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# **Judiciary Committee**

**March 27, 2014**

**8:30 AM**

**404 HOB**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Dennis Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Thursday, March 27, 2014 08:30 am  
**End Date and Time:** Thursday, March 27, 2014 11:30 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

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

CS/CS/HB 111 Pub. Rec./Forensic Behavioral Health Evaluations by Government Operations Subcommittee, Criminal Justice Subcommittee, Gibbons  
CS/HB 139 Athletic Coaches for Youth Athletic Teams by Criminal Justice Subcommittee, Jones, S.  
CS/HB 203 Unaccompanied Homeless Youth by Civil Justice Subcommittee, Raulerson  
CS/HB 209 Carrying Concealed Weapon or Concealed Firearm by Economic Development & Tourism Subcommittee, Fitzenhagen  
HM 261 Constitutional Convention/Single-Subject Requirement for Federal Legislation by Beshears  
CS/CS/HB 429 Hearsay by Criminal Justice Subcommittee, Civil Justice Subcommittee, Passidomo, Young  
CS/HB 515 Public Assistance Fraud by Appropriations Committee, Smith  
CS/HB 517 Fraudulent Controlled Substance Prescriptions by Criminal Justice Subcommittee, Hooper  
CS/CS/HB 641 Computer Crimes by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, La Rosa  
CS/CS/HB 643 Pub. Rec./Trade Secrets/Computers by Government Operations Subcommittee, Criminal Justice Subcommittee, La Rosa  
CS/CS/HB 807 Residential Properties by Business & Professional Regulation Subcommittee, Civil Justice Subcommittee, Moraitis  
HB 841 Crime Stoppers Trust Fund by Broxson  
CS/HB 849 Service Animals by Government Operations Subcommittee, Smith  
HB 1253 Use of Wireless Communications Devices while Operating a Motor Vehicle by Slosberg  
CS/HB 7055 Juvenile Justice by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Pilon

**NOTICE FINALIZED on 03/25/2014 16:10 by Jones.Missy**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 111 Pub. Rec./Forensic Behavioral Health Evaluations  
**SPONSOR(S):** Government Operations Subcommittee; Criminal Justice Subcommittee and Gibbons  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee	9 Y, 0 N, As CS	Williamson	Williamson
3) Judiciary Committee		Cox <i>Waa</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Rule 2.420 of the Florida Rules of Judicial Administration states the public must have access to the records of the judicial branch. Rule 2.420 also establishes 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information). Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing. Forensic behavioral health records filed with the courts in ch. 916, F.S., proceedings are not automatically exempt from public records as Type I information.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include behavioral health records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill creates a public record exemption for forensic behavioral health evaluations filed with the courts in ch. 916, F.S., proceedings. It defines the term "forensic behavioral health evaluation" to mean any record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.

The bill provides for retroactive application of the public record exemption. It also provides a public necessity statement as required by the State Constitution.

The bill eliminates the need to file motions and conduct hearings to make forensic behavioral health evaluations confidential. As such, the Office of State Courts Administrator determined the bill will result in a reduction in judicial and court system workload, but that the precise impact cannot be accurately determined.

**Article I, Section 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the State Court System.<sup>3</sup>

##### Public Access to Judicial Records

Rule 2.420 of the Florida Rules of Judicial Administration (Rule), states the public must have access to the records of the judicial branch.<sup>4,5</sup> The Rule identifies 20 categories of court record information which

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 119.15(2)(b), F.S.

<sup>4</sup> Fla. R. Jud. Admin 2.420(b)(1) defines "records of the judicial branch" as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- "Court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- "Administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>5</sup> Fla. R. Jud. Admin 2.420(b)(2) defines "judicial branch" as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

the clerk of the court must automatically designate and maintain as confidential (Type I information).<sup>6</sup> Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.<sup>7</sup>

In 2011, it was suggested that the Rule be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.<sup>8</sup> The opinion further stated "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."<sup>9</sup>

### Forensic Clients

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) establish, locate, and maintain separate and secure forensic facilities and programs for the treatment and training of defendants who have been charged with a felony and found to be incompetent to proceed due to their mental illness, mental retardation, or autism.<sup>10</sup> These agencies also provide services for individuals who have been acquitted of a felony by reason of insanity. In fiscal year 2012-2013, DCF provided services to a total of 2,885 individuals in accordance with ch. 916, F.S.<sup>11,12</sup>

Competency restoration training and mental health services are provided by DCF in four state forensic mental health treatment facilities with a total secure capacity of 1108 beds. There are also 435 non-secure, forensic step-down beds in civil hospitals. Evaluators employed at state mental health treatment facilities, as well as court-appointed evaluators, are tasked with evaluating defendants to determine if they meet criteria for involuntary commitment. Those reports are received by the circuit clerks of courts, presiding judges, defense counsel, and opposing counsel.<sup>13</sup>

### Clinical Records of Forensic Clients

Clinical records<sup>14</sup> for individuals adjudicated as incompetent to proceed due to mental illness, mental retardation, or autism, or who have been acquitted of a felony by reason of insanity are confidential and exempt from public records requirements.<sup>15</sup> These records may be released to specified individuals, including persons authorized by order of the court, and to the client's counsel when the records are needed by counsel for adequate representation.<sup>16</sup>

Individuals evaluated pursuant to ch. 916, F.S., who are not adjudicated incompetent to proceed or acquitted by reason of insanity also have their records filed with the courts.<sup>17</sup> However, these individuals' records have not been deemed exempt from public records requirements by the Legislature and thus, are not automatically exempt under Rule 2.420 as Type I information. Such records include

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<sup>6</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011); Fla. R. Jud Admin 2.420(d)(3).

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

<sup>8</sup> *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011).

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

<sup>10</sup> Section 916.105, F.S., further provides that forensic facilities must be designed and administered so that entry and exit may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.

<sup>11</sup> Chapter 916, F.S., governs mentally deficient and mentally ill defendants.

<sup>12</sup> Electronic mail from Gina Sisk with DCF, dated February 24, 2014 (on file with the Criminal Justice Subcommittee).

<sup>13</sup> Department of Children and Families, Analysis of HB 1183 (2013), which is similar to this bill (on file with the Criminal Justice Subcommittee).

<sup>14</sup> Section 916.107(8), F.S., states a clinical record must include data pertaining to admission and such other information as may be required under rules of DCF or APD.

<sup>15</sup> Section 916.107(8), F.S.

<sup>16</sup> Section 916.107(8)(a)2., F.S.

<sup>17</sup> *See* s. 916.107, F.S.

those created as a result of a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation.

Since forensic behavioral health evaluations contained in court files are not currently listed as Type I information, a motion must be filed and the trial court must hold a hearing in each case in order to make these records confidential. The Office of State Courts Administrator (OSCA) reports that in every applicable case, in essentially every circuit, these motions are being filed and granted after being unopposed by the State.<sup>18</sup>

### **Effect of the Bill**

The bill creates s. 916.1065, F.S., to provide that forensic behavioral health evaluations *filed with the court* under ch. 916, F.S., are confidential and exempt<sup>19</sup> from the public records requirements. Since this exemption is limited to records filed with the court, the requirements of the Open Government Sunset Review Act do not apply.

The bill defines the term “forensic behavioral health evaluation” to mean any record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.

The bill provides for retroactive application of the public record exemption.<sup>20</sup> It also provides a statement of public necessity as required by the State Constitution.

### **B. SECTION DIRECTORY:**

Section 1. Creates s. 916.1065, F.S., relating to confidentiality of forensic behavioral health evaluations.

Section 2. Provides a public necessity statement.

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

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

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

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill eliminates the need to file motions and conduct hearings to make forensic behavioral health evaluations confidential. OSCA determined the bill will result in a reduction in judicial and court

<sup>18</sup> Electronic mail from Sarah Naf, dated February 27, 2014 (on file with the Criminal Justice Subcommittee).

<sup>19</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att’y Gen. (1985).

<sup>20</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001)

system workload.<sup>21</sup> However, the precise impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the reduction in workload.<sup>22</sup>

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for forensic behavioral health evaluations filed with the court; thus, providing similar protections afforded other behavioral health evaluations. As such, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

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<sup>21</sup> Office of the State Courts Administrator, Analysis of HB 111 (on file with the Criminal Justice Subcommittee).

<sup>22</sup> *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Criminal Justice Subcommittee

On March 5, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds the necessary reference to s. 119.07(1), F.S., which was omitted from the original bill.

Government Operations Subcommittee

On March 18, 2014, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment provided for retroactive application of the public record exemption, and corrected a drafting error.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 916.1065, F.S.; providing a definition; providing an  
 4 exemption from public records requirements for a  
 5 forensic behavioral health evaluation filed with a  
 6 court; providing for retroactive applicability;  
 7 providing a statement of public necessity; providing  
 8 an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Section 916.1065, Florida Statutes, is created  
 13 to read:

14 916.1065 Confidentiality of forensic behavioral health  
 15 evaluations.-

16 (1) As used in this section, the term "forensic behavioral  
 17 health evaluation" means any record, including supporting  
 18 documentation, derived from a competency, substance abuse,  
 19 psychosexual, psychological, psychiatric, psychosocial,  
 20 cognitive impairment, sanity, or other mental health evaluation  
 21 of an individual.

22 (2) A forensic behavioral health evaluation filed with the  
 23 court under this chapter is confidential and exempt from s.  
 24 119.07(1) and s. 24(a), Art. I of the State Constitution.

25 (3) The exemption in this section applies to forensic  
 26 behavioral health evaluations filed with a court before, on, or

27 after the effective date of this section.

28       Section 2. The Legislature finds that it is a public  
 29 necessity that forensic behavioral health evaluations filed with  
 30 the court pursuant to chapter 916, Florida Statutes, be made  
 31 confidential and exempt from disclosure under s. 119.07(1),  
 32 Florida Statutes, and s. 24(a), Article I of the State  
 33 Constitution. The personal health of an individual and the  
 34 treatment he or she receives are intensely private matters. An  
 35 individual's forensic behavioral health evaluation should not be  
 36 made public merely because it is filed with the court.  
 37 Protecting forensic behavioral health evaluations is necessary  
 38 to consistently protect the health care privacy rights of all  
 39 persons. Making these evaluations confidential and exempt will  
 40 protect information of a sensitive personal nature, the release  
 41 of which would cause unwarranted damage to the reputation of an  
 42 individual. Further, the knowledge that sensitive personal  
 43 information is subject to disclosure could have a chilling  
 44 effect on mental health experts who conduct the evaluations for  
 45 use by the court. Therefore, making these evaluations  
 46 confidential and exempt allows courts to effectively and  
 47 efficiently make decisions relating to the competency of  
 48 individuals who interact with the state courts system.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 139 Athletic Coaches for Youth Athletic Teams  
**SPONSOR(S):** Criminal Justice Subcommittee; Jones, S. and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 358

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Thomas	Havlicak RH

### SUMMARY ANALYSIS

Section 943.0438, F.S., defines an "independent sanctioning authority" as a private entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S. Currently, independent sanctioning authorities must conduct a limited background screening on each current or prospective athletic coach for a youth athletic team that:

- Works twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Has direct contact with one or more minors on the team.

The independent sanctioning authority must check to see if the coach is listed in the sexual offender and sexual predator registries available on public websites maintained by the Florida Department of Law Enforcement and the United States Department of Justice.

The bill expands the current background screening requirements of s. 943.0438, F.S., to include assistant coaches and referees. In addition, the bill requires the background screening to include a Level 1 background check through the Florida Department of Law Enforcement (FDLE). A Level 1 background check requires the person's name to be run against Florida's criminal history records by FDLE and requires a \$24 fee. A Level 1 check includes a list of disqualifying offenses which would make the applicant ineligible to become a coach or referee – the same offenses that would disqualify a person from working in a child care facility. The bill authorizes the authority to allow certain disqualified persons to coach if the person:

- Has completed their sanctions at least 3 years prior for a felony conviction;
- Has completed their sanctions for a misdemeanor conviction; and
- Is not a career criminal offender, registered sex offender, or sex predator.

The bill prohibits the authority from delegating the screening responsibility to an individual team, and requires that the documentation of the results of each person screened and the written notice provided to any disqualified person be maintained for at least five years.

The bill will increase state revenues through the collection of background check fees and may have a workload impact on FDLE, but should not impact local governments. However, the increased revenues collected should offset any workload issues.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Employee Background Screening

Florida law provides standard procedures for the screening of prospective employees where the Legislature has determined it necessary to conduct criminal history background checks to protect vulnerable persons.<sup>1</sup> These standards include two different levels of screening: "Level 1" employment screening and "Level 2" employment screening. The Florida Department of Law Enforcement (FDLE) provides these criminal history checks to the employer or relevant state agency.

Level 1 screenings<sup>2</sup> are name-based demographic screenings that include statewide criminal record checks through FDLE. Level 2 screenings<sup>3</sup> consist of a fingerprint-based search of FDLE and the Federal Bureau of Investigations databases for state and national criminal arrest records. Level 1 screenings and Level 2 screenings have the same disqualifying offenses.<sup>4</sup> A Level 1 search may be conducted through FDLE via the internet with payment made by the use of a credit card.

###### Background Screening of Youth Athletic Team Coaches

Section 943.0438, F.S., defines an "independent sanctioning authority" as a private entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S. Currently, independent sanctioning authorities are not required to conduct a Level 1 or Level 2 screening. Instead, these entities must conduct a limited background screening on each current or prospective athletic coach for a "youth athletic team"<sup>5</sup> that:

- Works twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Has direct contact with one or more minors on the team.<sup>6</sup>

The independent sanctioning authority must check to see if the coach is listed in the sexual offender and sexual predator registries available on public websites maintained by FDLE<sup>7</sup> and the United States Department of Justice (DOJ)<sup>8,9</sup>.

The sanctioning authority must disqualify any applicant from acting as an athletic coach if the applicant appears in either registry.<sup>10</sup> The sanctioning authority must provide, within seven days of the screening, written notification to a disqualified person advising him or her of the results.<sup>11</sup> The sanctioning authority must maintain documentation of the results of each person screened and the written notice provided to any disqualified person. The statute is silent as to how long that documentation must be kept.<sup>12</sup>

<sup>1</sup> Chapter 435, F.S.

<sup>2</sup> Level 1 screenings are outlined in s. 435.03, F.S.

<sup>3</sup> Level 2 screenings are outlined in s. 435.04, F.S.

<sup>4</sup> Sections 435.03(2) and 435.04(2), F.S.

<sup>5</sup> The term "youth athletic team" is not defined in statute.

<sup>6</sup> Section 943.0438(1)(a) and (2)(a), F.S.

<sup>7</sup> <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited January 28, 2014).

<sup>8</sup> <http://www.nsopr.gov/?AspxAutoDetectCookieSupport=1> (last visited January 28, 2014).

<sup>9</sup> Section 943.0438(2)(a)1., F.S. Alternatively, the independent sanctioning authority may use a commercial consumer reporting agency that is in compliance with the federal Fair Credit Reporting Act to perform the required screening provided the agency searches the same sexual offender and sexual predator registries. Section 943.0438(2)(a)2., F.S.

<sup>10</sup> Section 943.0438(2)(b), F.S.

<sup>11</sup> Section 943.0438(2)(c), F.S.

<sup>12</sup> Section 943.0438(2)(d), F.S.

Current law further provides that, in any civil action brought for damages caused by the intentional tort of a coach that relates to sexual misconduct committed by the coach, there is a rebuttable presumption that the sanctioning authority was not negligent in using the coach if the sanctioning authority complied with the required background screening and disqualification requirements.<sup>13</sup>

Florida law does not currently require a sanctioning authority to background screen volunteers (other than coaches for independent youth athletic teams), nor is there a law that requires a sanctioning authority to screen volunteers for private organized youth recreational programs that are not athletic programs. In contrast, Florida law does require volunteers at certain locations to have a background screening,<sup>14</sup> and in certain instances, prohibits or limits a sexual offender's contact with minors altogether.<sup>15</sup>

### **Proposed Changes**

The bill expands the current background screening requirements of s. 943.0438, F.S., to include assistant coaches and referees that:

- Work twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Have direct contact with one or more minors on the team.

The bill provides that the required background screening of coaches, assistant coaches, and referees must include a Level 1 background check through FDLE, as well as a search of the sexual offender and sexual predator registries available on public websites maintained by FDLE and DOJ. The applicable disqualifying offenses for a Level 1 screening are the same as those for employees of child care facilities.<sup>16</sup> The bill authorizes the independent sanctioning authority to allow certain disqualified persons to act as a coach, assistant coach, or referee if the person qualifies for an exemption from disqualification as provided in s. 435.07, F.S. To qualify for the exemption from disqualification, the applicant must:

- Have completed all sanctions at least 3 years prior for a felony conviction;
- Have completed all sanctions for a misdemeanor conviction; and
- Not be a career criminal offender, registered sex offender, or sex predator.

The bill prohibits the authority from delegating the screening responsibility to an individual team. The bill requires that the documentation of the results of each person screened and the written notice provided to any disqualified person be maintained for at least five years.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.

Section 2. Provides an effective date of July 1, 2014.

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<sup>13</sup> Section 943.0438(3), F.S.

<sup>14</sup> Section 943.04351, F.S., requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, to conduct a search of that person through the registration information regarding sexual predators and sexual offenders maintained by DOJ.

<sup>15</sup> Section 775.21(10)(b), F.S., makes it a third-degree felony for a registered sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any specified sexual offense wherein the victim was a minor and the offender is not the parent or guardian of the victim, to work or volunteer at any business, school, daycare center, park, playground, or other place where children regularly congregate.

<sup>16</sup> Section 402.305(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will increase revenues to the state. Each Level 1 background check requires the payment of a \$24 fee, which is deposited into the FDLE Operating Trust Fund. It is unknown how many background checks will be done under the provisions of the bill. For purposes of discussion, if 10,000 background checks are done in a fiscal year, then the revenue collected will be \$240,000.

#### 2. Expenditures:

This bill may have some impact on FDLE's workload. Level 1 background checks can be done through the Internet with the use of a credit card. If the checks required by the bill are done through the Internet, then the workload impact on FDLE should be minimal. If the checks are done through the mail, the impact will be more significant. However, the increased revenues collected should offset any workload issues.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

The independent sanctioning authorities of youth athletic teams affected by the bill will incur the cost associated with the required background checks of coaches, assistant coaches, and referees. Such expense may be passed on to the coaches or the youth, perhaps through registration fees.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 5, 2014, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment revised the bill to:

- Narrow the scope of the bill to only include independent sanctioning authorities of youth athletic teams;
- Expand the current required screening to include assistant coaches and referees; and
- Provide that the screening must include a Level 1 background check.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to athletic coaches for youth athletic  
 3           teams; amending s. 943.0438, F.S.; revising the  
 4           definition of the term "athletic coach"; expanding  
 5           provisions relating to athletic coaches for  
 6           independent sanctioning authorities to require such  
 7           authorities to conduct specified background screening  
 8           of certain coaches of youth athletic teams; providing  
 9           that the duty may not be delegated; providing for  
 10          disqualification; providing for exemption from  
 11          disqualification; requiring that specified  
 12          documentation be maintained for a specified period by  
 13          such authorities; providing an effective date.

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

16  
 17           Section 1. Subsection (1) and paragraphs (a), (b), (c),  
 18           and (d) of subsection (2) of section 943.0438, Florida Statutes,  
 19           are amended to read:

20           943.0438 Athletic coaches for independent sanctioning  
 21           authorities.—

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

23           (a) "Athletic coach" means a person who:

24           1. Is authorized by an independent sanctioning authority  
 25           to work as a coach, assistant coach, or referee for 20 or more  
 26           hours within a calendar year, whether for compensation or as a

27 volunteer, for a youth athletic team based in this state; and  
 28 2. Has direct contact with one or more minors on the youth  
 29 athletic team.

30 (b) "Independent sanctioning authority" means a private,  
 31 nongovernmental entity that organizes, operates, or coordinates  
 32 a youth athletic team in this state if the team includes one or  
 33 more minors and is not affiliated with a private school as  
 34 defined in s. 1002.01.

35 (2) An independent sanctioning authority shall:

36 (a)1. Conduct a level 1 background screening pursuant to  
 37 s. 435.03 of each current and prospective athletic coach. The  
 38 authority may not delegate this responsibility to an individual  
 39 team and may not authorize any ~~No person shall be authorized by~~  
 40 ~~the independent sanctioning authority~~ to act as an athletic  
 41 coach unless a level 1 background screening is ~~has been~~  
 42 conducted and does ~~did~~ not result in disqualification under  
 43 paragraph (b). Level 1 background screenings shall be conducted  
 44 annually for each athletic coach. For purposes of this section,  
 45 a background screening shall include ~~be conducted with~~ a search  
 46 of the athletic coach's name or other identifying information  
 47 against state and federal registries of sexual predators and  
 48 sexual offenders, which are available to the public on Internet  
 49 sites provided by:

- 50 a. The Department of Law Enforcement under s. 943.043; and
- 51 b. The Attorney General of the United States under 42
- 52 U.S.C. s. 16920.

53           2. For purposes of this section, a background screening  
 54 conducted by a commercial consumer reporting agency in  
 55 compliance with the federal Fair Credit Reporting Act using the  
 56 identifying information referenced in subparagraph 1. ~~and~~ that  
 57 includes a level 1 background screening and a search of  
 58 ~~searching~~ that information against the sexual predator and  
 59 sexual offender Internet sites listed in sub-subparagraphs 1.a.  
 60 and b. shall be deemed to satisfy ~~in compliance with~~ the  
 61 requirements of this paragraph ~~section~~.

62           (b) Disqualify any person from acting as an athletic coach  
 63 as provided in s. 435.03 or if he or she is identified on a  
 64 registry described in paragraph (a). The authority may allow a  
 65 person disqualified under this paragraph to act as an athletic  
 66 coach if it determines that the person meets the requirements  
 67 for an exemption from disqualification under s. 435.07.

68           (c) Provide, within 7 business days following the  
 69 background screening under paragraph (a), written notice to a  
 70 person disqualified under this section advising the person of  
 71 the results and of his or her disqualification.

72           (d) Maintain for at least 5 years documentation of:  
 73           1. The results for each person screened under paragraph  
 74 (a); and  
 75           2. The written notice of disqualification provided to each  
 76 person under paragraph (c).

77           Section 2. This act shall take effect July 1, 2014.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 203 Unaccompanied Homeless Youth  
**SPONSOR(S):** Civil Justice Subcommittee; Raulerson and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Aziz	Bond
2) Health & Human Services Committee	16 Y, 0 N	Entress	Calamas
3) Judiciary Committee		Aziz <i>PA</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

In general, a minor may not consent to his or her own routine medical and dental care. Florida law requires that a parent or guardian consent to treatment.

The bill changes the term "unaccompanied youth" to "unaccompanied homeless youth" and specifies that an unaccompanied homeless youth, age 16 or over, may consent to medical treatment. The bill specifies that medical treatment includes: medical, dental, psychological, substance abuse, and other medical care by a licensed facility on behalf of himself or herself, or his or her child.

The bill specifies that minors who qualify as unaccompanied homeless youth must be issued a written certificate. The bill allows school district homeless liaisons, directors of emergency shelter programs, directors of a runaway or homeless youth basic centers, licensed clinical social workers and circuit courts to issue such certificates.

The bill allows a health care provider to accept the written certificate as proof of the minor's status as an unaccompanied homeless youth and specifies that the health care provider may keep a copy of the certificate.

The bill specifies that it does not affect the requirements of the "Parental Notice of Abortion Act."

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Homelessness

There are roughly 45,000 people facing homelessness in Florida.<sup>1</sup> In the 2011-12 school year, 63,685 school-aged children were identified as homeless at some point during the school year.<sup>2</sup>

According to the National Alliance to End Homelessness, the prevalence of youth homelessness is difficult to measure; however, researchers estimate that perhaps 1.6 million youth, aged 13-17, are homeless in the U.S.<sup>3</sup> While the reasons for youth homelessness vary by individual, the primary causes appear to be a family breakdown or a systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs.<sup>4</sup> Between 20,000 and 25,000 youth ages 16 and older transition from foster care to legal emancipation, or "age out" of the system annually with few resources and multiple challenges.<sup>5</sup> As a result, former foster care youth are disproportionately represented in the homeless population. Twenty-five percent of former foster youth nationwide report that they have been homeless at least one night within two-and-a-half to four years after exiting foster care.<sup>6</sup>

Federal law defines "homeless children and youths" as follows:

- (a) Individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and
- (b) Includes—
  - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
  - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(1) of this title);
  - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

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<sup>1</sup> Council on Homelessness Annual Report 2013. Florida Department of Children and Families, *accessible at*: <http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf> (last visited February 26, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> The Heterogeneity of Homeless Youth in America, National Alliance to End Homelessness, September 2011 *accessible at*: <http://www.endhomelessness.org/library/entry/the-heterogeneity-of-homeless-youth-in-america-examining-typologies> (last visited March 17, 2014).

<sup>4</sup> Fundamental Issues to Prevent and End Youth Homelessness, Youth Homelessness Series, Brief No. 1, National Alliance to End Homelessness, May 2006, *accessible at*: <http://www.endhomelessness.org/library/entry/fundamental-issues-to-prevent-and-end-youth-homelessness> (last visited March 17, 2014).

<sup>5</sup> *Id.*

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

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (1) through (iii).<sup>7</sup>

The term, "unaccompanied youth," is defined in federal law as a youth not in the physical custody of a parent or guardian.<sup>8</sup> Unaccompanied homeless youth, because of their disability of nonage and finances, face particular challenges in seeking routine health care. They disproportionately suffer higher rates of mental illness, substance abuse, pregnancy and sexually transmitted diseases.<sup>9</sup> While current law allows minors to consent to care for pregnancy and sexually transmitted diseases<sup>10</sup>, there is no statute which allows unaccompanied homeless youth to consent to general health and dental care.

### Disabilities of Nonage

Disability of nonage refers to a minor's lack of legal ability to enter into binding contracts.<sup>11</sup> However, minors who meet certain conditions can be granted the same rights as an adult. This process is known in current law as "having the disabilities of nonage removed."<sup>12</sup> In the case of a minor who has had the court remove the disabilities of nonage, a court would authorize the minor to perform all acts that a person could do if he or she was 18 years of age or older.<sup>13</sup>

Under current law, a minor may receive emergency medical care without parental consent.<sup>14</sup> A minor may consent to services relating to pregnancy<sup>15</sup>, treatment of sexually transmitted diseases<sup>16</sup>, and substance abuse.<sup>17</sup> The question of consent to general medical and dental care on behalf of a homeless unaccompanied minor, or the child of such a minor, has not been addressed by Florida law.

### School District Homeless Liaison

The Florida Department of Education has established a "school district homeless liaison" for each of the 67 counties.<sup>18</sup> The duties of the liaison include:<sup>19</sup>

- Assisting homeless children and youth who do not have immunizations or medical records to obtain necessary immunizations or medical records;
- Helping unaccompanied youth enroll in a school;
- Approving homeless students' eligibility for free lunch; and
- Providing homeless youth with access to all programs and services available to other students.<sup>20</sup>

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<sup>7</sup> 42 U.S.C. s. 11434a.

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

<sup>9</sup> Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J.L. Society 455, 504 (2012).

<sup>10</sup> See ss. 381.0051, 743.065, and 384.30, F.S.

<sup>11</sup> 25 Fla. Jur 2d Family Law § 240.

<sup>12</sup> See ss. 743.01 (marriage), 743.015 (petition by guardian or guardian ad litem), and 743.067 (petition by unaccompanied youth), F.S.

<sup>13</sup> Section 743.015, F.S.

<sup>14</sup> Section 743.064, F.S.

<sup>15</sup> Section 743.065, F.S. However, such care will not affect the requirements of the Parental Notice of Abortion Act. *Id.* Minors may also receive maternal health and contraceptive information and services of a nonsurgical nature. Section 381.0051(4), F.S. Furthermore, an unwed minor mother may consent to the performance of medical or surgical care or services for her child. Section 743.065, F.S.

<sup>16</sup> Section 384.30, F.S.

<sup>17</sup> Section 397.601(4)(a), F.S.

<sup>18</sup> Florida Department of Education, District Liaison List, *accessible at*:

<http://search.fldoe.org/default.asp?cx=012683245092260330905%3Aalo4lmikgz4&cof=FORID%3A11&q=school+district+homeless+liaison> (last visited February 26, 2014).

<sup>19</sup> *Id.*

## Emergency Shelter Program funded by U.S. Department of Housing and Urban Development

The Emergency Shelter Program is operated by the Department of Housing and Urban Development and is designed as the first step in the Continuum of Care. The Emergency Shelter Grants Program provides funds for emergency shelters and transitional housing with appropriate support services to help individuals reach independent living. States use grant funds to operate these facilities, provide essential social services, and prevent homelessness.<sup>21</sup> The providers of service must document that any youth served meets the federal definition of a homeless person.<sup>22</sup>

## Runway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Center Program works to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families.<sup>23</sup> The programs provide youth through age 18 with emergency shelter, food, clothing, counseling and referrals for health care.<sup>24</sup> Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements.<sup>25</sup>

The Transitional Living Programs supports projects that provide long-term residential services to homeless youth.<sup>26</sup> The Program accepts youth ages 16-21.<sup>27</sup> Transitional living programs are required to provide youth with stable, safe living accommodations, and services that help them develop the skills necessary to become independent.<sup>28</sup> Living accommodations may include host-family homes, group homes, maternity group homes, or supervised apartments owned by the program or rented in the community.<sup>29</sup>

## Clinical Social Worker Licensed under Chapter 491, F.S.

A clinical social worker is a person who has a master's or doctoral degree in social work and evaluates, assesses, diagnoses and treats emotional and mental disorders, behavioral disorders, and substance abuse.<sup>30</sup> To be licensed under ch. 491, F.S., a social worker must have a degree from an accredited

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<sup>20</sup> *The Education of Homeless Children and Youth*, U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet, , accessible at: [https://www.google.com/url?q=http://www.fldoe.org/bsa/title1/pdf/homeless\\_tap\\_08\\_23\\_051.pdf&sa=U&ei=\\_yQnU6mOFYyIkQfRIYGoDA&ved=0CAYQFjAB&client=internal-uds-cse&usg=AFQjCNFZ1J0cRlq2ZO-9A4XrNKK\\_dWe2XQ](https://www.google.com/url?q=http://www.fldoe.org/bsa/title1/pdf/homeless_tap_08_23_051.pdf&sa=U&ei=_yQnU6mOFYyIkQfRIYGoDA&ved=0CAYQFjAB&client=internal-uds-cse&usg=AFQjCNFZ1J0cRlq2ZO-9A4XrNKK_dWe2XQ) (last visited March 17, 2014).

<sup>21</sup> U.S. Department of Housing and Homeless Development, Homelessness Resource Exchange, accessible at: <http://www.hudhre.info/index.cfm?do=viewEsgProgram> (last visited February 26, 2014).

<sup>22</sup> U.S. Department of Housing and Homeless Development, Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities, accessible at: <https://www.onecpd.info/resource/829/emergency-shelter-grants-program-desk-guide/> (last visited February 26, 2014).

<sup>23</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Basic Center Program, accessible at: <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm> (last visited February 26, 2014).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Transitional Program, accessible at: <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm> (last visited February 26, 2014).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 491.003, F.S.

school, have two years of experience in clinical social work under supervision, and pass a test issued by the state.<sup>31</sup>

### **Effect of the Bill**

The bill changes the term "unaccompanied youth" to "unaccompanied homeless youth" in s. 743.067, F.S., related to the removal of disability of nonage of minors. The bill reorganizes the definition of the term and allows a school district homeless liaison, director of emergency shelter program, director of a runaway or homeless youth basic center, licensed clinical social worker and a circuit court to certify an individual as an unaccompanied homeless youth.

The bill specifies that minors who qualify as unaccompanied homeless youth must be issued a written certificate documenting this status. The bill requires the appropriate individual (either the school district homeless liaison, director of emergency shelter program, director of a runaway or homeless youth basic center, licensed clinical social worker, or a circuit court) to issue this certificate. The bill specifies that the certificate must be issued on the official letterhead stationery of the person making the determination and must include:

- The date of the finding,
- A citation to s. 743.067, F.S., and
- The signature of the individual making the finding.

The bill authorizes an unaccompanied homeless youth to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment. The bill specifies that this includes preventative care and care by a licensed mental health facility, hospital, and substance abuse treatment facility. The bill also allows unaccompanied homeless youth to consent to a forensic medical examination.<sup>32</sup> The bill allows such youth to consent to medical care for his or her own child if he or she is unmarried, is the parent of the child, and has custody of the child.

The bill allows a health care provider to accept the written certificate as proof of the minor's status as an unaccompanied homeless youth. The bill specifies that the health care provider may keep a copy of the certificate in the youth's file.

The bill also provides that it does not affect the requirements of the "Parental Notice of Abortion Act."<sup>33</sup>

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 743.067, F.S. relating to unaccompanied youth.

Section 2: Provides an effective date of July 1, 2014.

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

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

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

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<sup>31</sup> Section 491.005(1), F.S.

<sup>32</sup> A forensic medical exam is conducted on a crime victim.

<sup>33</sup> Section 390.01114, F.S., requires a physician performing or inducing the termination of pregnancy for a minor to provide parental notice 48 hours before performing a termination procedure on a minor, unless waived by a parent or otherwise ordered by a judge.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the term “unaccompanied youth” to “unaccompanied homeless youth”;
- Provided that a licensed clinical social worker or a circuit court may also certify a youth as an “unaccompanied homeless youth”; and
- Required issuance of a certificate to an unaccompanied homeless youth.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.





27 (b) Believed to qualify as an unaccompanied homeless  
 28 youth, as that term is defined in the McKinney-Vento Homeless  
 29 Assistance Act, by:

30 1. The director of an emergency shelter program funded by  
 31 the United States Department of Housing and Urban Development or  
 32 the director's designee;

33 2. The director of a runaway or homeless youth basic  
 34 center or transitional living program funded by the United  
 35 States Department of Health and Human Services or the director's  
 36 designee;

37 3. A clinical social worker licensed under chapter 491; or

38 4. A circuit court.

39 (2) A minor who qualifies as an unaccompanied homeless  
 40 youth shall be issued a written certificate documenting his or  
 41 her status by the appropriate individual as provided in  
 42 subsection (1). The certificate shall be issued on the official  
 43 letterhead stationery of the person making the determination and  
 44 shall include the date of the finding, a citation to this  
 45 section, and the signature of the individual making the finding.  
 46 A health care provider may accept the written certificate as  
 47 proof of the minor's status as an unaccompanied homeless youth  
 48 and may keep a copy of the certificate in the youth's medical  
 49 file.

50 (3) An unaccompanied homeless youth may:

51 (a) Petition the circuit court to have the disabilities of  
 52 nonage removed under s. 743.015. The youth shall qualify as a

53 | person not required to prepay costs and fees as provided in s.  
 54 | 57.081. The court shall advance the cause on the calendar.

55 |       (b) Consent to medical, dental, psychological, substance  
 56 | abuse, and surgical diagnosis and treatment, including  
 57 | preventative care and care by a facility licensed under chapter  
 58 | 394, chapter 395, or chapter 397 and a forensic medical  
 59 | examination for the purpose of investigating a felony offense  
 60 | under chapter 784, chapter 787, chapter 794, chapter 800, or  
 61 | chapter 827, for:

- 62 |           1. Himself or herself; or  
 63 |           2. His or her child, if the unaccompanied homeless youth  
 64 | is unmarried, is the parent of the child, and has actual custody  
 65 | of the child.

66 |       (4) This section does not affect the requirements of s.  
 67 | 390.01114.

68 |       Section 2. This act shall take effect July 1, 2014.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 209 Carrying Concealed Weapon or Concealed Firearm  
**SPONSOR(S):** Economic Development & Tourism Subcommittee; Fitzenhagen and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 296

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Cunningham	Cunningham
2) Economic Development & Tourism Subcommittee	9 Y, 3 N, As CS	Collins	West
3) Judiciary Committee		Cunningham	Havlicak <b>RH</b>

**SUMMARY ANALYSIS**

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. Carrying a concealed firearm is a third degree felony. These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm; or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
  - Self-defense chemical spray; or
  - A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties do not apply to:

- A person who carries a concealed weapon or a person who may lawfully possess a firearm and who carries a concealed firearm on or about his or her person while complying with a mandatory evacuation order issued during a state of emergency declared by the Governor.

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have an insignificant positive prison bed impact on the Department of Corrections. The bill may also have a positive jail bed impact.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 790.01, F.S., makes it a first degree misdemeanor<sup>1</sup> for a person to carry a concealed weapon<sup>2</sup> or electric weapon or device<sup>3</sup> on or about his or her person. Carrying a concealed firearm<sup>4</sup> is a third degree felony.<sup>5,6</sup> These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.;<sup>7</sup> or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
  - Self-defense chemical spray;<sup>8</sup> or
  - A nonlethal stun gun or dart-firing stun gun<sup>9</sup> or other nonlethal electric weapon or device that is designed solely for defensive purposes.<sup>10</sup>

##### Effect of the Bill

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties do not apply to:

- A person who carries a concealed weapon or a person who may lawfully possess a firearm and who carries a concealed firearm on or about his or her person while complying with a mandatory evacuation<sup>11</sup> order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S.<sup>12</sup>

The bill does not alter any laws relating to when a person may lawfully use force or where a person may lawfully carry a weapon or firearm.

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

<sup>2</sup> Section 790.001(3)(a), F.S., defines "concealed weapon" as any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.

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

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

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

<sup>6</sup> Section 790.01(2), F.S.

<sup>7</sup> Section 790.06, F.S., sets forth the requirements for obtaining a concealed weapon and concealed firearms license.

<sup>8</sup> Section 790.001(3)(b), F.S., defines "self-defense chemical spray" as a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical.

<sup>9</sup> Section 790.001(15), F.S., defines "dart-firing stun gun" as any device having one or more darts that are capable of delivering an electrical current.

<sup>10</sup> Section 790.01(3) and (4), F.S.

<sup>11</sup> As part of his or her emergency management powers, the Governor is authorized to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if she or he deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery. Section 252.36(5)(e), F.S.

<sup>12</sup> Section 252.36(2), F.S., provides that a state of emergency shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 790.01, F.S., relating to carrying concealed weapons.  
Section 2. Provides an effective date of July 1, 2014.

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

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have an insignificant positive prison bed impact on the Department of Corrections.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. The bill creates an additional exception to this statute, which could have a positive jail bed impact.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

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

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 5, 2014, the House Economic Development & Tourism Subcommittee adopted an amendment which clarified that the exemption provided by the bill pertaining to persons carrying concealed firearms would only apply to those who are lawfully permitted to possess a firearm.

The analysis has been updated to reflect the amendment.



1                   A bill to be entitled  
 2           An act relating to carrying a concealed weapon or a  
 3           concealed firearm; amending s. 790.01, F.S.; providing  
 4           an exemption from criminal penalties for carrying a  
 5           concealed weapon or a concealed firearm when complying  
 6           with a mandatory evacuation order during a declared  
 7           state of emergency; providing an effective date.

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

10  
 11           Section 1. Section 790.01, Florida Statutes, is amended to  
 12           read:

13           790.01 Carrying concealed weapons or concealed firearms.-

14           (1) Except as provided in subsection (3) ~~(4)~~, a person who  
 15           carries a concealed weapon or electric weapon or device on or  
 16           about his or her person commits a misdemeanor of the first  
 17           degree, punishable as provided in s. 775.082 or s. 775.083.

18           (2) Except as provided in subsection (3), a person who  
 19           carries a concealed firearm on or about his or her person  
 20           commits a felony of the third degree, punishable as provided in  
 21           s. 775.082, s. 775.083, or s. 775.084.

22           (3) This section does not apply to:

23           (a) A person licensed to carry a concealed weapon or a  
 24           concealed firearm pursuant to the provisions of s. 790.06.

25           (b) A person who carries a concealed weapon or a person  
 26           who may lawfully possess a firearm and who carries a concealed

27 firearm on or about his or her person while complying with a  
 28 mandatory evacuation order issued during a state of emergency  
 29 declared by the Governor pursuant to chapter 252.

30 ~~(c)(4)~~ ~~It is not a violation of this section for~~ A person  
 31 who carries ~~to carry~~ for purposes of lawful self-defense, in a  
 32 concealed manner:

33 1.(a) A self-defense chemical spray.

34 2.(b) A nonlethal stun gun or dart-firing stun gun or  
 35 other nonlethal electric weapon or device that is designed  
 36 solely for defensive purposes.

37 ~~(4)(5)~~ This section does not preclude any prosecution for  
 38 the use of an electric weapon or device, a dart-firing stun gun,  
 39 or a self-defense chemical spray during the commission of any  
 40 criminal offense under s. 790.07, s. 790.10, s. 790.23, or s.  
 41 790.235, or for any other criminal offense.

42 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Fitzenhagen offered the following:

3

4 **Amendment**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 790.01, Florida Statutes, is amended to  
 7 read:

8 790.01 Unlicensed Carrying of concealed weapons or  
 9 concealed firearms.-

10 (1) Except as provided in subsection (3) ~~(4)~~, a person who  
 11 is not licensed under s. 790.06 and who carries a concealed  
 12 weapon or electric weapon or device on or about his or her  
 13 person commits a misdemeanor of the first degree, punishable as  
 14 provided in s. 775.082 or s. 775.083.

15 (2) Except as provided in subsection (3), A person who is  
 16 not licensed under s. 790.06 and who carries a concealed firearm  
 17 on or about his or her person commits a felony of the third



## Amendment No. 1

18 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
19 775.084.

20 (3) This section does not apply to: ~~a person licensed to~~  
21 ~~carry a concealed weapon or a concealed firearm pursuant to the~~  
22 ~~provisions of s. 790.06.~~

23 (a) A person who carries a concealed weapon, or a person  
24 who may lawfully possess a firearm and who carries a concealed  
25 firearm, on or about his or her person while in the act of  
26 complying with a mandatory evacuation order issued during a  
27 state of emergency declared by the Governor pursuant to chapter  
28 252 or declared by a local authority pursuant to chapter 870.

29 ~~(b) (4) It is not a violation of this section for a person~~  
30 ~~who carries to carry~~ for purposes of lawful self-defense, in a  
31 concealed manner:

32 1. (a) A self-defense chemical spray.

33 2. (b) A nonlethal stun gun or dart-firing stun gun or  
34 other nonlethal electric weapon or device that is designed  
35 solely for defensive purposes.

36 (4) (5) This section does not preclude any prosecution for  
37 the use of an electric weapon or device, a dart-firing stun gun,  
38 or a self-defense chemical spray during the commission of any  
39 criminal offense under s. 790.07, s. 790.10, s. 790.23, or s.  
40 790.235, or for any other criminal offense.

41 Section 2. This act shall take effect July 1, 2014.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HM 261 Constitutional Convention/Single-Subject Requirement for Federal Legislation  
**SPONSOR(S):** Beshears and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SM 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 1 N	Dougherty	Rojas
2) Judiciary Committee		Aziz PA	Havlicak RH

**SUMMARY ANALYSIS**

One method of proposing amendments to the United States Constitution is through a constitutional convention pursuant to Article V, which requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for a convention. No convention has ever been convened under the current constitution.

