously bodily injury or death of the minor.

The Florida Department of Law Enforcement reported the following arrests for a violation of s. 856.015, F.S.: 157 in 2008, 230 in 2009 and 174 for 2010.

This bill could have an impact on local jails.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

In subsection 5 it is unclear who "the minor" refers to.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 105 (2011)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Criminal Justice Subcommittee  
2 Representative(s) Goodson offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove lines 31-32 and insert:

6 (5) If a violation of subsection (2) causes or contributes  
7 to causing serious bodily injury, as defined in s. 316.1933, or  
8 death, it is

9  
10  
11 -----  
12 **T I T L E A M E N D M E N T**

13 Remove lines 7-8 and insert:

14 violation of the open house party statute causes or contributes  
15 to causing serious bodily injury or death; providing criminal





# Florida Adult Drug Courts

A presentation to the  
House Criminal Justice Subcommittee

Farah Khan  
Legislative Policy Analyst

January 25, 2011

Florida Legislature Office of Program Policy Analysis & Government Accountability

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## What is OPPAGA?

- Florida Legislature's research unit
- Provides data, evaluative research, and objective analyses that assist legislative budget and policy process

[www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

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## What are Drug Courts?

- Dockets that hear cases involving drug addicted offenders
- Divert offenders from the criminal justice system
- Serve offenders in the community who are subject to treatment and drug testing
- Can help reduce prison admissions and state costs

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## Types of Drug Courts

- Pre-trial diversion
  - Designed for first-time drug offenders
  - Excludes offenders with prior felony convictions
- Post-adjudicatory (post-plea)
  - Serve non-violent, drug addicted offenders who typically have prior felony convictions
  - Focus of OPPAGA analysis

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## Analysis Results March 2009 Report

- Completion rates were relatively low
  - Half of post-plea participants graduated
- Recidivism rates were low
  - Graduates were 80% less likely to go to prison
  - 6% of graduates went to prison
  - 49% of failures went to prison

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## 2009 Legislature Expanded Post-Plea Drug Courts

- Authorized courts to serve:
  - Certain non-violent prison-bound offenders
  - Offenders who violate probation by testing positive on random drug test
- Required data collection and reporting
- Appropriated \$19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant

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### OPPAGA Report October 2010

- Chapter 2009-64, *Laws of Florida*, directed OPPAGA to evaluate the effectiveness of post-adjudicatory treatment-based drug court programs
- Data are not yet available to evaluate participant recidivism
- This report examined program implementation and potential cost savings

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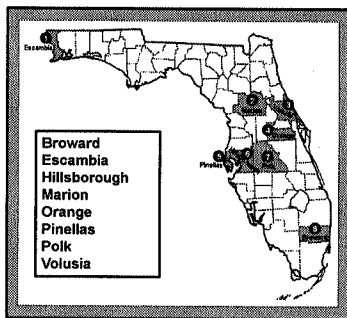
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### Expansion Drug Courts Have Been Implemented in Eight Counties



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### Expansion Drug Courts

- Serve drug addicted prison-bound offenders who:
  - Have a sentencing score 52 points or fewer
  - Current offense is a non-violent 3rd degree felony
  - Have violation of probation for a failed drug test
  - Are amenable to treatment
- Program is typically 12 to 18 months and is a condition of probation

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### **Expansion Courts Unlikely to Achieve Expected Savings**

- Expected to divert 4,000 offenders and save \$95 million over 2 years
- Drug courts unlikely to reach this goal
  - As of June 30, 2010, drug courts had admitted 324 offenders compared to the mid-year target of 900 (36%)
  - Program utilization rates varied from 20% to 66%

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### **Initial Estimates of Potential Population Were Overstated**

- Followed statewide criteria, but included offenders who traditionally have not been served by drug courts
  - Offenders with prior forcible felonies, drug trafficking and sales were included
  - Excluding these offenders reduces the potential population by 50%
- Resulted in fewer counties selected than needed to reach program admission goals

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### **Eligibility Criteria Restrict Admissions**

- Probation violators admitted if a failed substance abuse test is their only violation
  - However, 74% of probation violations for a failed drug test occurred with other technical violations
- Offenders with a history of violent offenses are not considered for expansion drug courts
  - Some offenders without recent violent offenses may be appropriate

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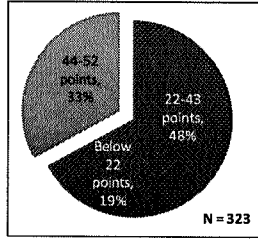
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## Most Expansion Drug Court Offenders Have Low Sentencing Scores



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## Policy Options

- Expand drug court criteria to include offenders with other technical violations, if substance abuse was the primary issue
- Include additional counties in the expansion drug courts
- Require existing programs to serve predominantly prison-bound offenders
- If these options are not feasible, funds can be shifted to other diversionary programs

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## For More Information



The Florida Legislature's  
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## Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings

### *at a glance*

The 2009 Legislature appropriated \$19 million in federal funds to establish eight post-adjudicatory drug courts. The drug courts were expected to divert offenders from prison and thereby reduce corrections costs by an estimated \$95 million.

The drug courts are generally meeting standards for their operation. However, they are unlikely to generate the expected cost savings for several reasons. Initial admissions targets overestimated the potential population of offenders who would qualify for the programs and strict eligibility criteria limited admissions. Some programs also appear to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court.

The Legislature may wish to consider four options to address these problems. It could modify drug court criteria to serve more prison-bound offenders, include additional counties in the program, require the courts to serve predominantly prison-bound offenders, and/or shift federal funds to other prison diversion programs.

### Scope

Chapter 2009-64, *Laws of Florida*, directs OPPAGA to evaluate the effectiveness of post-adjudicatory treatment-based drug court programs. This report examines how the programs are being implemented and the potential cost savings they may achieve for the state. Data are not yet available to evaluate participant recidivism.

### Background

Post-adjudicatory drug courts divert persons who have been found guilty of certain crimes from incarceration to supervised treatment. Offenders, who typically have prior drug-related offenses, are sentenced to drug court for 12 to 18 months as a condition of probation.<sup>1</sup> Prior to 2009, the programs were operated by 21 counties.

In 2009, the Legislature sought to reduce prison costs by passing Ch. 2009-64, *Laws of Florida*, to create new expanded drug courts for more serious prison-bound, non-violent offenders.

<sup>1</sup> In addition to post-adjudicatory programs, some counties operate pretrial diversion drug courts that divert first-time offenders from the criminal justice system.



The Legislature directed \$19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to the expansion drug courts for case management, treatment services and drug testing, data management, and project administration.

The Office of the State Courts Administrator worked with local jurisdictions to establish expansion drug courts in eight counties: Broward, Escambia, Hillsborough, Marion, Orange, Pinellas, Polk, and Volusia.<sup>2</sup>

## Findings

The eight expansion drug courts are generally meeting accepted standards for drug court operation. However, as currently implemented, the programs are unlikely to achieve the goal of diverting 4,000 offenders from prison over a two-year period, which was expected to reduce state corrections costs by an estimated \$95 million. Programs are not reaching their admission goals because initial admissions targets overestimated the potential population and strict eligibility criteria limit admissions. In addition, cost savings are reduced because some programs are serving offenders unlikely to be sentenced to prison in the absence of drug court. The Legislature could consider four options to increase correctional cost savings: expand eligibility criteria to serve more prison-bound offenders; increase the number of counties participating; require existing expansion courts to serve predominately prison-bound offenders; or shift federal funds to other prison diversion programs.

### ***Expansion drug courts are generally meeting Florida drug court standards***

The expansion drug courts are generally meeting six standards established in s. 397.334, *Florida Statutes*.<sup>3</sup>

<sup>2</sup> Duval was originally selected to participate but withdrew on May 19, 2010.