The memorial serves as an application to Congress to call an Article V Convention of the states for the limited purpose of proposing a single subject constitutional amendment. Such an amendment would prevent Congress from considering varied and disparate subjects in a single bill.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Methods of Amending the U.S. Constitution

Article V of the United States Constitution authorizes two methods for amending the Constitution: by Congress or by a constitutional convention.<sup>1</sup>

##### *Congressional Amendments*

A constitutional amendment may be proposed by a two-thirds majority of both chambers in the form of a joint resolution. After Congress proposes an amendment, the Archivist of the United States is responsible for administering the ratification process under the provisions of 1 U.S.C. s.106b.<sup>2</sup> Since the President does not have a constitutional role in the amendment process, the joint resolution does not go to the White House for signature or approval. The Office of the Federal Register (OFR) assembles an information package for the states which includes copies of the joint resolution and the statutory procedure for ratification under 1 U.S.C. s.106b. The Archivist submits the proposed amendment to the states for their consideration by sending a letter of notification and the OFR informational material to each Governor. The Governors then formally submit the amendment to their state legislatures.<sup>3</sup>

When a state ratifies a proposed amendment, it sends the state action to the Archivist. A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the states (38). The OFR verifies the 38 ratification documents and drafts a formal proclamation for the Archivist to certify that the amendment is valid and has become part of the Constitution. This certification is published in the Federal Register and U.S. Statutes at Large and serves as official notice that the amendment process has been completed.<sup>4</sup>

Since 1789, Congress has proposed 33 amendments by this method, 27 of which have been adopted.

##### *Constitutional Convention Amendments*

An amendment may be proposed by a constitutional convention called for by two-thirds of the state legislatures (34). If 34 states apply, Congress must call an Article V Convention to consider and propose amendments. These proposed amendments must also be ratified by three-fourths of the states (38).<sup>5</sup> This method has never been implemented<sup>6</sup>; therefore, there is no precedent for the exact process and application requirements. Some of the issues concerning this process include procedures within the state legislatures; the scope and conditions of applications for a convention; steps in submitting applications to Congress; and the role of the state governors in the process.<sup>7</sup>

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<sup>1</sup> U.S. CONST. art. V.

<sup>2</sup> *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited March 25, 2014).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Thomas H. Neale, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress 1* (2012).

<sup>6</sup> See Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 Tenn. L. Rev. 663, 665 (2011) ("Despite the submission of approximately 750 applications for an Article V convention, including applications by all fifty states, no constitutional convention has ever been called.").

<sup>7</sup> *Id.* See also Thomas H. Neale, Cong. Research Serv., RL 7-5700, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress* (2012).

The records of the Philadelphia Convention of 1787 demonstrate that the founders intended to balance Congress' amendatory power by providing the convention method to empower the people to propose amendments.<sup>8</sup> Article V identifies these methods as equal and requires the same ratification for all proposed amendments.

Although never used in full, this method has been a useful tool to provoke congressional action. The most successful incidence of using the threat of a constitutional convention to induce change was the movement for the direct election of Senators, which prodded Congress to propose the 17th Amendment.<sup>9</sup>

### Single Subject Provision

A single-subject constitutional provision prohibits a legislative body from enacting a law that embraces more than one subject.

#### *State Provisions*

According to the National Conference of State Legislatures, 41 states, including Florida, have a single subject provision in their state constitutions.<sup>10</sup> Florida's reads, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."<sup>11</sup> Seven state constitutions contain no single-subject provisions, one state places the requirement in a joint rule, while one remaining state seems to imply in its constitution that that legislation should be limited to a single subject.<sup>12</sup>

#### *Federal Provisions*

Currently, there is no federal constitutional or statutory requirement that legislation be limited to a single subject. However, legislation calling for a single subject requirement was introduced in both bodies of Congress during the current 113th Congress. Entitled the "One Subject at a Time Act," the legislation provides, in part, that "each bill or joint resolution shall embrace no more than one subject."<sup>13</sup> The bills have each been referred to a committee but neither has been scheduled for a hearing at this time. Similar legislation died in committee in 2012.<sup>14</sup>

### Constitutional Single Subject Amendment

The adoption of a single subject amendment to the U.S. Constitution would prevent Congress from considering bills that encompass more than one subject. Such a restriction would limit pork barrel spending, the use of riders to legislate, and the logrolling of omnibus legislation. Proponents argue that each measure before Congress should pass on its own merits without depending on legislative support for other unrelated measures to achieve the required number of votes for passage. Furthermore, they

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<sup>8</sup> Thomas H. Neale, *supra* note 7 at 6-8.

<sup>9</sup> *Id.* at 9-10.

<sup>10</sup> National Conference of State Legislatures, *Germaneness Requirements*, available at <http://www.ncsl.org/research/about-state-legislatures/germaneness-requirements.aspx> (last visited March 25, 2014).

<sup>11</sup> Art. III, s. 6, FLA. CONST.

<sup>12</sup> National Conference of State Legislatures, *State Constitutional Provisions that Limit Bills to One Subject (Single Subject Requirement)*, on file with the House Local & Federal Affairs Committee.

<sup>13</sup> H.R. 2113 and S. 1664, 113th Cong. (2013). H.R. 2113 is currently pending in the Subcommittee on the Constitution and Civil Justice, see <http://beta.congress.gov/bill/113th-congress/house-bill/2113> (last visited March 25, 2014). S. 1664 is currently pending in the Committee on Rules and Administration, see <http://beta.congress.gov/bill/113th-congress/senate-bill/1664> (last visited March 25, 2014).

<sup>14</sup> H.R. 3806 and S. 3359, 112th Cong. (2012), available at <http://www.ncsl.org/research/about-state-legislatures/germaneness-requirements.aspx> (last visited March 25, 2014).



contend that a single-subject amendment will increase productivity, efficiency, and transparency in a less acrimonious Congress.

### **Effect of Proposed Changes**

The memorial serves as an application to Congress pursuant to Article V of the U.S. Constitution to call an Article V Convention of the states for the limited purpose of proposing a single subject amendment. This memorial provides that such an amendment should read as follows:

Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title.

The memorial supersedes, revokes, withdraws, and nullifies all previous memorials and concurrent resolutions applying to Congress to call a Convention for the purpose of considering a single subject amendment. Additionally, the memorial provides for its own withdrawal should it be used to call a Convention that achieves any purpose other than a single subject amendment consideration.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

#### **B. SECTION DIRECTORY:**

Not applicable.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

#### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

House Memorial

A memorial to the Congress of the United States,  
 urging Congress to call a convention for the purpose  
 of proposing an amendment to the Constitution of the  
 United States to provide that every law enacted by  
 Congress shall embrace only one subject that shall be  
 clearly expressed in its title.

WHEREAS, each measure before a legislative body should pass  
 on its own merits without depending on legislative support for  
 other unrelated measures to achieve the required number of votes  
 for passage, and

WHEREAS, a single-subject constitutional provision  
 addresses this concern by prohibiting a legislative body from  
 enacting a law that embraces more than one subject, and

WHEREAS, 41 of the 50 states, including Florida, have a  
 single-subject provision in their respective state  
 constitutions, and the legislatures and citizens of these states  
 have benefited from a single-subject requirement, and

WHEREAS, the United States Constitution is the supreme law  
 of the United States of America, touching the lives of every  
 citizen in the several states, but is missing this important  
 provision, and

WHEREAS, our great country is deep in debt and Congress is  
 currently searching for a solution, and

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26 WHEREAS, a federal single-subject amendment would provide  
 27 the means to limit pork barrel spending, control the phenomenon  
 28 of legislating through riders, limit omnibus legislation  
 29 produced by logrolling, prevent public surprise, and increase  
 30 the institutional accountability of Congress and its members,  
 31 and

32 WHEREAS, it is Florida's hope and desire that Congress will  
 33 be able to conduct its business in a more productive, efficient,  
 34 transparent, and less acrimonious way with a single-subject  
 35 requirement, and

36 WHEREAS, Article V of the Constitution of the United States  
 37 makes provision for amending the Constitution on the application  
 38 of the legislatures of two-thirds of the several states, calling  
 39 a convention for proposing amendments that shall be valid to all  
 40 intents and purposes if ratified by the legislatures of three-  
 41 fourths of the several states, or by conventions in three-  
 42 fourths thereof, as the one or the other mode of ratification  
 43 may be proposed by Congress, NOW, THEREFORE,

44

45 Be It Resolved by the Legislature of the State of Florida:

46

47 That the Legislature of the State of Florida, with all due  
 48 respect, does hereby make application to the Congress of the  
 49 United States pursuant to Article V of the Constitution of the  
 50 United States to call a convention for the sole purpose of

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51 | proposing an amendment to the Constitution of the United States  
 52 | to provide:

53 |       Congress shall pass no bill, and no bill shall become  
 54 |       law, which embraces more than one subject, that  
 55 |       subject to be clearly expressed in the bill's title.

56 |       BE IT FURTHER RESOLVED that this memorial supersedes all  
 57 | previous memorials and concurrent resolutions applying to the  
 58 | Congress of the United States to call a convention for the  
 59 | purpose of proposing a single-subject amendment to the  
 60 | Constitution of the United States and that such previous  
 61 | memorials and resolutions are hereby revoked and withdrawn,  
 62 | nullified, and superseded to the same effect as if they had  
 63 | never been passed.

64 |       BE IT FURTHER RESOLVED that this memorial is revoked and  
 65 | withdrawn, nullified, and superseded to the same effect as if it  
 66 | had never been passed, and retroactive to the date of passage,  
 67 | if it is used for the purpose of calling a convention or used in  
 68 | support of conducting a convention to amend the Constitution of  
 69 | the United States for any purpose other than requiring that  
 70 | every law enacted by Congress embrace only one subject which  
 71 | shall be clearly expressed in the title.

72 |       BE IT FURTHER RESOLVED that copies of this memorial be  
 73 | dispatched to the President of the United States, to the  
 74 | President of the United States Senate, to the Speaker of the  
 75 | United States House of Representatives, and to each member of

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76 | the Florida delegation to the United States Congress.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Beshears offered the following:

**Amendment (with title amendment)**

Remove everything after the resolving clause and insert:

6 (1) That the Legislature of the State of Florida, with all  
 7 due respect, does hereby make application to the Congress of the  
 8 United States pursuant to Article V of the United States  
 9 Constitution to call a convention for the sole purpose of  
 10 proposing an amendment to the Constitution of the United States  
 11 to provide that Congress shall pass no bill, and no bill shall  
 12 become law, which embraces more than one subject, that subject  
 13 to be clearly expressed in the bill's title.

14 (2) That this memorial is revoked and withdrawn,  
 15 nullified, and superseded to the same effect as if it had never  
 16 been passed, and be retroactive to the date of passage, if it is  
 17 used for the purpose of calling a convention or used in support

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18 of conducting a convention to amend the Constitution of the  
19 United States for any purpose other than requiring that every  
20 law enacted by Congress embrace only one subject, which shall be  
21 clearly expressed in the title.

22 (3) That this application constitutes a continuing  
23 application in accordance with Article V of the United States  
24 Constitution until the legislatures of at least two-thirds of  
25 the states have made applications on the same subject.

26 BE IT FURTHER RESOLVED that copies of this memorial be  
27 dispatched to the President of the United States, to the  
28 President of the United States Senate, to the Speaker of the  
29 United States House of Representatives, and to each member of  
30 the Florida delegation to the United States Congress.

31

32

33

34

35

-----  
**T I T L E A M E N D M E N T**

36 Remove everything before the resolving clause and insert:  
37 A memorial to the Congress of the United States, applying to  
38 Congress to call a convention for the purpose of proposing an  
39 amendment to the Constitution of the United States to provide  
40 that every law enacted by Congress shall embrace only one  
41 subject, which shall be clearly expressed in its title.

42





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43 WHEREAS, each measure before a legislative body should pass  
44 on its own merits without depending on legislative support for  
45 other unrelated measures to achieve the required number of votes  
46 for passage, and

47 WHEREAS, a single-subject constitutional provision  
48 addresses this concern by prohibiting a legislative body from  
49 enacting a law that embraces more than one subject, and

50 WHEREAS, 41 of the 50 states, including Florida, have a  
51 single-subject provision in their respective state  
52 constitutions, and the legislatures and citizens of these states  
53 have benefited from a single-subject requirement, and

54 WHEREAS, the Constitution of the United States is the  
55 supreme law of the United States of America, touching the lives  
56 of every citizen in the several states, but is missing this  
57 important provision, and

58 WHEREAS, our great country is deep in debt and Congress is  
59 currently searching for a solution, and

60 WHEREAS, a federal single-subject amendment would provide  
61 the means to limit pork barrel spending, control the phenomenon  
62 of legislating through riders, limit omnibus legislation  
63 produced by logrolling, prevent public surprise, and increase  
64 the institutional accountability of Congress and its members,  
65 and

66 WHEREAS, it is Florida's hope and desire that Congress will  
67 be able to conduct its business in a more productive, efficient,



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68 transparent, and less acrimonious way with a single-subject  
69 requirement, and

70 WHEREAS, Article V of the United States Constitution makes  
71 provision for amending the Constitution on the application of  
72 the legislatures of two-thirds of the several states, calling a  
73 convention for proposing amendments that shall be valid to all  
74 intents and purposes if ratified by the legislatures of three-  
75 fourths of the several states or by conventions in three-fourths  
76 thereof, as the one or the other mode of ratification may be  
77 proposed by Congress, NOW, THEREFORE,





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 429 Hearsay

**SPONSOR(S):** Criminal Justice Subcommittee; Civil Justice Subcommittee; Passidomo; Young and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N, As CS	Westcott	Bond
2) Criminal Justice Subcommittee	9 Y, 3 N, As CS	Westcott	Cunningham
3) Judiciary Committee		Westcott 	Havlicak 

### SUMMARY ANALYSIS

The Florida Evidence Code governs the admissibility of evidence a court may consider during the course of a hearing or trial. Hearsay, a statement made out of court offered to prove the truth of the matter asserted, is generally inadmissible in court. There are, however, numerous exceptions to the hearsay rule whereby hearsay may be admissible.

The bill creates a hearsay exception that applies to a statement describing an act of domestic violence that was made to enable law enforcement to respond to an ongoing emergency.

The bill does not appear to have a fiscal impact on state or local governments.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Hearsay

"The purpose of the rules of evidence is to elicit and establish the truth."<sup>1</sup> One general rule of evidence is known as "hearsay." "Hearsay"<sup>2</sup> is a statement,<sup>3</sup> other than one made by the declarant<sup>4</sup> while testifying at trial or a hearing,<sup>5</sup> offered in evidence to prove the truth of the matter asserted.<sup>6</sup> Hearsay evidence is inadmissible unless an exception applies and the evidence is otherwise admissible.

For example, a victim of domestic violence calls the police. When a police officer arrives, the victim tells the officer that "Avery hit me." If the officer then testifies at trial that he heard the victim say "Avery hit me," the officer's testimony would be hearsay because "Avery hit me" is:

- A statement;
- Made outside of the court proceeding; and
- Offered to prove the truth of the matter asserted (i.e., that Avery hit the victim).

The reasoning behind excluding hearsay statements in general is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including that the statement is not made under oath, jurors cannot observe the demeanor of the declarant and judge the witness' credibility, and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.<sup>7</sup> However, current law provides 24 separate hearsay exceptions where, based on the circumstances surrounding the statement, the law finds sufficient reliability to warrant a hearsay exception. For example, out-of-court statements made by children under 16 are admissible in certain instances.<sup>8</sup>

##### Domestic Violence

Domestic violence<sup>9</sup> usually takes place in private, where only the abuser and the abused are present. Because constitutional prohibitions preclude the prosecutor from compelling the accused to testify against himself or herself, the testimony of the victim becomes an essential element of the prosecution's case.<sup>10</sup> The victim, however, is often unavailable because he or she has been killed, is unwilling to testify, or is otherwise unavailable. In these situations, a victim's hearsay statements can become the only opportunity for the prosecutor to bring in the victim's "voice" at trial.<sup>11</sup>

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<sup>1</sup> 23 Fla. Jur 2d Evidence and Witnesses s. 7, citing *Amos v. Gunn*, 94 So. 615 (Fla. 1922).

<sup>2</sup> Section 90.801, F.S.

<sup>3</sup> A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion. Section 90.801(1)(a), F.S. For example, the act of pointing to a suspect in a lineup in order to identify her is a "statement." See Fed. R. Evid. 801 Advisory Committee Note.

<sup>4</sup> The "declarant" is the person who made the statement. Section 90.801(1)(b), F.S.

<sup>5</sup> Often referred to simply as an "out-of-court statement."

<sup>6</sup> Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.

<sup>7</sup> *Lyles v. State*, 412 So.2d 458, 459 (Fla. 2d DCA 1982); see also Charles W. Ehrhardt, *Florida Evidence*, s. 801.1, 770 (2008 ed.).

<sup>8</sup> Section 90.803(23), F.S.

<sup>9</sup> Section 741.28(2), F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>10</sup> Hudders, Neal A., *The Problem of Using Hearsay in Domestic Violence Cases: Is a New Exception the Answer?*, Duke Law Journal 49.4 (2000): 1041-1075.

<sup>11</sup> *Id.*

### **Effect of the Bill**

The bill creates a hearsay exception that applies to a statement describing an act of domestic violence that was made to enable law enforcement to respond to an ongoing emergency.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.

Section 2. Provides that the bill becomes effective upon becoming law.

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

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

##### **1. Revenues:**

This bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

This bill does not appear to have any impact on state expenditures.

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

##### **1. Revenues:**

This bill does not appear to have any impact on local government revenues.

##### **2. Expenditures:**

This bill does not appear to have any impact on local government expenditures.

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

This bill does not appear to have any direct impact on the private sector.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

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

##### **2. Other:**

##### Confrontation Clause

The Confrontation Clause of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.

<sup>12</sup> The Florida Constitution also contains a Confrontation Clause<sup>13</sup>, which the Florida Supreme Court has held should be interpreted in the same manner as its federal counterpart.<sup>14</sup>

The United States' Supreme Court has held that the Confrontation Clause can only be invoked to exclude statements that are considered "testimonial" in nature.<sup>15</sup> The court clarified when a statement would be testimonial when it said:

[S]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.<sup>16</sup>

The court in that case focused on the fact that the statements made to a 911 operator were made regarding what was presently happening, and not describing a prior incident.<sup>17</sup> The Court reasoned that the statements in that case were made to allow law enforcement to respond to an on-going emergency, which rendered the statement to be non-testimonial in nature. The court also noted the difficulty of prosecuting domestic violence cases:

This particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial. When this occurs, the Confrontation Clause gives the criminal a windfall.<sup>18</sup>

However, if a prior statement is admitted under this bill, it perhaps cannot be the sole basis for a conviction. The Florida Supreme Court has ruled that a prior inconsistent statement cannot be the sole substantive evidence for a conviction.<sup>19</sup> This rationale likely applies to any inconsistent statement that may be admitted under this bill. Under this rationale, the evidence of the prior statement could be used as some evidence, but could not be the sole source of evidence used to convict an individual.

#### Court Rulemaking

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.<sup>20</sup> The case law interpreting Art. V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Art. V, s. 2.<sup>21</sup> On the other hand, legislation concerning matters of practice and procedure, are within the Court's "exclusive authority to regulate."<sup>22</sup> However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."<sup>23</sup> Evidence law is considered by the court to be procedural, although the court usually accedes to changes in the statutory evidence laws.

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<sup>12</sup> U.S. CONST. AMEND. 6.

<sup>13</sup> FLA. CONST. art. I, s. 16.

<sup>14</sup> *Perez v. State*, 536 So.2d 206, 209 (Fla. 1988).

<sup>15</sup> *Crawford v. Washington*, 541 U.S. 36 (2005).

<sup>16</sup> *Davis v. Washington*, 547 U.S. 813, 822 (2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 832-33.

<sup>19</sup> *State v. Moore*, 485 So.2d 1279 (Fla. 1986).

<sup>20</sup> Art. V, s. 2(a), Fla. Const.

<sup>21</sup> *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So.2d 730, 732 (Fla. 1991).

<sup>22</sup> *Id.*

<sup>23</sup> *In re Commitment of Cartwright*, 870 So.2d 152, 158 (Fla. 2d DCA 2004) (citing *Cable v. Tuttle's Design-Build, Inc.*, 753 So.2d 49, 53-54 (Fla. 2000)).

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 5, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The bill as filed would have removed a requirement that a prior inconsistent statement had to be under oath in order to be admissible as substantive evidence, whereas the committee substitute narrowed the bill to only create a limited hearsay exception regarding statements made in domestic violence situations.

On March 18, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment reworded the hearsay exception to apply to a statement describing an act of domestic violence that was made to enable law enforcement to respond to an ongoing emergency.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.



1                   A bill to be entitled  
 2           An act relating to hearsay; amending s. 90.803, F.S.;  
 3           providing that certain statements regarding an act of  
 4           domestic violence are an exception to the hearsay rule  
 5           and thus admissible at a court hearing or trial;  
 6           providing an effective date.

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

10           Section 1. Subsection (25) is added to section 90.803,  
 11   Florida Statutes, to read:

12           90.803 Hearsay exceptions; availability of declarant  
 13   immaterial.—The provision of s. 90.802 to the contrary  
 14   notwithstanding, the following are not inadmissible as evidence,  
 15   even though the declarant is available as a witness:

16           (25) DOMESTIC VIOLENCE.—A statement describing any act of  
 17   domestic violence, as defined in s. 741.28, that was made to  
 18   enable law enforcement to respond to an ongoing emergency.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 515 Public Assistance Fraud  
**SPONSOR(S):** Appropriations Committee; Smith and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Healthy Families Subcommittee	10 Y, 2 N	Entress	Brazzell
3) Appropriations Committee	17 Y, 7 N, As CS	Pridgeon	Leznoff
4) Judiciary Committee		Jones <i>JK</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

Section 414.39, F.S., establishes a variety of crimes involving public assistance fraud. Public assistance fraud includes fraud involving temporary cash assistance, food assistance, Medicaid, or optional state supplementation program. The criminal penalties that apply to these offenses are based on the value of the public assistance involved in the offense. For example, s. 414.39(5)(b), F.S., specifies that if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more, in any 12 consecutive months, such person commits a third degree felony.

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months. The bill also creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- (d) Makes it a first degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months.

The bill requires the Department of Children and Families (DCF), subject to available funding, to pay a reward to a person who reports original information relating to a violation of the state's public assistance fraud laws. The bill provides specifications that must be met before the reward money is paid.

The bill also amends s. 414.095(14), F.S., to add the following prohibitions and restrictions that apply to persons applying for or receiving Temporary Cash Assistance (TCA) benefits:

- Use of TCA benefits out-of-state is limited to 30 consecutive days. The TCA benefits of a recipient using his or her benefits out-of-state for more than 30 days shall be terminated.
- A parent or caretaker relative who has been disqualified due to fraud must have a protective payee designated to receive TCA benefits for an eligible child. An individual disqualified for fraud cannot be designated as a protective payee. In a two-parent household, if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

The bill creates new first and second degree felony offenses relating to public assistance fraud. The Criminal Justice Impact Conference met on March 3, 2014, and determined this bill will have an insignificant impact on state prison beds.

The bill has a significant fiscal impact on DCF and the Department of Financial Services. The bill provides \$408,260 in General Revenue funds and \$176,342 in Trust Funds to implement the provisions of this bill (see fiscal section).

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Assistance Fraud**

"Public assistance" refers to benefits paid on the basis of the temporary cash assistance,<sup>1</sup> food assistance,<sup>2</sup> Medicaid,<sup>3</sup> or optional state supplementation program.<sup>4,5</sup> Section 414.39, F.S., establishes the following crimes involving public assistance fraud, which are investigated by the Division of Public Assistance Fraud within the Department of Financial Services (DFS)<sup>6</sup>:

Section 414.39(1), F.S., provides that a person commits a crime if he or she:

- Fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive public assistance under any state or federally funded assistance program;
- Fails to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled; or
- Aids and abets another person in the commission of any such act.

Section 414.39(2), F.S., provides that a person commits a crime if he or she:

- Uses, transfers, acquires, traffics, alters, forges, or possesses;
- Attempts to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aids and abets another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of, a food assistance identification card, an authorization, including, but not limited to, an electronic authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

Section 414.39(3), F.S., specifies that any person having duties in the administration of a state or federally funded public assistance program or in the distribution of public assistance, or authorizations or identifications to obtain public assistance, under a state or federally funded public assistance program commits a crime if he or she:

- Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or if they knowingly fail to disclose any such fraudulent activity; or
- Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization.

Section 414.39(4), F.S., provides that a person commits a crime if he or she:

- Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or if they knowingly bill the recipient

<sup>1</sup> Temporary cash assistance provides cash assistance to families with children to help families become self-supporting.

<sup>2</sup> The Food Assistance Program helps people with low-income buy healthy food.

<sup>3</sup> Medicaid provides medical coverage to low-income individuals and families.

<sup>4</sup> Optional State Supplementation provides monthly cash payments to indigent elderly or disabled individuals.

<sup>5</sup> Section 414.0252(10), F.S.

<sup>6</sup> Section 414.411, F.S.

of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;

- Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources; or
- In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein.

Section 414.39(5), F.S., establishes criminal penalties that apply to all of the above-described offenses. The criminal penalties are based on the value of the public assistance involved in the offense.

Currently, s. 414.39(5), F.S., provides:

- (a) If the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;<sup>7</sup> or
- (b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person commits a third degree felony.<sup>8</sup>

In Fiscal Year 2012-2013, temporary case assistance served 209,142 people, food assistance served 4,879,342 people, and Medicaid served 3,744,588 people.<sup>9</sup>

#### Effect of the Bill

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months.

The bill creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony<sup>10</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- (d) Makes it a first degree felony<sup>11</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months.

The bill requires the Department of Children and Families (DCF) or the director of DCF's Office of Public Benefits Integrity to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws, unless the person declines the reward. The information and report must:

- Be made to DCF, DFS, or the Florida Department of Law Enforcement;
- Relate to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person; and
- Lead to the recovery of a fine, penalty, or forfeiture of property.

The reward requirement is subject to availability of funds and may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward must be paid from the state share of the recovery in the Federal Grants Trust Fund from moneys collected pursuant to s. 414.41,

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> DCF 2013 Annual Report, Florida Department of Children and Families.

<sup>10</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

F.S.<sup>12</sup> The bill specifies that a person who receives a reward for providing information about Medicaid fraud is not eligible to receive funds pursuant to the Florida False Claims Act.<sup>13</sup>

### Temporary Cash Assistance

“Temporary Case Assistance” (TCA) is defined as cash assistance provided under the state program certified under Title IV-A of the Social Security Act, as amended.<sup>14</sup> TCA is a program under the Temporary Assistance for Needy Families block grant.<sup>15</sup> DCF administers Florida’s TCA Program, which provides cash assistance to families with children under the age of 18 or under age 19 if full time high school students, that meet specified technical, income, and asset requirements. The program helps families become self-supporting while allowing children to remain in their own homes.<sup>16</sup>

Section 414.095, F.S., establishes the technical, income, and asset requirements that must be met before becoming eligible to receive TCA benefits,<sup>17</sup> sets forth criteria for determining how much TCA a person is entitled to, and establishes how TCA may be calculated and paid. For example, the statute requires that an applicant register for work and engage in work activities, be a resident of Florida, and have a minor child. The statute also contains a multitude of prohibitions and restrictions, such as:

- A family without a minor child living in the home is not eligible to receive TCA. However, a pregnant woman is eligible for TCA in the ninth month of pregnancy if all eligibility requirements are otherwise satisfied;
- An individual is ineligible to receive TCA during any period when the individual is fleeing to avoid prosecution, custody, or confinement after committing a crime, attempting to commit a crime that is a felony under the laws of the place from which the individual flees or a high misdemeanor in the State of New Jersey, or violating a condition of probation or parole imposed under federal or state law; and
- The parent or other caretaker relative must report to the department within a specified period that a minor child will be absent from the home for 30 or more consecutive days. A parent or caretaker relative who fails to report this information to DCF shall be disqualified from receiving TCA for 30 days for the first occurrence, 60 days for the second occurrence, and 90 days for the third or subsequent occurrence.<sup>18</sup>

Currently, eligible recipients may use benefits out of state, but there are no regulations relating to determining the length of absence that is permissible.<sup>19</sup>

In the event that TCA is terminated due to noncompliance with work requirements, DCF will establish a protective payee to receive cash assistance or food assistance funds on behalf of any children in the home who are under the age of 18.<sup>20</sup> The protective payee shall be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children.

<sup>12</sup> Section 414.41, F.S., requires DCF to take all necessary steps to recover overpayment whenever it becomes apparent that any person or provider has received any public assistance to which she or he is not entitled, through either simple mistake or fraud on the part of DCF or on the part of the recipient or participant.

<sup>13</sup> Under Florida’s False Claims Act (ss. 68.081-68.092, F.S.), people who blow the whistle on Medicaid Fraud are entitled to share in any funds recovered by the state. <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited on January 29, 2014). See s. 68.085(3), F.S.

<sup>14</sup> Section 414.0252(12), F.S.

<sup>15</sup> Title IV-A of the Social Security Act.

<sup>16</sup> *Temporary Cash Assistance*, The Department of Children and Families, *accessible at*: <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on February 23, 2014).

<sup>17</sup> DCF determines if the families meet such requirements. Section 414.095(1), F.S.

<sup>18</sup> Section 414.095(14), F.S.

<sup>19</sup> DCF’s Bill Analysis of HB 515 (2014) (on file with the Healthy Families Subcommittee).

<sup>20</sup> Section 414.095(4), F.S.

- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children.
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.<sup>21</sup>

#### Effect of the Bill

The bill amends s. 414.095(14), F.S., to add two additional prohibitions and restrictions. The first limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. The bill directs DCF to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state.

The second requires a parent or caretaker relative who has been disqualified due to fraud to have a protective payee designated to receive the TCA benefits for an eligible child. The requirements for designation of a protective payee are the same as provided in s. 414.065(2)(b), F.S.<sup>22</sup> The bill specifies that an individual disqualified for fraud cannot be designated as a protective payee and in a two-parent household; if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 414.39, F.S., relating to fraud.

Section 2. Amends s. 414.095, F.S., relating to determining eligibility for temporary cash assistance.

Section 3. Provides an appropriation to DCF to implement the provisions of the bill.

Section 4. Provides an appropriation to DFS to implement the provisions of the bill.

Section 5. Provides an effective date of October 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

- DCF reports that reducing annual TCA expenditures by terminating the benefits received by recipients no longer residing in the state of Florida may result in an estimated annual savings of \$1.8 million (based on repeated out of state use and averages).<sup>23</sup>
- DFS and DCF report that possible increased revenues if the reward provisions result in increased numbers of fraud violations reported that may generate a repayment to the state. According to DFS, the state retains between 20% and 35% of recoveries.<sup>24</sup>

<sup>21</sup> Section 414.065(2), F.S.

<sup>22</sup> Section 414.065, F.S., requires all TCA applicants to register for work and engage in work activities in accordance with s. 445.024, F.S. Those who do not comply with the work requirements are subject to penalties. Upon the second or third occurrence of noncompliance, TCA for a child or children in a family who are under age 16 may be continued. However, any payments must be made through a protective payee. Protective payees must be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and to utilize the assistance in the best interest of the child or children.

<sup>23</sup> DCF's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

<sup>24</sup> DFS's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

2. Expenditures:

The Criminal Justice Impact Conference met on March 3, 2014, and determined this bill will have an insignificant impact on state prison beds.

According to DCF:

- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S.,<sup>25</sup> in the Federal Grants Trust Fund, which is a significant source of funding for DCF's Public Benefit Integrity (PBI) program. Reduction of these funds may have an impact on the trust fund balance which is used for the PBI operation.
- Additional staff would be needed to receive and investigate the tips and complaints received through the reward program. The Florida Office of the Attorney General experienced a 286% increase in calls relating to Medicaid fraud in the first year of a new reward program. DCF's Office of Public Benefit Integrity currently receives an average of 26,400 online and telephonic fraud reports annually. Assuming a similar increase in reports, seven additional staff members would be needed to process the increase in complaint volume, investigative leads, and oversee the administration of the program.

Current call/ complaint volume	26,400
Additional anticipated volume (286% increase)	75,504
Minutes to log and process each complaint	8
Hours of additional workload	10,067
Contract staff to handle workload (10,067 hrs / 2,000 hrs per yr)	5.03

Expected additional cost (\$16.10/hr \* 2,000 hrs \* 5 staff) \$161,000

Additional DCF Staffing Need

1 FTE: Rewards Program Manager

1 OPS ACCESS Integrity Investigator

Salaries and Benefits \$48,003

Other Personnel Services \$35,601

Nonrecurring Expenses (furniture for FTE, Equipment for OPS & Contract Staff) \$9,473

Recurring Expenses (Rent, Supplies, telephone, postage) \$9,761

Technology (Software Programming) \$85,000

Contracted Services (6 Financial Specialists) \$161,000

DMS-Human Resources Services Contract \$344

Mailing Costs for Notification to TCA recipients \$3,500

**Total—FY 2014-15 \$352,682<sup>26</sup>**

According to DFS:

- Implementation of the cash reward process provided by this bill will likely generate a significant increase in the number of complaints received, based on the 286% increase in public complaints received when a similar reward system began by the Attorney General's Medicaid Fraud Unit.<sup>27</sup> Given current Division staffing and the lack of sufficient administrative support positions, additional personnel resources would be needed along with dedicated telephone lines.

<sup>25</sup> Section 414.41, F.S., allows DCF, in conjunction with the Food and Nutrition Service and the Internal Revenue Service, to intercept federal income tax refunds when clients owe food assistance or temporary cash assistance debt to the state.

<sup>26</sup> DCF's Bill Analysis of HB 515 (2014)(on file with the Health Care Appropriations Subcommittee).

<sup>27</sup> See DFS's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).



- DFS estimates the need for additional funding of:

Salaries and Benefits	\$187,140
Recurring Expenses	\$25,257
Nonrecurring Expenses	\$17,785
<u>DMS - Human Resources Service Contract</u>	<u>\$1,720</u>
<b>Total—FY 2014-15</b>	<b>\$231,920<sup>28</sup></b>

The bill provides an appropriation of \$176,340 from the General Revenue Fund and \$176,342 from the Federal Grants Trust Fund and one full time equivalent position to DCF to implement the provisions of the bill. The bill also provides \$231,920 from the General Revenue Fund and five full time equivalent positions to DFS to implement the provisions of the bill.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because:

- Portions of the bill are criminal law; and
- The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. DCF is required to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state. Section 414.45, F.S., also gives DCF the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S.,

<sup>28</sup> DFS's Bill Analysis of HB 515 (2014)(on file with the Government Operations Appropriations Subcommittee).

to implement and enforce the provisions of ch. 414, F.S. Therefore, adequate rulemaking authority appears to exist to implement any rules necessitated by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2014, the Appropriations Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Provides \$176,340 from the General Revenue Fund and \$176,342 from the Federal Grants Trust Fund and one full time equivalent position to the Department of Children and Families to implement the provisions of the bill.
- Provides \$231,928 from the General Revenue Fund and five full time equivalent positions to the Department of Financial Services to implement the provisions of the bill.

The analysis is drafted to the committee substitute as passed by the Appropriations Committee.

1 A bill to be entitled  
 2 An act relating to public assistance fraud; amending  
 3 s. 414.39, F.S.; providing enhanced criminal penalties  
 4 if the value of public assistance or identification  
 5 wrongfully received, retained, misappropriated,  
 6 sought, or used is of an aggregate value exceeding  
 7 specified amounts; providing for a reward for a report  
 8 of original information relating to a violation of the  
 9 state's public assistance fraud laws if the  
 10 information and report meet specified requirements;  
 11 amending s. 414.095, F.S.; limiting to a specified  
 12 period the use of temporary cash assistance benefits  
 13 out of state; requiring rulemaking; requiring that a  
 14 parent or caretaker relative who has been disqualified  
 15 due to fraud have a protective payee designated to  
 16 receive temporary cash assistance benefits for  
 17 eligible children; providing requirements for  
 18 protective payees; providing appropriations and  
 19 authorizing positions; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Subsections (1) through (5) of section 414.39,  
 24 Florida Statutes, are amended, and subsection (11) is added to  
 25 that section, to read:

26 414.39 Fraud.—

27 (1) Any person who knowingly:  
 28 (a) Fails, by false statement, misrepresentation,  
 29 impersonation, or other fraudulent means, to disclose a material  
 30 fact used in making a determination as to such person's  
 31 qualification to receive public assistance under any state or  
 32 federally funded assistance program;  
 33 (b) Fails to disclose a change in circumstances in order  
 34 to obtain or continue to receive any such public assistance to  
 35 which he or she is not entitled or in an amount larger than that  
 36 to which he or she is entitled; or  
 37 (c) Aids and abets another person in the commission of any  
 38 such act,  
 39  
 40 commits ~~is guilty of~~ a crime and shall be punished as provided  
 41 in subsection (5).  
 42 (2) Any person who knowingly:  
 43 (a) Uses, transfers, acquires, traffics, alters, forges,  
 44 or possesses; ~~or~~  
 45 (b) Attempts to use, transfer, acquire, traffic, alter,  
 46 forge, or possess; ~~or~~  
 47 (c) Aids and abets another person in the use, transfer,  
 48 acquisition, traffic, alteration, forgery, or possession of,  
 49  
 50 a food assistance identification card, an authorization,  
 51 including, but not limited to, an electronic authorization, for  
 52 the expenditure of food assistance benefits, a certificate of

53 eligibility for medical services, or a Medicaid identification  
 54 card in any manner not authorized by law commits a crime and  
 55 shall be punished as provided in subsection (5).

56 (3) Any person having duties in the administration of a  
 57 state or federally funded public assistance program or in the  
 58 distribution of public assistance, or authorizations or  
 59 identifications to obtain public assistance, under a state or  
 60 federally funded public assistance program and who:

61 (a) Fraudulently misappropriates, attempts to  
 62 misappropriate, or aids and abets in the misappropriation of,  
 63 food assistance, an authorization for food assistance, a food  
 64 assistance identification card, a certificate of eligibility for  
 65 prescribed medicine, a Medicaid identification card, or public  
 66 assistance from any other state or federally funded program with  
 67 which he or she has been entrusted or of which he or she has  
 68 gained possession by virtue of his or her position, or who  
 69 knowingly fails to disclose any such fraudulent activity; or

70 (b) Knowingly misappropriates, attempts to misappropriate,  
 71 or aids or abets in the misappropriation of, funds given in  
 72 exchange for food assistance program benefits or for any form of  
 73 food assistance benefits authorization,

74  
 75 commits ~~is guilty of~~ a crime and shall be punished as provided  
 76 in subsection (5).

77 (4) Any person who:

78 (a) Knowingly files, attempts to file, or aids and abets

79 in the filing of, a claim for services to a recipient of public  
 80 assistance under any state or federally funded public assistance  
 81 program for services that were not rendered; knowingly files a  
 82 false claim or a claim for nonauthorized items or services under  
 83 such a program; or knowingly bills the recipient of public  
 84 assistance under such a program, or his or her family, for an  
 85 amount in excess of that provided for by law or regulation;

86 (b) Knowingly fails to credit the state or its agent for  
 87 payments received from social security, insurance, or other  
 88 sources; or

89 (c) In any way knowingly receives, attempts to receive, or  
 90 aids and abets in the receipt of, unauthorized payment or other  
 91 unauthorized public assistance or authorization or  
 92 identification to obtain public assistance as provided herein,

93  
 94 commits ~~is guilty of~~ a crime and shall be punished as provided  
 95 in subsection (5).

96 (5) (a) If the value of the public assistance or  
 97 identification wrongfully received, retained, misappropriated,  
 98 sought, or used is less than an aggregate value of \$200 in any  
 99 12 consecutive months, such person commits a misdemeanor of the  
 100 first degree, punishable as provided in s. 775.082 or s.  
 101 775.083.

102 (b) If the value of the public assistance or  
 103 identification wrongfully received, retained, misappropriated,  
 104 sought, or used is of an aggregate value of \$200 or more, but

105 less than \$20,000 in any 12 consecutive months, such person  
 106 commits a felony of the third degree, punishable as provided in  
 107 s. 775.082, s. 775.083, or s. 775.084.

108 (c) If the value of the public assistance or  
 109 identification wrongfully received, retained, misappropriated,  
 110 sought, or used is of an aggregate value of \$20,000 or more, but  
 111 less than \$100,000 in any 12 consecutive months, such person  
 112 commits a felony of the second degree, punishable as provided in  
 113 s. 775.082, s. 775.083, or s. 775.084.

114 (d) If the value of the public assistance or  
 115 identification wrongfully received, retained, misappropriated,  
 116 sought, or used is of an aggregate value of \$100,000 or more in  
 117 any 12 consecutive months, such person commits a felony of the  
 118 first degree, punishable as provided in s. 775.082, s. 775.083,  
 119 or s. 775.084.

120 (e)~~(e)~~ As used in this subsection, the value of a food  
 121 assistance authorization benefit is the cash or exchange value  
 122 unlawfully obtained by the fraudulent act committed in violation  
 123 of this section.

124 (f)~~(d)~~ As used in this section, "fraud" includes the  
 125 introduction of fraudulent records into a computer system, the  
 126 unauthorized use of computer facilities, the intentional or  
 127 deliberate alteration or destruction of computerized information  
 128 or files, and the stealing of financial instruments, data, and  
 129 other assets.

130 (11)(a) Subject to availability of funds, the department

131 or the director of the Office of Public Benefits Integrity  
 132 shall, unless the person declines the reward, pay a reward to a  
 133 person who furnishes and reports original information relating  
 134 to a violation of the state's public assistance fraud laws if  
 135 the information and report:

136 1. Are made to the department, the Department of Financial  
 137 Services, or the Department of Law Enforcement.

138 2. Relate to criminal fraud upon public assistance program  
 139 funds or a criminal violation of public assistance fraud laws by  
 140 another person.

141 3. Lead to the recovery of a fine, penalty, or forfeiture  
 142 of property.

143 (b) The reward may not exceed 10 percent of the amount  
 144 recovered or \$500,000, whichever is less, in a single case.

145 (c) The reward shall be paid from the state share of the  
 146 recovery in the Federal Grants Trust Fund from moneys collected  
 147 pursuant to s. 414.41.

148 (d) A person who receives a reward pursuant to this  
 149 subsection is not eligible to receive funds pursuant to the  
 150 Florida False Claims Act for Medicaid fraud for which the reward  
 151 was received.

152 Section 2. Paragraphs (k) and (l) are added to subsection  
 153 (14) of section 414.095, Florida Statutes, to read:

154 414.095 Determining eligibility for temporary cash  
 155 assistance.—

156 (14) PROHIBITIONS AND RESTRICTIONS.—



157        (k) Use of temporary cash assistance benefits out of state  
 158 is limited to 30 consecutive days. The temporary cash assistance  
 159 benefits of a recipient using his or her benefits out-of-state  
 160 for more than 30 days shall be terminated. The department shall  
 161 adopt rules providing for the determination of temporary absence  
 162 and a recipient's intent to return to the state.

163        (l) A parent or caretaker relative who has been  
 164 disqualified due to fraud must have a protective payee  
 165 designated to receive temporary cash assistance benefits for an  
 166 eligible child. The requirements for designation of a protective  
 167 payee shall be the same as the requirements for designation of a  
 168 protective payee for work sanctions in s. 414.065(2)(b). An  
 169 individual disqualified for fraud cannot be designated as a  
 170 protective payee. In a two-parent household, if only one parent  
 171 is disqualified, the other parent may be designated as the payee  
 172 of the benefit.

173        Section 3. For the 2014-2015 fiscal year, the sum of  
 174 \$171,604 in recurring funds and \$4,736 in nonrecurring funds  
 175 from the General Revenue Fund and \$171,605 in recurring funds  
 176 and \$4,737 in nonrecurring funds from the Federal Grants Trust  
 177 Fund are appropriated to the Department of Children and  
 178 Families, and one full-time equivalent position with associated  
 179 salary rate of 32,698 are authorized, for the purpose of  
 180 implementing the cash rewards process provisions of this act.

181        Section 4. For the 2014-2015 fiscal year, the sum of  
 182 \$214,135 in recurring funds and \$17,785 in nonrecurring funds

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183 are appropriated from the Insurance Regulatory Trust Fund to the  
184 Department of Financial Services, and five full-time equivalent  
185 positions with associated salary rate of 114,040 are authorized,  
186 for the purpose of implementing the cash rewards process  
187 provisions of this act.

188       Section 5. This act shall take effect October 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 517 Fraudulent Controlled Substance Prescriptions  
**SPONSOR(S):** Criminal Justice Subcommittee and Hooper  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 1208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 1 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Cox <i>Mac</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V, which are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein.

The Drug Control Act permits a practitioner, in good faith and in the course of his or her professional practice only, to prescribe a controlled substance to a patient. Written prescriptions must meet certain requirements (e.g., they must have the quantity of the drug prescribed in both textual and numerical formats and be written on a standardized counterfeit-proof prescription pad).

Currently, it is a first degree misdemeanor for a person to possess a prescription form that has not been:

- Completed; and
- Signed by the practitioner whose name appears printed thereon.

When prosecuting this offense, the State is required to prove that a prescription form is not signed and not completed. A person may not be prosecuted for possession of prescription forms that are signed or completed.

The bill prohibits a person from possessing a prescription form unless the form has been:

- Signed by the practitioner whose name appears printed thereon; and
- Completed.

This has the effect of expanding the types of prescription forms that a person is prohibited from possessing, and may make it easier to prosecute the unauthorized possession of prescription forms.

Additionally, the bill makes first violations of the offense a third degree felony (rather than a first degree misdemeanor).

On January 30, 2014, the Criminal Justice Impact Conference determined the bill will have an insignificant prison bed impact.

The bill is effective on October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"<sup>1</sup> of the substance listed therein and whether there is a currently accepted medical use for the substance in the United States. For example, Schedule I substances have a high potential for abuse and have no currently accepted medical use,<sup>2</sup> while Schedule II substances have a high potential for abuse and have a currently accepted, but severely restricted medical use in treatment.<sup>3</sup>

##### **Prescriptions of Controlled Substances**

The Drug Control Act permits a practitioner,<sup>4</sup> in good faith and in the course of his or her professional practice only, to prescribe a controlled substance to a patient.<sup>5</sup> Additionally, controlled substances may only be dispensed by a pharmacist upon a written or oral prescription<sup>6</sup> of a practitioner in accordance with specified conditions.<sup>7</sup>

A written prescription for a controlled substance listed in ch. 893, F.S., must:

- Have the quantity of the drug prescribed in both textual and numerical formats;<sup>8</sup>
- Be dated with the abbreviated month written out on the face of the prescription;<sup>9</sup>
- Be either written on a standardized counterfeit-proof prescription pad<sup>10</sup> produced by a Department of Health-approved vendor<sup>11</sup> or electronically prescribed;<sup>12</sup> and
- Not be issued on the same prescription blank with another prescription order for a:
  - Controlled substance that is described in a different schedule; or
  - Medicinal drug.<sup>13,14</sup>

<sup>1</sup> Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

<sup>2</sup> Section 893.03(1), F.S.

<sup>3</sup> Section 893.03(2), F.S.

<sup>4</sup> Section 893.02(21), F.S., defines "practitioner" to mean a physician licensed pursuant to chapter 458, F.S., a dentist licensed pursuant to chapter 466, F.S., a veterinarian licensed pursuant to chapter 474, F.S., an osteopathic physician licensed pursuant to chapter 459, F.S., a naturopath licensed pursuant to chapter 462, F.S., a certified optometrist licensed pursuant to chapter 463, F.S., or a podiatric physician licensed pursuant to chapter 461, F.S., provided such practitioner holds a valid federal controlled substance registry number.

<sup>5</sup> Section 893.05, F.S.

<sup>6</sup> Section 893.02(22), F.S., defines "prescription," in part, as an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies.

<sup>7</sup> Section 893.04, F.S.

<sup>8</sup> Section 456.42, F.S.

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

<sup>10</sup> The Department of Health is required to develop the form and content for a counterfeit-resistant prescription blank. Practitioners must use the counterfeit-resistant prescription blank when prescribing a controlled substance listed in Schedule II, III, IV, or V. Section 893.065, F.S.

<sup>11</sup> An approved vendor is required to submit a monthly report to the Department of Health which, at a minimum, documents the number of prescription pads sold and identifies the purchasers of such prescription pads. Section 456.42, F.S.

<sup>12</sup> Section 456.42, F.S.

<sup>13</sup> Section 893.02(22), F.S.

There are a number of controlled substances contained in Schedules II through V that are prescribed by practitioners via a prescription form. Examples of such controlled substances include codeine, morphine, oxycodone, methadone, barbiturates, benzodiazepines, amphetamine, and anabolic steroids.

#### **Prohibited Acts Related to Prescriptions of Controlled Substances**

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Currently, s. 893.13(7)(a)7., F.S., makes it a first degree misdemeanor<sup>15</sup> for a person to possess a prescription form that has not been:

- Completed; and
- Signed by the practitioner whose name appears printed thereon.

The offense is a third degree felony<sup>16</sup> if committed a second or subsequent time.<sup>17</sup>

The offense does not apply to the issuing practitioner, an agent or employee of that practitioner, suppliers of prescription forms who are authorized by that practitioner to possess such forms, or pharmacists.<sup>18</sup>

When prosecuting this offense, the State is required to prove that a prescription form is not signed and not completed. A person may not be prosecuted for possession of prescription forms that are signed or completed.

#### **Effect of the Bill**

The bill prohibits a person from possessing a prescription form unless the form has been:

- Signed by the practitioner whose name appears printed thereon; and
- Completed.

This has the effect of expanding the types of prescription forms that a person is prohibited from possessing, and may make it easier to prosecute the unauthorized possession of prescription forms.

Additionally, the bill makes first violations of the offense a third degree felony (rather than a first degree misdemeanor).

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 2. Provides an effective date of October 1, 2014.

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

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

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

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<sup>14</sup> Section 465.003(8), F.S., defines the term "medicinal drug" to mean those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.

<sup>15</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>16</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>17</sup> Section 893.13(7)(c), F.S.

<sup>18</sup> Section 893.13(7)(a)7., F.S.

2. Expenditures:

On January 30, 2014, the Criminal Justice Impact Conference determined the bill will have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill reclassifies a first degree misdemeanor to a third degree felony. To the extent that this reduces the number of persons subject to misdemeanor penalties, the bill may result in a negative fiscal impact on county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not define what constitutes a prescription form being completed "in its entirety."

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies language and does not make any substantive changes to the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                   A bill to be entitled  
 2           An act relating to fraudulent controlled substance  
 3           prescriptions; amending s. 893.13, F.S.; revising  
 4           provisions prohibiting possession of incomplete  
 5           prescription forms; providing enhanced criminal  
 6           penalties for violations involving incomplete  
 7           prescription forms; providing an effective date.

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

10  
 11           Section 1. Paragraphs (a), (c), and (d) of subsection (7)  
 12           of section 893.13, Florida Statutes, are amended to read:

13           893.13 Prohibited acts; penalties.—

14           (7) (a) A person may not:

15           1. Distribute or dispense a controlled substance in  
 16           violation of this chapter.

17           2. Refuse or fail to make, keep, or furnish any record,  
 18           notification, order form, statement, invoice, or information  
 19           required under this chapter.

20           3. Refuse entry into any premises for any inspection or  
 21           refuse to allow any inspection authorized by this chapter.

22           4. Distribute a controlled substance named or described in  
 23           s. 893.03(1) or (2) except pursuant to an order form as required  
 24           by s. 893.06.

25           5. Keep or maintain any store, shop, warehouse, dwelling,  
 26           building, vehicle, boat, aircraft, or other structure or place



27 | which is resorted to by persons using controlled substances in  
 28 | violation of this chapter for the purpose of using these  
 29 | substances, or which is used for keeping or selling them in  
 30 | violation of this chapter.

31 |         6. Use to his or her own personal advantage, or reveal,  
 32 | any information obtained in enforcement of this chapter except  
 33 | in a prosecution or administrative hearing for a violation of  
 34 | this chapter.

35 |         7. Possess a prescription form unless it ~~which~~ has ~~not~~  
 36 | been ~~completed and~~ signed by the practitioner whose name appears  
 37 | printed thereon and completed. This subparagraph does not apply  
 38 | if, unless the person in possession of the form is the ~~that~~  
 39 | practitioner whose name appears printed thereon, ~~is~~ an agent or  
 40 | employee of that practitioner, ~~is~~ a pharmacist, or ~~is~~ a supplier  
 41 | of prescription forms who is authorized by that practitioner to  
 42 | possess those forms.

43 |         8. Withhold information from a practitioner from whom the  
 44 | person seeks to obtain a controlled substance or a prescription  
 45 | for a controlled substance that the person making the request  
 46 | has received a controlled substance or a prescription for a  
 47 | controlled substance of like therapeutic use from another  
 48 | practitioner within the previous 30 days.

49 |         9. Acquire or obtain, or attempt to acquire or obtain,  
 50 | possession of a controlled substance by misrepresentation,  
 51 | fraud, forgery, deception, or subterfuge.

52 |         10. Affix any false or forged label to a package or

53 receptacle containing a controlled substance.

54 11. Furnish false or fraudulent material information in,  
 55 or omit any material information from, any report or other  
 56 document required to be kept or filed under this chapter or any  
 57 record required to be kept by this chapter.

58 12. Store anhydrous ammonia in a container that is not  
 59 approved by the United States Department of Transportation to  
 60 hold anhydrous ammonia or is not constructed in accordance with  
 61 sound engineering, agricultural, or commercial practices.

62 13. With the intent to obtain a controlled substance or  
 63 combination of controlled substances that are not medically  
 64 necessary for the person or an amount of a controlled substance  
 65 or substances that is not medically necessary for the person,  
 66 obtain or attempt to obtain from a practitioner a controlled  
 67 substance or a prescription for a controlled substance by  
 68 misrepresentation, fraud, forgery, deception, subterfuge, or  
 69 concealment of a material fact. For purposes of this  
 70 subparagraph, a material fact includes whether the person has an  
 71 existing prescription for a controlled substance issued for the  
 72 same period of time by another practitioner or as described in  
 73 subparagraph 8.

74 (c) A ~~Any~~ person who violates ~~the provisions of~~  
 75 subparagraphs (a)1.-6. ~~(a)1.-7.~~ commits a misdemeanor of the  
 76 first degree, punishable as provided in s. 775.082 or s.  
 77 775.083, + except that, upon a second or subsequent violation,  
 78 the person commits a felony of the third degree, punishable as

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79 provided in s. 775.082, s. 775.083, or s. 775.084.

80 (d) A Any person who violates ~~the provisions of~~  
81 subparagraphs (a)7.-12. ~~(a)8.-12.~~ commits a felony of the third  
82 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
83 775.084.

84 Section 2. This act shall take effect October 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 641 Computer Crimes

**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee and La Rosa

**TIED BILLS:** CS/CS/HB 643 **IDEN./SIM. BILLS:** CS/CS/SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Jones <i>JH</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Chapter 815, F.S., entitled the "Florida Computer Crimes Act," was created in 1978 in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions.

The bill adds legislative intent language that recognizes that the proliferation of new technologies impact computer-related crimes. To this end, the bill amends the definition of computer network and creates a definition of the term *electronic device*, which means "a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data."

The bill also:

- Creates new computer-related offenses and expands the application of various existing computer-related crimes to include electronic devices;
- Creates an exception to computer-related offenses by specifying they do not apply to persons who act pursuant to a search warrant, an exception to a search warrant, or when acting within the scope of his or her employment;
- Expands the entities that can bring a civil action against persons convicted of computer-related offenses by including owners and lessees of electronic devices;
- Adds electronic devices to the list of items subject to forfeiture if used in computer-related offenses; and
- Provides nothing in this act may be construed to impose liability on certain computer service providers.

The bill also creates new second and third degree felony offenses relating to public utilities.

On March 3, 2014, the Criminal Justice Impact Conference determined that the bill will have an insignificant negative prison bed impact on the Department of Corrections.

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **The Florida Computer Crime Act**

Chapter 815, F.S., entitled the "Florida Computer Crimes Act," was created in 1978<sup>1</sup> in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions.

##### **Legislative Intent**

Currently, s. 815.02, F.S., provides that the Legislature finds and declares that:

- Computer-related crime is a growing problem in government as well as in the private sector;
- Computer-related crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime;
- The opportunities for computer-related crimes in financial institutions, government programs, government records, and other business enterprises through the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets are great; and
- While various forms of computer crime might possibly be the subject of criminal charges based on other provisions of law, it is appropriate and desirable that a supplemental and additional statute be provided which proscribes various forms of computer abuse.

##### **Effect of the Bill**

The bill amends s. 815.02, F.S., to add additional legislative intent language, which states that:

- The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.

##### **Definitions**

Section 815.03, F.S., provides numerous definitions that apply to ch. 815, F.S. For example, s. 815.03(4), F.S., defines *computer network* to mean "any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities."

##### **Effect of the Bill**

The bill amends the definition of *computer network* to mean "a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities."

The bill creates a definition of the term *electronic device*, which means "a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data."

##### **Offenses Against Intellectual Property**

Section 815.04, F.S., makes it a third degree felony<sup>2</sup> for a person to:

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<sup>1</sup> Chapter 78-92, L.O.F.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

- Willfully, knowingly, and without authorization modify data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network;
- Willfully, knowingly, and without authorization destroy data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or
- Willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret<sup>3</sup> or is confidential that is residing or existing internal or external to a computer, computer system, or computer network.

It is a second degree felony<sup>4</sup> if any of the above offenses are committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property.

#### Effect of the Bill

The bill expands the application of s. 815.04, F.S., by prohibiting a person from:

- Modifying or destroying data, etc. located on a computer, computer system, computer network, or an *electronic device*; and
- Disclosing or taking data, programs, or supporting documents which is a trade secret or is confidential that is residing or existing internal or external to a computer, computer system, computer network, or an *electronic device*.

### **Offenses Against Computer Users**

#### *Criminal Penalties*

Section 815.06(1), F.S., makes it a third degree felony for a person to willfully, knowingly, and without authorization:

- (a) Access or cause to be accessed any computer, computer system, or computer network;
- (b) Disrupt or deny or cause the denial of computer system services to an authorized user of a computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- (c) Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network;
- (d) Destroy, injure, or damage any computer, computer system, or computer network; or
- (e) Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony if a person violates subsection (1) and the person:

- Damages a computer, computer equipment, computer supplies, a computer system, or a computer network, and the monetary damage or loss incurred as a result of the violation is \$5,000 or greater;
- Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.<sup>5</sup>

It is a first degree felony<sup>6</sup> if a person violates subsection (1) and the violation endangers human life.<sup>7</sup>

<sup>3</sup> Section 812.081, F.S., defines a "trade secret" as the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: a Secret; Of value; For use or in use by the business; and Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

<sup>4</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> Section 815.06(2)(b), F.S.

Section 815.06(3), F.S., makes it a first degree misdemeanor<sup>8</sup> for a person to willfully, knowingly, and without authorization modify equipment or supplies used or intended to be used in a computer, computer system, or computer network.

None of the criminal penalties apply to a person who accesses his or her employer's computer system, computer network, computer program, or computer data when acting within the scope of his or her lawful employment.<sup>9</sup>

#### *Civil Remedies and Forfeiture*

Currently, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment, computer supplies, or computer data is authorized to bring a civil action against any person convicted under s. 815.06, F.S., for compensatory damages.<sup>10</sup> In such actions, the court may award reasonable attorney's fees to the prevailing party.<sup>11</sup>

For purpose of determining where a civil (or criminal) action may be brought, s. 816.06(7), F.S., specifies that in instances where a person causes the access to a computer, computer system, or computer network in one jurisdiction from another jurisdiction, the person is deemed to have personally accessed the computer, computer system, or computer network in both jurisdictions.

Additionally, any computer, computer system, computer network, computer software, or computer data owned by a defendant which is used during the commission of any violation s. 815.06, F.S., or any computer owned by a defendant which is used as a repository for the storage of software or data obtained in violation of s. 815.06, F.S., is subject to forfeiture as provided under ss. 932.701-932.704, F.S.<sup>12</sup>

#### Effect of the Bill

##### *Criminal Penalties*

The bill renumbers s. 815.06(1), F.S., to s. 815.06(2), F.S., and expands the application of the statute to include electronic devices and to include additional prohibited acts. Specifically, the bill:

- Amends paragraph (a) to prohibit a person from accessing, or causing to be accessed, any computer, computer system, computer network, or *electronic device*, with knowledge that the access is unauthorized;
- Amends paragraph (b) to prohibit a person from disrupting or denying or causing the denial of *the ability to transmit data to or from an authorized user of a computer system or computer network services*;
- Amends paragraphs (c) and (d) to include *electronic devices* in the list of property a person is prohibited from destroying, taking, injuring, or damaging;
- Amends paragraph (e) to include *electronic devices* in the list of property a person is prohibited from introducing contaminants into; and
- Creates paragraph (f) which prohibits a person from willfully, knowingly, and without authorization engaging in audio or video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

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<sup>6</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 815.06(2)(c), F.S.

<sup>8</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 815.06(6), F.S.

<sup>10</sup> Section 815.06(4), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 815.06(5), F.S.



The bill also expands the instances in which the penalty for violating s. 815.06, F.S., is increased to a second degree felony. Specifically, the bill makes it a second degree felony if a person commits any of the above-described acts and the person:

- Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031, F.S.

The bill also adds another instance in which the penalty for violating s. 815.06, F.S., is increased to a first degree felony. Specifically, the bill makes it a first degree felony if a person commits any of the above-described acts and the violation disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

The bill broadens the application of the misdemeanor offense by prohibiting persons from modifying equipment or supplies used or intended to be used in a computer, computer system, computer network, or *electronic device*.

The bill broadens the current exception by specifying that the offenses in s. 815.06, F.S., do not apply to a person who accesses his or her employer's computer system, computer network, computer program, computer data, or *electronic device* when acting within the scope of his or her lawful employment. The bill also creates an additional exception for persons who act pursuant to a search warrant, an exception to a search warrant, or when acting within the scope of his or her employment.

The bill defines the term person as:

- An individual;
- A partnership, corporation, association, or other entity doing business in this state, or an officer, agent, or employee of such an entity; or
- An officer, employee, or agent of the state or a county, municipality, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof.

The bill provides that nothing in this act may be construed to impose liability on any provider of an interactive computer service, as defined in 47 U.S.C. 230(f); information service, as defined in 47 U.S.C. 153; or communications service as defined in s. 202.11, F.S., when the provider provides the transmission, storage or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person.

#### *Civil Remedies and Forfeiture*

The bill expands the entities that can bring a civil action against persons convicted of s. 815.06, F.S., by including owners and lessees of *electronic devices*.

For purpose of determining where a civil (or criminal) action may be brought, the bill specifies that in instances where a person causes the access to a computer, computer system, computer network, or *electronic device* in one jurisdiction from another jurisdiction, the person is deemed to have personally accessed the computer, computer system, computer network, or *electronic device* in both jurisdictions.

The bill adds *electronic devices* to the list of items subject to forfeiture if used in a violation of s. 815.06, F.S.

The bill makes conforming changes to the offense severity ranking chart in s. 921.0022, F.S.

#### **Offenses Against Public Utilities**

Currently, ch. 815, F.S., does not include any offenses relating to public utilities.

### Effect of the Bill

The bill creates s. 815.061, F.S., to make it a third degree felony for a person to willfully, knowingly, and without authorization gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

The bill makes it a second degree felony for a person to physically tamper with, insert software into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility.

The bill defines term *public utility*, to include:

- A public utility or electric utility as defined in s. 366.02, F.S.;
- A utility as defined in s. 367.021, F.S.;
- A natural gas transmission company as defined in s. 368.103, F.S.;
- A person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and
- A separate legal entity created under s. 163.01, F.S., and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services

### B. SECTION DIRECTORY:

Section 1. Amends s. 721.071, F.S., relating to trade secrets.

Section 2. Amends s. 815.02, F.S., relating to legislative intent.

Section 3. Amends s. 815.03, F.S., relating to definitions.

Section 4. Amends s. 815.04, F.S., relating to offenses against intellectual property; public records exemption.

Section 5. Amends s. 815.06, F.S., relating to offenses against computer users.

Section 6. Creates s. 815.061, F.S., relating to offenses against public utilities.

Section 7. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 8. Provides an effective date of October 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

On March 3, 2014, the Criminal Justice Impact Conference determined that the bill will have an insignificant negative prison bed impact on the Department of Corrections.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact in that it broadens the application of the first degree misdemeanor offense in s. 815.06, F.S.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create the need for rulemaking or rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment:

- Corrected terminology;
- Expanded the application of s. 815.04(3), F.S., by prohibiting a person from disclosing or taking certain data located on an *electronic device*.
- Expanded the definition of the term "public utility; and
- Amended the Criminal Punishment Code severity ranking chart for purposes of incorporating the changes made to s. 815.04, F.S.

On March 11, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment provides that nothing in this act may be construed to impose liability on certain computer service providers.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

1 A bill to be entitled  
2 An act relating to computer crimes; amending s.  
3 721.071, F.S.; conforming a cross-reference; amending  
4 s. 815.02, F.S.; revising legislative findings;  
5 amending s. 815.03, F.S.; revising and providing  
6 definitions; amending s. 815.04, F.S.; providing that  
7 a person who willfully, knowingly, and without  
8 authorization modifies or destroys data, programs, or  
9 supporting documentation residing or existing internal  
10 or external to an electronic device commits an offense  
11 against intellectual property; providing that a person  
12 who willfully, knowingly, and without authorization  
13 discloses or takes data, programs, or supporting  
14 documentation that is a trade secret or is  
15 confidential as provided by law residing or existing  
16 internal or external to an electronic device commits  
17 an offense against intellectual property; providing  
18 criminal penalties; amending s. 815.06, F.S.; defining  
19 the term "person"; providing that a person who  
20 willfully, knowingly, and without authorization  
21 accesses an electronic device, disrupts the ability to  
22 transmit data to or from a user of computer network  
23 services, damages an electronic device or equipment or  
24 supplies used by an electronic device, introduces a  
25 computer contaminant into an electronic device, or  
26 engages in the audio or video surveillance of an

27 individual without the individual's knowledge by  
 28 accessing a computer, computer system, computer  
 29 network, or electronic device commits an offense  
 30 against the users of computer networks and electronic  
 31 devices; providing criminal penalties; providing  
 32 exceptions; providing that the Florida Computer Crimes  
 33 Act does not impose liability on certain providers of  
 34 specified services; creating s. 815.061, F.S.;

35 defining the term "public utility"; prohibiting a  
 36 person from willfully, knowingly, and without  
 37 authorization engaging in specified activities against  
 38 a computer, computer system, computer network, or  
 39 electronic device owned, operated, or used by a public  
 40 utility; providing criminal penalties; amending s.  
 41 921.0022, F.S.; conforming provisions of the offense  
 42 severity ranking chart to changes made by the act;  
 43 providing an effective date.

44  
 45 Be It Enacted by the Legislature of the State of Florida:

46  
 47 Section 1. Subsection (1) of section 721.071, Florida  
 48 Statutes, is amended to read:

49 721.071 Trade secrets.—

50 (1) If a developer or any other person filing material  
 51 with the division pursuant to this chapter expects the division  
 52 to keep the material confidential on grounds that the material

53 constitutes a trade secret, as that term is defined in s.  
 54 812.081, the developer or other person shall file the material  
 55 together with an affidavit of confidentiality. "Filed material"  
 56 for purposes of this section shall mean material that is filed  
 57 with the division with the expectation that the material will be  
 58 kept confidential and that is accompanied by an affidavit of  
 59 confidentiality. Filed material that is trade secret information  
 60 includes, but is not limited to, service contracts relating to  
 61 the operation of reservation systems and those items and matters  
 62 described in s. 815.04(3) ~~815.04(3)(a)~~.

63 Section 2. Present subsection (4) of section 815.02,  
 64 Florida Statutes, is redesignated as subsection (5), and a new  
 65 subsection (4) is added to that section, to read:

66 815.02 Legislative intent.—The Legislature finds and  
 67 declares that:

68 (4) The proliferation of new technology has led to the  
 69 integration of computer systems in most sectors of the  
 70 marketplace through the creation of computer networks, greatly  
 71 extending the reach of computer crime.

72 Section 3. Section 815.03, Florida Statutes, is amended to  
 73 read:

74 815.03 Definitions.—As used in this chapter, unless the  
 75 context clearly indicates otherwise:

76 (1) "Access" means to approach, instruct, communicate  
 77 with, store data in, retrieve data from, or otherwise make use  
 78 of any resources of a computer, computer system, or computer

79 network.

80 (2) "Computer" means an internally programmed, automatic  
81 device that performs data processing.

82 (3) "Computer contaminant" means any set of computer  
83 instructions designed to modify, damage, destroy, record, or  
84 transmit information within a computer, computer system, or  
85 computer network without the intent or permission of the owner  
86 of the information. The term includes, but is not limited to, a  
87 group of computer instructions, commonly called viruses or  
88 worms, which are self-replicating or self-propagating and which  
89 are designed to contaminate other computer programs or computer  
90 data; consume computer resources; modify, destroy, record, or  
91 transmit data; or in some other fashion usurp the normal  
92 operation of the computer, computer system, or computer network.

93 (4) "Computer network" means a system that provides a  
94 medium for communication between one or more computer systems or  
95 electronic devices, including communication with an input or  
96 output device such as a display terminal, printer, or other  
97 electronic equipment that is connected to the computer systems  
98 or electronic devices by physical or wireless telecommunication  
99 facilities ~~any system that provides communications between one~~  
100 ~~or more computer systems and its input or output devices,~~  
101 ~~including, but not limited to, display terminals and printers~~  
102 ~~that are connected by telecommunication facilities.~~

103 (5) "Computer program or computer software" means a set of  
104 instructions or statements and related data which, when executed

105 | in actual or modified form, cause a computer, computer system,  
 106 | or computer network to perform specified functions.

107 |       (6) "Computer services" include, but are not limited to,  
 108 | computer time; data processing or storage functions; or other  
 109 | uses of a computer, computer system, or computer network.

110 |       (7) "Computer system" means a device or collection of  
 111 | devices, including support devices, one or more of which contain  
 112 | computer programs, electronic instructions, or input data and  
 113 | output data, and which perform functions, including, but not  
 114 | limited to, logic, arithmetic, data storage, retrieval,  
 115 | communication, or control. The term does not include calculators  
 116 | that are not programmable and that are not capable of being used  
 117 | in conjunction with external files.

118 |       (8) "Data" means a representation of information,  
 119 | knowledge, facts, concepts, computer software, computer  
 120 | programs, or instructions. Data may be in any form, in storage  
 121 | media or stored in the memory of the computer, or in transit or  
 122 | presented on a display device.

123 |       (9) "Electronic device" means a device that is capable of  
 124 | communicating across a computer network with other computers or  
 125 | devices for the purpose of transmitting, receiving, or storing  
 126 | data.

127 |       ~~(10)~~~~(9)~~ "Financial instrument" means any check, draft,  
 128 | money order, certificate of deposit, letter of credit, bill of  
 129 | exchange, credit card, or marketable security.

130 |       ~~(11)~~~~(10)~~ "Intellectual property" means data, including



131 programs.

132 (12)~~(11)~~ "Property" means anything of value as defined in  
 133 s. 812.012 and includes, but is not limited to, financial  
 134 instruments, information, including electronically produced data  
 135 and computer software and programs in ~~either~~ machine-readable or  
 136 human-readable form, and any other tangible or intangible item  
 137 of value.

138 Section 4. Section 815.04, Florida Statutes, is amended to  
 139 read:

140 815.04 Offenses against intellectual property; public  
 141 records exemption.-

142 (1) A person who ~~Whoever~~ willfully, knowingly, and without  
 143 authorization modifies data, programs, or supporting  
 144 documentation residing or existing internal or external to a  
 145 computer, computer system, ~~or~~ computer network, or electronic  
 146 device commits an offense against intellectual property.

147 (2) A person who ~~Whoever~~ willfully, knowingly, and without  
 148 authorization destroys data, programs, or supporting  
 149 documentation residing or existing internal or external to a  
 150 computer, computer system, ~~or~~ computer network, or electronic  
 151 device commits an offense against intellectual property.

152 (3)~~(a)~~ Data, programs, or supporting documentation which  
 153 is a trade secret as defined in s. 812.081 which resides or  
 154 exists internal or external to a computer, computer system, or  
 155 computer network which is held by an agency as defined in  
 156 chapter 119 is confidential and exempt from the provisions of s.

157 119.07(1) and s. 24(a), Art. I of the State Constitution.

158 (4)~~(b)~~ A person who ~~Whoever~~ willfully, knowingly, and  
 159 without authorization discloses or takes data, programs, or  
 160 supporting documentation that ~~which~~ is a trade secret as defined  
 161 in s. 812.081 or is confidential as provided by law residing or  
 162 existing internal or external to a computer, computer system, ~~or~~  
 163 computer network, or electronic device commits an offense  
 164 against intellectual property.

165 (5)~~(4)~~(a) Except as otherwise provided in this subsection,  
 166 an offense against intellectual property is a felony of the  
 167 third degree, punishable as provided in s. 775.082, s. 775.083,  
 168 or s. 775.084.

169 (b) If the offense is committed for the purpose of  
 170 devising or executing any scheme or artifice to defraud or to  
 171 obtain any property, ~~then the person commits~~ offender is guilty  
 172 ~~of~~ a felony of the second degree, punishable as provided in s.  
 173 775.082, s. 775.083, or s. 775.084.

174 Section 5. Section 815.06, Florida Statutes, is amended to  
 175 read:

176 815.06 Offenses against ~~computer~~ users of computer  
 177 networks and electronic devices.-

178 (1) As used in this section, the term "person" means:

179 (a) An individual;

180 (b) A partnership, corporation, association, or other  
 181 entity doing business in this state, or an officer, agent, or  
 182 employee of such an entity; or

183        (c) An officer, employee, or agent of the state or a  
 184 county, municipality, special district, or other political  
 185 subdivision whether executive, judicial, or legislative,  
 186 including, but not limited to, a department, division, bureau,  
 187 commission, authority, district, or agency thereof.

188        (2) A person commits an offense against users of computer  
 189 networks or electronic devices if he or she ~~Whoever~~ willfully,  
 190 knowingly, and without authorization:

191            (a) Accesses or causes to be accessed any computer,  
 192 computer system, ~~or~~ computer network, or electronic device with  
 193 knowledge that such access is unauthorized;

194            (b) Disrupts or denies or causes the denial of the ability  
 195 to transmit data ~~computer system services~~ to or from an  
 196 authorized user of a ~~such~~ computer system or computer network  
 197 services, which, in whole or in part, is owned by, under  
 198 contract to, or operated for, on behalf of, or in conjunction  
 199 with another;

200            (c) Destroys, takes, injures, or damages equipment or  
 201 supplies used or intended to be used in a computer, computer  
 202 system, ~~or~~ computer network, or electronic device;

203            (d) Destroys, injures, or damages any computer, computer  
 204 system, ~~or~~ computer network, or electronic device; ~~or~~

205            (e) Introduces any computer contaminant into any computer,  
 206 computer system, ~~or~~ computer network, or electronic device; or

207            (f) Engages in audio or video surveillance of an  
 208 individual without that individual's knowledge by accessing any

209 inherent feature or component of a computer, computer system,  
 210 computer network, or electronic device, including accessing the  
 211 data or information of a computer, computer system, computer  
 212 network, or electronic device that is stored by a third party  
 213 ~~commits an offense against computer users.~~

214 (3)(2)(a) Except as provided in paragraphs (b) and (c), a  
 215 person who ~~whoever~~ violates subsection (2) (1) commits a felony  
 216 of the third degree, punishable as provided in s. 775.082, s.  
 217 775.083, or s. 775.084.

218 (b) A person commits a felony of the second degree,  
 219 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 220 if he or she ~~whoever~~ violates subsection (2) (1) and:

221 1. Damages a computer, computer equipment or supplies,  
 222 ~~computer supplies,~~ a computer system, or a computer network, and  
 223 the ~~monetary~~ damage or loss ~~incurred as a result of the~~  
 224 ~~violation~~ is at least \$5,000 or greater;

225 2. Commits the offense for the purpose of devising or  
 226 executing any scheme or artifice to defraud or obtain property;  
 227 ~~or~~

228 3. Interrupts or impairs a governmental operation or  
 229 public communication, transportation, or supply of water, gas,  
 230 or other public service; or

231 4. Intentionally interrupts the transmittal of data to or  
 232 from, or gains unauthorized access to, a computer, computer  
 233 system, computer network, or electronic device belonging to any  
 234 mode of public or private transit, as defined in s. 341.031,

235 ~~commits a felony of the second degree, punishable as provided in~~  
 236 ~~s. 775.082, s. 775.083, or s. 775.084.~~

237 (c) A person who ~~whoever~~ violates subsection (2) ~~(1)~~ and  
 238 ~~the violation endangers human life~~ commits a felony of the first  
 239 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 240 775.084, if the violation:

- 241 1. Endangers human life; or
- 242 2. Disrupts a computer, computer system, computer network,  
 243 or electronic device that affects medical equipment used in the  
 244 direct administration of medical care or treatment to a person.

245 ~~(4)(3)~~ A person who ~~whoever~~ willfully, knowingly, and  
 246 without authorization modifies equipment or supplies used or  
 247 intended to be used in a computer, computer system, ~~or~~ computer  
 248 network, or electronic device commits a misdemeanor of the first  
 249 degree, punishable as provided in s. 775.082 or s. 775.083.

250 ~~(5)(4)~~(a) In addition to any other civil remedy available,  
 251 the owner or lessee of the computer, computer system, computer  
 252 network, computer program, computer equipment or supplies,  
 253 electronic device, ~~computer supplies,~~ or computer data may bring  
 254 a civil action against a ~~any~~ person convicted under this section  
 255 for compensatory damages.

256 (b) In an ~~any~~ action brought under this subsection, the  
 257 court may award reasonable attorney ~~attorney's~~ fees to the  
 258 prevailing party.

259 ~~(6)(5)~~ A ~~Any~~ computer, computer system, computer network,  
 260 computer software, ~~or~~ computer data, or electronic device owned

261 by a defendant that ~~which~~ is used during the commission of a any  
 262 violation of this section or a any computer or electronic device  
 263 owned by the defendant that ~~which~~ is used as a repository for  
 264 the storage of software or data obtained in violation of this  
 265 section is subject to forfeiture as provided under ss. 932.701-  
 266 932.704.

267 ~~(7)(6)~~ This section does not apply to a any person who:

268 (a) Accesses his or her employer's computer system,  
 269 computer network, computer program, ~~or~~ computer data, or  
 270 electronic device when acting within the scope of his or her  
 271 lawful employment; or

272 (b) Has acted pursuant to a search warrant or to an  
 273 exception to a search warrant authorized by law or when acting  
 274 within the scope of his or her lawful employment.

275 ~~(8)(7)~~ For purposes of bringing a civil or criminal action  
 276 under this section, a person who causes, by any means, the  
 277 access to a computer, computer system, ~~or~~ computer network, or  
 278 electronic device in one jurisdiction from another jurisdiction  
 279 is deemed to have personally accessed the computer, computer  
 280 system, ~~or~~ computer network, or electronic device in both  
 281 jurisdictions.

282 (9) This chapter does not impose liability on a provider  
 283 of an interactive computer service as defined in 47 U.S.C.  
 284 230(f), information service as defined in 47 U.S.C. 153, or  
 285 communications service as defined in s. 202.11 that provides the  
 286 transmission, storage, or caching of electronic communications

287 or messages of others; other related telecommunications or  
 288 commercial mobile radio service; or content provided by another  
 289 person.

290 Section 6. Section 815.061, Florida Statutes, is created  
 291 to read:

292 815.061 Offenses against public utilities.-

293 (1) As used in this section, the term "public utility"  
 294 includes:

295 (a) A public utility or electric utility as defined in s.  
 296 366.02.

297 (b) A utility as defined in s. 367.021.

298 (c) A natural gas transmission company as defined in s.  
 299 368.103.

300 (d) A person, corporation, partnership, association,  
 301 public agency, municipality, cooperative, gas district, or other  
 302 legal entity and their lessees, trustees, or receivers, now or  
 303 hereafter owning, operating, managing, or controlling gas  
 304 transmission or distribution facilities or any other facility  
 305 supplying or storing natural or manufactured gas or liquefied  
 306 gas with air admixture or any similar gaseous substances by  
 307 pipeline to or for the public within this state.

308 (e) A separate legal entity created under s. 163.01 and  
 309 composed of any of the entities described in this subsection for  
 310 the purpose of providing utility services in this state,  
 311 including wholesale power and electric transmission services.

312 (2) A person may not willfully, knowingly, and without

313 authorization:

314 (a) Gain access to a computer, computer system, computer  
 315 network, or electronic device owned, operated, or used by a  
 316 public utility while knowing that such access is unauthorized.

317 (b) Physically tamper with, insert software into, or  
 318 otherwise transmit commands or electronic communications to a  
 319 computer, computer system, computer network, or electronic  
 320 device that causes a disruption in any service delivered by a  
 321 public utility.

322 (3) (a) A person who violates paragraph (2) (a) commits a  
 323 felony of the third degree, punishable as provided in s.  
 324 775.082, s. 775.083, or s. 775.084.

325 (b) A person who violates paragraph (2) (b) commits a  
 326 felony of the second degree, punishable as provided in s.  
 327 775.082, s. 775.083, or s. 775.084.

328 Section 7. Paragraphs (a) and (c) of subsection (3) of  
 329 section 921.0022, Florida Statutes, are amended to read:

330 921.0022 Criminal Punishment Code; offense severity  
 331 ranking chart.—

332 (3) OFFENSE SEVERITY RANKING CHART

333 (a) LEVEL 1

334

Florida	Felony	
Statute	Degree	Description

335



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336	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
337	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
338	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
339	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
340	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
341	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
342	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.

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343	322.212 (1) (a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
344	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
345	322.212 (5) (a)	3rd	False application for driver's license or identification card.
346	414.39 (2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
347	414.39 (3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
348	443.071 (1)	3rd	False statement or representation to obtain or

			increase reemployment assistance benefits.
348	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
349	517.302 (1)	3rd	Violation of the Florida Securities and Investor Protection Act.
350	562.27 (1)	3rd	Possess still or still apparatus.
351	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
352	812.014 (3) (c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
353	812.081 (2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
354			

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355	815.04 <u>(5)</u> <del>(4)</del> (a)	3rd	Offense against intellectual property (i.e., computer programs, data).
356	817.52 (2)	3rd	Hiring with intent to defraud, motor vehicle services.
357	817.569 (2)	3rd	Use of public record or public records information to facilitate commission of a felony.
358	826.01	3rd	Bigamy.
359	828.122 (3)	3rd	Fighting or baiting animals.
360	831.04 (1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
361	831.31 (1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.

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362	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
363	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
364	838.15(2)	3rd	Commercial bribe receiving.
365	838.16	3rd	Commercial bribery.
366	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
367	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
368	849.01	3rd	Keeping gambling house.
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes,

			or dispose of property or money by means of lottery.
369	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
370	849.25(2)	3rd	Engaging in bookmaking.
371	860.08	3rd	Interfere with a railroad signal.
372	860.13(1)(a)	3rd	Operate aircraft while under the influence.
373	893.13(2)(a)2.	3rd	Purchase of cannabis.
374	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
375	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
376			
377	(c) LEVEL 3		
378			

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	Florida Statute	Felony Degree	Description
379	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
380	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
381	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
382	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
383	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
384	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
385			

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386	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
387	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
388	327.35 (2) (b)	3rd	Felony BUI.
389	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
390	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
391	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
	379.2431 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be



destroyed, transferring,  
selling, offering to sell,  
molesting, or harassing marine  
turtles, marine turtle eggs, or  
marine turtle nests in  
violation of the Marine Turtle  
Protection Act.

392

379.2431  
(1)(e)6.

3rd

Soliciting to commit or  
conspiring to commit a  
violation of the Marine Turtle  
Protection Act.

393

400.9935(4)

3rd

Operating a clinic without a  
license or filing false license  
application or other required  
information.

394

440.1051(3)

3rd

False report of workers'  
compensation fraud or  
retaliation for making such a  
report.

395

501.001(2)(b)

2nd

Tampers with a consumer product  
or the container using

			materially false/misleading information.
396	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
397	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
398	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
399	697.08	3rd	Equity skimming.
400	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
401	796.05(1)	3rd	Live on earnings of a prostitute.
402	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or

			equipment used in firefighting.
403	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
404	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
405	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
406	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
407	815.04 <u>(5)</u> <del>(4)</del> (b)	2nd	Computer offense devised to defraud or obtain property.
408	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
409			

410	817.233	3rd	Burning to defraud insurer.
411	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
412	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.
413	817.236	3rd	Filing a false motor vehicle insurance application.
414	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
415	817.413(2)	3rd	Sale of used goods as new.
416	817.505(4)	3rd	Patient brokering.
417	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

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418	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
419	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
420	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
421	843.19	3rd	Injure, disable, or kill police dog or horse.
422	860.15 (3)	3rd	Overcharging for repairs and parts.
423	870.01 (2)	3rd	Riot; inciting or encouraging.
	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5.,

424	893.13(1)(d)2.	2nd	<p>(2)(c)6., (2)(c)7., (2)(c)8.,                  (2)(c)9., (3), or (4) drugs.</p> <p>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.</p>
425	893.13(1)(f)2.	2nd	<p>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.</p>
426	893.13(6)(a)	3rd	<p>Possession of any controlled                  substance other than felony                  possession of cannabis.</p>
427	893.13(7)(a)8.	3rd	<p>Withhold information from                  practitioner regarding previous</p>

			receipt of or prescription for a controlled substance.
428	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
429	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
430	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
431	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.
432			

433	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.
434	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
435	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.
436	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
437	944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.



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944.47(1)(c)            2nd    Possess contraband while upon  
the grounds of a correctional  
institution.

438

985.721                3rd    Escapes from a juvenile  
facility (secure detention or  
residential commitment  
facility).

439

440

Section 8. This act shall take effect October 1, 2014.



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COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative La Rosa offered the following:

**Amendment (with title amendment)**

Remove lines 91-317 and insert:

transmit data; or in some other fashion usurp or interfere with  
the normal operation of the computer, computer system, or  
computer network.

(4) "Computer network" means a system that provides a  
medium for communication between one or more computer systems or  
electronic devices, including communication with an input or  
output device such as a display terminal, printer, or other  
electronic equipment that is connected to the computer systems  
or electronic devices by physical or wireless telecommunication  
facilities ~~any system that provides communications between one~~  
~~or more computer systems and its input or output devices,~~  
~~including, but not limited to, display terminals and printers~~



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18 ~~that are connected by telecommunication facilities.~~

19 (5) "Computer program or computer software" means a set of  
20 instructions or statements and related data which, when executed  
21 in actual or modified form, cause a computer, computer system,  
22 or computer network to perform specified functions.

23 (6) "Computer services" include, but are not limited to,  
24 computer time; data processing or storage functions; or other  
25 uses of a computer, computer system, or computer network.

26 (7) "Computer system" means a device or collection of  
27 devices, including support devices, one or more of which contain  
28 computer programs, electronic instructions, or input data and  
29 output data, and which perform functions, including, but not  
30 limited to, logic, arithmetic, data storage, retrieval,  
31 communication, or control. The term does not include calculators  
32 that are not programmable and that are not capable of being used  
33 in conjunction with external files.