<sup>3</sup> These standards were adapted from the United States Department of Justice's 10 Key Drug Court Components and are intended to promote effectiveness and improve performance. We focused on 6 of the 10 standards that were

- **Drug courts provide access to a continuum of alcohol, drug, and related treatment and rehabilitation services.** All eight programs require offenders to attend intensive outpatient treatment through a multi-phased approach; six programs also offer residential treatment.<sup>4</sup> In addition, all provide referrals for ancillary services such as job training and employment assistance, transitional housing, and services for non-English language speakers.
- **Drug courts ensure ongoing judicial interaction with each drug court participant.** Seven of the eight programs require participants to appear before the judges at least once a month and five programs hold weekly drug court hearings. Judges base the required frequency of court attendance on each offender's progress.
- **Drug courts identify eligible participants early and promptly place them in the program.** Eligible offenders are typically identified by drug court staff or are referred by attorneys, treatment providers, or felony division judges. For all eight programs the state attorney's office screens cases to determine if the defendant meets the court's eligibility criteria. Once a defendant is accepted into the program, the court orders a substance abuse evaluation to determine treatment needs, and the drug court team uses the evaluation results to design a supervision and treatment plan. Five programs use the American Society of Addiction Medicine's validated risk assessment instrument.

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most central to drug court operations and appropriate for the program's implementation status. We did not evaluate the programs' compliance with four standards due to difficulties in translating program activities into measurable results or the programs' implementation status. These four standards were: promoting public safety while protecting participants' due process rights; measuring attainment of program goals and gauging effectiveness; continuing interdisciplinary education for drug court personnel; and forging local, state and community-based partnerships and coalitions to enhance drug court effectiveness.

<sup>4</sup> Drug court programs consist of three to four phases that participants must complete in order to successfully graduate from the program.

- **Drug courts integrate alcohol and other drug treatment services with justice system case processing.** Six courts hold frequent status hearings in which judges, treatment providers, probation officers, attorneys, and case managers assess the offenders' progress in the program. They discuss an offender's compliance with supervision requirements as well as whether to increase or decrease treatment requirements, impose sanctions and incentives, and monitor the offender's movement through program phases.
- **Drug courts adopt a coordinated strategy to govern drug court responses to participant compliance.** When offenders with serious substance abuse problems relapse, judges may impose a range of sanctions while the offenders remain in the program. For example, judges often use sanctions such as mandatory community service, extended probation, or jail stays when offenders violate probation requirements by testing positive on drug tests, missing treatment sessions, or failing to report to court.
- **Drug courts monitor abstinence with frequent random alcohol and drug testing.** All eight programs use random drug testing to monitor program compliance. Participants are tested by drug court staff at least twice per week. In addition, offenders are required to maintain a minimum number of 'clean days' before they can progress through the program phases and are also required to be drug free for at least 90 days before graduating from drug court.

***Expansion drug courts as currently implemented are unlikely to significantly reduce state prison costs***

The 2009 Legislature expanded eligibility criteria for drug courts to divert suitable offenders from prison and thereby reduce corrections costs. Expanded drug courts were expected to divert 4,000 offenders, thereby reducing state corrections costs by an estimated \$95 million. However, cost savings of this magnitude are unlikely to be achieved unless changes are made. Programs are not reaching their admission goals because initial estimates of the potential population were overstated and restrictive eligibility criteria limit admissions. In addition, cost savings are reduced because programs appear to be serving many offenders unlikely to be sentenced to prison in the absence of drug court.

**The expansion drug courts will not meet their goal of serving 2,000 offenders by December 2010.** As of June 30, 2010, the expansion drug courts had admitted 324 offenders, substantially fewer than the mid-year target of 900 offenders. Program utilization rates varied from 20% to 66% (see Exhibit 1). Six of the eight programs report that they will not achieve the anticipated number of admissions this year. The expansion drug courts will not reach admissions goals for two main reasons: initial estimates overstated the potential population and restrictive eligibility requirements limited admissions.

**Exhibit 1  
Expansion Drug Courts Have Low Admissions<sup>1</sup>**

Circuit	County	Number of Offenders to Serve	2010 Admissions	Program Capacity Used
1 <sup>st</sup>	Escambia	38	21	56%
5 <sup>th</sup>	Marion	35	7	20%
6 <sup>th</sup>	Pinellas	150	48	32%
7 <sup>th</sup>	Volusia	30	16	53%
9 <sup>th</sup>	Orange	120	43	36%
10 <sup>th</sup>	Polk	100	66	66%
13 <sup>th</sup>	Hillsborough	252	77	31%
17 <sup>th</sup>	Broward <sup>2</sup>	175	46	26%
<b>Total</b>		<b>900</b>	<b>324</b>	<b>36%</b>

<sup>1</sup> 2010 admissions are for the first six months of operation for most drug courts, from inception through June 30, 2010. Accordingly, the number of offenders to serve and program capacity used are based on half of the annual number projected.

<sup>2</sup> The expansion drug court in Broward County began operating in March 2010.

Source: OPPAGA analysis of county court data collected by the Office of the State Courts Administrator.

**Initial estimates of the potential population for expansion drug courts were overstated.**

Original estimates of the number of offenders potentially eligible for expansion drug courts included offenders with prior forcible felonies and drug trafficking and sales offenses, which drug courts traditionally have not served.<sup>5</sup> These estimates were used to determine how many counties to include in the expansion.<sup>6</sup> As a result, fewer counties were selected than needed to reach admissions goals. When offenders with prior violent or drug trafficking offenses are excluded, the estimate of potential prison diversions from participating counties is reduced by half, from approximately 6,000 offenders to 3,000.<sup>7</sup> In addition, Duval County

<sup>5</sup> Prior to the current expansion, Florida law did not address eligibility criteria for post-adjudicatory drug courts and each drug court established slightly different eligibility criteria through local administrative orders. While the 2009 statutory changes did not specifically exclude prior forcible felonies, most drug courts serve offenders who have non-violent felony drug or drug-related offenses and no history of violence, drug trafficking, or drug sales.

<sup>6</sup> The original estimates of the potential population were from the Office of Economic and Demographic Research and were based on the 2009 statutory criteria.

<sup>7</sup> OPPAGA's estimate is based on Fiscal Year 2007-08 prison admissions for drug offenses or non-violent property offenses, excluding prior or current forcible felonies and drug dealing, for offenders with drug treatment needs who have sentencing

withdrew from the expansion program in May 2010; it was expected to serve 200 offenders annually.

**Drug court eligibility criteria restrict admissions.** State law authorizes expansion drug courts to serve both offenders arrested for specified new crimes and for specific violations of probation. Probation violators are eligible if their offense occurred on or after July 1, 2009, and if the violation is solely for a failed substance abuse test. Consequently, programs cannot serve probation violators if the reason for the violation was anything other than a failed drug test. Department of Corrections data shows that statewide, 74% of all violations of probation for a failed drug test occurred with other technical violations.<sup>8</sup> According to drug court and Department of Corrections staff, probation offenders rarely are cited for a single violation; for example, offenders often are cited for additional technical violations such as failing to timely pay court-ordered fees, missing a treatment session, or failing to report to the probation office. In addition, drug court staff reported that some technical violations other than a failed drug test are related to the offender's substance abuse problem and are considered indicators that the offender has relapsed. Expanding the eligibility criteria to other technical violations of probation would increase the number of offenders eligible for the program.

In addition, some expansion drug court staff reported they could serve more prison-bound offenders if offenders with prior violent offenses could be considered for eligibility on a case-by-case basis. Although Florida law does not exclude offenders with a history of violent offenses, drug courts have traditionally excluded these offenders because federal grant requirements prohibited drug courts from serving these offenders. However, the Department of Justice has confirmed that

scores of 52 points or fewer.

<sup>8</sup> This percentage is based on a Department of Corrections analysis of 1,653 non-violent offenders who had sentencing scores of 52 points or fewer and did not have a prior history of violent or forcible offenses committed on or after July 1, 2009.

expansion drug courts are not required to adhere to the federal violent offender exclusion.<sup>9</sup> Although certain offenders with violent histories would not be suitable for the drug court model, drug court judges in general and state attorneys in three of the eight counties with expansion drug courts reported that some offenders with a previous violent offense may be appropriate for the program (e.g., a person who committed a violent offense years ago but has had no subsequent history of violence). Judges in these programs would like more discretion to serve offenders who are appropriate for treatment and do not present a risk to public safety.