34 (8) "Data" means a representation of information,  
35 knowledge, facts, concepts, computer software, computer  
36 programs, or instructions. Data may be in any form, in storage  
37 media or stored in the memory of the computer, or in transit or  
38 presented on a display device.

39 (9) "Electronic device" means a device or a portion of a  
40 device that is designed for and capable of communicating across  
41 a computer network with other computers or devices for the  
42 purpose of transmitting, receiving, or storing data, including,  
43 but not limited to, a cellular telephone, tablet, or other



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44 portable device designed for and capable of communicating with  
45 or across a computer network and that is actually used for such  
46 purpose.

47 (10)~~(9)~~ "Financial instrument" means any check, draft,  
48 money order, certificate of deposit, letter of credit, bill of  
49 exchange, credit card, or marketable security.

50 (11)~~(10)~~ "Intellectual property" means data, including  
51 programs.

52 (12)~~(11)~~ "Property" means anything of value as defined in  
53 s. 812.012 and includes, but is not limited to, financial  
54 instruments, information, including electronically produced data  
55 and computer software and programs in ~~either~~ machine-readable or  
56 human-readable form, and any other tangible or intangible item  
57 of value.

58 Section 4. Section 815.04, Florida Statutes, is amended to  
59 read:

60 815.04 Offenses against intellectual property; public  
61 records exemption.—

62 (1) A person who ~~Whoever~~ willfully, knowingly, and without  
63 authorization introduces a computer contaminant or modifies or  
64 renders unavailable data, programs, or supporting documentation  
65 residing or existing internal or external to a computer,  
66 computer system, ~~or~~ computer network, or electronic device  
67 commits an offense against intellectual property.

68 (2) A person who ~~Whoever~~ willfully, knowingly, and without  
69 authorization destroys data, programs, or supporting



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70 documentation residing or existing internal or external to a  
71 computer, computer system, ~~or~~ computer network, or electronic  
72 device commits an offense against intellectual property.

73 (3) ~~(a)~~ Data, programs, or supporting documentation which  
74 is a trade secret as defined in s. 812.081 which resides or  
75 exists internal or external to a computer, computer system, or  
76 computer network which is held by an agency as defined in  
77 chapter 119 is confidential and exempt from the provisions of s.  
78 119.07(1) and s. 24(a), Art. I of the State Constitution.

79 (4) ~~(b)~~ A person who ~~Whoever~~ willfully, knowingly, and  
80 without authorization discloses or takes data, programs, or  
81 supporting documentation that ~~which~~ is a trade secret as defined  
82 in s. 812.081 or is confidential as provided by law residing or  
83 existing internal or external to a computer, computer system, ~~or~~  
84 computer network, or electronic device commits an offense  
85 against intellectual property.

86 (5) ~~(4)~~ (a) Except as otherwise provided in this subsection,  
87 an offense against intellectual property is a felony of the  
88 third degree, punishable as provided in s. 775.082, s. 775.083,  
89 or s. 775.084.

90 (b) If the offense is committed for the purpose of  
91 devising or executing any scheme or artifice to defraud or to  
92 obtain any property, ~~then the~~ person commits ~~offender is guilty~~  
93 ~~of~~ a felony of the second degree, punishable as provided in s.  
94 775.082, s. 775.083, or s. 775.084.

95 Section 5. Section 815.06, Florida Statutes, is amended to



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96 read:

97 815.06 Offenses against ~~computer~~ users of computers,  
98 computer systems, computer networks and electronic devices.-

99 (1) As used in this section, the term "user" means a person  
100 with the authority to operate or maintain a computer, computer  
101 system, computer network, or electronic device.

102 (2) A person commits an offense against users of  
103 computers, computer systems, computer networks or electronic  
104 devices if he or she ~~Whoever~~ willfully, knowingly, and without  
105 authorization:

106 (a) Accesses or causes to be accessed any computer,  
107 computer system, ~~or~~ computer network, or electronic device with  
108 knowledge that such access is unauthorized;

109 (b) Disrupts or denies or causes the denial of the ability  
110 to transmit data ~~computer system services~~ to or from an  
111 authorized user of a such computer, computer system, computer  
112 network or electronic device ~~services~~, which, in whole or in  
113 part, is owned by, under contract to, or operated for, on behalf  
114 of, or in conjunction with another;

115 (c) Destroys, takes, injures, or damages equipment or  
116 supplies used or intended to be used in a computer, computer  
117 system, ~~or~~ computer network, or electronic device;

118 (d) Destroys, injures, or damages any computer, computer  
119 system, ~~or~~ computer network, or electronic device; ~~or~~

120 (e) Introduces any computer contaminant into any computer,  
121 computer system, ~~or~~ computer network, or electronic device; or

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122 (f) Engages in audio or video surveillance of an  
123 individual by accessing any inherent feature or component of a  
124 computer, computer system, computer network, or electronic  
125 device, including accessing the data or information of a  
126 computer, computer system, computer network, or electronic  
127 device that is stored by a third party  
128 ~~commits an offense against computer users.~~

129 (3) (2) (a) Except as provided in paragraphs (b) and (c), a  
130 person who ~~whenever~~ violates subsection (2) (1) commits a felony  
131 of the third degree, punishable as provided in s. 775.082, s.  
132 775.083, or s. 775.084.

133 (b) A person commits a felony of the second degree,  
134 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
135 if he or she ~~whenever~~ violates subsection (2) (1) and:

136 1. Damages a computer, computer equipment or supplies,  
137 ~~computer supplies,~~ a computer system, or a computer network, and  
138 the monetary damage or loss incurred as a result of the  
139 violation is at least \$5,000 or greater;

140 2. Commits the offense for the purpose of devising or  
141 executing any scheme or artifice to defraud or obtain property;  
142 ~~or~~

143 3. Interrupts or impairs a governmental operation or  
144 public communication, transportation, or supply of water, gas,  
145 or other public service; or

146 4. Intentionally interrupts the transmittal of data to or  
147 from, or gains unauthorized access to, a computer, computer



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148 system, computer network, or electronic device belonging to any  
149 mode of public or private transit, as defined in s. 341.031,

150  
151 ~~commits a felony of the second degree, punishable as provided in~~  
152 ~~s. 775.082, s. 775.083, or s. 775.084.~~

153 (c) A person who ~~Whoever~~ violates subsection (2) ~~(1)~~ and  
154 ~~the violation endangers human life~~ commits a felony of the first  
155 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
156 775.084, if the violation:

157 1. Endangers human life; or  
158 2. Disrupts a computer, computer system, computer network,  
159 or electronic device that affects medical equipment used in the  
160 direct administration of medical care or treatment to a person.

161 ~~(4)(3)~~ A person who ~~Whoever~~ willfully, knowingly, and  
162 without authorization modifies equipment or supplies used or  
163 intended to be used in a computer, computer system, ~~or~~ computer  
164 network, or electronic device commits a misdemeanor of the first  
165 degree, punishable as provided in s. 775.082 or s. 775.083.

166 ~~(5)(4)~~(a) In addition to any other civil remedy available,  
167 the owner or lessee of the computer, computer system, computer  
168 network, computer program, computer equipment or supplies,  
169 electronic device, ~~computer supplies,~~ or computer data may bring  
170 a civil action against a ~~any~~ person convicted under this section  
171 for compensatory damages.

172 (b) In an ~~any~~ action brought under this subsection, the  
173 court may award reasonable attorney ~~attorney's~~ fees to the





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174 prevailing party.

175 (6) (5) A ~~Any~~ computer, computer system, computer network,  
176 computer software, ~~or~~ computer data, or electronic device owned  
177 by a defendant that which is used during the commission of a ~~any~~  
178 violation of this section or a ~~any~~ computer or electronic device  
179 owned by the defendant that which is used as a repository for  
180 the storage of software or data obtained in violation of this  
181 section is subject to forfeiture as provided under ss. 932.701-  
182 932.704.

183 (7) (6) This section does not apply to a ~~any~~ person who:

184 (a) Accesses his or her employer's computer system,  
185 computer network, computer program, ~~or~~ computer data, or  
186 electronic device when acting within the scope of his or her  
187 lawful employment; or

188 (b) Has acted pursuant to a search warrant or to an  
189 exception to a search warrant authorized by law, or when acting  
190 within the scope of his or her lawful employment, or authorized  
191 security operations of a government or business.

192 (8) (7) For purposes of bringing a civil or criminal action  
193 under this section, a person who causes, by any means, the  
194 access to a computer, computer system, ~~or~~ computer network, or  
195 electronic device in one jurisdiction from another jurisdiction  
196 is deemed to have personally accessed the computer, computer  
197 system, ~~or~~ computer network, or electronic device in both  
198 jurisdictions.

199 (9) This chapter does not impose liability on a provider



Amendment No. 1

200 of an interactive computer service as defined in 47 U.S.C.  
201 230(f), information service as defined in 47 U.S.C. 153, or  
202 communications service as defined in s. 202.11 that provides the  
203 transmission, storage, or caching of electronic communications  
204 or messages of others; other related telecommunications or  
205 commercial mobile radio service; or content provided by another  
206 person.

207 Section 6. Section 815.061, Florida Statutes, is created  
208 to read:

209 815.061 Offenses against public utilities.-

210 (1) As used in this section, the term "public utility"  
211 includes:

212 (a) A public utility or electric utility as defined in s.  
213 366.02.

214 (b) A utility as defined in s. 367.021.

215 (c) A natural gas transmission company as defined in s.  
216 368.103.

217 (d) A person, corporation, partnership, association,  
218 public agency, municipality, cooperative, gas district, or other  
219 legal entity and their lessees, trustees, or receivers, now or  
220 hereafter owning, operating, managing, or controlling gas  
221 transmission or distribution facilities or any other facility  
222 supplying or storing natural or manufactured gas or liquefied  
223 gas with air admixture or any similar gaseous substances by  
224 pipeline to or for the public within this state.

225 (e) A separate legal entity created under s. 163.01 and



Amendment No. 1

226 composed of any of the entities described in this subsection for  
227 the purpose of providing utility services in this state,  
228 including wholesale power and electric transmission services.

229 (2) A person may not willfully, knowingly, and without  
230 authorization:

231 (a) Gain access to a computer, computer system, computer  
232 network, or electronic device owned, operated, or used by a  
233 public utility while knowing that such access is unauthorized.

234 (b) Physically tamper with, insert a computer contaminant  
235 into, or

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237

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239

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T I T L E A M E N D M E N T

241

Remove lines 8-30 and insert:

242

authorization introduces a computer contaminant or modifies or

243

renders data unavailable or destroys data, programs, or

244

supporting documentation residing or existing internal or

245

external to an electronic device commits an offense against

246

intellectual property; providing that a person who willfully,

247

knowingly, and without authorization discloses or takes data,

248

programs, or supporting documentation that is a trade secret or

249

is confidential as provided by law residing or existing internal

250

or external to an electronic device commits an offense against

251

intellectual property; providing criminal penalties; amending s.



Amendment No. 1

252 815.06, F.S.; defining the term "user"; providing that a person  
253 who willfully, knowingly, and without authorization accesses an  
254 electronic device, disrupts the ability to transmit data to or  
255 from a user of computer network services, damages an electronic  
256 device or equipment or supplies used by an electronic device,  
257 introduces a computer contaminant into an electronic device, or  
258 engages in the audio or video surveillance of an individual  
259 without the individual's knowledge by accessing a computer,  
260 computer system, computer network, or electronic device commits  
261 an offense against the users of computers, computer services,  
262 computer networks and electronic  
263



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 643 Pub. Rec./Trade Secrets/Computers  
**SPONSOR(S):** Government Operations Subcommittee; Criminal Justice Subcommittee and La Rosa  
**TIED BILLS:** CS/CS/HB 641 **IDEN./SIM. BILLS:** CS/SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Government Operations Subcommittee	12 Y, 0 N, As CS	Williamson	Williamson
3) Judiciary Committee		Jones <i>YJ</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Current law provides a public record exemption for data, programs, or supporting documentation that is a trade secret and that resides or exists internal or external to a computer, computer system, or computer network. Such trade secrets are confidential and exempt from public record requirements when held by an agency.

This bill, which is linked to the passage of House Bill 641, expands the public record exemption for data, programs, or supporting documentation that is a trade secret, to include such information when it resides or exists internal or external to an electronic device.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill could create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS section.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### House Bill 641 (2014)

Chapter 815, F.S., entitled the "Florida Computer Crimes Act," was created in 1978 in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions.

House Bill 641 adds legislative intent language that recognizes that the proliferation of new technologies impact computer-related crimes. To this end, the bill amends the definition of computer network and creates a definition of the term "electronic device," which means a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data.

##### Public Record Exemption for Trade Secrets

Section 815.04(3)(a), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret<sup>3</sup> and that resides or exists internal or external to a computer,

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 812.081, F.S., defines a "trade secret" as the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: a Secret; of value; for use or in use by the business; and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

computer system, or computer network. Such trade secrets are confidential and exempt<sup>4</sup> from public record requirements when held by an agency.<sup>5</sup>

For purposes of the public record exemption, agency is defined to mean:

[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.<sup>6</sup>

### **Effect of the Bill**

This bill, which is linked to the passage of House Bill 641, expands the current public record exemption for trade secrets to include such information when it resides or exists internal or external to an electronic device.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 815.04, F.S., relating to offenses against intellectual property; public records exemptions.

Section 2. Provides a public necessity statement.

Section 3. Provides a contingent effective date.

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

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

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

See FISCAL COMMENTS.

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<sup>4</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>5</sup> Section 119.011, F.S., defines a "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> Section 119.011(2), F.S.



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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See FISCAL COMMENTS.

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

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on state and local agencies. Staff responsible for complying with public record requests could require training related to the expansion of the current public record exemption. In addition, such agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the current public record exemption for certain trade secret information to include such information as it relates to an electronic device.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Criminal Justice Subcommittee

On February 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment removed the changes to the offense against intellectual property because they are included in CS/CS/HB 641.

Government Operations Subcommittee

On March 12, 2014, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment modified the public necessity statement to make it applicable to the expansion of the public record exemption.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

1                                   A bill to be entitled  
 2       An act relating to public records; amending s. 815.04,  
 3       F.S.; amending an exemption from public records  
 4       requirements for data, programs, and supporting  
 5       documentation that are trade secrets residing or  
 6       existing internal or external to a computer, computer  
 7       system, or computer network; expanding the exemption  
 8       to include such trade secret information residing or  
 9       existing internal or external to an electronic device;  
 10      providing for legislative review and repeal of the  
 11      exemption; providing a statement of public necessity;  
 12      providing a contingent effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16       Section 1. Subsection (3) of section 815.04, Florida  
 17 Statutes, is amended to read:

18       815.04 Offenses against intellectual property; public  
 19 records exemption.—

20       (3)(a) Data, programs, or supporting documentation that  
 21 ~~which~~ is a trade secret as defined in s. 812.081, that is held  
 22 by an agency as defined in chapter 119, and that ~~which~~ resides  
 23 or exists internal or external to a computer, computer system,  
 24 ~~or computer network, or electronic device~~ which is held by an  
 25 agency as defined in chapter 119 is confidential and exempt from  
 26 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State

27 Constitution.

28 (b) Whoever willfully, knowingly, and without  
 29 authorization discloses or takes data, programs, or supporting  
 30 documentation which is a trade secret as defined in s. 812.081  
 31 or is confidential as provided by law residing or existing  
 32 internal or external to a computer, computer system, or computer  
 33 network commits an offense against intellectual property.

34 (c) This subsection is subject to the Open Government  
 35 Sunset Review Act in accordance with s. 119.15, and shall stand  
 36 repealed on October 2, 2019, unless reviewed and saved from  
 37 repeal through reenactment by the Legislature.

38 Section 2. The Legislature finds that it is a public  
 39 necessity that data, programs, or supporting documentation that  
 40 is a trade secret as defined in s. 812.081, Florida Statutes,  
 41 that is held by an agency as defined in chapter 119, Florida  
 42 Statutes, and that resides or exists internal or external to an  
 43 electronic device be made confidential and exempt from s.  
 44 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 45 State Constitution. The public release of such data, programs,  
 46 and supporting documentation would negatively impact the  
 47 business interests of those providing an agency such trade  
 48 secrets by damaging the business in the marketplace. Without the  
 49 public records exemption, those entities and individuals  
 50 disclosing such trade secrets would hesitate to cooperate with  
 51 that agency, which would impair the effective and efficient  
 52 administration of governmental functions. Thus, the public and

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53 private harm in disclosing data, programs, or supporting  
54 documentation that is a trade secret, and that resides or exists  
55 internal or external to an electronic device, significantly  
56 outweighs any public benefit derived from disclosure, and the  
57 public's ability to scrutinize and monitor agency action is not  
58 diminished by the nondisclosure of such trade secrets.

59 Section 3. This act shall take effect on the same date  
60 that HB 641 or similar legislation takes effect, if such  
61 legislation is adopted in the same legislative session or an  
62 extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 807 Residential Properties

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Moraitis, Jr.

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	9 Y, 3 N, As CS	Butler	Luczynski
3) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Relating to the statutory regulation of various forms of residential properties, this bill:

- Defines the term "timeshare project," which is a timeshare property that is also a public lodging establishment, and substitutes the new term for "timeshare plan" as appropriate.
- Specifies that the statutory notice required of a homeowners' association to renew its covenants and restrictions for an additional 30 years is sufficient.
- Provides that a condominium association may access an abandoned unit for the purpose of preservation of the unit and may seek appointment of a receiver to lease the unit to offset costs of maintenance.
- Broadens the information that a condominium, cooperative or homeowners' association may include in a member directory.
- Requires outgoing board members of a condominium or cooperative to relinquish possession of records and property of the association to their successors in office, and authorizes the state to enforce compliance.
- Extends condominium bulk assignee and bulk buyer provisions by one year to July 1, 2016.
- Amends cooperative law to match condominium law on financial oversight, the prohibition on office-holding if delinquent or charged with theft of association funds, and emergency powers.
- Amends homeowners' association emergency powers to parallel those of a condominium.
- Simplifies the notice requirements regarding amendments to the restrictive covenants of a homeowners' association.

The bill does not appear to create a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Timeshares and Public Lodging Regulation**

The state Division of Hotels and Restaurants<sup>1</sup> regulates public lodging establishments, primarily related to health and safety issues.<sup>2</sup> A timeshare plan<sup>3</sup> may be a "public lodging establishment"<sup>4</sup> if it is rented for less than 30 days,<sup>5</sup> as a "vacation rental."<sup>6</sup> Timeshares and other vacation plans are more extensively regulated by the Division of Condominiums, Timeshares and Mobile Homes.<sup>7</sup> Both divisions are housed in the Department of Business and Professional Regulation.

A "transient public lodging establishment" is defined in s. 509.013, F.S. as:

[A]ny 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.

A "vacation rental" is defined in s. 509.242, F.S., as:

[A]ny unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

This bill defines the term "timeshare project" as:

[A] timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

The bill amends s. 509.242, F.S. to remove "timeshare plans" from the definition of a "vacation rental" and to affirmatively exclude the newly created "timeshare projects" from regulation as a "vacation rental." In other sections, instances of the term "timeshare plan" have been replaced with the more appropriate term "timeshare project," and the term "timeshare project" has been included wherever the term "vacation plan" or "vacation rental" appears in the regulation of public lodging establishments.

##### **Marketable Record Title Act and Homeowners Associations**

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.<sup>8</sup> In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims. One effect of MRTA is that homeowner association covenants can lose effect unless the association timely files a renewal. A

<sup>1</sup> Section 509.013(1), F.S.

<sup>2</sup> Section 509.032(1), F.S.

<sup>3</sup> Section 721.05(39), F.S.

<sup>4</sup> Section 509.013(4)(a), F.S.

<sup>5</sup> Section 509.013(4)(b)4., F.S.

<sup>6</sup> Section 509.242(1)(c), F.S.

<sup>7</sup> See generally, ch. 721, F.S.

<sup>8</sup> *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).



homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner in a form set by statute;<sup>9</sup>
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;<sup>10</sup>
- The board of directors of the association must approve the renewal by a two-thirds vote;<sup>11</sup>
- Notice of the renewal must be recorded in the Official Records of the county;<sup>12</sup> and
- A copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.<sup>13</sup>

The bill affirmatively clarifies in s. 712.05, F.S., that a homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3), F.S.

### **Condominium Associations**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>14</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>15</sup> A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>16</sup> Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, establishment of a quorum, voting rights, and election and removal of board members.<sup>17</sup>

#### *Access to an Abandoned Condominium Unit*

A condominium association has the right to access each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements, to any portion of a unit maintained by the association pursuant to the declaration, or as necessary to prevent damage to the common elements or to a unit. The bill amends s. 718.111(5), F.S., to add that the condominium association also has a right of access to an abandoned unit to:

- Inspect the unit and adjoining common elements;
- Make repairs to the unit or to the common elements serving the unit, as needed;
- Repair the unit if mold or deterioration is present;
- Turn on the utilities for the unit; or
- Otherwise maintain, preserve, or protect the unit and adjoining common elements.

A unit is presumed to be abandoned if the unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or no tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

<sup>9</sup> Section 712.06(1)(b), F.S.

<sup>10</sup> Section 712.05(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 712.06(2), F.S.

<sup>13</sup> Section 712.06(3)(b), F.S.

<sup>14</sup> Section 718.103(11), F.S.

<sup>15</sup> Section 718.104(2), F.S.

<sup>16</sup> Section 718.104(5), F.S.

<sup>17</sup> Section 718.112, F.S.

Before entry, the association must give at least 2 days' notice of the association's intent to enter the unit, which must be mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

The association may recover from the unit owner any costs incurred by the association. The association may place a lien against the unit to enforce collection of the expense.

The association may petition a court of competent jurisdiction to appoint a receiver and may lease an abandoned unit for the benefit of the association to offset the association's expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney's fees.

#### *Responsibility for Damage to the Condominium*

A condominium association is required to maintain a property insurance policy covering loss or damage to the condominium.<sup>18</sup> At one time, the split between association responsibility for loss and owner responsibility was set in the declaration of condominium, but that required insurance companies to review condominium documents when writing coverage and inevitably led to gaps where neither the association nor a member would have insurance for a loss, or led to unnecessary double coverage. Section 718.111(11)(f), F.S., resolves these insurance provisions by providing a clear split between association coverage and unit owner coverage. Where a covered loss to association property occurs, the association is responsible for the repair as a common expense. The bill amends s. 718.111(11)(j), F.S., to provide that where a loss occurs that is not an insurable event, the responsibility for the repair is as set forth in the declaration of condominium or the bylaws. Therefore, the split of responsibility in s. 718.111(11)(f), F.S., only covers insurable events.

#### *Condominium Association Directory*

Condominium law requires the association to keep and maintain certain records.<sup>19</sup> In general, all records of the association are open for copying and inspection by any member of the association.<sup>20</sup> However, certain records, including names and phone numbers of unit owners, are confidential.

Some associations publish a unit owner directory for the convenience of the members. An association may publish such a directory that includes unit owners' names, unit addresses, and a phone number. A unit owner may opt out of being published in the directory. The bill provides that multiple phone numbers may be published, and provides that a unit owner may consent to having other contact information published.<sup>21</sup>

#### *Association Records*

The bill creates s. 718.111(12)(f), F.S., to provide that an outgoing board member or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The Division of Florida Condominiums, Timeshares and Mobile Homes may enforce this requirement by imposing a civil

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<sup>18</sup> Section 718.111(11)(d), F.S.

<sup>19</sup> See generally, s. 718.111(12), F.S.

<sup>20</sup> Section 718.111(12)(c), F.S.

<sup>21</sup> Other contact information is a broad term that could include email address, instant message (IM) addresses, Twitter names, or any other form of communication that may exist or be invented.

penalty<sup>22</sup> against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

### *Meetings of the Board of Directors*

Current law contemplates that most meetings of the directors will be in person, but meeting through use of a teleconference is allowed provided a speakerphone is used. The bill amends s. 718.112(2)(b)5., F.S., to also allow real-time videoconferencing, or similar real-time electronic or video communication, in lieu of physical appearance at the meeting. Directors who appear electronically count toward establishing a quorum and may vote. The bill also amends s. 718.112(2)(c), F.S., to allow board members to communicate via e-mail, although e-mail voting is not allowed.

The bill amends s. 718.112, F.S., to clarify the language to provide that if 20 percent of the voting interests within the condominium association petition the board to address an item of business that the Board needs to put such item on its agenda for its next regular or special board meeting within 60 days, but that such meeting does not need to occur within 60 days.

### *Bulk Assignee and Bulk Buyer Provisions*

Bulk assignees and bulk buyers are real estate investors who buy more than seven condominium units from a developer.<sup>23</sup> Regular condominium law requires turnover of association control to the owners when a developer has sold a percentage of the units, but the requirement of an early turnover discourages investors from buying distressed units. To encourage investors to rehabilitate financially troubled condominiums, the bulk assignee and bulk buyer provisions in ss. 718.701-708, F.S., delay the turnover requirement and provide other legal protections to bulk assignees and bulk buyers. These protections are currently set to expire by a requirement that the bulk transfer occur no later than July 1, 2015. The bill amends s. 718.707, F.S., to extend the acquisition deadline to July 1, 2016.

### **Cooperative Associations**

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned of record by the cooperative association,<sup>24</sup> and individual units are leased to the residents, who own shares in the cooperative association.<sup>25</sup> The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

The bill changes cooperative law in the same manner that condominium law is being changed by the bill (see description above) in the following aspects:

- Owner records and directories; and,
- The requirement that an outgoing board or committee member relinquish official records and property of the association.

The bill amends cooperative law to match previous changes to condominium law in the following aspects:

- The bill increases the cooperative association audit deadlines and thresholds at s. 719.104(4)(a), F.S. to match those at s. 718.111(13), F.S.

<sup>22</sup> Section 718.501(1)(d)6., F.S., provides for a civil penalty of up to \$5,000. The section also provides that a person who complies with an order of the division within 10 days may not be penalized.

<sup>23</sup> Section 718.703, F.S.

<sup>24</sup> Section 719.103(2), F.S.

<sup>25</sup> Section 719.103(26), F.S.

- The bill amends s. 719.106(1)(a), F.S., by adding a prohibition on holding office in the cooperative upon delinquency in payment of monies owned to the association, or upon a felony theft or embezzlement charge by information or indictment involving association funds, to match the same requirement at s. 718.112(2)(o), F.S.
- The bill creates s. 719.128, F.S., to give a cooperative association the same emergency powers as a condominium association under s. 718.1265, F.S.

### **Homeowners' Associations**

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.<sup>26</sup> There is no state agency directly regulating homeowners' associations.

The bill changes homeowners' association law in the same manner that condominium law is being changed by this bill (see description above) with respect to owner records and directories.

The bill changes homeowners' association law to match previous changes to condominium law by creating s. 720.316, F.S., to give a homeowners' association the emergency powers similar to those granted a condominium association under s. 718.1265, F.S. However, where the emergency powers of a condominium association (current law) or a cooperative association (created by the bill) include the right to enter individual units, this bill does not grant to a homeowners' association the right to entry into individual homes.

#### *Amendment to Governing Documents of a Homeowners Association.*

A homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. A homeowners' association must furnish each member with a copy of an amendment within 30 days of recording.<sup>27</sup>

The bill provides that, in lieu of furnishing all members with a copy of the amendment, and if a draft copy was furnished to the members prior to adoption, the association may provide notice that the amendment was adopted. The notice must refer to the local recording information and must offer to furnish a copy on request and without charge.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 509.013, F.S., regarding definitions.

Section 2 amends s. 509.032, F.S., regarding duties.

Section 3 amends s. 509.221, F.S., regarding sanitary regulations.

Section 4 amends s. 509.241, F.S., regarding licenses required; exceptions.

Section 5 amends s. 509.242, F.S., regarding public lodging establishments; classifications.

Section 6 amends s. 509.251, F.S., regarding license fees.

Section 7 amends s. 712.05, F.S., regarding filing notice.

Section 8 amends s. 718.111, F.S., regarding the association.

<sup>26</sup> Section 720.301(9), F.S.

<sup>27</sup> Section 720.306(1)(b), F.S.

Section 9 amends s. 718.112, F.S., regarding bylaws.

Section 10 amends s. 718.707, F.S., regarding time limitation for classification as bulk assignee or bulk buyer.

Section 11 amends s. 719.104, F.S., regarding cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 12 amends s. 719.106, F.S., regarding bylaws; cooperative ownership.

Section 13 creates s. 719.128, F.S., regarding association emergency powers.

Section 14 amends s. 720.303, F.S., regarding association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 15 amends s. 720.306, F.S., regarding meetings of members; voting and election procedures; amendments.

Section 16 creates s. 720.316, F.S., regarding association emergency powers.

Section 17 provides an effective date of July 1, 2014.

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

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

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

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

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

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

The bill does not appear to have any direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

The bill creates a matter that the state may investigate and prosecute regarding condominium and cooperative associations, namely, the requirement for outgoing directors to return records and property to the association. It is unknown how often directors fail to return records, and the division's analysis

indicates that the fiscal impact is unknown.<sup>28</sup> Typical enforcement policy is to first warn and give an opportunity to cure. It is estimated that this enforcement would be infrequent and that in those infrequent instances most subjects of enforcement would immediately comply with the requirement to return records and property. Accordingly, the impact is likely minimal to none.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill appears to require minimal rulemaking. DBPR appears to have sufficient current rulemaking authority to implement any rules that may be required.<sup>29</sup>

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute provides a definition for "timeshare project" and substitutes it for "timeshare plan" where appropriate, provides that in the absence of an insurable event, the association or the unit owners will be responsible for repairs, as determined by the declaration of condominium or bylaws, provides that an association may print all telephone numbers of a member, and makes other grammatical and technical changes.

On March 18, 2014, the Business & Professional Regulation Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments make technical changes and remove Section 8 from the bill.

The staff analysis is drafted to reflect the committee substitute.

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<sup>28</sup> 2014 Department of Business and Professional Regulation Legislative Bill Analysis of SB 798, the Senate companion, dated February 20, 2014, on file with the House of Representatives Civil Justice Subcommittee.

<sup>29</sup> *Id.*

1                   A bill to be entitled  
 2           An act relating to residential properties; amending s.  
 3           509.013, F.S.; revising the definition of the term  
 4           "public lodging establishment"; amending s. 509.032,  
 5           F.S.; providing that timeshare projects are not  
 6           subject to annual inspection requirements; amending s.  
 7           509.221, F.S.; providing nonapplicability of certain  
 8           public lodging establishment requirements to timeshare  
 9           projects; amending s. 509.241, F.S.; providing that a  
 10          condominium association that does not own any units  
 11          classified as timeshare projects is not required to  
 12          apply for or receive a public lodging establishment  
 13          license; amending s. 509.242, F.S.; revising the  
 14          definition of the term "public lodging establishment"  
 15          to include a "timeshare project"; deleting reference  
 16          to the term "timeshare plan" in the definition of  
 17          "vacation rental"; defining the term "timeshare  
 18          project"; amending s. 509.251, F.S.; providing that  
 19          timeshare projects within separate buildings or at  
 20          separate locations but managed by one licensed agent  
 21          may be combined in a single license application;  
 22          amending s. 712.05, F.S.; clarifying existing law  
 23          relating to notification for purposes of preserving  
 24          marketable title; amending s. 718.111, F.S.;;  
 25          authorizing an association to inspect and repair  
 26          abandoned condominium units; providing conditions to

27 determine if a unit is abandoned; providing a  
 28 mechanism for an association to recover costs  
 29 associated with maintaining an abandoned unit;  
 30 providing that in the absence of an insurable event,  
 31 the association or unit owners are responsible for  
 32 repairs; providing that an owner may consent in  
 33 writing to the disclosure of certain contact  
 34 information; requiring an outgoing condominium  
 35 association board or committee member to relinquish  
 36 all official records and property of the association  
 37 within a specified time; providing a civil penalty for  
 38 failing to relinquish such records and property;  
 39 amending s. 718.112, F.S.; providing that a board or  
 40 committee member's participation in a meeting via  
 41 real-time videoconferencing, Internet-enabled  
 42 videoconferencing, or similar electronic or video  
 43 communication counts toward a quorum and that such  
 44 member may vote as if physically present; prohibiting  
 45 the board from voting via e-mail; amending s. 718.707,  
 46 F.S.; extending the date by which a condominium parcel  
 47 must be acquired in order for a person to be  
 48 classified as a bulk assignee or bulk buyer; amending  
 49 s. 719.104, F.S.; providing that an owner may consent  
 50 in writing to the disclosure of certain contact  
 51 information; requiring an outgoing cooperative  
 52 association board or committee member to relinquish



53 all official records and property of the association  
 54 within a specified time; providing a civil penalty for  
 55 failing to relinquish such records and property;  
 56 providing dates by which financial reports for an  
 57 association must be completed; specifying that members  
 58 must receive copies of financial reports; requiring  
 59 specific types of financial statements for  
 60 associations of varying sizes; providing exceptions;  
 61 providing a mechanism for waiving or increasing  
 62 financial reporting requirements; amending s. 719.106,  
 63 F.S.; providing for suspension from office of a  
 64 director or officer who is charged with one or more of  
 65 certain felony offenses; providing procedures for  
 66 filling such vacancy or reinstating such member under  
 67 specific circumstances; providing a mechanism for a  
 68 person who is convicted of a felony to be eligible for  
 69 board membership; creating s. 719.128, F.S.; providing  
 70 emergency powers of a cooperative association;  
 71 amending s. 720.303, F.S.; providing that an owner may  
 72 consent in writing to the disclosure of certain  
 73 contact information; amending s. 720.306, F.S.;

74 providing for specified notice to members in lieu of  
 75 copies of an amendment; creating s. 720.316, F.S.;

76 providing emergency powers of a homeowners'  
 77 association; providing an effective date.

78

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

80

81 Section 1. Paragraph (b) of subsection (4) of section  
82 509.013, Florida Statutes, is amended to read:

83 509.013 Definitions.—As used in this chapter, the term:

84 (4) (a) "Public lodging establishment" includes a transient  
85 public lodging establishment as defined in subparagraph 1. and a  
86 nontransient public lodging establishment as defined in  
87 subparagraph 2.

88 1. "Transient public lodging establishment" means any  
89 unit, group of units, dwelling, building, or group of buildings  
90 within a single complex of buildings which is rented to guests  
91 more than three times in a calendar year for periods of less  
92 than 30 days or 1 calendar month, whichever is less, or which is  
93 advertised or held out to the public as a place regularly rented  
94 to guests.

95 2. "Nontransient public lodging establishment" means any  
96 unit, group of units, dwelling, building, or group of buildings  
97 within a single complex of buildings which is rented to guests  
98 for periods of at least 30 days or 1 calendar month, whichever  
99 is less, or which is advertised or held out to the public as a  
100 place regularly rented to guests for periods of at least 30 days  
101 or 1 calendar month.

102

103 License classifications of public lodging establishments, and  
104 the definitions therefor, are set out in s. 509.242. For the

105 | purpose of licensure, the term does not include condominium  
 106 | common elements as defined in s. 718.103.

107 | (b) The following are excluded from the definitions in  
 108 | paragraph (a):

109 | 1. Any dormitory or other living or sleeping facility  
 110 | maintained by a public or private school, college, or university  
 111 | for the use of students, faculty, or visitors.

112 | 2. Any facility certified or licensed and regulated by the  
 113 | Agency for Health Care Administration or the Department of  
 114 | Children and Family Services or other similar place regulated  
 115 | under s. 381.0072.

116 | 3. Any place renting four rental units or less, unless the  
 117 | rental units are advertised or held out to the public to be  
 118 | places that are regularly rented to transients.

119 | 4. Any unit or group of units in a condominium,  
 120 | cooperative, or timeshare project plan and any individually or  
 121 | collectively owned one-family, two-family, three-family, or  
 122 | four-family dwelling house or dwelling unit that is rented for  
 123 | periods of at least 30 days or 1 calendar month, whichever is  
 124 | less, and that is not advertised or held out to the public as a  
 125 | place regularly rented for periods of less than 1 calendar  
 126 | month, provided that no more than four rental units within a  
 127 | single complex of buildings are available for rent.

128 | 5. Any migrant labor camp or residential migrant housing  
 129 | permitted by the Department of Health under ss. 381.008-  
 130 | 381.00895.

131           6. Any establishment inspected by the Department of Health  
132 and regulated by chapter 513.

133           7. Any nonprofit organization that operates a facility  
134 providing housing only to patients, patients' families, and  
135 patients' caregivers and not to the general public.

136           8. Any apartment building inspected by the United States  
137 Department of Housing and Urban Development or other entity  
138 acting on the department's behalf that is designated primarily  
139 as housing for persons at least 62 years of age. The division  
140 may require the operator of the apartment building to attest in  
141 writing that such building meets the criteria provided in this  
142 subparagraph. The division may adopt rules to implement this  
143 requirement.

144           9. Any roominghouse, boardinghouse, or other living or  
145 sleeping facility that may not be classified as a hotel, motel,  
146 timeshare project, vacation rental, nontransient apartment, bed  
147 and breakfast inn, or transient apartment under s. 509.242.

148           Section 2. Paragraph (a) of subsection (2) of section  
149 509.032, Florida Statutes, is amended to read:

150           509.032 Duties.—

151           (2) INSPECTION OF PREMISES.—

152           (a) The division has responsibility and jurisdiction for  
153 all inspections required by this chapter. The division has  
154 responsibility for quality assurance. Each licensed  
155 establishment shall be inspected at least biannually, except for  
156 transient and nontransient apartments, which shall be inspected

157 at least annually, and shall be inspected at such other times as  
 158 the division determines is necessary to ensure the public's  
 159 health, safety, and welfare. The division shall establish a  
 160 system to determine inspection frequency. Public lodging units  
 161 classified as vacation rentals or timeshare projects are not  
 162 subject to this requirement but shall be made available to the  
 163 division upon request. If, during the inspection of a public  
 164 lodging establishment classified for renting to transient or  
 165 nontransient tenants, an inspector identifies vulnerable adults  
 166 who appear to be victims of neglect, as defined in s. 415.102,  
 167 or, in the case of a building that is not equipped with  
 168 automatic sprinkler systems, tenants or clients who may be  
 169 unable to self-preserve in an emergency, the division shall  
 170 convene meetings with the following agencies as appropriate to  
 171 the individual situation: the Department of Health, the  
 172 Department of Elderly Affairs, the area agency on aging, the  
 173 local fire marshal, the landlord and affected tenants and  
 174 clients, and other relevant organizations, to develop a plan  
 175 which improves the prospects for safety of affected residents  
 176 and, if necessary, identifies alternative living arrangements  
 177 such as facilities licensed under part II of chapter 400 or  
 178 under chapter 429.

179 Section 3. Subsection (9) of section 509.221, Florida  
 180 Statutes, is amended to read:

181 509.221 Sanitary regulations.—

182 (9) Subsections (2), (5), and (6) do not apply to any

183 facility or unit classified as a vacation rental, ~~or~~  
 184 nontransient apartment, or timeshare project as described in s.  
 185 509.242(1)(c), ~~and~~ (d), and (g).

186 Section 4. Subsection (2) of section 509.241, Florida  
 187 Statutes, is amended to read:

188 509.241 Licenses required; exceptions.—

189 (2) APPLICATION FOR LICENSE.—Each person who plans to open  
 190 a public lodging establishment or a public food service  
 191 establishment shall apply for and receive a license from the  
 192 division prior to the commencement of operation. A condominium  
 193 association, as defined in s. 718.103, which does not own any  
 194 units classified as vacation rentals or timeshare projects under  
 195 s. 509.242(1)(c) or (g) is not required to apply for or receive  
 196 a public lodging establishment license.

197 Section 5. Subsection (1) of section 509.242, Florida  
 198 Statutes, is amended to read:

199 509.242 Public lodging establishments; classifications.—

200 (1) A public lodging establishment shall be classified as  
 201 a hotel, motel, nontransient apartment, transient apartment, bed  
 202 and breakfast inn, timeshare project, or vacation rental if the  
 203 establishment satisfies the following criteria:

204 (a) Hotel.—A hotel is any public lodging establishment  
 205 containing sleeping room accommodations for 25 or more guests  
 206 and providing the services generally provided by a hotel and  
 207 recognized as a hotel in the community in which it is situated  
 208 or by the industry.

209 (b) Motel.—A motel is any public lodging establishment  
 210 which offers rental units with an exit to the outside of each  
 211 rental unit, daily or weekly rates, offstreet parking for each  
 212 unit, a central office on the property with specified hours of  
 213 operation, a bathroom or connecting bathroom for each rental  
 214 unit, and at least six rental units, and which is recognized as  
 215 a motel in the community in which it is situated or by the  
 216 industry.

217 (c) Vacation rental.—A vacation rental is any unit or  
 218 group of units in a condominium or, cooperative, ~~or timeshare~~  
 219 ~~plan~~ or any individually or collectively owned single-family,  
 220 two-family, three-family, or four-family house or dwelling unit  
 221 that is also a transient public lodging establishment but that  
 222 is not a timeshare project.

223 (d) Nontransient apartment.—A nontransient apartment is a  
 224 building or complex of buildings in which 75 percent or more of  
 225 the units are available for rent to nontransient tenants.

226 (e) Transient apartment.—A transient apartment is a  
 227 building or complex of buildings in which more than 25 percent  
 228 of the units are advertised or held out to the public as  
 229 available for transient occupancy.

230 (f) Bed and breakfast inn.—A bed and breakfast inn is a  
 231 family home structure, with no more than 15 sleeping rooms,  
 232 which has been modified to serve as a transient public lodging  
 233 establishment, which provides the accommodation and meal  
 234 services generally offered by a bed and breakfast inn, and which

235 is recognized as a bed and breakfast inn in the community in  
 236 which it is situated or by the hospitality industry.

237 (g) Timeshare project.—A timeshare project is a timeshare  
 238 property, as defined in chapter 721, that is located in this  
 239 state and that is also a transient public lodging establishment.

240 Section 6. Subsection (1) of section 509.251, Florida  
 241 Statutes, is amended to read:

242 509.251 License fees.—

243 (1) The division shall adopt, by rule, a schedule of fees  
 244 to be paid by each public lodging establishment as a  
 245 prerequisite to issuance or renewal of a license. Such fees  
 246 shall be based on the number of rental units in the  
 247 establishment. The aggregate fee per establishment charged any  
 248 public lodging establishment shall not exceed \$1,000; however,  
 249 the fees described in paragraphs (a) and (b) may not be included  
 250 as part of the aggregate fee subject to this cap. Vacation  
 251 rental units or timeshare projects within separate buildings or  
 252 at separate locations but managed by one licensed agent may be  
 253 combined in a single license application, and the division shall  
 254 charge a license fee as if all units in the application are in a  
 255 single licensed establishment. The fee schedule shall require an  
 256 establishment which applies for an initial license to pay the  
 257 full license fee if application is made during the annual  
 258 renewal period or more than 6 months prior to the next such  
 259 renewal period and one-half of the fee if application is made 6  
 260 months or less prior to such period. The fee schedule shall



261 include fees collected for the purpose of funding the  
 262 Hospitality Education Program, pursuant to s. 509.302, which are  
 263 payable in full for each application regardless of when the  
 264 application is submitted.

265 (a) Upon making initial application or an application for  
 266 change of ownership, the applicant shall pay to the division a  
 267 fee as prescribed by rule, not to exceed \$50, in addition to any  
 268 other fees required by law, which shall cover all costs  
 269 associated with initiating regulation of the establishment.

270 (b) A license renewal filed with the division within 30  
 271 days after the expiration date shall be accompanied by a  
 272 delinquent fee as prescribed by rule, not to exceed \$50, in  
 273 addition to the renewal fee and any other fees required by law.  
 274 A license renewal filed with the division more than 30 but not  
 275 more than 60 days after the expiration date shall be accompanied  
 276 by a delinquent fee as prescribed by rule, not to exceed \$100,  
 277 in addition to the renewal fee and any other fees required by  
 278 law.

279 Section 7. Subsection (1) of section 712.05, Florida  
 280 Statutes, is amended to read:

281 712.05 Effect of filing notice.—

282 (1) A ~~Any~~ person claiming an interest in land or a  
 283 homeowners' association desiring to preserve a a ~~any~~ covenant or  
 284 restriction may preserve and protect the same from  
 285 extinguishment by the operation of this act by filing for  
 286 record, during the 30-year period immediately following the

287 effective date of the root of title, a written notice, ~~in~~  
 288 ~~writing~~, in accordance with this chapter. Such ~~the provisions~~  
 289 ~~hereof, which~~ notice preserves ~~shall have the effect of so~~  
 290 ~~preserving~~ such claim of right or such covenant or restriction  
 291 or portion of such covenant or restriction for up to a period of  
 292 ~~not longer than~~ 30 years after filing the notice ~~same~~ unless the  
 293 notice is filed again ~~filed~~ as required in this chapter ~~herein~~.  
 294 A person's ~~No~~ disability or lack of knowledge of any kind may  
 295 ~~not on the part of anyone shall~~ delay the commencement of or  
 296 suspend the running of the said 30-year period. Such notice may  
 297 be filed for record by the claimant or by any other person  
 298 acting on behalf of a ~~any~~ claimant who is:

- 299 (a) Under a disability;;
- 300 (b) Unable to assert a claim on his or her behalf;; or
- 301 (c) One of a class, but whose identity cannot be

302 established or is uncertain at the time of filing such notice of  
 303 claim for record.

304

305 Such notice may be filed by a homeowners' association only if  
 306 the preservation of such covenant or restriction or portion of  
 307 such covenant or restriction is approved by at least two-thirds  
 308 of the members of the board of directors of an incorporated  
 309 homeowners' association at a meeting for which a notice, stating  
 310 the meeting's time and place and containing the statement of  
 311 marketable title action described in s. 712.06(1)(b), was mailed  
 312 or hand delivered to members of the homeowners' association at

313 least not less than 7 days before ~~prior to~~ such meeting. The  
 314 homeowners' association or clerk of the circuit court is not  
 315 required to provide additional notice pursuant to s. 712.06(3).  
 316 The preceding sentence is intended to clarify existing law.

317 Section 8. Subsection (5), paragraph (j) of subsection  
 318 (11), and paragraph (c) of subsection (12) of section 718.111,  
 319 Florida Statutes, are amended, and paragraph (f) is added to  
 320 subsection (12) of that section, to read:

321 718.111 The association.—

322 (5) RIGHT OF ACCESS TO UNITS.—

323 (a) The association has the irrevocable right of access to  
 324 each unit during reasonable hours, when necessary for the  
 325 maintenance, repair, or replacement of any common elements or of  
 326 any portion of a unit to be maintained by the association  
 327 pursuant to the declaration or as necessary to prevent damage to  
 328 the common elements or to a unit ~~or units~~.

329 (b)1. In addition to the association's right of access in  
 330 paragraph (a) and regardless of whether authority is provided in  
 331 the declaration or other recorded condominium documents, an  
 332 association, at the sole discretion of the board, may enter an  
 333 abandoned unit to inspect the unit and adjoining common  
 334 elements; make repairs to the unit or to the common elements  
 335 servicing the unit, as needed; repair the unit if mold or  
 336 deterioration is present; turn on the utilities for the unit; or  
 337 otherwise maintain, preserve, or protect the unit and adjoining  
 338 common elements. For purposes of this paragraph, a unit is

339 presumed to be abandoned if:

340 a. The unit is the subject of a foreclosure action and no  
 341 tenant appears to have resided in the unit for at least 4  
 342 continuous weeks without prior written notice to the  
 343 association; or

344 b. No tenant appears to have resided in the unit for 2  
 345 consecutive months without prior written notice to the  
 346 association, and the association is unable to contact the owner  
 347 or determine the whereabouts of the owner after reasonable  
 348 inquiry.

349 2. Except in the case of an emergency, an association may  
 350 not enter an abandoned unit until 2 days after notice of the  
 351 association's intent to enter the unit has been mailed or hand-  
 352 delivered to the owner at the address of the owner as reflected  
 353 in the records of the association. The notice may be given by  
 354 electronic transmission to unit owners who previously consented  
 355 to receive notice by electronic transmission.

356 3. Any expense incurred by an association pursuant to this  
 357 paragraph is chargeable to the unit owner and enforceable as an  
 358 assessment pursuant to s. 718.116, and the association may use  
 359 its lien authority provided by s. 718.116 to enforce collection  
 360 of the expense.

361 4. The association may petition a court of competent  
 362 jurisdiction to appoint a receiver and may lease out an  
 363 abandoned unit for the benefit of the association to offset  
 364 against the rental income the association's costs and expenses

365 of maintaining, preserving, and protecting the unit and the  
 366 adjoining common elements, including the costs of the  
 367 receivership and all unpaid assessments, interest,  
 368 administrative late fees, costs, and reasonable attorney fees.

369 (11) INSURANCE.—In order to protect the safety, health,  
 370 and welfare of the people of the State of Florida and to ensure  
 371 consistency in the provision of insurance coverage to  
 372 condominiums and their unit owners, this subsection applies to  
 373 every residential condominium in the state, regardless of the  
 374 date of its declaration of condominium. It is the intent of the  
 375 Legislature to encourage lower or stable insurance premiums for  
 376 associations described in this subsection.

377 (j) Any portion of the condominium property that must be  
 378 insured by the association against property loss pursuant to  
 379 paragraph (f) which is damaged by an insurable event shall be  
 380 reconstructed, repaired, or replaced as necessary by the  
 381 association as a common expense. In the absence of an insurable  
 382 event, the association or the unit owners shall be responsible  
 383 for the reconstruction, repair, or replacement, as determined by  
 384 the provisions of the declaration or bylaws. All property  
 385 insurance deductibles, uninsured losses, and other damages in  
 386 excess of property insurance coverage under the property  
 387 insurance policies maintained by the association are a common  
 388 expense of the condominium, except that:

389 1. A unit owner is responsible for the costs of repair or  
 390 replacement of any portion of the condominium property not paid

391 | by insurance proceeds if such damage is caused by intentional  
 392 | conduct, negligence, or failure to comply with the terms of the  
 393 | declaration or the rules of the association by a unit owner, the  
 394 | members of his or her family, unit occupants, tenants, guests,  
 395 | or invitees, without compromise of the subrogation rights of the  
 396 | insurer.

397 |         2. The provisions of subparagraph 1. regarding the  
 398 | financial responsibility of a unit owner for the costs of  
 399 | repairing or replacing other portions of the condominium  
 400 | property also apply to the costs of repair or replacement of  
 401 | personal property of other unit owners or the association, as  
 402 | well as other property, whether real or personal, which the unit  
 403 | owners are required to insure.

404 |         3. To the extent the cost of repair or reconstruction for  
 405 | which the unit owner is responsible under this paragraph is  
 406 | reimbursed to the association by insurance proceeds, and the  
 407 | association has collected the cost of such repair or  
 408 | reconstruction from the unit owner, the association shall  
 409 | reimburse the unit owner without the waiver of any rights of  
 410 | subrogation.

411 |         4. The association is not obligated to pay for  
 412 | reconstruction or repairs of property losses as a common expense  
 413 | if the property losses were known or should have been known to a  
 414 | unit owner and were not reported to the association until after  
 415 | the insurance claim of the association for that property was  
 416 | settled or resolved with finality, or denied because it was

417 | untimely filed.

418 |       (12) OFFICIAL RECORDS.—

419 |       (c) The official records of the association are open to  
 420 | inspection by any association member or the authorized  
 421 | representative of such member at all reasonable times. The right  
 422 | to inspect the records includes the right to make or obtain  
 423 | copies, at the reasonable expense, if any, of the member. The  
 424 | association may adopt reasonable rules regarding the frequency,  
 425 | time, location, notice, and manner of record inspections and  
 426 | copying. The failure of an association to provide the records  
 427 | within 10 working days after receipt of a written request  
 428 | creates a rebuttable presumption that the association willfully  
 429 | failed to comply with this paragraph. A unit owner who is denied  
 430 | access to official records is entitled to the actual damages or  
 431 | minimum damages for the association's willful failure to comply.  
 432 | Minimum damages are \$50 per calendar day for up to 10 days,  
 433 | beginning on the 11th working day after receipt of the written  
 434 | request. The failure to permit inspection entitles any person  
 435 | prevailing in an enforcement action to recover reasonable  
 436 | attorney fees from the person in control of the records who,  
 437 | directly or indirectly, knowingly denied access to the records.  
 438 | Any person who knowingly or intentionally defaces or destroys  
 439 | accounting records that are required by this chapter to be  
 440 | maintained during the period for which such records are required  
 441 | to be maintained, or who knowingly or intentionally fails to  
 442 | create or maintain accounting records that are required to be

443 created or maintained, with the intent of causing harm to the  
444 association or one or more of its members, is personally subject  
445 to a civil penalty pursuant to s. 718.501(1)(d). The association  
446 shall maintain an adequate number of copies of the declaration,  
447 articles of incorporation, bylaws, and rules, and all amendments  
448 to each of the foregoing, as well as the question and answer  
449 sheet as described in s. 718.504 and year-end financial  
450 information required under this section, on the condominium  
451 property to ensure their availability to unit owners and  
452 prospective purchasers, and may charge its actual costs for  
453 preparing and furnishing these documents to those requesting the  
454 documents. An association shall allow a member or his or her  
455 authorized representative to use a portable device, including a  
456 smartphone, tablet, portable scanner, or any other technology  
457 capable of scanning or taking photographs, to make an electronic  
458 copy of the official records in lieu of the association's  
459 providing the member or his or her authorized representative  
460 with a copy of such records. The association may not charge a  
461 member or his or her authorized representative for the use of a  
462 portable device. Notwithstanding this paragraph, the following  
463 records are not accessible to unit owners:

464 1. Any record protected by the lawyer-client privilege as  
465 described in s. 90.502 and any record protected by the work-  
466 product privilege, including a record prepared by an association  
467 attorney or prepared at the attorney's express direction, which  
468 reflects a mental impression, conclusion, litigation strategy,



469 or legal theory of the attorney or the association, and which  
 470 was prepared exclusively for civil or criminal litigation or for  
 471 adversarial administrative proceedings, or which was prepared in  
 472 anticipation of such litigation or proceedings until the  
 473 conclusion of the litigation or proceedings.

474 2. Information obtained by an association in connection  
 475 with the approval of the lease, sale, or other transfer of a  
 476 unit.

477 3. Personnel records of association or management company  
 478 employees, including, but not limited to, disciplinary, payroll,  
 479 health, and insurance records. For purposes of this  
 480 subparagraph, the term "personnel records" does not include  
 481 written employment agreements with an association employee or  
 482 management company, or budgetary or financial records that  
 483 indicate the compensation paid to an association employee.

484 4. Medical records of unit owners.

485 5. Social security numbers, driver's license numbers,  
 486 credit card numbers, e-mail addresses, telephone numbers,  
 487 facsimile numbers, emergency contact information, addresses of a  
 488 unit owner other than as provided to fulfill the association's  
 489 notice requirements, and other personal identifying information  
 490 of any person, excluding the person's name, unit designation,  
 491 mailing address, property address, and any address, e-mail  
 492 address, or facsimile number provided to the association to  
 493 fulfill the association's notice requirements. Notwithstanding  
 494 the restrictions in this subparagraph, an association may print

495 and distribute to parcel owners a directory containing the name,  
 496 parcel address, and all telephone numbers ~~number~~ of each parcel  
 497 owner. However, an owner may exclude his or her telephone  
 498 numbers ~~number~~ from the directory by so requesting in writing to  
 499 the association. An owner may consent in writing to the  
 500 disclosure of other contact information described in this  
 501 subparagraph. The association is not liable for the inadvertent  
 502 disclosure of information that is protected under this  
 503 subparagraph if the information is included in an official  
 504 record of the association and is voluntarily provided by an  
 505 owner and not requested by the association.

506 6. Electronic security measures that are used by the  
 507 association to safeguard data, including passwords.

508 7. The software and operating system used by the  
 509 association which allow the manipulation of data, even if the  
 510 owner owns a copy of the same software used by the association.  
 511 The data is part of the official records of the association.

512 (f) An outgoing board or committee member must relinquish  
 513 all official records and property of the association in his or  
 514 her possession or under his or her control to the incoming board  
 515 within 5 days after the election. The division shall impose a  
 516 civil penalty as set forth in s. 718.501(1)(d)6. against an  
 517 outgoing board or committee member who willfully and knowingly  
 518 fails to relinquish such records and property.

519 Section 9. Paragraphs (b) and (c) of subsection (2) of  
 520 section 718.112, Florida Statutes, are amended to read:

521 718.112 Bylaws.—

522 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the  
 523 following and, if they do not do so, shall be deemed to include  
 524 the following:

525 (b) *Quorum; voting requirements; proxies.*—

526 1. Unless a lower number is provided in the bylaws, the  
 527 percentage of voting interests required to constitute a quorum  
 528 at a meeting of the members is a majority of the voting  
 529 interests. Unless otherwise provided in this chapter or in the  
 530 declaration, articles of incorporation, or bylaws, and except as  
 531 provided in subparagraph (d)4., decisions shall be made by a  
 532 majority of the voting interests represented at a meeting at  
 533 which a quorum is present.

534 2. Except as specifically otherwise provided herein, unit  
 535 owners may not vote by general proxy, but may vote by limited  
 536 proxies substantially conforming to a limited proxy form adopted  
 537 by the division. A voting interest or consent right allocated to  
 538 a unit owned by the association may not be exercised or  
 539 considered for any purpose, whether for a quorum, an election,  
 540 or otherwise. Limited proxies and general proxies may be used to  
 541 establish a quorum. Limited proxies shall be used for votes  
 542 taken to waive or reduce reserves in accordance with  
 543 subparagraph (f)2.; for votes taken to waive the financial  
 544 reporting requirements of s. 718.111(13); for votes taken to  
 545 amend the declaration pursuant to s. 718.110; for votes taken to  
 546 amend the articles of incorporation or bylaws pursuant to this

547 section; and for any other matter for which this chapter  
 548 requires or permits a vote of the unit owners. Except as  
 549 provided in paragraph (d), a proxy, limited or general, may not  
 550 be used in the election of board members. General proxies may be  
 551 used for other matters for which limited proxies are not  
 552 required, and may be used in voting for nonsubstantive changes  
 553 to items for which a limited proxy is required and given.  
 554 Notwithstanding this subparagraph, unit owners may vote in  
 555 person at unit owner meetings. This subparagraph does not limit  
 556 the use of general proxies or require the use of limited proxies  
 557 for any agenda item or election at any meeting of a timeshare  
 558 condominium association.

559 3. Any proxy given is effective only for the specific  
 560 meeting for which originally given and any lawfully adjourned  
 561 meetings thereof. A proxy is not valid longer than 90 days after  
 562 the date of the first meeting for which it was given and may be  
 563 revoked. ~~Every proxy is revocable~~ at any time at the pleasure of  
 564 the unit owner executing it.

565 4. A member of the board of administration or a committee  
 566 may submit in writing his or her agreement or disagreement with  
 567 any action taken at a meeting that the member did not attend.  
 568 This agreement or disagreement may not be used as a vote for or  
 569 against the action taken or to create a quorum.

570 5. A ~~If any of the~~ board or committee member's  
 571 participation in a meeting via telephone, real-time  
 572 videoconferencing, or similar real-time electronic or video

573 communication counts toward a quorum, and such member may vote  
 574 as if physically present ~~members meet by telephone conference,~~  
 575 ~~those board or committee members may be counted toward obtaining~~  
 576 ~~a quorum and may vote by telephone.~~ A telephone speaker must be  
 577 used so that the conversation of such ~~those~~ members may be heard  
 578 by the board or committee members attending in person as well as  
 579 by any unit owners present at a meeting.

580 (c) *Board of administration meetings.*—Meetings of the  
 581 board of administration at which a quorum of the members is  
 582 present are open to all unit owners. Members of the board of  
 583 administration may use e-mail as a means of communication but  
 584 may not cast a vote on an association matter via e-mail. A unit  
 585 owner may tape record or videotape the meetings. The right to  
 586 attend such meetings includes the right to speak at such  
 587 meetings with reference to all designated agenda items. The  
 588 division shall adopt reasonable rules governing the tape  
 589 recording and videotaping of the meeting. The association may  
 590 adopt written reasonable rules governing the frequency,  
 591 duration, and manner of unit owner statements.

592 1. Adequate notice of all board meetings, which must  
 593 specifically identify all agenda items, must be posted  
 594 conspicuously on the condominium property at least 48 continuous  
 595 hours before the meeting except in an emergency. If 20 percent  
 596 of the voting interests petition the board to address an item of  
 597 business, the board, within 60 days after receipt of the  
 598 petition, shall place the item on the agenda at its next regular

599 board meeting or at a special meeting called for that purpose of  
 600 ~~the board, but not later than 60 days after the receipt of the~~  
 601 ~~petition, shall place the item on the agenda.~~ Any item not  
 602 included on the notice may be taken up on an emergency basis by  
 603 a vote of at least a majority plus one of the board members.  
 604 Such emergency action must be noticed and ratified at the next  
 605 regular board meeting. However, written notice of a ~~any~~ meeting  
 606 at which a nonemergency special assessment assessments, or an at  
 607 ~~which~~ amendment to rules regarding unit use, will be considered  
 608 must be mailed, delivered, or electronically transmitted to the  
 609 unit owners and posted conspicuously on the condominium property  
 610 at least 14 days before the meeting. Evidence of compliance with  
 611 this 14-day notice requirement must be made by an affidavit  
 612 executed by the person providing the notice and filed with the  
 613 official records of the association. Upon notice to the unit  
 614 owners, the board shall, by duly adopted rule, designate a  
 615 specific location on the condominium or association property  
 616 where all notices of board meetings must ~~are to~~ be posted. If  
 617 there is no condominium property or association property where  
 618 notices can be posted, notices shall be mailed, delivered, or  
 619 electronically transmitted to each unit owner at least 14 days  
 620 before the meeting ~~to the owner of each unit~~. In lieu of or in  
 621 addition to the physical posting of the notice on the  
 622 condominium property, the association may, by reasonable rule,  
 623 adopt a procedure for conspicuously posting and repeatedly  
 624 broadcasting the notice and the agenda on a closed-circuit cable

625 television system serving the condominium association. However,  
 626 if broadcast notice is used in lieu of a notice physically  
 627 posted on condominium property, the notice and agenda must be  
 628 broadcast at least four times every broadcast hour of each day  
 629 that a posted notice is otherwise required under this section.  
 630 If broadcast notice is provided, the notice and agenda must be  
 631 broadcast in a manner and for a sufficient continuous length of  
 632 time so as to allow an average reader to observe the notice and  
 633 read and comprehend the entire content of the notice and the  
 634 agenda. Notice of any meeting in which regular or special  
 635 assessments against unit owners are to be considered ~~for any~~  
 636 ~~reason~~ must specifically state that assessments will be  
 637 considered and provide the nature, estimated cost, and  
 638 description of the purposes for such assessments.

639 2. Meetings of a committee to take final action on behalf  
 640 of the board or make recommendations to the board regarding the  
 641 association budget are subject to this paragraph. Meetings of a  
 642 committee that does not take final action on behalf of the board  
 643 or make recommendations to the board regarding the association  
 644 budget are subject to this section, unless those meetings are  
 645 exempted from this section by the bylaws of the association.

646 3. Notwithstanding any other law, the requirement that  
 647 board meetings and committee meetings be open to the unit owners  
 648 does not apply to:

649 a. Meetings between the board or a committee and the  
 650 association's attorney, with respect to proposed or pending

651 litigation, if the meeting is held for the purpose of seeking or  
 652 rendering legal advice; or

653 b. Board meetings held for the purpose of discussing  
 654 personnel matters.

655 Section 10. Section 718.707, Florida Statutes, is amended  
 656 to read:

657 718.707 Time limitation for classification as bulk  
 658 assignee or bulk buyer.—A person acquiring condominium parcels  
 659 may not be classified as a bulk assignee or bulk buyer unless  
 660 the condominium parcels were acquired on or after July 1, 2010,  
 661 but before July 1, 2016 ~~2015~~. The date of such acquisition shall  
 662 be determined by the date of recording a deed or other  
 663 instrument of conveyance for such parcels in the public records  
 664 of the county in which the condominium is located, or by the  
 665 date of issuing a certificate of title in a foreclosure  
 666 proceeding with respect to such condominium parcels.

667 Section 11. Paragraph (c) of subsection (2) and subsection  
 668 (4) of section 719.104, Florida Statutes, are amended, and  
 669 paragraph (e) is added to subsection (2) of that section, to  
 670 read:

671 719.104 Cooperatives; access to units; records; financial  
 672 reports; assessments; purchase of leases.—

673 (2) OFFICIAL RECORDS.—

674 (c) The official records of the association are open to  
 675 inspection by any association member or the authorized  
 676 representative of such member at all reasonable times. The right



677 to inspect the records includes the right to make or obtain  
 678 copies, at the reasonable expense, if any, of the association  
 679 member. The association may adopt reasonable rules regarding the  
 680 frequency, time, location, notice, and manner of record  
 681 inspections and copying. The failure of an association to  
 682 provide the records within 10 working days after receipt of a  
 683 written request creates a rebuttable presumption that the  
 684 association willfully failed to comply with this paragraph. A  
 685 unit owner who is denied access to official records is entitled  
 686 to the actual damages or minimum damages for the association's  
 687 willful failure to comply. The minimum damages are \$50 per  
 688 calendar day for up to 10 days, beginning on the 11th working  
 689 day after receipt of the written request. The failure to permit  
 690 inspection entitles any person prevailing in an enforcement  
 691 action to recover reasonable attorney fees from the person in  
 692 control of the records who, directly or indirectly, knowingly  
 693 denied access to the records. Any person who knowingly or  
 694 intentionally defaces or destroys accounting records that are  
 695 required by this chapter to be maintained during the period for  
 696 which such records are required to be maintained, or who  
 697 knowingly or intentionally fails to create or maintain  
 698 accounting records that are required to be created or  
 699 maintained, with the intent of causing harm to the association  
 700 or one or more of its members, is personally subject to a civil  
 701 penalty pursuant to s. 719.501(1)(d). The association shall  
 702 maintain an adequate number of copies of the declaration,

703 articles of incorporation, bylaws, and rules, and all amendments  
 704 to each of the foregoing, as well as the question and answer  
 705 sheet as described in s. 719.504 and year-end financial  
 706 information required by the department, on the cooperative  
 707 property to ensure their availability to unit owners and  
 708 prospective purchasers, and may charge its actual costs for  
 709 preparing and furnishing these documents to those requesting the  
 710 same. An association shall allow a member or his or her  
 711 authorized representative to use a portable device, including a  
 712 smartphone, tablet, portable scanner, or any other technology  
 713 capable of scanning or taking photographs, to make an electronic  
 714 copy of the official records in lieu of the association  
 715 providing the member or his or her authorized representative  
 716 with a copy of such records. The association may not charge a  
 717 member or his or her authorized representative for the use of a  
 718 portable device. Notwithstanding this paragraph, the following  
 719 records shall not be accessible to unit owners:

720 1. Any record protected by the lawyer-client privilege as  
 721 described in s. 90.502 and any record protected by the work-  
 722 product privilege, including any record prepared by an  
 723 association attorney or prepared at the attorney's express  
 724 direction which reflects a mental impression, conclusion,  
 725 litigation strategy, or legal theory of the attorney or the  
 726 association, and which was prepared exclusively for civil or  
 727 criminal litigation or for adversarial administrative  
 728 proceedings, or which was prepared in anticipation of such

729 litigation or proceedings until the conclusion of the litigation  
 730 or proceedings.

731 2. Information obtained by an association in connection  
 732 with the approval of the lease, sale, or other transfer of a  
 733 unit.

734 3. Personnel records of association or management company  
 735 employees, including, but not limited to, disciplinary, payroll,  
 736 health, and insurance records. For purposes of this  
 737 subparagraph, the term "personnel records" does not include  
 738 written employment agreements with an association employee or  
 739 management company, or budgetary or financial records that  
 740 indicate the compensation paid to an association employee.

741 4. Medical records of unit owners.

742 5. Social security numbers, driver license numbers, credit  
 743 card numbers, e-mail addresses, telephone numbers, facsimile  
 744 numbers, emergency contact information, addresses of a unit  
 745 owner other than as provided to fulfill the association's notice  
 746 requirements, and other personal identifying information of any  
 747 person, excluding the person's name, unit designation, mailing  
 748 address, property address, and any address, e-mail address, or  
 749 facsimile number provided to the association to fulfill the  
 750 association's notice requirements. Notwithstanding the  
 751 restrictions in this subparagraph, an association may print and  
 752 distribute to parcel owners a directory containing the name,  
 753 parcel address, and all telephone numbers ~~number~~ of each parcel  
 754 owner. However, an owner may exclude his or her telephone

755 numbers ~~number~~ from the directory by so requesting in writing to  
 756 the association. An owner may consent in writing to the  
 757 disclosure of other contact information described in this  
 758 subparagraph. The association is not liable for the inadvertent  
 759 disclosure of information that is protected under this  
 760 subparagraph if the information is included in an official  
 761 record of the association and is voluntarily provided by an  
 762 owner and not requested by the association.

763 6. Electronic security measures that are used by the  
 764 association to safeguard data, including passwords.

765 7. The software and operating system used by the  
 766 association which allow the manipulation of data, even if the  
 767 owner owns a copy of the same software used by the association.  
 768 The data is part of the official records of the association.

769 (e) An outgoing board or committee member must relinquish  
 770 all official records and property of the association in his or  
 771 her possession or under his or her control to the incoming board  
 772 within 5 days after the election. The division shall impose a  
 773 civil penalty as set forth in s. 719.501(1)(d) against an  
 774 outgoing board or committee member who willfully and knowingly  
 775 fails to relinquish such records and property.

776 (4) FINANCIAL REPORT.—

777 (a) Within 90 ~~60~~ days following the end of the fiscal or  
 778 calendar year or annually on such date as ~~is otherwise~~ provided  
 779 in the bylaws of the association, the board of administration ~~of~~  
 780 ~~the association~~ shall prepare and complete, or contract with a

781 third party to prepare and complete, a financial report covering  
 782 the preceding fiscal or calendar year. Within 21 days after the  
 783 financial report is completed by the association or received  
 784 from the third party, but no later than 120 days after the end  
 785 of the fiscal year, calendar year, or other date provided in the  
 786 bylaws, the association shall provide each member with a copy of  
 787 the annual financial report or a written notice that a copy of  
 788 the financial report is available upon request at no charge to  
 789 the member. The division shall adopt rules setting forth uniform  
 790 accounting principles, standards, and reporting requirements.  
 791 ~~mail or furnish by personal delivery to each unit owner a~~  
 792 ~~complete financial report of actual receipts and expenditures~~  
 793 ~~for the previous 12 months, or a complete set of financial~~  
 794 ~~statements for the preceding fiscal year prepared in accordance~~  
 795 ~~with generally accepted accounting procedures. The report shall~~  
 796 ~~show the amounts of receipts by accounts and receipt~~  
 797 ~~classifications and shall show the amounts of expenses by~~  
 798 ~~accounts and expense classifications including, if applicable,~~  
 799 ~~but not limited to, the following:~~

- 800 ~~1. Costs for security;~~
- 801 ~~2. Professional and management fees and expenses;~~
- 802 ~~3. Taxes;~~
- 803 ~~4. Costs for recreation facilities;~~
- 804 ~~5. Expenses for refuse collection and utility services;~~
- 805 ~~6. Expenses for lawn care;~~
- 806 ~~7. Costs for building maintenance and repair;~~

807 ~~8. Insurance costs;~~  
 808 ~~9. Administrative and salary expenses; and~~  
 809 ~~10. Reserves for capital expenditures, deferred~~  
 810 ~~maintenance, and any other category for which the association~~  
 811 ~~maintains a reserve account or accounts.~~

812 (b) Except as provided in paragraph (c), an association  
 813 whose total annual revenues meet the criteria of this paragraph  
 814 shall prepare or cause to be prepared a complete set of  
 815 financial statements according to the generally accepted  
 816 accounting principles adopted by the Board of Accountancy. The  
 817 financial statements shall be as follows:

818 1. An association with total annual revenues between  
 819 \$150,000 and \$299,999 shall prepare a compiled financial  
 820 statement.

821 2. An association with total annual revenues between  
 822 \$300,000 and \$499,999 shall prepare a reviewed financial  
 823 statement.

824 3. An association with total annual revenues of \$500,000  
 825 or more shall prepare an audited financial statement. The  
 826 ~~division shall adopt rules that may require that the association~~  
 827 ~~deliver to the unit owners, in lieu of the financial report~~  
 828 ~~required by this section, a complete set of financial statements~~  
 829 ~~for the preceding fiscal year. The financial statements shall be~~  
 830 ~~delivered within 90 days following the end of the previous~~  
 831 ~~fiscal year or annually on such other date as provided in the~~  
 832 ~~bylaws. The rules of the division may require that the financial~~

833 ~~statements be compiled, reviewed, or audited, and the rules~~  
 834 ~~shall take into consideration the criteria set forth in s.~~  
 835 ~~719.501(1)(j).~~

836 4. The requirement to have the financial statements  
 837 compiled, reviewed, or audited does not apply to an association  
 838 ~~associations~~ if a majority of the voting interests of the  
 839 association present at a duly called meeting of the association  
 840 have voted ~~determined for a fiscal year~~ to waive this  
 841 requirement for the fiscal year. In an association in which  
 842 turnover of control by the developer has not occurred, the  
 843 developer may vote to waive the audit requirement for the first  
 844 2 years of ~~the~~ operation of the association, after which time  
 845 waiver of an applicable audit requirement shall be by a majority  
 846 of voting interests other than the developer. The meeting shall  
 847 be held prior to the end of the fiscal year, and the waiver  
 848 shall be effective for only one fiscal year. An association may  
 849 not waive the financial reporting requirements of this section  
 850 for more than 3 consecutive years. ~~This subsection does not~~  
 851 ~~apply to a cooperative that consists of 50 or fewer units.~~

852 (c)1. An association with total annual revenues of less  
 853 than \$150,000 shall prepare a report of cash receipts and  
 854 expenditures.

855 2. An association in a community of fewer than 50 units,  
 856 regardless of the association's annual revenues, shall prepare a  
 857 report of cash receipts and expenditures in lieu of the  
 858 financial statements required by paragraph (b), unless the

859 declaration or other recorded governing documents provide  
 860 otherwise.

861 3. A report of cash receipts and expenditures must  
 862 disclose the amount of receipts by accounts and receipt  
 863 classifications and the amount of expenses by accounts and  
 864 expense classifications, including the following, as applicable:  
 865 costs for security, professional, and management fees and  
 866 expenses; taxes; costs for recreation facilities; expenses for  
 867 refuse collection and utility services; expenses for lawn care;  
 868 costs for building maintenance and repair; insurance costs;  
 869 administration and salary expenses; and reserves, if maintained  
 870 by the association.

871 (d) If at least 20 percent of the unit owners petition the  
 872 board for a greater level of financial reporting than that  
 873 required by this section, the association shall duly notice and  
 874 hold a membership meeting within 30 days after receipt of the  
 875 petition to vote on raising the level of reporting for that  
 876 fiscal year. Upon approval by a majority of the voting interests  
 877 represented at a meeting at which a quorum of unit owners is  
 878 present, the association shall prepare an amended budget or  
 879 shall adopt a special assessment to pay for the financial report  
 880 regardless of any provision to the contrary in the declaration  
 881 or other recorded governing documents. In addition, the  
 882 association shall provide within 90 days after the meeting or  
 883 the end of the fiscal year, whichever occurs later:

884 1. Compiled, reviewed, or audited financial statements, if



885 the association is otherwise required to prepare a report of  
 886 cash receipts and expenditures;

887 2. Reviewed or audited financial statements, if the  
 888 association is otherwise required to prepare compiled financial  
 889 statements; or

890 3. Audited financial statements, if the association is  
 891 otherwise required to prepare reviewed financial statements.

892 (e) If approved by a majority of the voting interests  
 893 present at a properly called meeting of the association, an  
 894 association may prepare or cause to be prepared:

895 1. A report of cash receipts and expenditures in lieu of a  
 896 compiled, reviewed, or audited financial statement;

897 2. A report of cash receipts and expenditures or a  
 898 compiled financial statement in lieu of a reviewed or audited  
 899 financial statement; or

900 3. A report of cash receipts and expenditures, a compiled  
 901 financial statement, or a reviewed financial statement in lieu  
 902 of an audited financial statement.

903 Section 12. Paragraph (a) of subsection (1) of section  
 904 719.106, Florida Statutes, is amended to read:

905 719.106 Bylaws; cooperative ownership.—

906 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative  
 907 documents shall provide for the following, and if they do not,  
 908 they shall be deemed to include the following:

909 (a) Administration.—

910 1. The form of administration of the association shall be

911 described, indicating the titles of the officers and board of  
 912 administration and specifying the powers, duties, manner of  
 913 selection and removal, and compensation, if any, of officers and  
 914 board members. In the absence of such a provision, the board of  
 915 administration shall be composed of five members, except in the  
 916 case of cooperatives having five or fewer units, in which case  
 917 in not-for-profit corporations, the board shall consist of not  
 918 fewer than three members. In the absence of provisions to the  
 919 contrary, the board of administration shall have a president, a  
 920 secretary, and a treasurer, who shall perform the duties of  
 921 those offices customarily performed by officers of corporations.  
 922 Unless prohibited in the bylaws, the board of administration may  
 923 appoint other officers and grant them those duties it deems  
 924 appropriate. Unless otherwise provided in the bylaws, the  
 925 officers shall serve without compensation and at the pleasure of  
 926 the board. Unless otherwise provided in the bylaws, the members  
 927 of the board shall serve without compensation.

928 2. A person who has been suspended or removed by the  
 929 division under this chapter, or who is delinquent in the payment  
 930 of any monetary obligation due to the association, is not  
 931 eligible to be a candidate for board membership and may not be  
 932 listed on the ballot. A director or officer charged by  
 933 information or indictment with a felony theft or embezzlement  
 934 offense involving the association's funds or property is  
 935 suspended from office. The board shall fill the vacancy  
 936 according to general law until the end of the period of the

937 suspension or the end of the director's term of office,  
 938 whichever occurs first. However, if the charges are resolved  
 939 without a finding of guilt or without acceptance of a plea of  
 940 guilty or nolo contendere, the director or officer shall be  
 941 reinstated for any remainder of his or her term of office. A  
 942 member who has such criminal charges pending may not be  
 943 appointed or elected to a position as a director or officer. A  
 944 person who has been convicted of any felony in this state or in  
 945 any United States District Court, or who has been convicted of  
 946 any offense in another jurisdiction which would be considered a  
 947 felony if committed in this state, is not eligible for board  
 948 membership unless such felon's civil rights have been restored  
 949 for at least 5 years as of the date such person seeks election  
 950 to the board. The validity of an action by the board is not  
 951 affected if it is later determined that a board member is  
 952 ineligible for board membership due to having been convicted of  
 953 a felony.

954 ~~3.2.~~ When a unit owner files a written inquiry by  
 955 certified mail with the board of administration, the board shall  
 956 respond in writing to the unit owner within 30 days of receipt  
 957 of the inquiry. The board's response shall either give a  
 958 substantive response to the inquirer, notify the inquirer that a  
 959 legal opinion has been requested, or notify the inquirer that  
 960 advice has been requested from the division. If the board  
 961 requests advice from the division, the board shall, within 10  
 962 days of its receipt of the advice, provide in writing a

963 substantive response to the inquirer. If a legal opinion is  
 964 requested, the board shall, within 60 days after the receipt of  
 965 the inquiry, provide in writing a substantive response to the  
 966 inquirer. The failure to provide a substantive response to the  
 967 inquirer as provided herein precludes the board from recovering  
 968 attorney's fees and costs in any subsequent litigation,  
 969 administrative proceeding, or arbitration arising out of the  
 970 inquiry. The association may, through its board of  
 971 administration, adopt reasonable rules and regulations regarding  
 972 the frequency and manner of responding to the unit owners'  
 973 inquiries, one of which may be that the association is obligated  
 974 to respond to only one written inquiry per unit in any given 30-  
 975 day period. In such case, any additional inquiry or inquiries  
 976 must be responded to in the subsequent 30-day period, or  
 977 periods, as applicable.

978 Section 13. Section 719.128, Florida Statutes, is created  
 979 to read:

980 719.128 Association emergency powers.-

981 (1) To the extent allowed by law, unless specifically  
 982 prohibited by the cooperative documents, and consistent with s.  
 983 617.0830, the board of administration, in response to damage  
 984 caused by an event for which a state of emergency is declared  
 985 pursuant to s. 252.36 in the area encompassed by the  
 986 cooperative, may exercise the following powers:

987 (a) Conduct board or membership meetings after notice of  
 988 the meetings and board decisions is provided in as practicable a

989 manner as possible, including via publication, radio, United  
 990 States mail, the Internet, public service announcements,  
 991 conspicuous posting on the cooperative property, or any other  
 992 means the board deems appropriate under the circumstances.  
 993 (b) Cancel and reschedule an association meeting.  
 994 (c) Designate assistant officers who are not directors. If  
 995 the executive officer is incapacitated or unavailable, the  
 996 assistant officer has the same authority during the state of  
 997 emergency as the executive officer he or she assists.  
 998 (d) Relocate the association's principal office or  
 999 designate an alternative principal office.  
 1000 (e) Enter into agreements with counties and municipalities  
 1001 to assist counties and municipalities with debris removal.  
 1002 (f) Implement a disaster plan before or immediately  
 1003 following the event for which a state of emergency is declared,  
 1004 which may include turning on or shutting off elevators;  
 1005 electricity; water, sewer, or security systems; or air  
 1006 conditioners for association buildings.  
 1007 (g) Based upon the advice of emergency management  
 1008 officials or upon the advice of licensed professionals retained  
 1009 by the board of administration, determine any portion of the  
 1010 cooperative property unavailable for entry or occupancy by unit  
 1011 owners or their family members, tenants, guests, agents, or  
 1012 invitees to protect their health, safety, or welfare.  
 1013 (h) Based upon the advice of emergency management  
 1014 officials or upon the advice of licensed professionals retained

1015 by the board of administration, determine whether the  
 1016 cooperative property can be safely inhabited or occupied.  
 1017 However, such determination is not conclusive as to any  
 1018 determination of habitability pursuant to the declaration.

1019 (i) Require the evacuation of the cooperative property in  
 1020 the event of a mandatory evacuation order in the area where the  
 1021 cooperative is located. If a unit owner or other occupant of a  
 1022 cooperative fails to evacuate the cooperative property for which  
 1023 the board has required evacuation, the association is immune  
 1024 from liability for injury to persons or property arising from  
 1025 such failure.

1026 (j) Mitigate further damage, including taking action to  
 1027 contract for the removal of debris and to prevent or mitigate  
 1028 the spread of fungus, including mold or mildew, by removing and  
 1029 disposing of wet drywall, insulation, carpet, cabinetry, or  
 1030 other fixtures on or within the cooperative property, regardless  
 1031 of whether the unit owner is obligated by the declaration or law  
 1032 to insure or replace those fixtures and to remove personal  
 1033 property from a unit.

1034 (k) Contract, on behalf of a unit owner, for items or  
 1035 services for which the owner is otherwise individually  
 1036 responsible, but which are necessary to prevent further damage  
 1037 to the cooperative property. In such event, the unit owner on  
 1038 whose behalf the board has contracted is responsible for  
 1039 reimbursing the association for the actual costs of the items or  
 1040 services, and the association may use its lien authority

1041 provided by s. 719.108 to enforce collection of the charges.  
 1042 Such items or services may include the drying of the unit, the  
 1043 boarding of broken windows or doors, and the replacement of a  
 1044 damaged air conditioner or air handler to provide climate  
 1045 control in the unit or other portions of the property.

1046 (1) Notwithstanding a provision to the contrary, and  
 1047 regardless of whether such authority does not specifically  
 1048 appear in the cooperative documents, levy special assessments  
 1049 without a vote of the owners.

1050 (m) Without unit owners' approval, borrow money and pledge  
 1051 association assets as collateral to fund emergency repairs and  
 1052 carry out the duties of the association if operating funds are  
 1053 insufficient. This paragraph does not limit the general  
 1054 authority of the association to borrow money, subject to such  
 1055 restrictions contained in the cooperative documents.

1056 (2) The authority granted under subsection (1) is limited  
 1057 to that time reasonably necessary to protect the health, safety,  
 1058 and welfare of the association and the unit owners and their  
 1059 family members, tenants, guests, agents, or invitees, and to  
 1060 mitigate further damage and make emergency repairs.

1061 Section 14. Paragraph (c) of subsection (5) of section  
 1062 720.303, Florida Statutes, is amended to read:

1063 720.303 Association powers and duties; meetings of board;  
 1064 official records; budgets; financial reporting; association  
 1065 funds; recalls.-

1066 (5) INSPECTION AND COPYING OF RECORDS.-The official

1067 records shall be maintained within the state for at least 7  
1068 years and shall be made available to a parcel owner for  
1069 inspection or photocopying within 45 miles of the community or  
1070 within the county in which the association is located within 10  
1071 business days after receipt by the board or its designee of a  
1072 written request. This subsection may be complied with by having  
1073 a copy of the official records available for inspection or  
1074 copying in the community or, at the option of the association,  
1075 by making the records available to a parcel owner electronically  
1076 via the Internet or by allowing the records to be viewed in  
1077 electronic format on a computer screen and printed upon request.  
1078 If the association has a photocopy machine available where the  
1079 records are maintained, it must provide parcel owners with  
1080 copies on request during the inspection if the entire request is  
1081 limited to no more than 25 pages. An association shall allow a  
1082 member or his or her authorized representative to use a portable  
1083 device, including a smartphone, tablet, portable scanner, or any  
1084 other technology capable of scanning or taking photographs, to  
1085 make an electronic copy of the official records in lieu of the  
1086 association's providing the member or his or her authorized  
1087 representative with a copy of such records. The association may  
1088 not charge a fee to a member or his or her authorized  
1089 representative for the use of a portable device.