**Most expansion drug court clients have low sentencing scores.** As directed by the Legislature, the expansion drug courts are serving non-violent felony offenders. As of June 30, 2010, offenders admitted into the programs had no prior or current violent felony offenses, had committed third degree non-violent felony offenses or received technical violations of probation, and had sentencing scores of 52 points or fewer, as required by statute.

The Legislature intended expansion drug courts to reduce state costs by diverting offenders from prison. However, most drug court participants have sentencing scores below 44 points, well below the maximum sentencing score of 52 points required to meet eligibility criteria.<sup>10</sup> Judges in six of the eight expansion counties are certifying that the offenders admitted to drug court with

<sup>9</sup> The expansion drug courts awards were authorized under the American Recovery and Reinvestment Act of 2009 through the Edward Byrne Justice Assistance Grant (JAG) program. Although drug courts funded under Bureau of Justice Assistance Drug Court Discretionary Grant provisions are prohibited from serving offenders with a prior violent felony conviction, drug courts funded under the Justice Assistance Grant program are not required to adhere to this exclusion.

<sup>10</sup> Under the Florida Criminal Punishment Code, offenders are assigned points for their crime and any past crimes, and these scores are used in sentencing. If an offender's total points are equal to or less than 44, the lowest permissible sentence is a non-state prison sanction unless the court determines within its discretion that a prison sentence up to the statutory maximum can be imposed.

sentencing scores below 44 points would have been sentenced to prison in the absence of drug court. In contrast, some judges and state attorneys in Polk and Orange counties stated that most offenders placed in expansion drug court would not have been sent to prison on their current offense; approximately 92% of offenders in these counties scored below 44 points. As shown in Exhibit 2, most of the offenders served by the drug courts have sentencing scores between 23 and 44 points.

**Exhibit 2**  
**Circuits Varied Widely in the Percentage of Participants Likely to be Diverted from Prison**

Circuit	County	Percentage in Each Sentencing Score Range			Number
		1-22	23-43	44-52	
9 <sup>th</sup>	Orange	65%	33%	2%	43
10 <sup>th</sup>	Polk	21%	67%	12%	66
13 <sup>th</sup>	Hillsborough	21%	64%	16%	77
7 <sup>th</sup>	Volusia	6%	63%	31%	16
1 <sup>st</sup>	Escambia	0%	65%	35%	20
5 <sup>th</sup>	Marion	14%	43%	44%	7
17 <sup>th</sup>	Broward	2%	33%	65%	46
6 <sup>th</sup>	Pinellas	0%	15%	85%	48
<b>Total Number</b>		<b>61</b>	<b>155</b>	<b>107</b>	<b>323</b>

Source: OPPAGA analysis of county court data collected by the Office of the State Courts Administrator.

The low sentencing scores of many participants raise questions about whether they would have been sentenced to prison in the absence of a drug court. Office of Economic and Demographic Research data for non-violent felony offenders sentenced in Fiscal Year 2009-10 shows that offenders with sentencing scores greater than 22 points but not more than 44 points were unlikely to be sentenced to prison (see Exhibit 3).

**Exhibit 3  
Few Non-Violent Felony Offenders with Sentencing Scores of 44 Points or Fewer Were Sentenced to Prison<sup>1</sup>**

Sentencing Score Range	Number Sentenced	Percentage of Non-Violent Felony Offenders Receiving Each Sanction		
		State Supervision	Jail, Other	Prison
22 and below	14,004	69.9%	27.5%	<b>2.6%</b>
Over 22 to 44	12,786	57.6%	30.9%	<b>11.5%</b>
Over 44 to 52	1,007	24.8%	17.5%	<b>57.7%</b>

<sup>1</sup> The total reflects offenders sentenced in Fiscal Year 2009-10 for non-violent felony offenses or community sanction violations committed on or after July 1, 2009, who had no prior forcible felonies. Data does not include cases where the sentencing score was not reported.

Source: Office of Economic and Demographic Research.

Focusing drug court resources on offenders who score below 44 points reduces the potential cost savings for the state. We estimate that the state could save approximately \$6,300 per year for each offender served in a drug court rather than incarcerated in prison.<sup>11</sup> However, the state will attain these savings only if the participating counties serve offenders who would be sentenced to prison in the absence of a drug court.<sup>12</sup>

***Options for increasing correctional cost savings***

The 2009 Legislature appropriated \$19 million in federal trust funds for drug court treatment services with the goal of reducing state correctional costs by \$95 million. According to the Office of the State Courts Administrator, the state has until September 30, 2012, to spend

<sup>11</sup> The average cost to serve a drug court participant is approximately \$5,100, which includes approximately \$3,500 in treatment costs and \$1,600 in Department of Corrections supervision costs compared to an average annual prison bed cost of approximately \$19,000. Since half of post-adjudicatory drug court participants fail to successfully complete the program and serve an average sentence of 1.5 years in prison, we estimate the expected cost savings per participant is approximately \$6,300.

<sup>12</sup> Broward and Pinellas counties, two of the largest counties in the expansion, primarily serve offenders who score above 44 points and will be in the best position to provide cost savings.

down these funds before they revert to the federal treasury. As of June 30, 2010, the state had not spent approximately \$18.1 million, or 96%, of the funds.<sup>13</sup>

To avoid reverting this money and to reduce state prison costs by diverting prison-bound offenders, the Legislature may wish to consider four options.

- Expand drug court criteria to serve more prison-bound offenders.
- Include additional counties to divert more prison-bound offenders.
- Require existing expansion courts to serve predominantly prison-bound offenders.
- Shift federal drug court funds to other prison diversion programs.

**Expand drug court criteria.** Most drug courts report that they could serve more prison-bound offenders if the eligibility criteria were expanded. The Legislature may wish to consider

- authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation; and
- giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.

**Include additional counties so as to divert more prison-bound offenders.** Because program participation is low, the Legislature could afford to add new counties to the drug court expansion program if they agree to serve prison-bound offenders. For example, Bay, Brevard, and St. Lucie counties have high prison admission rates for drug court eligible offenders but were not previously selected for program participation.

<sup>13</sup> The Office of the State Courts Administrator reports that \$852,325 has been expended as of July 2010, and that this amount does not include expenditures for Duval County or Hillsborough County.

**Require existing expansion courts to serve predominantly prison-bound offenders.** While the courts should have some flexibility to serve lower scoring offenders, the Legislature intended the expansion drug courts to serve offenders who would be sentenced to prison in the absence of the drug court.

- The Office of State Courts Administrator should work with counties serving few offenders with sentencing scores over 44 points to identify ways to target more serious offenders. For example, courts should target potential drug court clients by screening offenders in the felony division rather than limiting referrals to offenders who violate probation.
- The Legislature may wish to stop funding programs that are not predominately serving prison-bound offenders. Funding from these programs could be shifted to the existing expansion counties or allocated to new counties willing to serve prison-bound offenders.

**Shift federal drug court funds to other prison diversion programs.**

- In the absence of increased program admissions and to avoid reverting drug court funds to the federal government, the

Legislature may wish to shift some of the funding to serve prison-bound offenders in other diversionary programs (e.g., day-reporting centers and community-based substance abuse and mental health treatment).<sup>14</sup> Federal Byrne-JAG grant requirements do not prohibit use of these funds for other programs and some other states are using these funds on other such diversion efforts. In addition, the Legislature may wish to expand problem solving courts, such as mental health courts, to serve prison-bound offenders with both mental health and substance abuse treatment needs.

## Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Office of State Clerks Administrator to review. Their responses have been reproduced in Appendices A.