1090 (c) The association may adopt reasonable written rules  
1091 governing the frequency, time, location, notice, records to be  
1092 inspected, and manner of inspections, but may not require a



1093 parcel owner to demonstrate any proper purpose for the  
 1094 inspection, state any reason for the inspection, or limit a  
 1095 parcel owner's right to inspect records to less than one 8-hour  
 1096 business day per month. The association may impose fees to cover  
 1097 the costs of providing copies of the official records, including  
 1098 the costs of copying and the costs required for personnel to  
 1099 retrieve and copy the records if the time spent retrieving and  
 1100 copying the records exceeds one-half hour and if the personnel  
 1101 costs do not exceed \$20 per hour. Personnel costs may not be  
 1102 charged for records requests that result in the copying of 25 or  
 1103 fewer pages. The association may charge up to 25 cents per page  
 1104 for copies made on the association's photocopier. If the  
 1105 association does not have a photocopy machine available where  
 1106 the records are kept, or if the records requested to be copied  
 1107 exceed 25 pages in length, the association may have copies made  
 1108 by an outside duplicating service and may charge the actual cost  
 1109 of copying, as supported by the vendor invoice. The association  
 1110 shall maintain an adequate number of copies of the recorded  
 1111 governing documents, to ensure their availability to members and  
 1112 prospective members. Notwithstanding this paragraph, the  
 1113 following records are not accessible to members or parcel  
 1114 owners:

- 1115 1. Any record protected by the lawyer-client privilege as
- 1116 described in s. 90.502 and any record protected by the work-
- 1117 product privilege, including, but not limited to, a record
- 1118 prepared by an association attorney or prepared at the

1119 attorney's express direction which reflects a mental impression,  
 1120 conclusion, litigation strategy, or legal theory of the attorney  
 1121 or the association and which was prepared exclusively for civil  
 1122 or criminal litigation or for adversarial administrative  
 1123 proceedings or which was prepared in anticipation of such  
 1124 litigation or proceedings until the conclusion of the litigation  
 1125 or proceedings.

1126 2. Information obtained by an association in connection  
 1127 with the approval of the lease, sale, or other transfer of a  
 1128 parcel.

1129 3. Personnel records of association or management company  
 1130 employees, including, but not limited to, disciplinary, payroll,  
 1131 health, and insurance records. For purposes of this  
 1132 subparagraph, the term "personnel records" does not include  
 1133 written employment agreements with an association or management  
 1134 company employee or budgetary or financial records that indicate  
 1135 the compensation paid to an association or management company  
 1136 employee.

1137 4. Medical records of parcel owners or community  
 1138 residents.

1139 5. Social security numbers, driver license numbers, credit  
 1140 card numbers, electronic mailing addresses, telephone numbers,  
 1141 facsimile numbers, emergency contact information, any addresses  
 1142 for a parcel owner other than as provided for association notice  
 1143 requirements, and other personal identifying information of any  
 1144 person, excluding the person's name, parcel designation, mailing

1145 address, and property address. Notwithstanding the restrictions  
 1146 in this subparagraph, an association may print and distribute to  
 1147 parcel owners a directory containing the name, parcel address,  
 1148 and all telephone numbers ~~number~~ of each parcel owner. However,  
 1149 an owner may exclude his or her telephone numbers ~~number~~ from  
 1150 the directory by so requesting in writing to the association. An  
 1151 owner may consent in writing to the disclosure of other contact  
 1152 information described in this subparagraph. The association is  
 1153 not liable for the disclosure of information that is protected  
 1154 under this subparagraph if the information is included in an  
 1155 official record of the association and is voluntarily provided  
 1156 by an owner and not requested by the association.

1157 6. Any electronic security measure that is used by the  
 1158 association to safeguard data, including passwords.

1159 7. The software and operating system used by the  
 1160 association which allows the manipulation of data, even if the  
 1161 owner owns a copy of the same software used by the association.  
 1162 The data is part of the official records of the association.

1163 Section 15. Paragraph (b) of subsection (1) of section  
 1164 720.306, Florida Statutes, is amended to read:

1165 720.306 Meetings of members; voting and election  
 1166 procedures; amendments.—

1167 (1) QUORUM; AMENDMENTS.—

1168 (b) Unless otherwise provided in the governing documents  
 1169 or required by law, and other than those matters set forth in  
 1170 paragraph (c), any governing document of an association may be

1171 amended by the affirmative vote of two-thirds of the voting  
 1172 interests of the association. Within 30 days after recording an  
 1173 amendment to the governing documents, the association shall  
 1174 provide copies of the amendment to the members. However, if a  
 1175 copy of the proposed amendment is provided to the members before  
 1176 they vote on the amendment and the proposed amendment is not  
 1177 changed before the vote, the association, in lieu of providing a  
 1178 copy of the amendment, may provide notice to the members that  
 1179 the amendment was adopted, identifying the official book and  
 1180 page number or instrument number of the recorded amendment and  
 1181 that a copy of the amendment is available at no charge to the  
 1182 member upon written request to the association. The copies and  
 1183 notice described in this paragraph may be provided  
 1184 electronically to those owners who previously consented to  
 1185 receive notice electronically.

1186 Section 16. Section 720.316, Florida Statutes, is created  
 1187 to read:

1188 720.316 Association emergency powers.-

1189 (1) To the extent allowed by law, unless specifically  
 1190 prohibited by the declaration or other recorded governing  
 1191 documents, and consistent with s. 617.0830, the board of  
 1192 directors, in response to damage caused by an event for which a  
 1193 state of emergency is declared pursuant to s. 252.36 in the area  
 1194 encompassed by the association, may exercise the following  
 1195 powers:

1196 (a) Conduct board or membership meetings after notice of

1197 the meetings and board decisions is provided in as practicable a  
 1198 manner as possible, including via publication, radio, United  
 1199 States mail, the Internet, public service announcements,  
 1200 conspicuous posting on the association property, or any other  
 1201 means the board deems appropriate under the circumstances.

1202 (b) Cancel and reschedule an association meeting.

1203 (c) Designate assistant officers who are not directors. If  
 1204 the executive officer is incapacitated or unavailable, the  
 1205 assistant officer has the same authority during the state of  
 1206 emergency as the executive officer he or she assists.

1207 (d) Relocate the association's principal office or  
 1208 designate an alternative principal office.

1209 (e) Enter into agreements with counties and municipalities  
 1210 to assist counties and municipalities with debris removal.

1211 (f) Implement a disaster plan before or immediately  
 1212 following the event for which a state of emergency is declared,  
 1213 which may include, but is not limited to, turning on or shutting  
 1214 off elevators; electricity; water, sewer, or security systems;  
 1215 or air conditioners for association buildings.

1216 (g) Based upon the advice of emergency management  
 1217 officials or upon the advice of licensed professionals retained  
 1218 by the board, determine any portion of the association property  
 1219 unavailable for entry or occupancy by owners or their family  
 1220 members, tenants, guests, agents, or invitees to protect their  
 1221 health, safety, or welfare.

1222 (h) Based upon the advice of emergency management

1223 officials or upon the advice of licensed professionals retained  
 1224 by the board, determine whether the association property can be  
 1225 safely inhabited or occupied. However, such determination is not  
 1226 conclusive as to any determination of habitability pursuant to  
 1227 the declaration.

1228 (i) Mitigate further damage, including taking action to  
 1229 contract for the removal of debris and to prevent or mitigate  
 1230 the spread of fungus, including mold or mildew, by removing and  
 1231 disposing of wet drywall, insulation, carpet, cabinetry, or  
 1232 other fixtures on or within the association property.

1233 (j) Notwithstanding a provision to the contrary, and  
 1234 regardless of whether such authority does not specifically  
 1235 appear in the declaration or other recorded governing documents,  
 1236 levy special assessments without a vote of the owners.

1237 (k) Without owners' approval, borrow money and pledge  
 1238 association assets as collateral to fund emergency repairs and  
 1239 carry out the duties of the association if operating funds are  
 1240 insufficient. This paragraph does not limit the general  
 1241 authority of the association to borrow money, subject to such  
 1242 restrictions contained in the declaration or other recorded  
 1243 governing documents.

1244 (2) The authority granted under subsection (1) is limited  
 1245 to that time reasonably necessary to protect the health, safety,  
 1246 and welfare of the association and the parcel owners and their  
 1247 family members, tenants, guests, agents, or invitees, and to  
 1248 mitigate further damage and make emergency repairs.

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2014

1249

Section 17. This act shall take effect July 1, 2014.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 807 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Moraitis offered the following:

3

4 **Amendment**

5 Remove line 120 and insert:

6 cooperative, or timeshare plan and any individually or

7





Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Wood offered the following:

**Amendment (with title amendment)**

Between lines 654 and 655, insert:

6 Section 10. Section 718.50151, Florida Statutes, is  
 7 repealed.

12 -----  
 13 **T I T L E A M E N D M E N T**

14 Remove line 45 and insert:

15 the board from voting via e-mail; repealing s. 718.50151, F.S.,  
 16 relating to Community Association Living Study Council and  
 17 membership functions; amending s. 718.707,



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 807 (2014)

Amendment No. 2

18

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 841 Crime Stoppers Trust Fund  
**SPONSOR(S):** Broxson and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Jones <i>gk</i>	Havlicak <i>EH</i>

### SUMMARY ANALYSIS

Crime Stoppers programs are citizen-run non-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime." Crime Stoppers programs allow citizens to anonymously provide information to law enforcement about crimes. Typically, a cash reward is given if the information leads to an arrest.

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs (Department) to establish a Crime Stoppers Trust Fund. At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, and private grants awarded to the Department.

In 1998, the Legislature added a funding source by imposing a \$20 court cost on persons convicted of any criminal offense. The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected. Counties may apply to the Department for a grant from the funds collected by their judicial circuit. However, grants may only be awarded to counties that are served by an official member of the Florida Association of Crime Stoppers, Inc. and used only to support Crime Stoppers and their crime fighting programs.

The bill permits a county which is awarded funds under s. 16.555, F.S., to use the funds to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers. The bill does not appear to have any impact on state or local government's revenues or expenditures.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Crime Stoppers Programs**

Crime Stoppers programs are citizen run non-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime."<sup>1</sup> Crime Stoppers allow citizens to anonymously provide information to law enforcement about crimes.<sup>2</sup> Typically, a cash reward is given if the information leads to an arrest.<sup>3</sup>

The Crime Stoppers concept originated in Albuquerque, New Mexico in 1976 when a detective asked local media to broadcast a reenactment of an unsolved murder he was investigating.<sup>4</sup> Local media publicized the reenactment as the "Crime of the Week" and provided a phone number to call if anyone had information.<sup>5</sup> The broadcast promised anonymity for anyone who called with information and a cash reward if the information led to persons involved in the crime.<sup>6</sup>

The first Crime Stoppers program in Florida formed in 1977. Subsequently, the Florida Association of Crime Stoppers, Inc. (Association) was established to facilitate the flow of information and spread the Crime Stoppers program throughout the state.<sup>7</sup> The Association, which currently has 32 programs, also provides trainings for Crime Stoppers programs throughout Florida.<sup>8</sup>

##### **Crime Stoppers Funding**

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs (Department) to establish a Crime Stoppers Trust Fund.<sup>9</sup> At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, and private grants awarded to the Department.<sup>10</sup>

In 1998, the Legislature added a funding source by imposing a \$20 court cost on persons convicted of any criminal offense.<sup>11</sup> The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected.<sup>12</sup> Counties may apply to the Department for a grant from the funds collected by their judicial circuit. However, grants may only be awarded to counties that are served by an official member of the Association and used only to support Crime Stoppers and their crime fighting programs.<sup>13</sup>

##### Effect of the Bill

The bill amends s. 16.555, F.S., to allow a county which is awarded grant funds to use the funds to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

---

<sup>1</sup> Big Bend Crime Stoppers, <http://www.bbcsi.org/about-2> (last visited on March 5, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Florida Association of Crime Stoppers, <http://www.floridacrimestoppers.com/pages/where> (last visited on March 5, 2014).

<sup>5</sup> Crime Stoppers USA, <http://www.crimestoppersusa.com/profile.htm> (last visited on March 5, 2014).

<sup>6</sup> Florida Association of Crime Stoppers, <http://www.floridacrimestoppers.com/pages/where> (last visited on March 5, 2014).

<sup>7</sup> *Id.* The association's original name was the "Florida Association of Crimelines Anonymous, Inc.," it was changed in September 1991.

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

<sup>9</sup> Chapter 1991-205, L.O.F.

<sup>10</sup> Section 16.555(4)(a), F.S., requires the department to apply for all federal and state or private grants which meet the purposes of advancing Crime Stoppers in the State of Florida. Upon securing such grants, the funds must be deposited in the "Crime Stoppers Trust Fund."

<sup>11</sup> Chapter 1998-319, L.O.F.; Section 938.06(2), F.S., requires the clerk of the court to collect the court costs, forward the costs to the Crime Stoppers Trust Fund and assess a \$3.00 service charge.

<sup>12</sup> Section 16.555(4)(b), F.S.

<sup>13</sup> Section 16.555(5)(b), F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 16.555, F.S., relating to Crime Stoppers Trust Fund; rulemaking.

Section 2. Provides an effective date of July 1, 2014.

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

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Section 16.555(6), F.S., requires the Department to adopt and enforce rules to implement the provisions of s. 16.555, F.S., and specifies what such rules must include (e.g., criteria for local governments to apply for funding from the "Crime Stoppers Trust Fund" in order to aid in local law enforcement). The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to the Crime Stoppers Trust Fund;  
 3 amending s. 16.555, F.S.; authorizing a county that is  
 4 awarded funds from the trust fund to use the funds for  
 5 promotional items; providing an effective date.

6  
 7 Be It Enacted by the Legislature of the State of Florida:  
 8

9 Section 1. Subsection (5) of section 16.555, Florida  
 10 Statutes, is amended to read:

11 16.555 Crime Stoppers Trust Fund; rulemaking.—

12 (5)(a) The department shall be the disbursing authority  
 13 for the distribution of funding to units of local government  
 14 that apply, ~~upon their application~~ to the department for funding  
 15 assistance.

16 (b) Funds deposited in the trust fund pursuant to  
 17 paragraph (4)(b) shall be disbursed as provided in this  
 18 paragraph. A ~~Any~~ county may apply to the department under s.  
 19 938.06 for a grant from the funds collected in the judicial  
 20 circuit in which the county is located ~~under s. 938.06~~. A grant  
 21 may be awarded only to counties that ~~which~~ are served by an  
 22 official member of the Florida Association of Crime Stoppers and  
 23 may ~~only~~ be used only to support Crime Stoppers and its ~~their~~  
 24 crime fighting programs. Only one such official member is ~~shall~~  
 25 ~~be~~ eligible for support within any county. In order to aid the  
 26 department in determining eligibility, the secretary of the



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27 Florida Association of Crime Stoppers shall furnish the  
 28 department with a schedule of authorized crime stoppers programs  
 29 and shall update the schedule as necessary. The department shall  
 30 award grants to eligible counties from available funds and shall  
 31 distribute funds as equitably as possible, based on amounts  
 32 collected within each county, if ~~when~~ more than one county is  
 33 eligible within a judicial circuit.



34       (c) A county that is awarded funds under this section may  
 35 use such funds to purchase and distribute promotional items to  
 36 increase public awareness and educate the public about Crime  
 37 Stoppers.

38       Section 2. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 849 Service Animals  
**SPONSOR(S):** Government Operations Subcommittee; Smith and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 0 N, As CS	Stramski	Williamson
2) Judiciary Committee		Jones 	Havlicak 
3) State Affairs Committee			

### SUMMARY ANALYSIS

Under Florida law, an individual with a disability, defined as a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled, is entitled to equal access to public accommodations, (PA) public employment, and housing. Such an individual may be accompanied by a trained service animal in all areas of PA that the public is normally allowed to occupy. Documentation that a service animal is trained is not a precondition for providing service to a person accompanied by a service animal. Any person who denies or interferes with the right of a disabled individual or animal trainer to use a place of PA commits a second degree misdemeanor.

This bill defines an "emotional support animal" as an animal that provides emotional support to individuals with disabilities who have a disability-related need for such support. Training is not required for an animal to be classified as an "emotional support animal." The bill revises the definition of "individual with a disability" to add a person with a physical or mental impairment that substantially limits one or more major life activities. A "major life activity" is defined as a function such as caring for oneself, performing manual tasks, walking, hearing, and speaking, among others. A "physical or mental impairment" is defined, in part, as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

The bill requires a PA to modify its policies to permit use of a service animal by a person with a disability. However, the bill specifies that a PA may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform. The bill requires a service animal to be kept under the control of its handler. It authorizes a PA to remove the animal if it is not under the handler's control, the animal is not housebroken, or the animal's behavior poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or animal trainer to use a place of PA is modified to require a person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity at the discretion of the court.

The bill provides that an individual with a disability who has an emotional support animal has equal access to housing accommodations, and such a person may not be required to pay extra compensation for housing. Unless the need for an emotional support or service animal is apparent, a landlord may request medical documentation from an individual to verify the disability and need for a service or emotional support animal.

Finally, the bill provides that knowingly and willfully misrepresenting oneself to be qualified to use a service animal or to be a trainer of a service animal is a second degree misdemeanor. It also requires such person to perform 30 hours of community service.

The bill does not appear to have a fiscal impact on state or local governments.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Americans with Disabilities Act<sup>1</sup>

The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities<sup>2</sup> in employment,<sup>3</sup> the provision of public services,<sup>4</sup> and in public accommodations.<sup>5</sup> This prohibition requires entities covered by the law to provide reasonable accommodations to disabled persons. One such accommodation provides that a disabled person is entitled to be accompanied by a service animal<sup>6</sup> in all areas of a public accommodation or a public entity that is otherwise open to the public.<sup>7</sup> A public accommodation or a public entity may not ask about the nature of a person's disability, but may ask if an animal is required because of a disability, and may ask what tasks the animal has been trained to perform. A public accommodation or a public entity may remove a service animal if it is out of control and the animal's handler does not take immediate action to remove it, or if the animal is not housebroken.<sup>8</sup>

###### Federal Fair Housing Act<sup>9</sup>

The federal Fair Housing Act (FHA) prohibits any person from discriminating in the sale or rental of a dwelling based on handicap.<sup>10, 11</sup> Failure to provide a reasonable accommodation, including permitting use of service animals, to a disabled person may constitute a violation of the prohibition on discrimination based on a handicap.<sup>12</sup> Accommodation of untrained emotional support animals may also be required under the FHA if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.<sup>13</sup>

###### Florida Service Animal Law

Florida law provides that an individual with a disability<sup>14</sup> is entitled to equal privileges of access in public accommodations,<sup>15</sup> public employment,<sup>16</sup> and housing accommodations.<sup>17</sup> An individual with a disability

<sup>1</sup> 42 U.S.C. s. 12101, *et seq.*

<sup>2</sup> Under the ADA, a disability means a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 42 U.S.C. s. 12102(1).

<sup>3</sup> 42 U.S.C. s. 12112.

<sup>4</sup> 42 U.S.C. s. 12132.

<sup>5</sup> 42 U.S.C. s. 12182.

<sup>6</sup> A "service animal" is defined in part as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability[...]The work or tasks performed by a service animal must be directly related to the individual's disability...[T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."

<sup>7</sup> 28 C.F.R. ss. 36.302(c)(7) and 35.136(g).

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

<sup>9</sup> 42 U.S.C. s. 3601.

<sup>10</sup> The definition of "handicap" under the Fair Housing Act mirrors the definition of "disability" under the ADA. 42 U.S.C. s. 3602(h). *See supra*, fn 2.

<sup>11</sup> 42 U.S.C. s. 3604(f).

<sup>12</sup> *See* 28 C.F.R. ss. 35.136 and 36.302.

<sup>13</sup> *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because "plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation...")

<sup>14</sup> An "individual with a disability" means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise has a physical impairment that substantially limits one or more major life activities. Section 413.08(1)(b), F.S.

<sup>15</sup> Section 413.08(2), F.S. "Public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited. Section 413.08(1)(c), F.S.

has the right to be accompanied by a trained service animal<sup>18</sup> in all areas of public accommodations that the public is normally allowed to occupy.<sup>19</sup> A trainer of a service animal, while engaged in the training of the animal, has the same rights of access and obligations of liability for damage as an individual with a disability who is accompanied by a service animal.<sup>20</sup> Public accommodations are not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.<sup>21</sup>

Documentation that a service animal is trained is not a precondition for providing service to a person accompanied by a service animal, though a public accommodation may ask if an animal is a service animal and what tasks it is trained to perform in order to determine if an animal is a service animal or a pet.<sup>22</sup> A public accommodation may remove a service animal if the animal poses a direct threat to the health and safety of others. Allergies and fear of animals are not sufficient for removal.<sup>23</sup> While no deposit may be required of a disabled individual as a precondition of allowing that person to be accompanied by a service animal, the individual is responsible for the care of the animal and for damage caused by the animal.<sup>24</sup> If a service animal is removed by the public accommodation, it must provide the disabled individual the option of continuing access to the public accommodation without having the service animal on the premises.<sup>25</sup>

Any person who denies or interferes with the rights of access to public accommodations, or otherwise interferes with the rights, of a person with a disability or a trainer of a service animal while engaged in the training of such an animal, commits a second degree misdemeanor.<sup>26, 27</sup>

It is the policy of the state that individuals with a disability be employed by the state or its subdivisions, or in other employment funded in whole or in part by public funds. An individual with a disability may not be refused employment on the basis of disability alone, unless it is shown that the particular disability prevents the performance of the work involved.<sup>28</sup> A covered employer who discriminates in employment against a person with a disability commits a second degree misdemeanor, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.<sup>29</sup>

An individual with a disability is entitled to rent, lease, or purchase any housing accommodations subject to the same conditions that are applicable to all persons.<sup>30</sup> An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for such animal. Such a person is liable for any harm to the premises or another person on the premises caused by the animal.<sup>31</sup>

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<sup>16</sup> Section 413.08(5), F.S.

<sup>17</sup> Section 413.08(6), F.S. "Housing accommodation" means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.

Section 413.08(1)(a), F.S.

<sup>18</sup> "Service animal" means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet. Section 413.08(1)(d), F.S.

<sup>19</sup> Section 413.08(3), F.S.

<sup>20</sup> Section 413.08(8), F.S.

<sup>21</sup> Section 413.08(2), F.S.

<sup>22</sup> Section 413.08(3)(a), F.S.

<sup>23</sup> Section 413.08(3)(e), F.S.

<sup>24</sup> Section 413.08(b) and (c)

<sup>25</sup> Section 413.08(3) (e), F.S.

<sup>26</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S

<sup>27</sup> Section 413.08(4), F.S.

<sup>28</sup> Section 413.08(5), F.S.

<sup>29</sup> Section 413.08(7), F.S.

<sup>30</sup> Section 413.08(6), F.S.

<sup>31</sup> Section 413.08(6)(b), F.S.

## Effect of the Bill

The bill defines an "emotional support animal" as an animal that provides emotional support to an individual with a disability who has a disability-related need for such support. Training is not required for an animal to be classified as an "emotional support animal."

The bill revises the definition of "individual with a disability" to add a person with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined in part as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. A "major life activity" is defined as a function such as caring for oneself, performing manual tasks, walking, hearing, and speaking, among others.

The bill expands the definition of "service animal" to add animals trained to work or perform tasks to assist with psychiatric, intellectual, or other mental disabilities. The work or tasks performed for the purpose of the definition must be directly related to the disability,<sup>32</sup> and do not include any crime-deterrent effect due to an animal's presence or the provision of emotional support, well-being, comfort, or companionship.

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler. Specifically, the service animal must have a harness, leash, or other tether. The service animal must be under the handler's control by means of voice control, signals, or other effective means if the handler is unable to use a harness, leash, or other tether, because of a disability or the use of such would interfere with the service animal's safe, effective performance of work or tasks.

A public accommodation may remove the animal if it is not under the handler's control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform.

The bill modifies current criminal penalty provisions applicable to any person who interferes with the right of an individual with a disability or animal trainer engaged in the training of an animal to access a place of public accommodation, or who otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of an animal. It requires the person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court, to be completed in not more than one year.

The bill provides that an individual with a disability who has an emotional support animal has equal access to housing accommodations and such a person may not be required to pay extra compensation for housing because of any emotional support animal kept by the individual. Unless the need for an emotional support or service animal is apparent, a landlord may request medical documentation from an individual to verify the disability and need for a service or emotional support animal.

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<sup>32</sup> The bill lists the work or tasks a service animal that may perform but are not limited to: and may include, but are not limited to, guiding an individual a person who is visually impaired or blind, alerting an individual a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual a person who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks.

Finally, the bill provides that it is a second degree misdemeanor for a person to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal, punishable by imprisonment of up to 60 days or a fine not to exceed \$500.<sup>33</sup> In addition, such a person must perform 30 hours of community service for an organization that serves individuals with disabilities or another entity, at the discretion of the court, to be performed in not more than one year.

**B. SECTION DIRECTORY:**

Section 1 amends s. 413.08, F.S., relating to the rights of an individual with a disability; use of a service animal; discrimination in public employment or housing accommodations; penalties.

Section 2 provides an effective date of July 1, 2014.

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

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

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

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

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

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

This bill does not appear to have a direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

<sup>33</sup> Sections 775.082(4)(b) and 775.083(1)(e), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2014, the Government Operations Subcommittee adopted an amendment to HB 849 and reported the bill favorably with committee substitute. The amendment provides that it is a misdemeanor to knowingly and willfully, as opposed to knowingly and fraudulently, misrepresent oneself as using a service animal and being qualified to use a service animal, or as being a trainer of a service animal.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.



1 A bill to be entitled

2 An act relating to service animals; amending s.  
3 413.08, F.S.; providing and revising definitions;  
4 requiring a public accommodation to permit use of a  
5 service animal by an individual with a disability  
6 under certain conditions; providing conditions for a  
7 public accommodation to exclude or remove a service  
8 animal; revising penalties to include community  
9 service for certain persons or entities who interfere  
10 with use of a service animal in specified  
11 circumstances; providing equal access to housing  
12 accommodations for an individual with a disability  
13 accompanied by an emotional support animal; providing  
14 conditions under which a landlord may request  
15 documentation of a qualifying disability; providing a  
16 penalty for knowing and willful misrepresentation with  
17 respect to use or training of a service animal;  
18 providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Section 413.08, Florida Statutes, is amended to  
23 read:

24 413.08 Rights and responsibilities of an individual with a  
25 disability; use of a service or emotional support animal;  
26 prohibited discrimination in public employment, public

27 | accommodations, and ~~or~~ housing accommodations; penalties.-

28 | (1) As used in this section and s. 413.081, the term:

29 | (a) "Emotional support animal" means an animal that  
 30 | provides emotional support to individuals with disabilities who  
 31 | have a disability-related need for such support or that  
 32 | alleviates one or more identified symptoms or effects of an  
 33 | individual's disability. Training is not required for an  
 34 | emotional support animal.

35 | (b)(a) "Housing accommodation" means any real property or  
 36 | portion thereof which is used or occupied, or intended,  
 37 | arranged, or designed to be used or occupied, as the home,  
 38 | residence, or sleeping place of one or more persons, but does  
 39 | not include any single-family residence, the occupants of which  
 40 | rent, lease, or furnish for compensation not more than one room  
 41 | therein.

42 | (c)(b) "Individual with a disability" means a person who  
 43 | has a physical or mental impairment that substantially limits  
 44 | one or more major life activities of the individual ~~is deaf,~~  
 45 | ~~hard of hearing, blind, visually impaired, or otherwise~~  
 46 | ~~physically disabled.~~ As used in this paragraph, the term:

47 | 1. "Major life activity" means a function such as caring  
 48 | for one's self, performing manual tasks, walking, seeing,  
 49 | hearing, speaking, breathing, learning, and working ~~"Hard of~~  
 50 | ~~hearing" means an individual who has suffered a permanent~~  
 51 | ~~hearing impairment that is severe enough to necessitate the use~~  
 52 | ~~of amplification devices to discriminate speech sounds in verbal~~

53 ~~communication.~~

54 2. "Physical or mental impairment" means:

55 a. A physiological disorder or condition, disfigurement,  
 56 or anatomical loss that affects one or more bodily functions; or

57 b. A mental or psychological disorder that meets one of  
 58 the diagnostic categories specified in the most recent edition  
 59 of the Diagnostic and Statistical Manual of Mental Disorders  
 60 published by the American Psychiatric Association, such as an  
 61 intellectual or developmental disability, organic brain  
 62 syndrome, traumatic brain injury, posttraumatic stress disorder,  
 63 or an emotional or mental illness ~~"Physically disabled" means~~  
 64 ~~any person who has a physical impairment that substantially~~  
 65 ~~limits one or more major life activities.~~

66 ~~(d)(e)~~ "Public accommodation" means a common carrier,  
 67 airplane, motor vehicle, railroad train, motor bus, streetcar,  
 68 boat, or other public conveyance or mode of transportation;  
 69 hotel; lodging place; place of public accommodation, amusement,  
 70 or resort; and other places to which the general public is  
 71 invited, subject only to the conditions and limitations  
 72 established by law and applicable alike to all persons.

73 ~~(e)(d)~~ "Service animal" means an animal that is trained to  
 74 do work or perform tasks for an individual with a disability,  
 75 including a physical, sensory, psychiatric, intellectual, or  
 76 other mental disability. The work done or tasks performed must  
 77 be directly related to the individual's disability and may  
 78 include, but are not limited to, guiding an individual ~~a person~~

79 | who is visually impaired or blind, alerting an individual a  
 80 | ~~person~~ who is deaf or hard of hearing, pulling a wheelchair,  
 81 | assisting with mobility or balance, alerting and protecting an  
 82 | individual a person who is having a seizure, retrieving objects,  
 83 | alerting an individual to the presence of allergens, providing  
 84 | physical support and assistance with balance and stability to an  
 85 | individual with a mobility disability, helping an individual  
 86 | with a psychiatric or neurological disability by preventing or  
 87 | interrupting impulsive or destructive behaviors, reminding an  
 88 | individual with mental illness to take prescribed medications,  
 89 | calming an individual with posttraumatic stress disorder during  
 90 | an anxiety attack, or doing other specific work or performing  
 91 | other special tasks. A service animal is not a pet. The crime-  
 92 | deterrent effect of an animal's presence and the provision of  
 93 | emotional support, well-being, comfort, or companionship do not  
 94 | constitute work or tasks for purposes of this definition.

95 | (2) An individual with a disability is entitled to full  
 96 | and equal accommodations, advantages, facilities, and privileges  
 97 | in all public accommodations. A public accommodation must modify  
 98 | its policies, practices, and procedures to permit use of a  
 99 | service animal by an individual with a disability. This section  
 100 | does not require any person, firm, business, or corporation, or  
 101 | any agent thereof, to modify or provide any vehicle, premises,  
 102 | facility, or service to a higher degree of accommodation than is  
 103 | required for a person not so disabled.

104 | (3) An individual with a disability has the right to be

105 accompanied by a service animal in all areas of a public  
 106 accommodation that the public or customers are normally  
 107 permitted to occupy.

108 (a) The service animal must be under the control of its  
 109 handler and must have a harness, leash, or other tether, unless  
 110 either the handler is unable because of a disability to use a  
 111 harness, leash, or other tether, or the use of a harness, leash,  
 112 or other tether would interfere with the service animal's safe,  
 113 effective performance of work or tasks, in which case the  
 114 service animal must be otherwise under the handler's control by  
 115 means of voice control, signals, or other effective means.

116 (b)(a) Documentation that the service animal is trained is  
 117 not a precondition for providing service to an individual  
 118 accompanied by a service animal. A public accommodation may not  
 119 ask about the nature or extent of an individual's disability. To  
 120 determine the difference between a service animal and a pet, a  
 121 public accommodation may ask if an animal is a service animal  
 122 required because of a disability and what work or what tasks the  
 123 animal has been trained to perform ~~in order to determine the~~  
 124 ~~difference between a service animal and a pet.~~

125 (c)(b) A public accommodation may not impose a deposit or  
 126 surcharge on an individual with a disability as a precondition  
 127 to permitting a service animal to accompany the individual with  
 128 a disability, even if a deposit is routinely required for pets.

129 (d)(e) An individual with a disability is liable for  
 130 damage caused by a service animal if it is the regular policy

131 and practice of the public accommodation to charge nondisabled  
 132 persons for damages caused by their pets.

133 ~~(e)(d)~~ The care or supervision of a service animal is the  
 134 responsibility of the individual owner. A public accommodation  
 135 is not required to provide care or food or a special location  
 136 for the service animal or assistance with removing animal  
 137 excrement.

138 ~~(f)(e)~~ A public accommodation may exclude or remove any  
 139 animal from the premises, including a service animal, if the  
 140 animal is out of control and the animal's handler does not take  
 141 effective action to control it, the animal is not housebroken,  
 142 or the animal's behavior poses a direct threat to the health and  
 143 safety of others. Allergies and fear of animals are not valid  
 144 reasons for denying access or refusing service to an individual  
 145 with a service animal. If a service animal is excluded or  
 146 removed for being a direct threat to others, the public  
 147 accommodation must provide the individual with a disability the  
 148 option of continuing access to the public accommodation without  
 149 having the service animal on the premises.

150 (4) Any person, firm, or corporation, or the agent of any  
 151 person, firm, or corporation, who denies or interferes with  
 152 admittance to, or enjoyment of, a public accommodation or  
 153 otherwise interferes with the rights of an individual with a  
 154 disability or the trainer of a service animal while engaged in  
 155 the training of such an animal pursuant to subsection (8),  
 156 commits a misdemeanor of the second degree, punishable as

157 | provided in s. 775.082 or s. 775.083 and must perform 30 hours  
 158 | of community service for an organization that serves individuals  
 159 | with disabilities, or for another entity or organization at the  
 160 | discretion of the court, to be completed in not more than 1  
 161 | year.

162 | (5) It is the policy of this state that an individual with  
 163 | a disability be employed in the service of the state or  
 164 | political subdivisions of the state, in the public schools, and  
 165 | in all other employment supported in whole or in part by public  
 166 | funds, and an employer may not refuse employment to such a  
 167 | person on the basis of the disability alone, unless it is shown  
 168 | that the particular disability prevents the satisfactory  
 169 | performance of the work involved.

170 | (6) An individual with a disability is entitled to rent,  
 171 | lease, or purchase, as other members of the general public, any  
 172 | housing accommodations offered for rent, lease, or other  
 173 | compensation in this state, subject to the conditions and  
 174 | limitations established by law and applicable alike to all  
 175 | persons.

176 | (a) This section does not require any person renting,  
 177 | leasing, or otherwise providing real property for compensation  
 178 | to modify her or his property in any way or provide a higher  
 179 | degree of care for an individual with a disability than for a  
 180 | person who is not disabled.

181 | (b) An individual with a disability who has a service  
 182 | animal or an emotional support animal or who obtains a service

183 animal or an emotional support animal is entitled to full and  
 184 equal access to all housing accommodations provided for in this  
 185 section, and such a person may not be required to pay extra  
 186 compensation for such ~~the service~~ animal. However, such a person  
 187 is liable for any damage done to the premises or to another  
 188 person on the premises by the ~~such an~~ animal. A housing  
 189 accommodation may request proof of compliance with vaccination  
 190 requirements.

191 (c) Except when the disability and the need for the  
 192 service or emotional support animal is readily apparent, such as  
 193 when it is observed guiding, pulling, or providing physical  
 194 assistance to an individual who is blind, has low vision, uses a  
 195 wheelchair, or needs the animal for stability, a landlord may  
 196 request medical documentation that a tenant has a qualifying  
 197 disability and how the service or emotional support animal  
 198 benefits the individual with a disability.

199 (7) An employer covered under subsection (5) who  
 200 discriminates against an individual with a disability in  
 201 employment, unless it is shown that the particular disability  
 202 prevents the satisfactory performance of the work involved, or  
 203 any person, firm, or corporation, or the agent of any person,  
 204 firm, or corporation, providing housing accommodations as  
 205 provided in subsection (6) who discriminates against an  
 206 individual with a disability, commits a misdemeanor of the  
 207 second degree, punishable as provided in s. 775.082 or s.  
 208 775.083.



209 (8) Any trainer of a service animal, while engaged in the  
 210 training of such an animal, has the same rights and privileges  
 211 with respect to access to public facilities and the same  
 212 liability for damage as is provided for those persons described  
 213 in subsection (3) accompanied by service animals.

214 (9) A person who knowingly and willfully misrepresents  
 215 herself or himself, through conduct or verbal or written notice,  
 216 as using a service animal and being qualified to use a service  
 217 animal or as a trainer of a service animal commits a misdemeanor  
 218 of the second degree, punishable as provided in s. 775.082 or s.  
 219 775.083 and must perform 30 hours of community service for an  
 220 organization that serves individuals with disabilities, or for  
 221 another entity or organization at the discretion of the court,  
 222 to be completed in not more than 1 year.

223 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Smith offered the following:

3  
4 **Amendment**

5 Remove line 31 and insert:  
6 have a disability-related need for such support and that  
7



Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Smith offered the following:

3  
4  
5  
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7  
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9

**Amendment**

Remove line 91 and insert:

other special tasks. A service animal is not a pet. For purposes of subsections (2), (3), and (4), a service animal is limited to a dog or miniature horse. The crime-



Amendment No. 3

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Smith offered the following:

**Amendment (with title amendment)**

Remove lines 160-222 and insert:

discretion of the court, to be completed in not more than six months.

8 (5) It is the policy of this state that an individual with  
 9 a disability be employed in the service of the state or  
 10 political subdivisions of the state, in the public schools, and  
 11 in all other employment supported in whole or in part by public  
 12 funds, and an employer may not refuse employment to such a  
 13 person on the basis of the disability alone, unless it is shown  
 14 that the particular disability prevents the satisfactory  
 15 performance of the work involved.

16 (6) An individual with a disability is entitled to rent,  
 17 lease, or purchase, as other members of the general public, any



Amendment No. 3

18 housing accommodations offered for rent, lease, or other  
19 compensation in this state, subject to the conditions and  
20 limitations established by law and applicable alike to all  
21 persons.

22 (a) This section does not require any person renting,  
23 leasing, or otherwise providing real property for compensation  
24 to modify her or his property in any way or provide a higher  
25 degree of care for an individual with a disability than for a  
26 person who is not disabled.

27 (b) An individual with a disability who has a service  
28 animal or an emotional support animal or who obtains a service  
29 animal or an emotional support animal is entitled to full and  
30 equal access to all housing accommodations provided for in this  
31 section, and such a person may not be required to pay extra  
32 compensation for such ~~the service~~ animal. However, such a person  
33 is liable for any damage done to the premises or to another  
34 person on the premises by the ~~such an~~ animal. A housing  
35 accommodation may request proof of compliance with vaccination  
36 requirements.

37 (c) Except when the disability and the need for the  
38 service or emotional support animal is readily apparent, such as  
39 when it is observed guiding, pulling, or providing physical  
40 assistance to an individual who is blind, has low vision, uses a  
41 wheelchair, or needs the animal for stability, a housing  
42 accommodation may request medical documentation that an  
43 individual with a disability has a qualifying disability and how



Amendment No. 3

44 the service or emotional support animal benefits the individual  
45 with a disability.

46 (7) An employer covered under subsection (5) who  
47 discriminates against an individual with a disability in  
48 employment, unless it is shown that the particular disability  
49 prevents the satisfactory performance of the work involved, or  
50 any person, firm, or corporation, or the agent of any person,  
51 firm, or corporation, providing housing accommodations as  
52 provided in subsection (6) who discriminates against an  
53 individual with a disability, commits a misdemeanor of the  
54 second degree, punishable as provided in s. 775.082 or s.  
55 775.083.

56 (8) Any trainer of a service animal, while engaged in the  
57 training of such an animal, has the same rights and privileges  
58 with respect to access to public facilities and the same  
59 liability for damage as is provided for those persons described  
60 in subsection (3) accompanied by service animals.

61 (9) A person who knowingly and willfully misrepresents  
62 herself or himself, through conduct or verbal or written notice,  
63 as using a service animal and being qualified to use a service  
64 animal or as a trainer of a service animal commits a misdemeanor  
65 of the second degree, punishable as provided in s. 775.082 or s.  
66 775.083 and must perform 30 hours of community service for an  
67 organization that serves individuals with disabilities, or for  
68 another entity or organization at the discretion of the court,  
69 to be completed in not more than six months.

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Amendment No. 3

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T I T L E A M E N D M E N T

Remove line 14 and insert:  
conditions under which a housing accommodation may request





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1253 Use of Wireless Communications Devices while Operating a Motor Vehicle  
**SPONSOR(S):** Slosberg and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N	Cox	Cunningham
2) Judiciary Committee		Cox <i>Yaa</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

Currently, s. 316.305, F.S., prohibits a person from using a wireless communication device (WCD) while operating a motor vehicle to:

- Manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- Send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing and instant messaging.

Florida law does not specifically make it a crime for a person to cause the death of another while operating a vehicle and using a WCD. However, depending on the facts of the case, a person who kills another while operating a vehicle and using a WCD could be prosecuted for vehicular homicide, DUI manslaughter, or leaving the scene of an accident involving death.

The bill creates s. 316.3035, F.S., providing a person commits a second degree felony by causing the death of a human being or viable fetus while operating a vehicle and using a WCD in violation of s. 316.305, F.S. The offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew, or should have known, that the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.

The bill defines "wireless communication device" in accordance with s. 316.305, F.S., as "any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications."

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, there will likely be a negative prison bed impact to the Department of Corrections because the bill creates new first and second degree felonies.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Traffic Fatalities – Wireless Communication Devices**

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), there were 227,998 total crashes in Florida in 2011, down from 235,461 in 2010.<sup>1</sup> Mirroring trends nationally, traffic fatalities in Florida have been trending downward.<sup>2</sup> In 2011, Florida's 2,400 traffic fatalities represented a 1.8 percent decrease from the previous year and a 32 percent reduction since 2005.<sup>3</sup>

DHSMV is unable to determine how many of Florida's traffic fatalities are a direct result of distracted driving as this information may or may not show up on a crash report. However, the National Highway Traffic Safety Administration (NHTSA) reports that ten percent of fatal crashes nationwide in 2011 were reported as distraction-affected crashes.<sup>4</sup> NHTSA further reports that "text messaging creates a crash risk 23 times worse than driving while not distracted,"<sup>5</sup> largely because "sending or receiving a text takes a driver's eyes from the road for an average of 4.6 seconds, the equivalent – at 55 mph – of driving the length of an entire football field."<sup>6</sup> Researchers have identified texting-while-driving as among the most dangerous of distractions because it involves "manual, visual, and cognitive distraction simultaneously."<sup>7</sup>

##### **Driving Offenses Involving the Death of a Person**

Currently, s. 316.305, F.S. (the texting-while-driving ban), prohibits a person from using a wireless communication device<sup>8</sup> (WCD) while operating a motor vehicle (vehicle) to:

- Manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- Send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing, and instant messaging.<sup>9</sup>

The offense is punishable as a noncriminal traffic infraction, punishable as a nonmoving violation,<sup>10</sup> and enforcement is only permitted as a secondary offense.<sup>11</sup>

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<sup>1</sup> 2011 Florida Traffic Crash Statistics, Traffic Crash Facts, <http://www.flhsmv.gov/html/safety.html> (last visited March 14, 2014).

<sup>2</sup> The National Highway Traffic Safety Administration (NHTSA) has reported that traffic fatalities fell in 2011 to their lowest level since 1949. *Highway Deaths Fell to Lowest Level in More Than Six Decades, Down 26 Percent Since 2005*, NHTSA December 10, 2012 press release,

<http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/New+NHTSA+Analysis+Shows+2011+Traffic+Fatalities+Declined+by+Nearly+Two+Percent> (last visited on March 14, 2014).

<sup>3</sup> *Id.*

<sup>4</sup> *Distracted Driving 2011*, U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), <http://www.distraction.gov/content/press-release/2013/04-05.html> (last visited March 14, 2014) [In 2011, there were a total of 29,757 fatal crashes in the United States involving 43,668 drivers. In those crashes, 32,367 people were killed. In 2011, 3,020 fatal crashes occurred that involved distraction (10% of all fatal crashes)].

<sup>5</sup> *Id.* While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra of the Virginia Tech Transportation Institute.

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

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

<sup>8</sup> Section 316.305(3)(a), F.S., defines a "wireless communications device" as any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications.