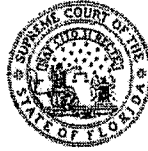
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<sup>14</sup> See *Intermediate Sanctions for Non-Violent Offenders Could Produce Savings*, OPPAGA Report No. 10-27, March 2010, which provides recommendations for community-based treatment options.

## Appendix A

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Charles T. Canady  
Chief Justice



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Elisabeth H. Goodner  
State Courts Administrator

### Office of the State Courts Administrator

Phone: (850) 922-5081 Fax: (850) 488-0156  
e-mail: [osca@flcourts.org](mailto:osca@flcourts.org)

September 29, 2010

Gary R. VanLandingham, Ph.D.  
Director, Office of Program Policy Analysis  
and Government Accountability  
Claude Pepper Building  
111 West Madison Street, Room 312  
Tallahassee, FL 32399-1475

Dear Dr. VanLandingham:

I appreciate the opportunity to comment on OPPAGA's draft report entitled "Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings." Overall, I concur with the recommendations outlined in the report and my staff has been working diligently to develop a strategy for addressing the concerns raised. Additionally, I would like to offer a few observations.

The report includes two major findings, the first being that expansion drug courts are generally meeting Florida drug court standards. This finding is important because these standards are statistically linked to successful outcomes, including lower recidivism rates, in the national data. Programs that consistently meet the standards should ultimately produce positive outcomes, including a significant number of graduates who will not go to prison and in fact will go on to lead productive lives.

The avoidance of prison and the ability to lead productive lives are important to the next finding: that expansion drug courts as currently implemented are unlikely to significantly reduce state prison costs. We have two comments regarding this finding. First, it may be premature to use admissions data to predict the potential of cost savings, considering that the six months of data used includes the "ramp up" time necessary for local programs to fully develop their referral mechanisms. The actual number of offenders served during the first 12 months of operations will not be known for several more months. Certainly the programs have not served as many offenders as initially planned and we will not reach the original target. But we do anticipate that many more offenders will be served in the coming months. Second, cost effectiveness also should be measured against actual expenditures. Expenditures to date are significantly lower than initial projections. Expansion programs may ultimately show some cost savings while serving fewer offenders, even if less than expected.

Gary R. VanLandingham, Ph.D  
September 29, 2010  
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The report indicates that the estimates of the number of qualified offenders who could be served by the programs were significantly overstated because they did not exclude prior violent offenses or drug trafficking and sales offenses. This led to target admissions numbers that have proven to be too high. Planning for this project relied on data provided by the Office of Economic and Demographic Research (EDR). EDR based their data on the new provisions passed in 2009. This methodology was sound considering the information we had at the time. However, in developing the implementation plan we did not contemplate that local programs, in consultation with the local state attorneys, public defenders and treatment providers, would exercise their discretion to exclude individuals with violent histories or drug trafficking and sales offenses. If indeed the initial estimates of potential prison diversions from participating counties could be reduced by half as OPPAGA suggests, from approximately 6,000 offenders to 3,000 offenders, targets should also be lowered and any evaluation of the expansion program should ultimately consider those lower targets. My office is in the process of doing an analysis of county specific data to determine reasonable estimates of future program admissions, which could serve as a basis for revising the estimated cost savings.

The report points to another issue that can impact potential prison cost savings: that there are non prison-bound offenders being placed into these programs. OPPAGA specifically identifies Orange and Polk Counties as serving a significant number of offenders who seemingly do not meet the prison-bound criteria. This conclusion is made based on low sentencing scores and the statements of some judges and state attorneys in those counties. In August, my staff met with the judges in Orange and Polk Counties to discuss this matter. Both counties have agreed to ensure that prison-bound offenders are targeted to participate in the program. In addition, Polk and Orange Counties have agreed to begin documenting that each offender is indeed prison-bound. My staff will continue to monitor admissions to ensure compliance. We are confident that the other six counties are serving prison-bound offenders in their respective expansion programs.

As recommended in the report, we agree that expanding the drug court criteria to serve more prison-bound offenders would increase the number of eligible offenders. Several programs have further suggested that the legislature consider raising the 52 point sentencing score threshold to 60 points as originally recommended in OPPAGA's March 2010 report entitled "State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders." This would also allow more non-violent offenders in need of substance abuse treatment into the program. My office will be able to propose language for the legislature's consideration.

Finally, I would like to note that getting this program implemented has been exceedingly challenging, given the many requirements in the federal grant regulations. As reflected in the report, program census is low. Yet while this program will not meet the targeted number of offenders during its first year of operations, I remain confident that with time the expansion drug courts will begin producing more positive outcomes and may prove to be a cost effective approach to dealing



Gary R. VanLandingham, Ph.D  
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with offenders whose criminal activity is fueled by their substance abuse and addiction. I welcome any further guidance from the legislature and other stakeholders on how this program can better serve prison-bound offenders and the citizens of Florida.

Thank you for the opportunity to respond to the report. Please do not hesitate to contact me if you require additional information.

Sincerely,



Elisabeth H. Goodner

LG:jg





## Review of the Department of Corrections' Faith-based Prisons

Presentation to the House Criminal Justice Subcommittee

Marti W. Harkness  
Staff Director, Criminal Justice  
OPPAGA

January 25, 2011

Florida Legislature Office of Program Policy Analysis & Government Accountability

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### Characteristics of Faith-based Initiative

- Religious preference is not considered in determining eligibility
- Participation is voluntary
- All faiths are included
- No state funds are used on religious programming or materials
- Each program is autonomous

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### Faith-based Settings

- Faith and character-based institutions
  - 4,307 slots at 4 locations
  - Permanent placement
- Faith-based / self-improvement dorms
  - 681 slots at 7 locations
  - 12-month placement

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### Faith-based Prisons Have Improved Institutional Safety

- Lower disciplinary report rates than comparable institutions
  - Lawtey - 9% lower
  - Wakulla - 49% lower
  - Hillsborough - 68% lower
  
- Lower incidents of contraband
  - Wakulla - 2 weapons seized versus Taylor with 14 weapons seized
  - Lawtey - 6 positive drug tests versus Avon Park with 16 positive inmate drug tests

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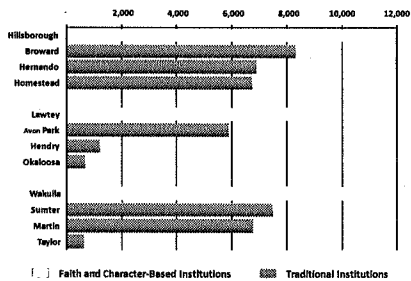
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### Faith-based Prisons Have Higher Levels of Volunteerism



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### Inmates in Prison-wide Programs Less Likely to Reoffend

- Offenders released from Wakulla were 15% less likely to reoffend than comparable offenders
  - Hillsborough - 5% lower
  - Lawtey - 6% lower
  
- No measurable effect on post-release outcomes for dorm-based programs

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### **The Initiative Has Two Challenges**

- **Some dorm-based programs have challenges maintaining religious diversity**
- **Some dorm-based programs are under-utilized**
  - Union serves maximum security inmates age 50 and over
  - Lancaster dorm serves youthful offenders over age 21, but under 24

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### **Any Questions?**



Office of Program Policy Analysis & Government Accountability  
OPPAGA supports the Florida Legislature by providing data, evaluation research, and objective analyses that assist legislative budget and policy deliberations.

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## Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest

### *at a glance*

Florida's faith- and character-based initiative is a volunteer-staffed program that offers religious and life skills programs in 11 Florida prisons. Inmate participation is voluntary and inmates of any faith are eligible. No state funds are expended on the initiative.

The initiative operates prison-wide in four correctional institutions and in specified dorms in seven institutions. The prison-wide programs have a demonstrated positive effect on inmate institutional adjustment and institutional security, and a modest but positive effect on reducing the likelihood that inmates will reoffend. The dorm-based programs also have a positive effect on institutional adjustment and security; however, they do not have a demonstrated effect on inmate recidivism.

The department has encountered several challenges managing the dorm-based programs, including limitations in providing inmates with religious diversity and underutilization of some prison dorms.

### Scope

As directed by the Legislature, this report examines Florida's faith-based initiative and addresses three questions.

- What are the characteristics of Florida's faith- and character-based prison initiative?

- What are the demonstrated outcomes of the faith- and character-based initiative?
- What challenges has Florida's faith- and character-based prison initiative encountered?

### Background

Faith- and character-based programs are prison rehabilitative programs intended to change inmates' internal motivations and thereby alter their behavior. Florida is one of 19 states and the Federal Bureau of Prisons that offer faith-based prison programs.

### Questions and Answers –

#### What are the characteristics of Florida's faith- and character-based prison initiative?

The initiative is a volunteer-staffed program that offers a variety of faith- and character-based education programs to inmates. Florida's initiative operates prison-wide in four correctional institutions and in designated dorms in seven institutions. Inmate participation is voluntary and inmates of any faith are eligible. The initiative is decentralized and program offerings vary by prison location. No state funds are expended on the initiative.

***Florida's faith- and character-based initiative has five primary characteristics***

The initiative is intended to provide an environment that facilitates inmate transformation through volunteer-led programs and religious study and services. The initiative has five distinguishing elements.

- **An inmate's religious faith, or lack thereof, is not considered in determining eligibility.** Neither religious preference nor participation in chapel programs is considered in eligibility decisions.
- **Inmate participation is completely voluntary.** Inmates wishing to participate in the initiative must sign a form requesting placement in a prison-wide program or a designated dorm. Inmate selection is conducted by the Department of Correction's classification staff at its central office. Any inmate wishing to leave a faith-based placement is generally transferred within one week.
- **The initiative seeks to offer a full range of religious accommodation.** Florida law requires the department to develop linkages with churches, synagogues, mosques, and other faith-based institutions and to ensure there is no attempt to convert an offender to a particular faith or religious preference.
- **State funds are not expended on religious programming or materials.** All programs are volunteer-led and all materials are donated. The department has established safeguards to ensure that state funds are not spent for this purpose.
- **Each program is autonomous.** The programs are coordinated by chaplains who report to the warden rather than the head of chaplaincy at the central office. Program composition is left to the discretion of individual chaplains and prison wardens. The course offerings, content, and presentation are not standard or centralized and vary by location.

***The initiative is offered through prison-wide programs and in specified dorms***

The department provides faith- and character-based programs in two settings. First, the department operates four prisons in which the programs are offered to all inmates institution-wide. Second, it operates faith-based self-improvement dorms at seven prisons which offer the programs only to inmates living within the specified dorm in the prison compound.

**Faith- and character-based institutions** are prisons where the initiative is offered to all inmates and the programs have been incorporated into the facility's mission. These institutions are considered a permanent placement and the length of time an inmate can stay is open-ended. Three of the faith- and character-based prisons house male inmates while the fourth houses female inmates.

These prisons offer a range of programs that inmates can choose among based on their religious preference and personal interest. The programs include Bible study groups, Spanish-language worship, Native American prayer, and parenting skills and yoga classes. Inmates are required to participate in one program a month, equivalent to one hour of programming per week. Many inmates participate in multiple programs, a practice encouraged by staff.

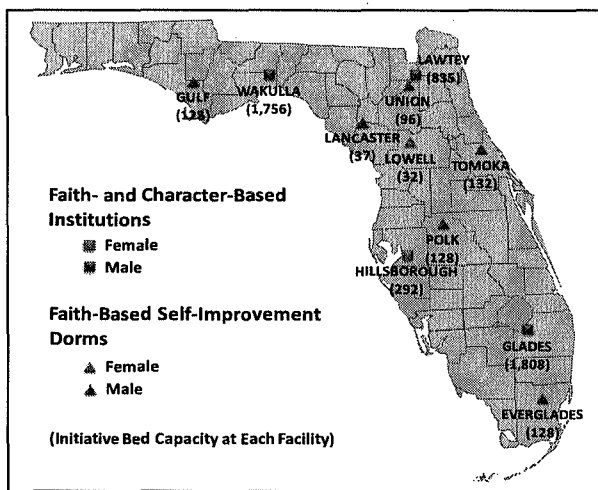
**Faith-based/self-improvement dorms** are housing units within regular prisons where the initiative has been established as an enclave community within the prison compound. These dorms are 12-month programs. Section 944.803(3), *Florida Statutes*, require that 80% of inmates assigned to these dorms be within 36 months of release. Inmates in dorm-based programs must participate in all required programs. For example, inmates participating in the dorm program at Tomoka Correctional Institution have six hours of required programming per week.

**The programs serve over 5,300 inmates.** As shown in Exhibit 1, the overall initiative has a capacity of approximately 5,300 inmates, with 94% of the slots for male participants. These

include 4,691 slots within the faith- and character-based institutions and 681 slots in the faith-based/self-improvement dorms.<sup>1</sup> The number of inmates with pending requests for placement in these programs is sizable, with 8,890 inmates on the waiting list for the institution-based programs and 1,600 for the dorm-based programs.

**Exhibit 1**

**Florida's Faith-Based Correctional Initiative Is Offered in Four Institutions and Seven Dorms**



Source: OPPAGA.

**What are the demonstrated outcomes of the faith- and character-based initiative?**

The initiative has demonstrated positive effects on inmate institutional adjustment and prison security and a modest but positive impact on inmate recidivism. The initiative also has generated significant volunteer resources for the department.

***The faith- and character-based initiative has produced several positive outcomes***

The initiative has demonstrated several positive outcomes. Both inmates and department staff

<sup>1</sup> In May 2009, Glades Correctional Institution began operating as the fourth faith-based institution in the Florida correctional system. Because it was a newly established program location, we did not include this institution in our analysis.

report that it has improved prison safety. Inmates in these programs have fewer disciplinary reports, a fact which suggests that the initiative improves prison safety. There have been fewer contraband seizures and positive drug tests in prisons served by the initiative, and inmates served by the prison-wide initiative have shown somewhat lower recidivism compared to similar inmates. The initiative also has generated significant volunteer support for the department's programs.

**Prison-wide programs have improved institutional safety.** Both department staff and inmates report that the initiative has generated a positive effect on the institutional environment. Most inmates we spoke with stated that the initiative has improved their lives in prison, helping them overcome destructive habits and adopt a more positive outlook. Department staff generally reported that the initiative has a positive effect on facility management including facilitating inmate adjustment to prison life, encouraging personal accountability, and providing structure to leisure time.

Both inmates and staff also reported that the initiative results in a safer environment because good inmate behavior is a requirement for participation.<sup>2</sup> Once they are placed in the program, inmates can be removed from the faith- and character-based settings if they commit a single serious infraction of prison rules.

Department reports show that inmates in prison-wide faith- and character-based programs have lower rates of disciplinary reports than comparable inmates. During the period January 1, 2009, through June 30, 2009, the Lawtey, Hillsborough, and Wakulla Correctional Institutions, which operate prison-wide programs, had lower rates of disciplinary reports per 1,000 inmates than comparable inmates in other institutions. Specifically, inmates in Lawtey Correctional Institution had a disciplinary report rate 9% lower than inmates

<sup>2</sup> Inmates must have received no disciplinary reports that resulted in disciplinary confinement during the previous 90 days.



from comparable institutions, while the disciplinary report rates at the Hillsborough and Wakulla Correctional Institutions were 68% and 49% lower, respectively.<sup>3</sup> The department's data did not provide detail on the severity of the violations that generated the disciplinary reports; however, the lower report rate suggests that inmates participating in the initiative may pose a less significant threat to prison safety than inmates in other institutions.