<sup>9</sup> The statute provides a variety of exceptions (e.g., the statute does not apply to law enforcement personnel who are performing official duties, or to persons reporting an emergency or criminal or suspicious activity to law enforcement).

<sup>10</sup> A second or subsequent violation within 5 years after the date of a prior conviction for a violation is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S. Section 316.305(4)(b), F.S.

<sup>11</sup> Section 316.305(5), F.S. Because texting while driving is a secondary offense, a driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban.

Florida law does not specifically make it a crime for a person to cause the death of another while operating a vehicle and using a WCD. However, depending on the facts of the case, a person who kills another while operating a vehicle and using a WCD can be prosecuted for one of the offenses described below.

### Vehicular Homicide

Vehicular homicide, a second degree felony,<sup>12</sup> is the killing of a human being, or the killing of a viable fetus<sup>13</sup> by any injury to the mother, caused by the operation of a vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.<sup>14</sup> The offense is reclassified to a first degree felony<sup>15</sup> if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.<sup>16,17</sup>

Courts have held that vehicular homicide cannot be proven without proving the elements that constitute reckless driving.<sup>18</sup>

A person commits the offense of “reckless driving” if he or she drives a vehicle in willful or wanton<sup>19</sup> disregard for the safety of persons or property.<sup>20</sup> In determining whether a person was driving recklessly, the essential inquiry is whether the defendant knowingly drove the vehicle in such a manner and under such conditions as was likely to cause death or great bodily harm.<sup>21</sup> A person need not have foreseen the specific circumstances causing the death of the particular victim, it is sufficient that he or she should have reasonably foreseen that the same general type of harm might occur if he or she knowingly drives the vehicle under circumstances that would likely cause the death of another.<sup>22</sup>

### DUI Manslaughter

DUI manslaughter, a second degree felony, occurs when a person commits the offense of driving under the influence<sup>23</sup> and, by operating such vehicle, causes or contributes to causing the death of a unborn

<sup>12</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>13</sup> A fetus is considered viable when it becomes capable of meaningful life outside the womb through standard medical measures. Section 782.071(2), F.S.

<sup>14</sup> Section 782.071, F.S.

<sup>15</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>16</sup> Section 782.071(1), F.S.

<sup>17</sup> Section 316.062, F.S., requires the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property to give his or her name, address, and the registration number of the vehicle he or she is driving. Upon request and if available, the person must exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and must give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash. Additionally, the person must render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

<sup>18</sup> *W.E.B. v. State*, 553 So.2d 323, 326 (Fla. 1st DCA 1989); *Berube v. State*, 6 So.3d 624 (Fla. 5th DCA 2008).

<sup>19</sup> “Willful” means intentionally, knowingly, and purposely. “Wanton” means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property. *W.E.B.*, 553 So.2d at 326.

<sup>20</sup> Section 316.192, F.S. A first conviction of reckless driving is punishable by no more than 90 days imprisonment or a fine of \$25-\$500, or by both. A second or subsequent conviction is punishable by no more than six months or by a fine of not less than \$50-\$1,000, or by both.

<sup>21</sup> The Florida Supreme Court describes recklessness as a degree of negligence that falls short of culpable negligence, but more than a mere failure to use ordinary care. *McCreary v. State*, 371 So.2d 1024, 1026 (Fla. 1979).

<sup>22</sup> *W.E.B.*, 553 So.2d at 326.

<sup>23</sup> Section 316.193, F.S., provides that a person commits the offense of “driving under the influence” if he or she is driving or in actual physical control of a vehicle and the person:

- Is under the influence, to the extent that the person’s normal faculties are impaired, of alcoholic beverages, any chemical substance as provided in s. 877.111, F.S., or any substance controlled under ch. 893, F.S.;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

quick child<sup>24</sup> or human being.<sup>25</sup> As with vehicular homicide, the offense is reclassified as a first degree felony if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.<sup>26</sup>

A person convicted of DUI manslaughter must be sentenced to a mandatory minimum term of imprisonment of 4 years.<sup>27</sup>

#### Leaving the Scene of an Accident Involving Death

Section 316.027, F.S., requires a person driving a vehicle involved in a crash that results in the death of any person to immediately stop the vehicle and remain at the scene until the driver has complied with s. 316.062, F.S.<sup>28</sup> A person who leaves the scene of a crash involving death commits a first degree felony.<sup>29</sup> If the person was driving under the influence, the court must sentence the person to a minimum mandatory prison sentence of two years.<sup>30</sup>

#### **Effect of the Bill**

The bill creates s. 316.3035, F.S., providing a person commits a second degree felony by causing the death of a human being or viable fetus while operating a vehicle and using a WCD in violation of s. 316.305, F.S. (the texting-while-driving ban).<sup>31</sup> The offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.

As noted above, depending on the facts of the case, a person who kills a human being or a viable fetus while operating a vehicle and using a WCD can be prosecuted for one of the above mentioned offenses.

The bill defines "wireless communication device" to have the same meaning as provided in the texting-while-driving ban and "viable fetus" to have the same meaning as in s. 782.071, F.S. (vehicular homicide).

#### **B. SECTION DIRECTORY:**

Section 1. Creates s. 316.3035, F.S., relating to death caused by motor vehicle operator using a wireless communication device; criminal penalty.

Section 2. Provides and effective date of July 1, 2014.

<sup>24</sup> Section 316.193(3), F.S., provides that the definition of the term "unborn quick child" must be determined in accordance with the definition of viable fetus as set forth in s. 782.071, F.S.

<sup>25</sup> Section 316.193(3)(a), F.S.

<sup>26</sup> Section 316.193(3)(b), F.S.

<sup>27</sup> Section 316.193(3), F.S.

<sup>28</sup> *Supra* note 13.

<sup>29</sup> Section 316.027(1)(b), F.S. Proof that the driver caused or contributed to causing injury to a person is not required for a conviction. *See Lawrence v. State*, 801 So.2d 293, 295 (Fla. 2d DCA 2001) and *Kelly v. State*, 987 So.2d 1237, 1239 (Fla. 2d DCA 2008).

<sup>30</sup> Section 316.027(1)(b), F.S.

<sup>31</sup> Law enforcement officers (LEOs) may conduct a search of a WCD, such as a cell phone, after securing a valid search warrant or when an exception to the search warrant requirement exists, such as consent from the owner of the WCD. Additionally, LEOs can obtain the electronic communication records from the providers of electronic communication service by subpoenaing the records from the provider.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections because it creates a new first and second degree felony offense for causing the death of a person or viable fetus by operating a vehicle while using a WCD. The extent of the impact is unknown, however, because in many instances, a person who causes the death of another by operating a vehicle while using a WCD could currently be charged with another criminal offense.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2014. Generally, bills that provide a new criminal penalty or enhance a current criminal penalty are effective October 1<sup>st</sup> so as to give agencies enough time for implementation and provide the public with sufficient notice of the conduct that is prohibited.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to the use of wireless communications  
 3 devices while operating a motor vehicle; creating s.  
 4 316.3035, F.S.; defining the term "wireless  
 5 communications device"; providing a criminal penalty  
 6 if a person operating a motor vehicle while using a  
 7 wireless communications device causes the death of a  
 8 human being or a viable fetus; providing an effective  
 9 date.

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

12  
 13 Section 1. Section 316.3035, Florida Statutes, is created  
 14 to read:

15 316.3035 Death caused by motor vehicle operator using a  
 16 wireless communications device; criminal penalty.-

17 (1) As used in this section, the term "wireless  
 18 communications device" has the same meaning as provided in s.  
 19 316.305.

20 (2) A person who causes the death of a human being or a  
 21 viable fetus as provided in s. 782.071 while operating a motor  
 22 vehicle and using a wireless communications device in violation  
 23 of s. 316.305 commits:

24 (a) A felony of the second degree, punishable as provided  
 25 in s. 775.082, s. 775.083, or s. 775.084; or

26 (b) A felony of the first degree, punishable as provided

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2014

27 | in s. 775.082, s. 775.083, or s. 775.084, if:

28 |       1. At the time of the accident, the person knew, or should  
29 | have known, that the accident occurred; and

30 |       2. The person failed to give information and render aid as  
31 | required by s. 316.062.

32 |       Section 2. This act shall take effect July 1, 2014.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 7055      PCB CRJS 14-01    Juvenile Justice  
**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Pilon and others  
**TIED BILLS:**            **IDEN./SIM. BILLS:** CS/CS/SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
1) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	deNagy	Lloyd
2) Judiciary Committee		Cox <i>[Signature]</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

Chapter 985, F.S., provides the framework for the juvenile justice system in Florida and authorizes the Department of Juvenile Justice (DJJ) to administer services and provide care to the state's delinquent children. The bill amends a variety of statutes in ch. 985, F.S., relating to DJJ, its duties, and its programs. Specifically, the bill:

- Updates legislative intent language and definitions applicable to ch. 985, F.S.;
- Modifies procedures relating to jurisdiction, contempt of court, fingerprinting and photographing, and intake assessments;
- Revises and expands the detention care system;
- Provides authority to the department to develop, within existing resources, evening reporting centers and community re-entry teams;
- Expands the department's notification requirements to a school or victim when the custody status of a youth has changed;
- Allows technical violations to be resolved through alternative consequence programs;
- Broadens the application of transition-to-adulthood services to youth of all ages;
- Expands when a misdemeanor youth may be committed to a residential program;
- Creates a new offense relating to "willful and malicious neglect" of juvenile offenders;
- Enhances the performance accountability system for service providers; and
- Limits the amount paid to hospitals and health care providers who are not under contract with the department for health care services provided to juveniles.

The bill also amends a variety of statutes in ch. 985, F.S., to make conforming changes, correct statutory cross-references, update terminology, and to delete obsolete provisions.

The bill does not appear to have a fiscal impact on local governments, but is expected to have a minimal fiscal impact on DJJ. DJJ has stated that they will be able to handle the increased costs within their existing resources. See FISCAL COMMENTS.

Except as otherwise provided, the bill is effective on July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### DJJ / HRS

In years past, all "proceedings relating to children" were under the auspices of the Department of Health and Rehabilitative Services (HRS). These proceedings included dependency and delinquency cases.<sup>1</sup> In 1994, the Legislature created the Department of Juvenile Justice (DJJ), which was assigned responsibility for juvenile delinquency cases and children and families in need of services (CINS/FINS) cases. HRS retained jurisdiction of dependency cases. Despite this bifurcation, the statutes relating to delinquency and dependency remained together in ch. 39, F.S.<sup>2</sup>

In 1997, the Legislature transferred the juvenile justice provisions of ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).<sup>3</sup> However, a handful of provisions relating to dependency were inadvertently included in the transfer.

##### Effect of the Bill

The bill removes obsolete provisions throughout ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are currently addressed in ch. 39, F.S.

##### **Legislative Intent (Sections 1 and 2)**

Sections 985.01 and 985.02, F.S., contain legislative intent for ch. 985, F.S. Section 985.01, F.S., addresses the purposes of ch. 985, F.S., as a whole, while s. 985.02, F.S., provides more detailed legislative intent language specific to certain juvenile justice topics.

##### Effect of the Bill

The bill amends existing portions of s. 985.01, F.S., to specify that it is the purpose of ch. 985, F.S., to:

- Provide *victims* due process while involved in the juvenile justice system (current law only addresses due process for children and "other interested parties");
- Provide an environment that fosters *educational* development (current law only refers to social, emotional, intellectual, and physical development); and
- Provide children committed to DJJ technical education, when appropriate (current law only refers to training in life skills, including career education).

The bill creates new provisions in s. 985.01, F.S., specifying that the purpose of ch. 985, F.S., is to:

- Increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children;
- Care for children in the least restrictive and most appropriate service environments to ensure that children assessed as low and moderate risk to reoffend are not committed to residential programs; and
- Allocate resources for the most effective programs, services, and treatments to ensure that children, their families, and their community support systems are connected with these programs at the points along the juvenile justice continuum where they will have the most impact.

The bill amends existing portions of s. 985.02, F.S., to:

- Remove duplicative legislative intent language relating to detention care (similar language is found in s. 985.01, F.S.);

<sup>1</sup> *History of the Juvenile Justice System in Florida*, <http://www.djj.state.fl.us/about-us/history> (last visited on February 13, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

- Specify that the Legislature finds that secure detention is appropriate to provide punishment for *children who pose a threat to public safety* (current law specifies secure detention is appropriate to discourage further delinquent behavior);
- Specify that the Legislature finds the placement of facilities close to the home communities of the children they house is intended to facilitate family involvement in the treatment process;
- Specify that the Legislature finds that residential facilities must have no more than 90 (rather than 165) beds each;
- Remove language specifying that “the Legislature finds that the detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition;” and
- Explain what gender-specific programming should entail and why gender-specific programming is important for reducing juvenile delinquency.

The bill also adds new legislative findings to s. 985.02, F.S., relating to two specific topic areas - “trauma-informed care” and “family and community engagement.”

- The section addressing trauma-informed care provides that the DJJ should use trauma-informed care<sup>4</sup> as an approach to treating children with histories of trauma and explains that this method of care is preferred for such children because it assists with preventing retraumatization of the child.
- The section addressing family and community engagement provides that families and community support systems are critical to ensuring children are not delinquent; specifies that children should be served and treated in their homes and diverted from restrictive placements, when appropriate; and provides that DJJ should develop customized plans which “recognize the child’s individual strengths, reduce their risks, and prepare them for a successful transition to, and unification with, their family and community support system.”

### **Definitions (Section 3)**

Section 985.03, F.S., provides definitions that apply to the chapter.

#### Effect of the Bill

The bill amends s. 985.03, F.S., to define the following terms:

- “Abscond” is defined to mean to hide, conceal, or absent oneself from the jurisdiction of the court or supervision of the department to avoid prosecution or supervision;
- “Prevention” is defined to mean programs, strategies, initiatives, and networks designed to keep children from making initial or further contact with the juvenile justice system; and
- “Trauma-informed care” is defined to mean services that are provided to children with a history of trauma, recognizing the symptoms of trauma and acknowledging the role the trauma has played in the child’s life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

The bill amends the existing definitions of the following terms:

- “Child,” “juvenile,” and “youth” are amended to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years;
- “Comprehensive Assessment,” “assessment,” and “day treatment” are amended to refer to “career and technical education,” rather than “vocational” services;
- “Conditional release” is amended to include transition-to-adulthood services;
- “Intake” is amended to allow juvenile assessment center personnel (rather than just DJJ personnel) to accept and screen a report of delinquency;

<sup>4</sup> The bill defines “trauma-informed care” in s. 985.03, F.S., to mean providing services to children with a history of trauma, which recognizes the symptoms of trauma and acknowledges the role the trauma has played in the child’s life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

- “Temporary release” is amended to no longer apply to periods of time when the child is supervised pursuant to conditional release program or supervised by DJJ staff.

The bill deletes definitions for the following terms, which refer to the dependency system: “child support,” “foster care,” “habitually truant,” “halfway house,” “shelter hearing,” and “staff-secure shelter.”

The bill also deletes definitions for the following terms, as they have been replaced by “prevention services:” “delinquency prevention programs” and “preventative services.”

The terms “detention care” and “restrictiveness levels” are also amended in this bill. However, both have a significant effect on the substantive areas of the juvenile justice system and thus are addressed in the appropriate substantive portions of this analysis.

#### **Jurisdiction (Section 4)**

Section 985.0301, F.S., specifies that Florida’s circuit courts have exclusive original jurisdiction of proceedings in which a child is alleged to have committed a violation of law. Jurisdiction attaches to the child by service of the summons upon the child and a parent or when the child is taken into custody, whichever first occurs.<sup>5</sup>

Currently, the circuit court where the violation occurred may transfer a case to the circuit court in which the child resides or will reside at the time of detention or placement.<sup>6</sup> A child who has been detained must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.<sup>7</sup>

The court retains jurisdiction over a child until the child:

- Reaches 19 years of age, if the child’s case has not been resolved;
- Reaches 19 years of age, if the child is ordered to participate in a probation program, which includes participation in transition-to-adulthood services;
- Reaches 21 years of age, if the child is committed to DJJ;
- Reaches 22 years of age, if the child is committed to DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;<sup>8</sup>
- Reaches 21 years of age, if the child is committed to DJJ for placement in an intensive residential treatment program for 10-13 year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program;
- Reaches 21 years of age, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete such program;
- Reaches 21 years of age, if the child is a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders, specifically to complete the program; or
- Satisfies any restitution ordered in the case.<sup>9</sup>

#### **Effect of the Bill**

The bill amends s. 985.0301, F.S., to authorize, rather than require, the court to transfer a detained child to a detention center in the circuit in which the child resides or will reside at the time of detention. The bill restricts such transfers to only these two circumstances, which means the receiving court will no longer be able to direct where the detained child may be placed when a case is being transferred.

The bill simplifies the above-described age-based jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Reaches 19 years of age, generally, or if the child is in a probation program;

<sup>5</sup> Section 985.0301(2), F.S.

<sup>6</sup> Section 985.0301(4)(a), F.S.

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

<sup>8</sup> This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

<sup>9</sup> Section 985.0301(5), F.S.

- Reaches 21 years of age, if the child is committed to DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Reaches 21 years of age, if the child is a juvenile sexual offender who has been placed on community-based treatment alternative with supervision, or in a program or facility for juvenile sexual offenders, specifically for purpose of completing the program;
- Satisfies any restitution ordered in the case.

### **Prevention (Section 13)**

Currently, ch. 985, F.S., does not include statutes specifically relating to prevention services.

#### Effect of the Bill

The bill creates s. 985.17, F.S., relating to prevention services. This section specifies that the Legislature finds that:

- Prevention services decrease recidivism by addressing the needs of at-risk youth and their families, preventing further involvement of such youth in the juvenile justice system, protecting public safety, and facilitating successful reentry into the community; and
- To assist with decreasing recidivism, prevention services must strengthen protective factors and reduce risk factors using tested and effective approaches.

The bill requires DJJ to:

- Engage faith and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency;<sup>10</sup>
- Establish volunteer coordinators in each circuit and encourage mentor recruitment;
- Encourage the recruitment of volunteers to serve as mentors for youth in DJJ services;
- Promote the "Invest in Children" license plate to help fund programs and services to prevent juvenile delinquency;<sup>11</sup>
- Focus prevention services on preventing initial or further involvement with the juvenile justice system by including certain services (e.g., literacy and gender-specific programs) and included targets services to troubled, truant, ungovernable, abused, trafficked, and runaway youth;
- Ensure their prevention services address the multiple needs of youth at risk of becoming delinquent in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system; and
- Expend prevention-related funds in a manner that maximizes accountability and ensures documentation of outcomes.

The bill incorporates language into s. 985.17, F.S., that is currently found in two sections that are being repealed by the bill (ss. 985.605 and 985.606, F.S.). This language requires DJJ to expend prevention-related funds in a manner that maximizes accountability to the public and ensures the documentation of outcomes. The bill provides that as a condition of receipt of state funds, entities that receive or use state moneys to fund prevention services through contracts with DJJ or grants from any entity must:

- Design programs providing services to further one or more of the following strategies:
  - Encouraging youth to attend and succeed in school;
  - Engaging youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences;
  - Encouraging youth to avoid the use of violence; and
  - Assisting youth in acquiring the skills needed to find meaningful employment, including assistance in finding a suitable employer for the child; and

<sup>10</sup> The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

<sup>11</sup> The bill further requires DJJ to allocate moneys for programs and services within each county based on that county's proportionate share of the license plate annual use fee collected by the county, which is identical to how s. 320.08058(11), F.S., specifies the money should be allocated.

- Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

The bill requires DJJ to monitor the output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The bill also requires DJJ monitor all state-funded programs that receive or use state moneys to fund the juvenile delinquency prevention services through contracts or grants for compliance with all provisions in the contracts and grants.

### **Intake Process (Sections 11 and 12)**

Every child under the age of 18 charged with a crime in Florida is referred to DJJ.<sup>12</sup> Intake and screening services for youth referred to DJJ are performed at a Juvenile Assessment Center (JAC),<sup>13</sup> but must be performed by a DJJ employee.<sup>14</sup> Once brought into intake, DJJ assigns the child a juvenile probation officer (JPO), conducts an assessment, and recommends to the state attorney and the court the most appropriate sanctions and services.<sup>15</sup> The JPO serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.<sup>16</sup>

### **Effect of the Bill**

The bill amends s. 985.14, F.S., to allow both DJJ and JAC personnel to perform the intake process, which will provide a more efficient intake process in counties that operate their own JACs. The bill also:

- Clarifies that the intake assessment process consists of a preliminary screening that may be followed by a full mental health, cognitive impairment, substance abuse, and/or psychosexual evaluation; and
- Requires youth to be screened to determine career or technical education problems (rather than vocational problems).

The bill replaces the term “juvenile probation officer” with “department” throughout s. 985.145, F.S., which will allow DJJ to use employees other than JPOs to serve as a child’s primary case manager.

### **Detention Care System (Sections 14 through 21)**

Detention is the temporary custody status of children who are held pursuant to a court order or following arrest.<sup>17</sup> Currently, children may be detained in one of three types of detention care: secure,<sup>18</sup> nonsecure,<sup>19</sup> and home detention,<sup>20</sup> but only when specific statutory criteria are met. Section 985.24, F.S., provides broad findings upon which all determinations and court orders regarding detention care shall be based, including that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;

<sup>12</sup> A referral is similar to an arrest in the adult criminal justice system.

<sup>13</sup> Section 985.135(4), F.S.

<sup>14</sup> Section 985.14(2), F.S.

<sup>15</sup> Section 985.14(1) and (2), F.S.

<sup>16</sup> Section 985.145(1), F.S.

<sup>17</sup> Section 985.03(18), F.S.

<sup>18</sup> Section 985.03(18)(a), F.S., defines “secure detention” as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

<sup>19</sup> Section 985.03(18)(b), F.S., defines “nonsecure detention” as temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement. However, DJJ reports that its current practice for detention is to only utilize secure detention, home detention, or home detention with electronic monitoring. E-mail from Jon Menendez, DJJ Legislative Affairs Director, dated December 10, 2013 (on file with the Criminal Justice Subcommittee).

<sup>20</sup> Section 985.03(18)(c), F.S., defines “home detention” as temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

- Has committed contempt of court; or
- Requests protection from imminent bodily harm.

Upon a child being taken into custody by a law enforcement agency, the JPO must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.<sup>21</sup> The JPO makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument" (DRAI).<sup>22</sup> In certain instance, the JPO does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).<sup>23</sup>

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.<sup>24</sup> A detention hearing is conducted by a circuit judge who reviews the DRAI to determine whether there is probable cause to believe the child committed the offense and whether there is a need for continued detention.<sup>25</sup> If so, the court's detention order must include specific instructions that direct the release of the child from detention no later than 5 p.m. on the last day of the detention period (generally, there is a 21-day limit to secure, nonsecure, or home detention<sup>26</sup>).<sup>27</sup>

On occasion, a juvenile may be released from secure detention or transferred to nonsecure detention. In such instances, detention staff must notify the appropriate law enforcement agency and school personnel, but only if the child is a juvenile sexual offender.

#### Effect of the Bill

The bill makes numerous substantive changes to the statutes which govern the detention care system. First, the bill amends the definition of "detention care" found in s. 985.03, F.S., to remove "home detention," thereby limiting the definition to "secure" and "nonsecure" detention. The bill amends the definition of "nonsecure detention" to mean:

- Temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive home environment under the supervision of DJJ staff pending adjudication, disposition, or placement. Forms of nonsecure detention may include, but are not limited to home detention, electronic monitoring, day reporting centers, evening reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court.

The bill authorizes DJJ to develop evening reporting centers (centers), within existing resources, which are included in the definition of "nonsecure detention." These centers serve as an alternative to placing a child in secure detention and may be collocated with a JAC. Centers must serve children and families who are awaiting a child's court hearing, and must operate at a minimum during the afternoon and evening hours to provide a highly structured program of supervision. Centers may also provide academic tutoring, counseling, family engagement programs, and other activities.

The term "juvenile probation officer" is replaced by the term "department" throughout many of the detention-related statutes, which will allow DJJ to use employees other than JPOs to make initial detention placement decisions. The bill specifies that a child's "illegal possession of a firearm" can be considered as a basis for ordering detention or continued detention, and requires secure detention for any child who has been taken into custody on three or more separate occasions within a 60 day period.

<sup>21</sup> Section 985.25, F.S.

<sup>22</sup> Sections 985.25(1) and 985.245, F.S. Section 985.254, F.S., outlines with whom the Detention Risk Assessment Instrument (DRAI) shall be developed, when and how it shall be updated, and what factors the DRAI should be identifying when evaluating a child to determine whether detention placement is appropriate.

<sup>23</sup> Section 985.25(1)(b), F.S.

<sup>24</sup> Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive such right. Section 985.033, F.S.

<sup>25</sup> Section 985.255(3), F.S.

<sup>26</sup> Section 985.26(2), F.S. A child may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.

<sup>27</sup> Section 985.255(3)(c), F.S.

If a court orders detention but does not include the release date in the order, DJJ must request the court to set one on the same date the child is placed into detention care.

The bill requires detention staff to notify the appropriate law enforcement agency, school personnel, and victim when a child charged with any of the following offenses is released from secure detention or transferred to nonsecure detention:

- Murder, under s. 782.04, F.S.;
- Sexual battery, under ch. 794, F.S.;
- Stalking, under s. 784.048, F.S.; or
- Domestic violence, as defined in s. 741.28, F.S.

In some respects, this expands the notification requirement by not limiting it to juvenile sex offenders. In other respects, this limits the notification requirement, because it only requires notification for sexual battery, and not all of the previously-included offenses that qualify a child as a juvenile sex offender.

In instances where a detained child is transferred to a jail or other facility used to detain adults,<sup>28</sup> the bill requires physical observation and documented checks of the child every 10 minutes, rather than every 15 minutes.

The court must place all children who are adjudicated and awaiting placement in a commitment program in detention care. In such instances, the bill requires, rather than permits, a child who has been committed to a high-risk or maximum risk residential facility to be held in secure detention until placement has been accomplished.

#### **Disposition (Sections 22 through 27)**

A child who is alleged to have committed a violation of law is formally charged by the filing of a petition for delinquency by the state attorney.<sup>29</sup> Because a child may be subject to deprivation of liberty if adjudicated delinquent, federal constitutional law requires that such child be afforded many of the same due process safeguards afforded to adult criminal defendants.<sup>30</sup> The case then proceeds to an adjudicatory hearing (trial)<sup>31</sup> as quickly as practicable. If the court finds that the child committed the violation of law, it may either withhold adjudication of delinquency or adjudicate the child delinquent.<sup>32</sup>

If a child is found to have committed an offense, either through an adjudicatory hearing or by entering into a plea, the court must hold a disposition hearing to determine the most appropriate penalty for that child. Before making a final disposition, the court must review a pre-disposition report (PDR),<sup>33</sup> which is prepared by DJJ.<sup>34</sup> The court must then determine whether it is appropriate for the child to be adjudicated and whether commitment to DJJ or probation and community-based sanctions are more

<sup>28</sup> Section 985.265, F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

<sup>29</sup> Section 985.318, F.S.

<sup>30</sup> Section 985.35, F.S., provides that the child is entitled to present evidence, cross examine witnesses, protect himself or herself from self-incrimination, and to not have evidence illegally seized or obtained presented to the court in the case against them. Additionally, the facts must be established beyond a reasonable doubt and the rules of evidence apply to the proceedings. Additionally, s. 985.033, F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.

<sup>31</sup> Section 985.03(2), F.S., states an "adjudicatory hearing" is equivalent to a trial in adult criminal court and is a hearing for the court to determine whether or not the facts support the allegations stated in the petition, as provided for under s. 985.35, F.S. One difference with adjudicatory hearings is that a judge decides both the questions of fact and law. Section 985.35(2), F.S.

<sup>32</sup> Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.

<sup>33</sup> Section 985.433(6), F.S., provides that the pre-disposition report includes a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning the disposition of the case.

<sup>34</sup> Section 985.43, F.S.



appropriate.<sup>35</sup> Specific procedures are provided that must be adhered to during the disposition of the case to ensure the court makes the most appropriate disposition choice.<sup>36</sup>

### Predisposition Reports

As noted above, the first determination to be made by the court at disposition is a determination of the suitability or unsuitability for adjudication and commitment of the child. This determination must include consideration of DJJ's recommendations, which may include a PDR. Currently, the PDR must identify appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade.

### *Effect of the Bill*

The bill requires the PDR to identify appropriate educational and career (rather than vocational) goals, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and
- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

### Probation or Postcommitment Probation (Probation)

The court that has jurisdiction over an adjudicated delinquent child may place the child in a probation program or a postcommitment probation program.<sup>37</sup> A child's probation program must include both a penalty component and a rehabilitative component.<sup>38</sup> Each child is assigned a JPO who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with the terms of probation, the child may be brought before the court on a violation of probation. There are two types of violations of probation - substantive violations (a new criminal offense) and technical violations (failure to comply with the conditions of probation).<sup>39</sup> If a child admits to the violation or is found by the court to have violated his or her probation, the court must enter an order revoking, modifying, or continuing probation.<sup>40</sup> Specifically, the court may:

- Place the child into a consequence unit<sup>41</sup> for up to 15 days;
- Place the child on home detention with electronic monitoring;
- Modify or continue the child's probation; or
- Revoke probation and commit the child to DJJ.<sup>42</sup>

### *Effect of the Bill*

The bill amends s. 985.435, F.S., to add a new component that may be included as a part of the probation program. This component, called an alternative consequence component, is solely for instances when a child commits a technical violation of probation (not a substantive violation), and is intended to provide swift and appropriate consequences for any future technical violations. If the probation program includes the alternative consequence component, the judge must state in the disposition order the consequences that will apply to specific violations.

The bill amends s. 985.439, F.S., to authorize the court to place the child who has admitted, or been found to have committed, a violation of probation that is technical in nature in an alternative

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<sup>35</sup> Section 985.433(6), F.S.

<sup>36</sup> Section 985.433, F.S.

<sup>37</sup> Section 985.435(1), F.S.

<sup>38</sup> Section 985.435(2) and (3), F.S., give examples of what these components include.

<sup>39</sup> See *Meeks v. State*, 754 So.2d 101, 103 (Fla.1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934 (Fla. 3d DCA 1996).

<sup>40</sup> Section 985.439(4), F.S.

<sup>41</sup> Section 985.439(2), F.S., defines "consequence unit" as a secure facility specifically designated by the department for children who are taken into custody under s. 985.101, F.S., for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.

<sup>42</sup> Section 985.439(4), F.S.

consequence program. If this occurs, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must to be established at the local level in coordination with law enforcement agencies, the Chief Judge of the circuit, the State Attorney, and the Public Defender and
- May be operated by a law enforcement agency, DJJ, a juvenile assessment center, or another entity selected by DJJ.

### Commitment

The court that has jurisdiction over an adjudicated delinquent child may commit the child to a nonresidential or residential facility.<sup>43</sup> Commitment programs vary by "restrictiveness level," which is defined in s. 985.03(46), F.S., to mean "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." There are currently five restrictiveness levels of commitment, including:

- Minimum-risk nonresidential, also known as a level 2 commitment program, where children remain in the community and participate in at least 5 days per week in a day treatment program;
- Low-risk residential, also known as a level 4 program, where children are in a residential program and are allowed to have unsupervised access to the community;
- Moderate-risk residential, also known as a level 6 program, where children are in a residential program and are allowed to have supervised access to the community;
- High-risk residential, also known as a level 8 program, where children are not allowed access to the community; and
- Maximum-risk residential, also known as a level 10 program, which are long-term residential programs, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to the community.<sup>44</sup>

Each residential restrictiveness level cannot have more than 165 beds.<sup>45</sup>

If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing.<sup>46</sup> DJJ must then recommend the restrictiveness level most appropriate for the child. The court must commit the child at the restrictiveness level identified, but may commit at a different restrictiveness level by stating for the record the reasons that establish by a preponderance of the evidence why the court is disregarding the restrictiveness level recommended by DJJ.<sup>47</sup>

Once a commitment order is entered, DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.<sup>48</sup> Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and DJJ does not have the flexibility to move a child into a different restrictiveness level.

A child is committed to a residential program for an indeterminate length of time and must complete an individualized treatment plan.<sup>49</sup> The goals of the plan are based on the child's rehabilitative needs and must include educational and vocational service goals.<sup>50</sup> In addition, all residential programs provide medical, mental health, substance abuse, and developmental disability services.<sup>51</sup>

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<sup>43</sup> Section 985.441, F.S.

<sup>44</sup> Section 985.03(46), F.S.

<sup>45</sup> Section 985.03(46), F.S.

<sup>46</sup> Section 985.441(7), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, <http://www.djj.state.fl.us/research/reports/car> (last visited February 13, 2014).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

### *Effect of the Bill*

The bill replaces the term "juvenile probation officer" with the term "department" throughout many of the commitment-related statutes, which will allow DJJ to use employees other than JPOs to perform commitment-related duties.

The bill amends the definition of "restrictiveness level" in s. 985.03(46), F.S., to combine low-risk residential (level 4) and moderate-risk residential (level 6) into one group called "nonsecure residential." This will allow DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure that other needs or services the child requires may be fulfilled. The bill also limits residential restrictiveness levels to 90 beds (rather than 165).

The bill amends s. 985.441, F.S., to allow certain youth<sup>52</sup> to be committed to nonsecure residential placement if the child has:

- Previously been adjudicated or *had an adjudication withheld* for a felony offense; or
- *Previously* been adjudicated or had adjudication withheld for three or more misdemeanor offenses *within the previous 18 months*.

The bill amends s. 985.275, F.S., to require DJJ to notify law enforcement and, if the offense requires victim notification under ch. 960, F.S., the victim, any time a child in the custody of DJJ:

- Escapes from a residential commitment program or from being carried thereto or therefrom; or
- Absconds from a nonresidential commitment facility.

The bill further requires that DJJ make every reasonable effort to locate the child within their existing resources.

### Conditional Release and Transition-to-Adulthood Services

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program. Its purpose is to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the department to the family.<sup>53</sup>

DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.<sup>54</sup> Children participating in conditional release services must participate in an educational program<sup>55</sup> if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.<sup>56</sup> A child who has received their diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.<sup>57</sup>

DJJ must also provide to older<sup>58</sup> children with opportunities to participate in "transition-to-adulthood" services that assist with building life skills and increase the ability to live independently and be self-sufficient.<sup>59</sup> DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.<sup>60</sup>

<sup>52</sup> This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor who commit a technical violation. Section 985.441(2), F.S.

<sup>53</sup> Section 985.03(12), F.S.

<sup>54</sup> Section 985.46(3), F.S.

<sup>55</sup> Pursuant to s. 1003.21(1) and (2)(a), F.S.

<sup>56</sup> Section 985.46(5), F.S.

<sup>57</sup> *Id.*

<sup>58</sup> "Older" in s. 985.461, F.S., refers to children 17 years of age or older.

<sup>59</sup> Section 985.461(1), F.S.

<sup>60</sup> Section 985.461(4)(a)-(h), F.S.

### Effect of the Bill

The bill amends s. 985.46, F.S., to clarify that conditional release includes the provision of transition-to-adulthood services. The bill also requires a child of noncompulsory school age who is on conditional release supervision to participate in the education program *or career and technical education courses*.

The bill expands the application of transition-to-adulthood services by removing the limitation that these services only be provided to "older children." As a result, any child who is under the supervision of DJJ may be provided transition-to-adulthood services as part of their treatment plan.

The bill also expands the activities DJJ is authorizes to engage in to support participation in transition-to-adulthood services. Specifically, DJJ may:

- Use community re-entry teams to assist in the development of a list of age appropriate activities and responsibilities to be incorporated in the child's case plan. Community re-entry teams may include representatives from school districts, law enforcement, workforce development services, community based service providers, and the child's family.
- Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, and resumes and cover letters to enhance the child's employability; and
- Collaborate with school district contacts to facilitate appropriate educational services based on the child's identified needs.

### **Contempt of Court (Section 5)**

Section 985.037, F.S., authorizes the court to punish a child for contempt for interfering with the court or court administration, or for violating any provision of ch. 985, F.S., or order of the court. There are two types of contempt of court - direct and indirect. Direct contempt results from conduct committed in the presence of the judge, while indirect contempt concerns conduct outside the judge's presence.<sup>61</sup>

A child charged with direct contempt may be sanctioned immediately.<sup>62</sup> If a child is charged with indirect contempt, the court must hold a hearing within 24 hours to determine if the child committed indirect contempt.<sup>63</sup> In indirect contempt proceedings, the child is given specified due process rights.<sup>64</sup>

If a court finds that a child committed contempt of court, the court may either take the child into custody for the child to serve an alternative sanction<sup>65</sup> or order the child be placed into a secure facility<sup>66</sup> for a specified time.<sup>67</sup> If a child is placed into a secure facility for contempt, the placement must be reviewed by the court every 72 hours to determine whether it is appropriate for the child to remain there.<sup>68</sup>

### Effect of the Bill

The bill requires the court to hold a hearing to determine if a child has committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies that if a judge places a child into a secure facility for contempt, such facility must be a *detention* facility. In such instances, the court need only review the appropriateness of the placement upon motion by the defense attorney or state attorney (rather than every 72 hours).

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<sup>61</sup> *Kelley v. Rice*, 800 So.2d 247 (Fla. 2nd DCA 2001); *E.T. v. State*, 587 So.2d 615 (Fla. 1st DCA 1991).

<sup>62</sup> Section 985.037(4)(a), F.S.

<sup>63</sup> Section 985.037(4)(b), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator who shall coordinate and maintain a spectrum of contempt sanction alternatives. The alternative sanctions coordinator serves under the chief judge of the circuit. The court may immediately request that the alternative sanctions coordinator recommend the most appropriate sanctions placement.

<sup>66</sup> A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate Section 985.037(1), F.S.

<sup>67</sup> Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.

<sup>68</sup> Section 985.037(4), F.S.

## **Fingerprinting and Photographing (Section 10)**

Section 985.11, F.S., requires a child who is charged with or found to have committed specified offenses to be fingerprinted, and requires the fingerprints to be submitted to the Florida Department of Law Enforcement (FDLE).

### Effect of the Bill

The bill excludes a child from the fingerprint requirements if the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, F.S.

## **Internal Agency Procedures (Sections 31, 33, 34, 36, 37, 38 39 and 40)**

### Administering the Juvenile Justice Continuum

Section 985.601, F.S., requires DJJ to develop or contract for diversified and innovative programs to provide rehabilitative treatment, and provides examples of such treatment.

### *Effect of the Bill*

The bill adds the terms “trauma-informed care,” family engagement resources and programs,” and “gender-specific programming” to the examples of rehabilitative treatment. The bill also authorizes DJJ to pay expenses, within existing resources, in support of innovative programs and activities that address identified needs and the well-being of children in DJJ’s care or under its supervision.

### Quality Assurance and Cost-Effectiveness

Section 985.632, F.S., requires DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. DJJ is also required to develop an accountability system which assists in ensuring that the children it serves are receiving the best services for his or her needs.

DJJ is required to annually collect cost data for every program that it operates or contracts for and submit this data to the Legislature and the Governor.<sup>69</sup> DJJ is also required to develop a cost-effectiveness model and apply the model to each commitment program. The cost-effectiveness model must compare program costs to client outcomes and program outputs, and include recidivism rates.<sup>70</sup> DJJ must rank each commitment program based on the cost-effectiveness model and may terminate a program if the program has failed to achieve a minimum threshold of program effectiveness.

Section 985.632, F.S., defines “client”<sup>71</sup> and “program effectiveness.”<sup>72</sup>

### *Effect of the Bill*

The bill:

- Revises legislative intent language to accurately reflect the measures DJJ uses to quantify program outcomes;
- Requires the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Deletes the terms “client” and “program effectiveness” and adds the following definitions:
  - “Program,” means any facility or service for youth that is operated by DJJ or by a provider under contract with DJJ; and
  - “Program group,” means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison amongst programs within the group;

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<sup>69</sup> Section 985.632(3), F.S.

<sup>70</sup> *Id.*

<sup>71</sup> “Client” is defined to mean any person who is being provided treatment or services by DJJ or by a provider under contract with DJJ.

Section 985.632(2)(a), F.S.

<sup>72</sup> “Program effectiveness” means the ability of the program to achieve desired client outcomes, goals, and objectives.

- Codifies the Comprehensive Accountability Report (CAR),<sup>73</sup> and requires DJJ to work with the Office of Economic and Demographic Research to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Requires the standard methodology used in the CAR to include certain terminology for measuring performance, specify program outputs, and specify desired child outcomes and methods to measure child outcomes; and
- Revises components of the cost-effectiveness model by requiring:
  - The cost-effectiveness model to compare costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and
  - DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards, in addition to the cost-effectiveness model.

The bill removes the terms “quality assurance” and “minimum threshold” and replaces them with the terms “quality improvement” and “minimum standard” throughout s. 985.632, F.S.

#### Departmental Contracting Powers; Personnel Standards and Screening

Section 985.644, F.S., requires DJJ employees and all personnel<sup>74</sup> of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);<sup>75</sup> and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person’s employment.

DJJ must electronically submit the fingerprint information of DJJ employees and contract personnel (other than law enforcement, correctional, and correctional probation officers) to FDLE.

#### *Effect of the Bill*

The bill provides that law enforcement, correctional, or correctional probation officers who are certified pursuant to s. 943.13, F.S., are not required to submit to level 2 screenings, provided they are currently employed by a law enforcement agency or correctional facility.

#### Juvenile Justice Training Academies

DJJ is required to establish and oversee juvenile justice training academies to ensure that all parties involved with children in the juvenile justice system are able to meet the needs of such children while meeting specified accreditation requirements.<sup>76</sup> DJJ must develop, implement, and maintain the curriculum for the training academies, develop uniform minimum job-related training and establish a certifiable program for juvenile justice training.<sup>77</sup>

Section 985.66(3), F.S., requires DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.<sup>78</sup> All department program staff and

<sup>73</sup> The CAR, in its current form, has been published by DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. *Comprehensive Accountability Reports*, <http://www.djj.state.fl.us/research/reports/car> (last visited on February 13, 2014).

<sup>74</sup> Section 985.644(3)(a), F.S., states that personnel includes all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers of contract providers for any program for children.

<sup>75</sup> Section 435.04, F.S. Level 2 employment screenings require fingerprints to be processed through statewide criminal history records checks through FDLE, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

<sup>76</sup> Section 985.66(1), F.S.

<sup>77</sup> Section 985.66(1), (2), and (3), F.S.

<sup>78</sup> These components include to design, implement, maintain, evaluate and revise a basic training program for: a. the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; b. an advanced training program that is intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; c. a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and d. juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders.

Section 985.66(3), F.S.

providers who deliver direct care services pursuant to contract with DJJ are required to participate in and successfully complete the approved training program relevant to their areas of employment.<sup>79</sup> Judges, state attorneys, public defenders, law enforcement officers, and school district personnel *may* participate in such a training program.

#### *Effect of the Bill*

The bill amends s. 985.66, F.S., to:

- Remove references to “academies” when referring to juvenile justice training programs;
- Revise legislative intent language to specify that the purpose of establishing staff development and training programs is to “provide employees of the department, any private or public entity, or contract providers who provide services or care for youth under the responsibility of the department with the knowledge and skills needed to appropriately interact with children and provide such care and services;”
- Requires DJJ to designate the *number* of (not just the location of) training programs and courses; and
- Authorize all employees of contract providers who provide services or care for youth under the responsibility of DJJ to participate in the certifiable training program.