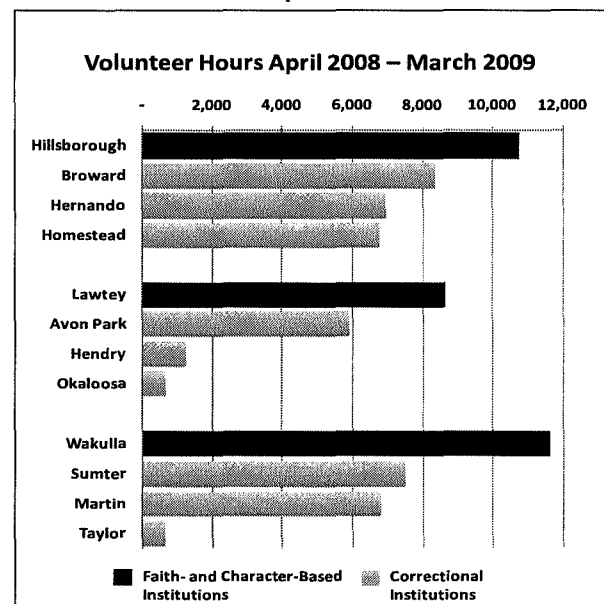
In addition, facilities with prison-wide programs have lower incidents of the discovery of identified contraband than similar prisons that do not offer these programs. During 2008, the faith- and character-based prisons had fewer incidences of weapon seizures and fewer positive inmate drug tests than comparable prisons. This positive outcome occurred despite the fact that the prisons offering the initiative programs had significantly more volunteers visiting the facilities than the comparison prisons and thus more opportunity for the introduction of contraband. For example, the Wakulla Correctional Institution, which operates a prison-wide program, had two weapons seized during the year, while a similar institution (Taylor Correctional Institution) had 14 weapon seizures. Similarly, the faith- and character-based Lawtey Correctional Institution had six inmates test positive for drugs in 2008, while Avon Park Correctional Institution, which does not have a prison-wide program, had 16 positive inmate drug tests.<sup>4</sup>

**The prison-wide programs have generated increased volunteerism.** The initiative has generated a substantial increase in the number of volunteer hours donated to prison programs. As part of the initiative, the Legislature directed the department to increase the number of volunteers who minister to inmates from various faith-based institutions. The department invited

both secular and religious charitable organizations to mentor inmates and offer programming designed to effect an inner transformation of inmates. This outreach effort has been successful in increasing volunteer hours in participating prisons. For example, before the faith- and character-based program was implemented, Hillsborough Correctional Institution averaged 220 volunteer hours per month. Since the program was implemented, Hillsborough has averaged 796 hours volunteer hours per month; an increase of 262%.

During the period April 1, 2008 through March 31, 2009, the three prison-wide programs operating at that time had significantly higher numbers of volunteer hours per inmate compared to similar traditional institutions. For example, as shown in Exhibit 2, Lawtey Correctional Institution had 8,624 volunteer hours while Hendry Correctional Institution had 1,230 volunteer hours.

**Exhibit 2**  
**Faith- and Character-Based Institutions Have Higher Volunteerism Than Comparable Institutions**



Source: OPPAGA analysis.

<sup>3</sup> We were unable to compare disciplinary report rates for the faith-based self-improvement dorms because the department does not separate disciplinary report data by housing unit within prisons.

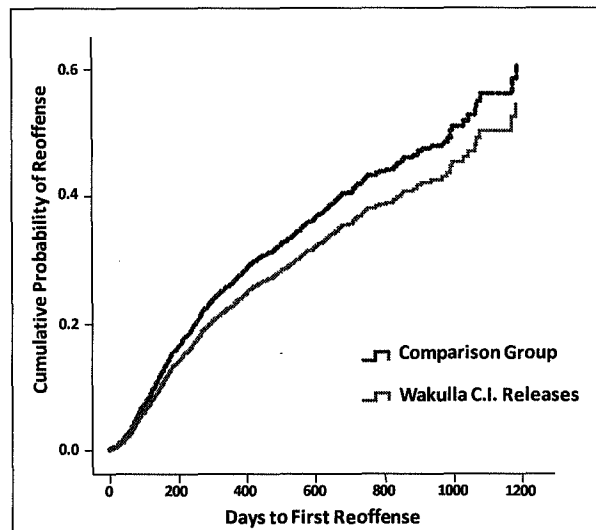
<sup>4</sup> We were unable to compare incidence of contraband for the faith-based self-improvement dorms because this information is reported at the institution level and a dorm-level comparison was not possible.

This outcome is valuable given current economic conditions in which government resources are limited. Between April 1, 2008, and March 31, 2009, DOC's three institution-based programs generated 31,000 volunteer hours, the equivalent of 15 full-time employees hours representing a value to the state of over \$550,000.<sup>5</sup>

**Inmates served in prison-wide programs are less likely to reoffend.** Inmates released from the faith- and character-based institutions have shown somewhat better post-release outcomes. OPPAGA analyzed department recidivism data and found that inmates who participated in the prison-wide programs had a slightly longer "time to failure" than comparable inmates who were on the waiting list for the programs. That is, inmates served by the program, on average, were in the community without committing new offenses longer than comparable inmates (see Appendix A for more details on the methodology).

As shown in Exhibit 3, inmates released from the Wakulla Correctional Institution program were, on average, 15% less likely to have reoffended than comparable inmates who did not participate in the faith- and character-based initiative. The post-release benefits were weaker for the other two prison-wide programs— inmates served by the initiative at the Hillsborough Correctional Institution were 5% less likely to reoffend while those served at the Lawtey Correctional Institution were 6% less likely to reoffend than comparable inmates who did not participate in the initiative.

**Exhibit 3**  
**Wakulla Inmates Were 15% Less Likely to Reoffend Than Comparable Inmates**



Source: OPPAGA analysis.

Our data analysis found that participation in the dorm-based programs had no measurable effect on post-release recidivism outcomes. Nonetheless, inmates in both the institution- and dorm-based programs generally state that the initiative has improved their prospects of a successful re-entry through constructive self reflection and plans to join a church or other faith-based organization as part of their re-entry plan.

These findings are consistent with those reported by the Urban Institute.<sup>6</sup> Using a different statistical technique and definition of recidivism, the Urban Institute found that at six months after release, inmates served at Lawtey Correctional Institution had lower re-incarceration rates than a matched comparison group, but this effect essentially disappeared after 12 months following release. The Urban Institute found no statistically significant differences between inmates at Hillsborough

<sup>5</sup> The number of employees is calculated based on 2,080 hours annually per full-time employee. The value of 31,000 volunteer hours is calculated at \$17.78 per hour which is the average 2007 hourly earnings for Florida nonsupervisory workers based on data from Independent Sector, a forum for nonprofits, foundations, and corporate giving programs.

<sup>6</sup> *Evaluation of Florida's Faith- and Character-Based Institutions*, Urban Institute Justice Policy Center, October 2007.

Correctional Institution and a matched comparison group.<sup>7</sup>

It is unclear from our analysis why prison-wide programs have better recidivism success than dorm-based programs. Faith- and character-based programs are relatively new nationwide and there is little solid empirical research evaluating the effectiveness of these initiatives in reducing recidivism. While there appear to be potential benefits to faith- and character-based programming in state and federal correctional systems, additional research is needed to identify what factors contribute to program success. Additional research also is needed to examine the efficacy of specific program curricula and models and to determine what mix of programming generates the greatest improvement in recidivism.

## What challenges has Florida's faith- and character-based prison initiative encountered?

The initiative has faced two primary challenges —providing religious diversity in its dorm-based programs, and avoiding underutilization of program dorms.

**Some dorm-based programs have challenges maintaining religious diversity.** The faith- and character-based dorm programs are small enclave communities within larger prisons. These programs provide a more intensive experience than the prison-wide programs, and operate as a therapeutic community where participants are to develop strong bonds and hold each other accountable to meeting program requirements.

Some of the dorm-based programs have experienced difficulty in maintaining diversity in their religious programming, which is constitutionally mandated. For example, the faith-based dorm at Union Correctional

Institution currently partners with one church to deliver its faith- and character-based program. The volunteer coordinator and all volunteers are members of this church and the programming reflects the church's teachings. The department indicated that it needs to better monitor volunteers at this institution to ensure that volunteers are not attempting to convert inmates to a specific faith and that it needs to make greater efforts to bring in volunteers of other faiths. In contrast to the prison-wide programs which offer a wide variety of programs, non-Christian participants in some dorm-based programs have few religious program choices other than attending the non-Christian services that are open to all prison inmates in the institution's chapel.

### **Some dorm-based programs are underutilized.**

Due in part to the configuration of some prisons offering faith- and character-based dorms, some of these units are underutilized. Each correctional facility is assigned a profile of inmates to serve, defined by the gender, age, and custody grade of the inmates it houses. This profile, along with statutory requirements governing the initiative and institutional and inmate management considerations, can limit the department's ability to place inmates in the faith- and character-based dorms.

Union Correctional Institution serves maximum security inmates over the age of 50, and has not fully utilized its faith- and character-based dorm program. This is in part due to the provision of s. 944.803(3), *Florida Statutes*, which requires at least 80% of inmates participating in the dorm-based program to be within 36 months of release. There are relatively few inmates over the age of 50 who are serving relatively short sentences in Florida's prison population. Department staff indicate that it is difficult to assign enough inmates to the program to fill all available beds.<sup>8</sup> Staff at the prison stated that if

<sup>7</sup> The Urban Institute did not study the Wakulla Correctional Institution because at the time of the study it had not been operational long enough to have had sufficient releases to analyze.

<sup>8</sup> Section 944.803(3), *F.S.*, is unclear as to whether this requirement applies to each dorm location or the program as a whole. Department legal staff stated that applying the requirement to the program as a whole would be a reasonable interpretation and would allow for greater participation by long-term inmates in some locations to be off set at others.

the law were modified to allow more than 20% of dorm residents to have more than 36 months remaining on their sentence, the program could consistently maintain full utilization.

Lancaster Correctional Institution, which serves medium security youthful offenders, 18-24 years old, also has experienced underutilization of its dorm program. In order to qualify for reimbursements from the National Child Nutrition Program, some Lancaster dorms house only inmates less than 21 years of age.<sup>9</sup> Other dorms including the faith- and character-based dorm, serve only inmates age 21 years and over. However, there are relatively few inmates on the program's waiting list that fit the narrow facility profile at Lancaster (male, youthful offender, medium security level or lower). To reduce the number of empty beds in the dorm, the department has placed inmates in the faith- and character-based dorm who are not participating in the initiative's programming. The presence of non-participants within the program may undermine its therapeutic and rehabilitative goals and discourage open communication and full compliance among program participants. Program staff asserted that it would be easier to consistently maintain full utilization if the dorm were allowed to serve inmates age 18 years and older.

## Recommendations

To improve the initiative's effectiveness in reducing recidivism, the department should monitor emerging research on other faith- and character-based correctional initiatives and adopt best practices and evidence-based models as they become established and can provide demonstrated results.

To ensure the constitutionality of the faith- and character-based initiative and full utilization of all dorm-based program beds, we recommend that the Department of Corrections require

<sup>9</sup> Residential institutions that house both children and adults are eligible to participate in the National Child Nutrition Program when the institution has a distinct or separate area for the care of children. In an institution, a child is defined as a person less than 21 years of age.

volunteer coordinators and chaplains to regularly report to central office chaplaincy their strategies for ensuring that dorm program composition meets the religious needs of all dorm-based program participants.

To achieve higher utilization of the faith- and character-based dorms, we recommend that the Legislature amend s. 944.803(3), *Florida Statutes*, to authorize the department to serve more than 20% of inmates with more than 36 months left on their sentence in faith- and character-based dorms. Alternately, the Legislature could clarify that the department could meet the statutory requirement by adjusting the population at other dorm-based program locations so that overall the program has at least 80% of inmates within 36 months of release. We also recommend that the department modify its eligibility criteria for the dorm-based program at Lancaster Correctional Institution to admit the full youthful offender age range of 18 to 24 years.

## Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Corrections for his review and response.

The Secretary's written response has been reproduced in Appendix B.

## Appendix A

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# Methodology – Comparing Faith-Based Institution and Dorm Outcomes

To assess the outcomes of the Department of Correction's Faith- and Character-Based Program, we compared the recidivism rates of four groups of offenders:

- inmates released from a faith- and character-based institution;
- a comparison group composed of inmates released from prison who had been on the waiting list for a faith- and character-based institution but were not placed in the institution;
- inmates who completed a faith- and character-based dorm program; and
- a comparison group composed of inmates on the waiting list for placement in a faith- and character-based dorm program who were not placed in the program and also were not placed in a work release center, work camp, forestry camp, or road prison prior to their release from prison.

**Data.** The Department of Corrections provided data on these inmates' demographics, criminal histories, disciplinary referrals, and subsequent offenses.

**Study population.** We examined data on 1,293 inmates who were released from a faith- and character-based institution after the initiative had been operating in the prison for at least six months. We examined data for all released inmates from these institutions through December 2008, including 231 inmates from Hillsborough Correctional Institution, 635 from Lawtey Correctional Institution, and 427 inmates released from Wakulla Correctional Institution.

Our comparison group consisted of 2,283 inmates who requested transfer to a faith- and character-based institution but were not placed in one of the institutions before their release from prison.

We examined data on 1,311 inmates who had completed a faith- and character-based dorm program as of December 2008. It generally takes about 12 months for inmates to complete these programs, and we analyzed all released inmates who had completed a dorm program through December 2008. The group comprised inmates from seven institutions, including 287 inmates from Everglades Correctional Institution, 245 inmates from Gulf Correctional Institution, 51 from Lancaster Correctional Institution, 42 from Lowell Correctional Institution, 343 from Polk Correctional Institution, 286 from Tomoka Correctional Institution, and 57 inmates from Union Correctional Institution.

Our comparison group consisted of 9,988 inmates who requested a transfer to a faith- and character-based dorm program but who were not placed in these programs before their release from prison, and also did not participate in other re-entry programming including work release, work camps, forestry camps or road prisons.

**Method of analysis.** Using Cox regression, we estimated the risk of inmates in the institution and dorm groups recidivating relative to that of inmates in their respective comparison groups. This technique calculates the probability of reoffending after release from prison,

given the number of days an inmate has been released. For the inmates' recidivism date we used the earliest of three dates; the date of first subsequent offense, arrest, or re-incarceration. Inmates in the institution group were followed for a maximum of five years after release. Inmates in the dorm group were followed a maximum of eight years. The dorm programs have been operating longer than prison-wide programs. The Cox regression allowed us to control for differences between the treatment and comparison groups on factors related to recidivism including age, race, gender, severity of worst prior offense, disciplinary referral rate, and custody level.

**Statistical results.** We found a modest positive effect in recidivism outcomes when comparing inmates from Wakulla Correctional Institution to the wait list comparison group. The risk of recidivating for Wakulla inmates relative to the wait list counterparts was 0.85. This relative risk of 0.85 means that inmates released from Wakulla were 15% less likely to reoffend than similar inmates on the wait list. We found less of an effect for the faith- and character-based correctional institutions of Lawtey (0.94 or 6% less likely to reoffend) and Hillsborough (0.95 or 5% less likely to reoffend). We found no substantive differences in recidivism for the inmates in the faith- and character-based dorm programs compared to their counterparts on the wait lists when controlling for factors related to recidivism.

**Exhibit 1**

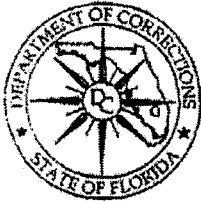
**The Risk of Inmates from Hillsborough, Lawtey, and Wakulla Recidivating Was Lower Relative to a Selected Comparison Group of Inmates from Other Facilities**

Facility	Relative Risk of Reoffending	Number of Inmates
Dorms	1.03	1,311
Hillsborough	0.95	231
Lawtey	0.94	635
Wakulla	0.85	427

Note: These results are based on the entire population of cases. Accordingly, inferential analyses using p-values and confidence intervals were not appropriate and our analysis addressed the magnitude of the differences between treatment and control groups for both the faith- and character-based institutions and the dorms.

## Appendix B

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FLORIDA  
DEPARTMENT OF  
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Governor  
**CHARLIE CRIST**

Secretary  
**WALTER A. McNEIL**

<http://www.dc.state.fl.us>  
Fax: (850) 922-2848

October 22, 2009

Gary VanLandingham  
Director  
Office of Program Policy Analysis  
& Government Accountability  
111 West Madison Street  
Tallahassee, FL 32399-1475

Dear Mr. VanLandingham,

Thank you for the opportunity to respond to OPPAGA's report on the Department of Corrections' Faith and Character-Based Prison Initiative. I am pleased and agree with your assessment that both the prison-wide and dorm-based programs have demonstrated a positive effect on inmate institutional adjustment and institutional security and that all three prison-wide programs studied have had a positive effect on reducing the likelihood that inmates will reoffend. This is truly remarkable when you consider that the initiative's programs are volunteer-staffed, inmate participation is on a voluntary basis, and no state funds are expended on these programs.

Your specific findings of positive outcomes can be seen as a tribute to our staff that manage and implement this initiative on a daily basis. These findings can also give hope to inmates that want to improve themselves and succeed in prison and after release. These specific findings are that inmates participating in prison-wide programs (*when compared to comparable inmates*) had lower disciplinary rates, fewer incidences of weapons seizures, fewer positive drug tests, and were less likely to re-offend, while facilities offering these programs have a much higher level of volunteerism (*compared to previous levels at each prison-wide program and to comparable facilities selected by OPPAGA staff*).

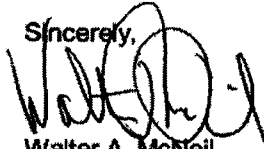
I was glad to see that the two primary challenges (*maintaining religious diversity and underutilization*) facing this initiative were limited to the dorm-based programs. I suspect that the 'smaller-scale nature' of the dorm-based programs is our biggest problem in facing these challenges. However, as seen in the following responses to your recommendations, the department will take the steps necessary to address these challenges.

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I was also very encouraged to see that none of the three program-specific recommendations dealt with the prison-wide programs which further highlights our success in implementing them.

Finally, I want to thank you for the professional and courteous manner in which you and your staff conducted this review. As usual, they were a pleasure to work with. Responses to the recommendations contained in your report are shown on the following attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter A. McNeil". The signature is stylized and somewhat cursive.

Walter A. McNeil  
Secretary



Gary VanLandingham, OPPAGA | Faith and Character-Based Prison Initiative

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Department of Corrections

Office of Re-Entry

Responses to OPPAGA Recommendations

Office of Re-Entry responses to the recommendations contained in the OPPAGA report are shown below.

Recommendation 1 – To improve the initiative’s effectiveness in reducing recidivism, the department should monitor emerging research on other faith- and character-based correctional initiatives and adopt best practices and evidence-based models as they become established and can provide demonstrated results.

Office of Re-Entry Response – We concur and will comply. To monitor emerging research and demonstrated results for faith- and character-based correctional initiatives, the department will task Chaplaincy Services and the Bureau of Research and Data Analysis with the responsibility to continually conduct an applicable literature review. When they determine a specific practice that fits the department’s model, has promising results, and can be applied at no cost to taxpayers, they will present it to the Office of Re-Entry for their implementation consideration.

Recommendation 2 – To ensure the constitutionality of the faith- and character-based initiative and full utilization of all dorm-based program beds, we recommend that the Department of Corrections require volunteer coordinators and chaplains to regularly report to central office chaplaincy their strategies for ensuring that dorm program composition meets the religious needs of all dorm based-program participants.

Office of Re-Entry Response - The constitutionality of the faith and character-based initiatives are of critical concern to the Department. It is due to the procedural prudence and balanced approach of the department that these programs have successfully operated in full public purview but without First Amendment litigation. That said, this recommendation is duly noted and will result in appropriate adjustments. Such adjustments can be illustrated by the actions already taken at and planned for Union CI, to include:

1. Monthly meetings between the Chaplain and the volunteer coordinator. They have been having these informal meetings for some time. Future meetings will address operational issues, curriculum, volunteer recruitment, and inmate participation;
2. Secondly, the Chaplain will be required to submit a monthly report to the Central Office Chaplaincy Services Administrator. This report will include inmate attendance, curriculum with annotation, volunteer recruitment (efforts and goals) and operational issues; and
3. Finally, the Chaplain will initiate a more formal continuing education for the current volunteers. The constitutionality of the program depends in part on a

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well-trained volunteer team. These intentional training sessions will explain procedures, review precautions, and respond to current issues.

The Chaplain has been making a sincere effort to recruit additional volunteers to the Faith- and Character-Based dorm program at Union Correctional Institution. He has scheduled two additional programs from sources other than the 'one church' mentioned above. He is in the process of adding two volunteers who are fluent in Spanish. He is continuing this effort with the express intent of creating a more diverse program.

**Recommendation 3** – To achieve higher utilization of the faith- and character-based dorms, we recommend that the Legislature amend s.944.803(3), *Florida Statutes*, to authorize the department to serve more than 20% of inmates with more than 36 months left on their sentence in faith- and character-based dorms. Alternately, the Legislature could clarify that the department could meet the statutory requirement by adjusting the population at other dorm-based program locations so that overall the program has at least 80% of inmates within 36 months of release.

**Office of Re-Entry Response** – Concerning the first option offered in Recommendation 3, given that our faith- and character-based programs are a key part of the department-wide Re-Entry Initiative, we would ask that the Legislature not amend the referenced statute. A key part of the Re-Entry Initiative is the evidence-based, best practice of maximizing program resources to provide needed programs for those inmates that are within 36 months of release. To be authorized to serve more than 20% of inmates with more than 36 months left on their sentence in faith- and character-based dorms would go against our Re-Entry efforts to comply with best-practice and the overall aim of having Re-Entry services succeed by providing timely, excellent programs that help inmates succeed.

Concerning the second option offered in this recommendation, given the latest data available, the Legislature may not need to clarify departmental requirements in this regard. Since 6/3/2008, the Bureau of Research and Data Analysis has prepared a bi-weekly report for Classification that breaks down these percentages by dorm and statewide. Data from the latest report (as of 10/2/2009) show that statewide 89.9% of all inmates housed in dorm programs had less than 36 months left before release. Plus, six of the seven dorm programs were well over the 80% threshold, with the remaining dorm program at 79.5% (virtual compliance). So, whether one applies the 80% standard to each dorm or statewide, the department's monitoring efforts have paid off and show that a minor adjustment is needed at only one facility to bring us into compliance for each individual dorm and that statewide we far exceed the current legislative requirement.

**Recommendation 4** – We also recommend that the department modify its eligibility criteria for the dorm-based program at Lancaster Correctional Institution to admit the full youthful offender age range of 18 to 24 years.

Gary VanLandingham, OPPAGA | Faith and Character-Based Prison Initiative

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Office of Re-Entry Response – Since this recommendation could effect federal requirements for and dollars from the National Child Nutrition Program (NCNP), as well as local facility options in terms of inmate management, the department will need to further review how it could comply with this recommendation. Leadership within the Office of Re-Entry, Chaplaincy Services, and the executive leadership team at Lancaster CI will need to be consulted to determine the best option.

One promising option would be to change the age-range for this dorm program from 21-24 to 18-20. This would keep Lancaster CI compliant with the NCNP eligibility criteria that require a distinct or separate area for the care of 'children' (in an institution, a child is defined as a person less than 21 years of age). Also, with only 37 beds in this dorm, this change in age-range could go a long way to ensure full utilization of the dorm (since under-utilization has been a problem given the existing age-range of 21-24). This would in turn eliminate the need to place non-participants in this faith-based dorm to ensure full utilization.