#### Juvenile Justice Circuit Advisory Boards

Section 985.664, F.S., authorizes juvenile justice circuit advisory boards (advisory boards) to be established in each of the 20 judicial circuits. The purpose of the advisory boards is to advise DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.<sup>80</sup> The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Section 985.664, F.S., requires the advisory board's initial chair to be selected by October 1, 2013, and establishes a timeframe in which the initial chair must appoint other board members. This language is now obsolete.

#### *Effect of the Bill*

The bill removes the obsolete language and specifies that the chair of a board serves at the pleasure of DJJ's Secretary.

#### Direct-Support Organizations

Section 985.672, F.S., defines a direct support organization (DSO) as a not-for-profit organization whose sole purpose is to support the juvenile justice system and which is:

- Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with DJJ's adopted goals and mission.

DJJ may permit, without charge, appropriate use of fixed property and facilities of the juvenile justice system by a DSO.<sup>81</sup> Unlike other agencies with DSOs, DJJ is not permitted to allow DSOs to use personnel services.<sup>82</sup>

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<sup>79</sup> Section 985.66(3), F.S.

<sup>80</sup> Section 985.664(1), F.S.

<sup>81</sup> Section 985.672(4), F.S.

<sup>82</sup> These agencies include the Guardian ad Litem, Department of Veteran's Affairs, Department of Elderly Affairs, and the Department of Agriculture and Consumer Services.

### *Effect of the Bill*

The bill gives DJJ the authority to permit a DSO to use personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

### Siting of Facilities

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, DJJ is required to conduct a detailed statewide comprehensive study (Study) to determine current and future needs for all facility types for children committed to DJJ.<sup>83</sup> The Study must assess, rank, and designate appropriate sites based upon these needs.<sup>84</sup>

### *Effect of the Bill*

The bill amends s. 985.682, F.S., to delete the requirement that DJJ conduct the Study.

### One-Time Startup Funding for Juvenile Justice Purposes

Section 985.69, F.S., authorizes funds from juvenile justice appropriations to be utilized as one-time startup funding for juvenile justice purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction and leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs. DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

### *Effect of the Bill*

The bill changes the term "one-time startup" to "repair and maintenance" throughout the s. 985.69, F.S. This allows these funds to be used for the continuing repair and maintenance of DJJ facilities.

## **Payment of Medical Expenses for Detained Youth (Section 35)**

### Medicare Rates

Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).<sup>85</sup>

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.<sup>86</sup> Other Medicare providers are paid via a prospective payment system (PPS). The PPS is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services). CMS uses separate PPS's for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.<sup>87</sup>

### The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill<sup>88</sup> capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider (provider) providing services at a hospital. Payments to providers for services were capped at 110 percent of the Medicare allowable rate for inmate medical care when no contract existed between DOC and a hospital, or a

<sup>83</sup> Section 985.682(1), F.S.

<sup>84</sup> Section 985.682(2), F.S.

<sup>85</sup> *What is Medicare?* <http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html> (last visited February 13, 2014).

<sup>86</sup> *Fee Schedules – General Information*, <http://www.cms.gov/FeeScheduleGenInfo/> (last visited on February 13, 2014).

<sup>87</sup> *Prospective Payment System – General Information*, <http://www.cms.gov/ProspMedicareFeeSvcPmtGen/> (last visited on February 13, 2014).

<sup>88</sup> Chapter 2008-153, L.O.F.



provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration (AHCA) were capped at 125 percent of the Medicare allowable rate. In 2009, s. 945.6041, F.S., codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap.<sup>89</sup>

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that DJJ could pay to a hospital or provider providing any health care services.<sup>90</sup>

#### *Effect of the Bill*

The bill codifies the language contained in the implementing bill for the 2013-2014 General Appropriations Act. Specifically, the bill provides that if there is no contract between DJJ and the hospital or provider providing health care services (services) at a hospital, payments to a provider may not exceed 110 percent of the Medicare allowable rate for any services provided. DJJ may continue to make payments for services to a provider at the contracted rates for contracts executed before July 1, 2014, through the term of an executed contract.<sup>91</sup> However, once that contract expires, payments may not exceed 110 percent of the Medicare allowable rate.

If a contract is executed on or after July 1, 2014, payments to providers for services may not exceed 110% of the Medicare allowable rate, unless the services are performed at a hospital that reports a negative operating margin for the previous fiscal year to the AHCA through hospital-audited financial data. In that instance, DJJ may pay up to 125 percent of the Medicare allowable rate.

The bill defines the term "hospital" to mean a hospital licensed under ch. 395, F.S., and a "health care provider" to have the same meaning as provided in s. 766.105, F.S.

#### **Offenses Committed Against Youth under the Jurisdiction of DJJ (Sections 42 and 43)**

##### Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony<sup>92</sup> for a DJJ employee<sup>93</sup> to engage in sexual misconduct<sup>94</sup> with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

##### Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., outlines the legislative intent for the juvenile justice system and provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there have been instances in which a DJJ employee neglects a juvenile offender in DJJ's custody resulting in harm to the juvenile offender.<sup>95</sup>

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances where a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to prosecute such employees. One statute prosecutors have attempted to use for such prosecutions is s. 827.03, F.S., relating to criminal child neglect. However,

<sup>89</sup> Created by ch. 2009-63, L.O.F.

<sup>90</sup> Chapter 2013-41, L.O.F.

<sup>91</sup> The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

<sup>92</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>93</sup> Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a DJJ program or a program operated by a provider under a contract.

<sup>94</sup> Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of DJJ or an employee of a provider under contract with DJJ.

<sup>95</sup> *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies,*

[http://blogs.browardpalmbeach.com/pulp/2012/03/djj\\_eric\\_perez\\_death\\_grand\\_jury\\_report.php](http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php) (last visited on February 13, 2014);

*Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ,* <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/> (last visited on February 13, 2014).

the child neglect statute is not designed to prosecute neglect cases that arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 or older.<sup>96</sup>

#### *Effect of the Bill*

The bill amends s. 985.701, F.S., to define "juvenile offender" as "any person of any age who is detained, or committed to the custody of, the department." This mirrors the definition used in s. 985.702, F.S., discussed below.

The bill creates s. 985.702, F.S., establishing a new criminal offense, effective October 1, 2014, relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony<sup>97</sup> for a DJJ employee to willfully and maliciously neglect a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the neglect does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a second degree felony.

The bill defines an "employee" as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ; and defines a "juvenile offender" as "any person of any age who is detained by, or committed to the custody of, the department." "Neglect" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., such determination constitutes sufficient cause under s. 110.227, F.S.,<sup>98</sup> for dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to DJJ's incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Any person who is required to prepare a report under this section who knowingly or willfully fails to file a report, or prevents another person from filing a report commits a first degree misdemeanor. In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor.
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

<sup>96</sup> Chapter 827, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, there are instances which DJJ has custody of a person who is 18 years old or older. For example, s. 985.0301(5)(a), F.S., states DJJ must retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and may retain jurisdiction for an additional 365 days following the child's 19<sup>th</sup> birthday if the child is participating in transition-to-adulthood services.

<sup>97</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>98</sup> Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

The bill provides the effective date of this section is October 1, 2014.

### **Repealers (Sections 9, 32, 41, and 46)**

#### Youth Custody Officers

Section 985.105, F.S., creates a position called "youth custody officer" (YCO) within DJJ. YCOs are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.<sup>99</sup>

YCOs must meet the minimum qualifications for employment or appointment, be certified under ch. 943, F.S., and comply with the requirements for continued employment required by s. 943.135, F.S.<sup>100</sup> Additionally, s. 121.0515, F.S., designates YCOs as "special risk class" members for purposes of the Florida Retirement System.

DJJ reports that it eliminated YCO positions in July 2010, due to budget cuts.<sup>101</sup> The duties of YCOs were either distributed among existing employees or were no longer performed by DJJ.<sup>102</sup>

#### *Effect of Bill*

The bill repeals s. 985.105, F.S., to eliminate the YCO position, and amends s. 121.0515, F.S., to remove references to YCOs as a position that is designated as a special risk class member.

#### Prevention Services Programs and Providers

Section 985.605, F.S., requires DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency or a child from becoming eligible under the CINS program to inform the Governor and Legislature.<sup>103</sup> DJJ is authorized to expend funds to prevent juvenile delinquency as long as DJJ maximizes public accountability and documents outcomes. Each entity that receives money from the state must design their programs to provide one of four specified strategies<sup>104</sup> and submit demographic information of all their participants to DJJ for verification.<sup>105</sup> DJJ is required to develop a system to measure the effectiveness of programs that accept state funds.

Section 985.606, F.S., requires each state agency or entity that receives or uses state appropriations to fund programs, grants, appropriations, or activities that are designed to prevent juvenile delinquency and related issues to collect data relative to the performance of such activities and provide said data to the Governor and both houses of the Legislature no later than January 31st of each year for the preceding fiscal year.

#### *Effect of the Bill*

The bill repeals ss. 985.605 and 985.606, F.S. However, the policies found therein relating to design strategies for prevention programs, public accountability of such programs, documentation of program outcomes, the sharing of personal demographic information of program participants, and data collection for performance outcomes of the prevention services are moved to s. 985.17, F.S.

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<sup>99</sup> Section 985.105(3), F.S.

<sup>100</sup> Section 985.105(2), F.S.

<sup>101</sup> Department of Juvenile Justice, 2013 Agency Proposal for HB 4019 (on file with Criminal Justice Subcommittee staff).

<sup>102</sup> *Id.*

<sup>103</sup> Section 985.605(1), F.S.

<sup>104</sup> Section 985.605(2)(a), F.S.

<sup>105</sup> Section 985.605(2)(c), F.S.

### Early Delinquency Intervention Programs

Section 985.61, F.S., authorizes the establishment of an Early Delinquency Intervention Program (EDIP) and provides specified components that must be included in such program. The EDIP must be developed by DJJ in cooperation with specified local entities (e.g., law enforcement, judiciary, etc.) and must consist of intensive residential treatment in a secure facility for 7 days to 6 weeks (followed by additional services for 6-9 months).<sup>106</sup> The court has the authority to make the EDIP a part of a child's dispositional placement.<sup>107</sup>

DJJ reports the funding for the EDIP was eliminated from their budget in Fiscal Year 2006-07.<sup>108</sup>

#### *Effect of the Bill*

The bill repeals s. 985.61, F.S.

### Juvenile Maintenance Trust Fund

Section 985.694, F.S., creates the Juvenile Care and Maintenance Trust Fund, which must be credited with any money or other property received for personal use or the benefit of juveniles in the custody of DJJ. DJJ acts as a fiduciary of the money in the fund on behalf of juveniles who are committed to or detained in DJJ facilities or facilities operated by private vendors contracting with DJJ. DJJ reports that the trust fund is no longer utilized and has no funding stream. DJJ further reports that facilities have local welfare trust funds which serve the same purpose.<sup>109</sup>

#### *Effect of the Bill*

The bill repeals s. 985.694, F.S.

### Tours of state correctional facilities

Section 945.75, F.S., requires DOC to develop programs in which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under terms and conditions established by DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as "scared straight programs."<sup>110</sup> The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.<sup>111</sup>

DJJ reports that because they complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002. They receive between two million and eight million dollars in federal funding.<sup>112</sup> DJJ reports that it could lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.<sup>113</sup>

#### *Effect of the Bill*

The bill repeals s. 945.75, F.S.

## B. SECTION DIRECTORY:

Section 1. Amends s. 985.01, F.S., relating to purposes and intent.

Section 2. Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

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<sup>106</sup> Section 985.61, F.S.

<sup>107</sup> *Id.*

<sup>108</sup> Electronic mail from Jon Menendez dated December 12, 2013 (on file with the Criminal Justice Subcommittee).

<sup>109</sup> Electronic mail from Jon Menendez dated December 12, 2013 (on file with the Criminal Justice Subcommittee).

<sup>110</sup> *Scared Straight Programs*, [www.dcjs.virginia.gov/juvenile/compliance](http://www.dcjs.virginia.gov/juvenile/compliance) (last visited on February 13, 2014); *See also Scared Straight Programs: Jail and Detention Tours*, DJJ, [www.djj.state.fl.us/docs/research2/scared\\_straight\\_booklet\\_version](http://www.djj.state.fl.us/docs/research2/scared_straight_booklet_version) (last visited on February 13, 2014)

<sup>111</sup> *Id.*

<sup>112</sup> Department of Juvenile Justice, 2013 Agency Proposal (on file with the Criminal Justice Subcommittee).

<sup>113</sup> *Id.*

- Section 3. Amends s. 985.03, F.S., relating to definitions.
- Section 4. Amends s. 985.0301, F.S., relating to jurisdiction.
- Section 5. Amends s. 985.037, F.S., relating to punishment for contempt of court; alternative sanctions.
- Section 6. Amends s. 985.039, F.S., relating to cost of supervision; cost of care.
- Section 7. Amends s. 985.045, F.S., relating to court records.
- Section 8. Amends s. 985.101, F.S., relating to taking a child into custody.
- Section 9. Repeals s. 985.105, F.S., relating to youth custody officer.
- Section 10. Amends s. 985.11, F.S., relating to fingerprinting and photographing.
- Section 11. Amends s. 985.14, F.S., relating to intake and case management system.
- Section 12. Amends s. 985.145, F.S., relating to responsibilities of the juvenile probation officer during intake; screenings and assessments.
- Section 13. Creates s. 985.17, F.S., relating to prevention services.
- Section 14. Amends s. 985.24, F.S., relating to use of detention; prohibitions.
- Section 15. Amends s. 985.245, F.S., relating to risk assessment instrument.
- Section 16. Amends s. 985.25, F.S., relating to detention intake.
- Section 17. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.
- Section 18. Amends s. 985.26, F.S., relating to length of detention.
- Section 19. Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.
- Section 20. Amends s. 985.27, F.S., relating to postcommitment detention while awaiting placement.
- Section 21. Amends s. 985.275, F.S., relating to detention of escapee or absconder on authority of the department.
- Section 22. Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.
- Section 23. Amends s. 985.435, F.S., relating to probation and postcommitment probation; community service.
- Section 24. Amends s. 985.439, F.S., relating to violation of probation or postcommitment probation.
- Section 25. Amends s. 985.441, F.S., relating to commitment.
- Section 26. Amends s. 985.46, F.S., relating to conditional release.
- Section 27. Amends s. 985.461, F.S., relating to transition to adulthood.

- Section 28. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.
- Section 29. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.
- Section 30. Amends s. 985.514, F.S., relating to responsibility for cost of care; fees.
- Section 31. Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.
- Section 32. Repeals s. 985.605, F.S., relating to prevention service program; monitoring; uniform performance measures; s. 985.606, F.S., relating to prevention services providers; performance data collection; reporting; and s. 985.61, F.S., relating to early delinquency intervention program; criteria.
- Section 33. Amends s. 985.632, F.S., relating to quality assurance and cost effectiveness.
- Section 34. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.
- Section 35. Creates s. 985.6441, F.S., relating to health care services.
- Section 36. Amends s. 985.66, F.S., relating to juvenile justice training academies; staff development and training; Juvenile Justice Training Trust Fund.
- Section 37. Amends s. 985.664, F.S., relating to juvenile justice circuit advisory boards.
- Section 38. Amends s. 985.672, F.S., relating to direct-support organization; definition; use of property; board of directors; audit.
- Section 39. Amends s. 985.682, F.S., relating to siting of facilities; study; criteria.
- Section 40. Amends s. 985.69, F.S., relating to one-time startup funding for juvenile justice purposes.
- Section 41. Repeals s. 985.694, F.S., relating to Juvenile Care and Maintenance Trust Fund.
- Section 42. Amends s. 985.701, F.S., relating to sexual misconduct prohibited; reporting required; penalties.
- Section 43. Creates s. 985.702, F.S., relating to willful and malicious neglect of a juvenile offender prohibited; reporting required; penalties.
- Section 44. Amends s. 985.721, F.S., relating to escapes from a secure detention or residential commitment facility.
- Section 45. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.
- Section 46. Repeals s. 945.75, F.S., relating to tours of state correctional facilities for juveniles.
- Section 47. Amends s. 121.0515, F.S., relating to Special Risk Class.
- Section 48. Amends s. 316.635, F.S., relating to courts having jurisdiction over traffic violations; powers relating to custody and detention of minors.
- Section 49. Amends s. 318.143, F.S., relating to sanctions for infractions by minors.

Section 50. Provides an effective date of July 1, 2014, except as otherwise expressly provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

By repealing s. 945.75, F.S., relating to "scared straight programs," the bill keeps DJJ in compliance with the Juvenile Justice and Delinquency Prevention Act, and eligible for federal funding.

#### 2. Expenditures:

See FISCAL COMMENTS section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill adds new detention criteria which could result in some children being held in secure detention that would not otherwise have been detained, or being detained for longer periods of time. To the extent this occurs, it will have a minimal negative fiscal impact on local government expenditures. See FISCAL COMMENTS section.

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

Families who are currently financially unable to access various services may have increased access to services, such as tutoring and counseling, as a result of the establishment of evening reporting centers.

Children who may currently be subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because the bill creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining any employment they currently possess.

Doctors and hospitals that currently provide services to children in the custody of DJJ without a contract may collect less money for the same services they currently provide if their fees are capped at 110 percent of the Medicare allowable rate.

### D. FISCAL COMMENTS:

The bill provides that the maximum bed number for all residential facilities shall be 90 beds, instead of the maximum bed number of 165 currently set in statute. DJJ currently has two residential facilities over the 90 bed limit; Riverside Academy has 165 beds and Avon Park Youth Academy has 144 beds. DJJ reports they have already issued replacement "Invitations to Negotiate" for both of these facilities.<sup>114</sup> The restructuring of these programs is being done within DJJ's existing resources.

The bill amends s. 985.25, F.S., to require any child who has been taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until his or her detention hearing. DJJ reports that 1,730 youth met this criteria in the previous fiscal year. DJJ reports that the variable cost (clothing and food) per youth is less than \$10 per day per youth. This will be an

<sup>114</sup> DJJ Follow-Up Document provided by electronic mail from Jon Menendez dated December 20, 2013 (on file with the Criminal Justice Subcommittee).

estimated increased cost of \$30,000 a year. This number could vary depending on how many nights each youth stays at the detention center. DJJ states the majority of these youth will stay only one night and that they will absorb these increased costs within their existing resources.

The bill allows DJJ to pay expenses in support of innovative programs and activities, subject to the requirements of chapters 215, 216, and 287, F.S., that address identified needs and the well-being of children in the department's care or under its supervision. These will be new expenses the department is currently not paying. The department states these new expenses will be funded within existing resources.

The bill allows DJJ to permit the Direct Support Organization to use DJJ personnel services, which may have a fiscal impact on DJJ. However, DJJ states any new expenses will be funded within existing resources.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create an additional need for rulemaking or rulemaking authority.

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 19, 2014, the Justice Appropriations Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified portions of the intent language;
- Conformed terminology used in two sections of the bill that address intake;
- Made technical changes to how the bill references acts of domestic violence;
- Provided an October 1, 2014, effective date for the new criminal offense of willful and malicious neglect of a juvenile offender; and
- Made a technical change to the section providing the effective date.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.



1                                   A bill to be entitled  
 2           An act relating to juvenile justice; amending ss.  
 3           985.01 and 985.02, F.S.; revising legislative purposes  
 4           and intent; amending s. 985.03, F.S.; revising  
 5           definitions; amending s. 985.0301, F.S.; clarifying  
 6           jurisdictional age restrictions for children in the  
 7           juvenile justice system; restricting when cases may be  
 8           transferred to a different jurisdiction; amending s.  
 9           985.037, F.S.; providing for the placement of a child  
 10          in a secure detention facility for contempt of court;  
 11          providing due process to a child accused of direct  
 12          contempt; revising the procedure for reviewing a  
 13          child's placement in secure detention for contempt of  
 14          court; amending ss. 985.039, 985.045, and 985.101,  
 15          F.S.; conforming provisions; repealing s. 985.105,  
 16          F.S., relating to the creation, duties, and  
 17          qualifications of the youth custody officers in the  
 18          Department of Juvenile Justice; amending s. 985.11,  
 19          F.S.; revising when fingerprints must be submitted to  
 20          the Department of Law Enforcement; amending s. 985.14,  
 21          F.S.; revising the intake process; amending s.  
 22          985.145, F.S.; substituting "Department of Juvenile  
 23          Justice" for references to "juvenile probation  
 24          officer"; creating s. 985.17, F.S.; providing  
 25          legislative intent; requiring the department to  
 26          provide specialized services to minimize the

27 |       likelihood that youth will enter the juvenile justice  
 28 |       system; providing for the department to promote the  
 29 |       Invest in Children license plate to help fund  
 30 |       prevention programs and services; providing for the  
 31 |       department to monitor state-funded programs, grants,  
 32 |       contracts, appropriations, and activities designed to  
 33 |       prevent juvenile crime and report annually on these  
 34 |       measures; limiting expenditure of funds to those  
 35 |       prevention services that are consistent with the law  
 36 |       and maximize public accountability; amending s.  
 37 |       985.24, F.S.; revising factors to determine if the use  
 38 |       of detention care is appropriate; authorizing the  
 39 |       department to establish nonsecure, nonresidential  
 40 |       evening reporting centers; conforming provisions;  
 41 |       amending s. 985.245, F.S.; conforming provisions;  
 42 |       amending s. 985.25, F.S.; requiring a child to be held  
 43 |       in secure detention under certain circumstances;  
 44 |       clarifying procedures for releasing a child before the  
 45 |       child's detention hearing; conforming provisions;  
 46 |       amending s. 985.255, F.S.; providing that a child  
 47 |       shall be given a detention hearing within 24 hours  
 48 |       after being taken into custody; clarifying when a  
 49 |       court may order continued detention care; revising  
 50 |       specified factors for ordering continued detention  
 51 |       care; clarifying when a child charged with domestic  
 52 |       violence can be held in secure detention; revising

53 | written findings required to retain a child charged  
 54 | with domestic violence in secure detention; deleting  
 55 | obsolete provisions; amending s. 985.26, F.S.;  
 56 | conforming terminology; amending s. 985.265, F.S.;  
 57 | revising procedures for transferring a child to  
 58 | another detention status; providing new notification  
 59 | requirements for when a child is released or  
 60 | transferred from secure detention; revising the  
 61 | frequency of physical observation checks for children  
 62 | detained in jail facilities; amending s. 985.27, F.S.;  
 63 | requiring a child to be held in secure detention  
 64 | pending placement in a high-risk or maximum-risk  
 65 | residential program; conforming provisions; amending  
 66 | s. 985.275, F.S.; requiring the department to notify  
 67 | specified parties when a child absconds from a  
 68 | commitment program; requiring the department to make  
 69 | every reasonable effort to locate the absconded child;  
 70 | amending s. 985.433, F.S.; revising the content of a  
 71 | predisposition report; conforming terminology;  
 72 | amending s. 985.435, F.S.; authorizing a probation  
 73 | program to include an alternative consequence  
 74 | component that may be used to address noncompliance  
 75 | with the technical conditions of probation; requiring  
 76 | the department to identify a child's risk of  
 77 | reoffending if the child is being placed on probation  
 78 | or postcommitment probation; amending s. 985.439,

79 | F.S.; authorizing the department to establish  
 80 | alternative sanctions for violations of probation or  
 81 | postcommitment probation; conforming terminology;  
 82 | amending s. 985.441, F.S.; providing that a child on  
 83 | probation for certain offenses may not be committed  
 84 | for a probation violation that is technical in nature;  
 85 | conforming terminology; amending s. 985.46, F.S.;  
 86 | revising the definition of the term "conditional  
 87 | release"; revising terminology; amending s. 985.461,  
 88 | F.S.; expanding the opportunity for transition-to-  
 89 | adulthood services to all children; revising  
 90 | provisions that the department may use to support  
 91 | participation in transition-to-adulthood services;  
 92 | conforming terminology; amending ss. 985.481 and  
 93 | 985.4815, F.S.; deleting obsolete provisions; amending  
 94 | s. 985.514, F.S.; conforming provisions; amending s.  
 95 | 985.601, F.S.; requiring the department's programs to  
 96 | include trauma-informed care, family engagement  
 97 | resources and programs, and gender-specific  
 98 | programming; authorizing the department to pay the  
 99 | expenses of programs and activities that address the  
 100 | needs and well-being of children in its care or under  
 101 | its supervision; conforming terminology; repealing ss.  
 102 | 985.605, 985.606, and 985.61, F.S.; deleting  
 103 | provisions relating to prevention services programs  
 104 | and providers and early delinquency intervention

105 | programs; amending s. 985.632, F.S.; providing for the  
 106 | establishment of a performance accountability system  
 107 | for contract providers; revising definitions;  
 108 | providing for the development of a Comprehensive  
 109 | Accountability Report; requiring the department to  
 110 | prepare and submit the report annually to the Governor  
 111 | and Legislature; specifying content that must be  
 112 | included in the report; revising provisions relating  
 113 | to the cost-effectiveness model and quality  
 114 | improvement; amending s. 985.644, F.S.; clarifying an  
 115 | exemption for specified certified law enforcement,  
 116 | correctional, and correctional probation officers  
 117 | relating to a requirement to submit to level 2  
 118 | background screenings; creating s. 985.6441, F.S.;  
 119 | providing definitions; limiting the amount that the  
 120 | department may pay a hospital or health care provider  
 121 | for health care services based on a percentage of the  
 122 | Medicare allowable rate; providing applicability;  
 123 | amending s. 985.66, F.S.; revising specified juvenile  
 124 | justice staff development and training procedures;  
 125 | expanding application of training requirements to  
 126 | contract providers who care for children in the  
 127 | department's custody; amending s. 985.664, F.S.;  
 128 | deleting obsolete provisions relating to the initial  
 129 | selection of the juvenile justice circuit advisory  
 130 | board chairs; revising procedures for appointing

131 juvenile justice circuit advisory board chairs;  
 132 providing that chairs serve at the pleasure of the  
 133 secretary; amending s. 985.672, F.S.; clarifying  
 134 language concerning expenditures of the direct-support  
 135 organization's funds; authorizing the direct-support  
 136 organization to use department personnel services;  
 137 defining the term "personnel services"; amending s.  
 138 985.682, F.S.; deleting obsolete provisions regarding  
 139 a comprehensive study relating to the siting of  
 140 facilities; amending s. 985.69, F.S.; providing for  
 141 the use of specified funds for repair and maintenance;  
 142 repealing s. 985.694, F.S.; deleting a provision  
 143 relating to the Juvenile Care and Maintenance Trust  
 144 Fund; amending s. 985.701, F.S.; defining the term  
 145 "juvenile offender" for purposes of prohibiting sexual  
 146 misconduct with juvenile offenders; creating s.  
 147 985.702, F.S.; providing definitions; providing for  
 148 the imposition of criminal penalties against specified  
 149 employees who inflict neglect upon juvenile offenders;  
 150 providing enhanced penalties for such treatment that  
 151 results in great bodily harm, permanent disability, or  
 152 permanent disfigurement to a juvenile offender;  
 153 specifying that such conduct constitutes sufficient  
 154 cause for an employee's dismissal from employment;  
 155 prohibiting such employee from future employment with  
 156 the juvenile justice system; providing incident

157 reporting requirements; prohibiting an employee who  
 158 witnesses such an incident from knowingly or willfully  
 159 failing to report such incident; prohibiting false  
 160 reporting, preventing another from reporting, or  
 161 coercing another to alter testimony or reports;  
 162 providing criminal penalties; amending s. 985.721,  
 163 F.S.; correcting a cross-reference; amending s.  
 164 943.0582, F.S.; clarifying that minors are not  
 165 eligible for expunction if they have been charged by a  
 166 state attorney for other crimes; repealing s. 945.75,  
 167 F.S.; deleting a requirement that the Department of  
 168 Corrections and counties develop programs under which  
 169 a judge may order juveniles who have committed  
 170 delinquent acts to tour correctional facilities;  
 171 amending ss. 121.0515, 316.635, and 318.143, F.S.;  
 172 conforming provisions and correcting cross-references;  
 173 providing effective dates.

174

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

176

177 Section 1. Section 985.01, Florida Statutes, is amended to  
 178 read:

179 985.01 Purposes and intent.—

180 (1) The purposes of this chapter are:

181 (a) To increase public safety by reducing juvenile  
 182 delinquency through effective prevention, intervention, and

183 treatment services that strengthen and reform the lives of  
 184 children.

185 (b)~~(a)~~ To provide judicial and other procedures to assure  
 186 due process through which children, victims, and other  
 187 interested parties are assured fair hearings by a respectful and  
 188 respected court or other tribunal and the recognition,  
 189 protection, and enforcement of their constitutional and other  
 190 legal rights, while ensuring that public safety interests and  
 191 the authority and dignity of the courts are adequately  
 192 protected.

193 (c)~~(b)~~ To provide ~~for the care, safety, and protection of~~  
 194 ~~children in~~ an environment that fosters healthy social,  
 195 emotional, intellectual, educational, and physical development;  
 196 to ensure secure and safe custody; and to promote the health and  
 197 well-being of all children under the state's care.

198 (d)~~(e)~~ To ensure the protection of society, by providing  
 199 for a comprehensive standardized assessment of the child's needs  
 200 so that the most appropriate control, discipline, punishment,  
 201 and treatment can be administered consistent with the  
 202 seriousness of the act committed, the community's long-term need  
 203 for public safety, the prior record of the child, and the  
 204 specific rehabilitation needs of the child, while also  
 205 providing, whenever possible, restitution to the victim of the  
 206 offense.

207 (e)~~(d)~~ To preserve and strengthen the child's family ties  
 208 whenever possible, by providing for removal of the child from



209 the physical custody of a parent ~~parental custody~~ only when his  
 210 or her welfare or the safety and protection of the public cannot  
 211 be adequately safeguarded without such removal; and, when the  
 212 child is removed from his or her own family, to secure custody,  
 213 care, and discipline for the child as nearly as possible  
 214 equivalent to that which should have been given by the parents,  
 215 ~~and to assure, in all cases in which a child must be permanently~~  
 216 ~~removed from parental custody, that the child be placed in an~~  
 217 ~~approved family home, adoptive home, independent living program,~~  
 218 ~~or other placement that provides the most stable and permanent~~  
 219 ~~living arrangement for the child, as determined by the court.~~

220 (f)(e)1. To assure that the adjudication and disposition  
 221 of a child alleged or found to have committed a violation of  
 222 Florida law be exercised with appropriate discretion and in  
 223 keeping with the seriousness of the offense and the need for  
 224 treatment services, and that all findings made under this  
 225 chapter be based upon facts presented at a hearing that meets  
 226 the constitutional standards of fundamental fairness and due  
 227 process.

228 2. To assure that the sentencing and placement of a child  
 229 tried as an adult be appropriate and in keeping with the  
 230 seriousness of the offense and the child's need for  
 231 rehabilitative services, and that the proceedings and procedures  
 232 applicable to such sentencing and placement be applied within  
 233 the full framework of constitutional standards of fundamental  
 234 fairness and due process.

235 (g)~~(f)~~ To provide children committed to the department  
 236 with training in life skills, including career and technical  
 237 education, when appropriate.

238 (h) To care for children in the least restrictive and most  
 239 appropriate service environments to ensure that children  
 240 assessed as low and moderate risk to reoffend are not committed  
 241 to residential programs.

242 (i) To allocate resources for the most effective programs,  
 243 services, and treatments to ensure that children, their  
 244 families, and their community support systems are connected with  
 245 these programs at the points along the juvenile justice  
 246 continuum where they will have the most impact.

247 (2) It is the intent of the Legislature that this chapter  
 248 be liberally interpreted and construed in conformity with its  
 249 declared purposes.

250 Section 2. Paragraphs (g) and (h) of subsection (1),  
 251 subsections (2) and (3), paragraph (b) of subsection (4), and  
 252 subsections (5) and (7) of section 985.02, Florida Statutes, are  
 253 amended, and subsections (8) and (9) are added to that section,  
 254 to read:

255 985.02 Legislative intent for the juvenile justice  
 256 system.—

257 (1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of  
 258 the Legislature that the children of this state be provided with  
 259 the following protections:

260 (g) Access to prevention programs and ~~preventive~~ services.

261 ~~(h) An independent, trained advocate when intervention is~~  
 262 ~~necessary, and a skilled guardian or caretaker in a safe~~  
 263 ~~environment when alternative placement is necessary.~~

264 (2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that  
 265 children in the care of the state's ~~dependency and delinquency~~  
 266 system ~~systems~~ need appropriate health care services, that the  
 267 impact of substance abuse on health indicates the need for  
 268 health care services to include substance abuse services where  
 269 appropriate, and that it is in the state's best interest that  
 270 such children be provided the services they need to enable them  
 271 to become and remain independent of state care. In order to  
 272 provide these services, the state's ~~dependency and delinquency~~  
 273 system ~~systems~~ must have the ability to identify and provide  
 274 appropriate intervention and treatment for children with  
 275 personal or family-related substance abuse problems. It is  
 276 therefore the purpose of the Legislature to provide authority  
 277 for the state to contract with community substance abuse  
 278 treatment providers for the development and operation of  
 279 specialized support and overlay services for the ~~dependency and~~  
 280 ~~delinquency~~ system ~~systems~~, which will be fully implemented and  
 281 utilized as resources permit.

282 (3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the  
 283 policy of the state with respect to juvenile justice and  
 284 delinquency prevention to first protect the public from acts of  
 285 delinquency. In addition, it is the policy of the state to:

286 (a) Develop and implement effective methods of preventing

287 and reducing acts of delinquency, with a focus on maintaining  
 288 and strengthening the family as a whole so that children may  
 289 remain in their homes or communities.

290 (b) Develop and implement effective programs to prevent  
 291 delinquency, to divert children from the traditional juvenile  
 292 justice system, to intervene at an early stage of delinquency,  
 293 and to provide critically needed alternatives to  
 294 institutionalization and deep-end commitment.

295 (c) Provide well-trained personnel, high-quality services,  
 296 and cost-effective programs within the juvenile justice system.

297 (d) Increase the capacity of local governments and public  
 298 and private agencies to conduct rehabilitative treatment  
 299 programs and to provide research, evaluation, and training  
 300 services in the field of juvenile delinquency prevention.

301

302 ~~The Legislature intends that detention care, in addition to~~  
 303 ~~providing secure and safe custody, will promote the health and~~  
 304 ~~well-being of the children committed thereto and provide an~~  
 305 ~~environment that fosters their social, emotional, intellectual,~~  
 306 ~~and physical development.~~

307 (4) DETENTION.—

308 (b) The Legislature intends that a juvenile found to have  
 309 committed a delinquent act understands the consequences and the  
 310 serious nature of such behavior. Therefore, the Legislature  
 311 finds that secure detention is appropriate to provide punishment  
 312 for children who pose a threat to public safety ~~that discourages~~

313 ~~further delinquent behavior.~~ The Legislature also finds that  
 314 certain juveniles have committed a sufficient number of criminal  
 315 acts, including acts involving violence to persons, to represent  
 316 sufficient danger to the community to warrant sentencing and  
 317 placement within the adult system. It is the intent of the  
 318 Legislature to establish clear criteria in order to identify  
 319 these juveniles and remove them from the juvenile justice  
 320 system.

321 (5) SITING OF FACILITIES.—

322 (a) The Legislature finds that timely siting and  
 323 development of needed residential facilities for juvenile  
 324 offenders is critical to the public safety of the citizens of  
 325 this state and to the effective rehabilitation of juvenile  
 326 offenders.

327 (b) It is the purpose of the Legislature to guarantee that  
 328 such facilities are sited and developed within reasonable  
 329 timeframes after they are legislatively authorized and  
 330 appropriated.

331 (c) The Legislature further finds that such facilities  
 332 must be located in areas of the state close to the home  
 333 communities of the children they house in order to ensure the  
 334 most effective rehabilitation efforts, ~~and the most intensive~~  
 335 postrelease supervision, and case management. The placement of  
 336 facilities close to the home communities of the children they  
 337 house is also intended to facilitate family involvement in the  
 338 treatment process. Residential facilities shall have no more

339 than 90 ~~165~~ beds each, including campus-style programs, unless  
 340 those campus-style programs include more than one ~~level of~~  
 341 ~~restrictiveness, provide multilevel education and treatment~~  
 342 program programs using different treatment protocols, and have  
 343 facilities that coexist separately in distinct locations on the  
 344 same property.

345 (d) It is the intent of the Legislature that all other  
 346 departments and agencies of the state shall cooperate fully with  
 347 the Department of Juvenile Justice to accomplish the siting of  
 348 facilities for juvenile offenders.

349  
 350 The supervision, counseling, and rehabilitative treatment, ~~and~~  
 351 ~~punitive~~ efforts of the juvenile justice system should avoid the  
 352 inappropriate use of correctional programs and large  
 353 institutions. ~~The Legislature finds that detention services~~  
 354 ~~should exceed the primary goal of providing safe and secure~~  
 355 ~~eustody pending adjudication and disposition.~~

356 (7) GENDER-SPECIFIC PROGRAMMING.—

357 (a) The Legislature finds that the ~~prevention, treatment,~~  
 358 ~~and rehabilitation~~ needs of children youth served by the  
 359 juvenile justice system are gender-specific. A gender-specific  
 360 approach is one in which programs, services, and treatments  
 361 comprehensively address the unique developmental needs of a  
 362 targeted gender group under the care of the department. Young  
 363 women and men have different pathways to delinquency, display  
 364 different patterns of offending, and respond differently to

365 interventions, treatment, and services.

366 (b) ~~Gender-specific programming refers to unique program~~  
 367 ~~models and services that comprehensively address the needs of a~~  
 368 ~~targeted gender group. Gender-specific services require the~~  
 369 ~~adherence to the principle of equity to ensure that the~~  
 370 ~~different interests of young women and men are recognized and~~  
 371 ~~varying needs are met, with equality as the desired outcome.~~  
 372 Gender-specific interventions focus ~~programming focuses~~ on the  
 373 differences between young females' and young males' social roles  
 374 and responsibilities, ~~positions in society,~~ access to and use of  
 375 resources, history of trauma, and reasons for interaction with  
 376 the juvenile justice system ~~and social codes governing behavior.~~  
 377 Gender-specific programs increase the effectiveness of programs  
 378 by making interventions more appropriate to the specific needs  
 379 of young women and men and ensuring that these programs do not  
 380 unknowingly create, maintain, or reinforce gender roles or  
 381 relations that may be damaging.

382 (8) TRAUMA-INFORMED CARE.—The Legislature finds that the  
 383 department should use trauma-informed care as an approach to  
 384 treating children with histories of trauma. Trauma-informed care  
 385 assists service providers in recognizing the symptoms of trauma  
 386 and acknowledges the role trauma has played in the child's life.  
 387 Services for children should be based on an understanding of the  
 388 vulnerabilities and triggers of trauma survivors that  
 389 traditional service delivery approaches may exacerbate, so that  
 390 these services and programs can be more supportive and avoid

391 retraumatization. The department should use trauma-specific  
 392 interventions that are designed to address the consequences of  
 393 trauma in the child and to facilitate healing.

394 (9) FAMILY AND COMMUNITY ENGAGEMENT.—The Legislature finds  
 395 that families and community support systems are critical to the  
 396 success of children and to ensure they are nondelinquent.  
 397 Therefore, when appropriate, children who can safely be held  
 398 accountable when served and treated in their homes and  
 399 communities should be diverted from more restrictive placements  
 400 within the juvenile justice system. There should be an emphasis  
 401 on strengthening the family and immersing the family members in  
 402 their community support system. The department should develop  
 403 customized plans that acknowledge the importance of family and  
 404 community support systems. The customized plans should recognize  
 405 a child's individual needs, capitalize on their strengths,  
 406 reduce their risks, and prepare them for a successful transition  
 407 to, and unification with, their family and community support  
 408 system. The child's family must be considered in the  
 409 department's process of assessing the needs, services and  
 410 treatment, and community connections of the children who are  
 411 involved in the juvenile justice system or in danger of becoming  
 412 involved in the system.

413 Section 3. Section 985.03, Florida Statutes, is amended to  
 414 read:

415 985.03 Definitions.—As used in this chapter, the term:  
 416 (1) "Abscond" means to hide, conceal, or absent oneself



417 from the jurisdiction of the court or supervision of the  
 418 department to avoid prosecution or supervision.

419 (2)~~(1)~~ "Addictions receiving facility" means a substance  
 420 abuse service provider as defined in chapter 397.

421 (3)~~(2)~~ "Adjudicatory hearing" means a hearing for the  
 422 court to determine whether or not the facts support the  
 423 allegations stated in the petition, as is provided for under s.  
 424 985.35 in delinquency cases.

425 (4)~~(3)~~ "Adult" means any natural person other than a  
 426 child.

427 (5)~~(4)~~ "Arbitration" means a process whereby a neutral  
 428 third person or panel, called an arbitrator or an arbitration  
 429 panel, considers the facts and arguments presented by the  
 430 parties and renders a decision which may be binding or  
 431 nonbinding.

432 (6)~~(5)~~ "Authorized agent" or "designee" of the department  
 433 means a person or agency assigned or designated by the  
 434 department ~~or the Department of Children and Family Services, as~~  
 435 ~~appropriate,~~ to perform duties or exercise powers under this  
 436 chapter and includes contract providers and their employees ~~for~~  
 437 ~~purposes of providing services to and managing cases of children~~  
 438 ~~in need of services and families in need of services.~~

439 (7)~~(6)~~ "Child" or "juvenile" or "youth" means any  
 440 ~~unmarried~~ person under the age of 18 ~~who has not been~~  
 441 ~~emancipated by order of the court and who has been found or~~  
 442 ~~alleged to be dependent, in need of services, or from a family~~

443 ~~in need of services,~~ or any married or unmarried person who is  
 444 alleged to have committed ~~charged with~~ a violation of law  
 445 occurring prior to the time that person reached the age of 18  
 446 years.

447 ~~(8)(7)~~ "Child in need of services" has the same meaning as  
 448 provided in s. 984.03 ~~means a child for whom there is no pending~~  
 449 ~~investigation into an allegation or suspicion of abuse, neglect,~~  
 450 ~~or abandonment; no pending referral alleging the child is~~  
 451 ~~delinquent; or no current supervision by the department or the~~  
 452 ~~Department of Children and Family Services for an adjudication~~  
 453 ~~of dependency or delinquency. The child must also, under this~~  
 454 ~~chapter, be found by the court:~~

455 ~~(a) To have persistently run away from the child's parents~~  
 456 ~~or legal custodians despite reasonable efforts of the child, the~~  
 457 ~~parents or legal custodians, and appropriate agencies to remedy~~  
 458 ~~the conditions contributing to the behavior. Reasonable efforts~~  
 459 ~~shall include voluntary participation by the child's parents or~~  
 460 ~~legal custodians and the child in family mediation, services,~~  
 461 ~~and treatment offered by the department or the Department of~~  
 462 ~~Children and Family Services;~~

463 ~~(b) To be habitually truant from school, while subject to~~  
 464 ~~compulsory school attendance, despite reasonable efforts to~~  
 465 ~~remedy the situation under ss. 1003.26 and 1003.27 and through~~  
 466 ~~voluntary participation by the child's parents or legal~~  
 467 ~~custodians and by the child in family mediation, services, and~~  
 468 ~~treatment offered by the Department of Juvenile Justice or the~~

469 ~~Department of Children and Family Services, or~~  
 470 ~~(c) To have persistently disobeyed the reasonable and~~  
 471 ~~lawful demands of the child's parents or legal custodians, and~~  
 472 ~~to be beyond their control despite efforts by the child's~~  
 473 ~~parents or legal custodians and appropriate agencies to remedy~~  
 474 ~~the conditions contributing to the behavior. Reasonable efforts~~  
 475 ~~may include such things as good faith participation in family or~~  
 476 ~~individual counseling.~~

477 (9)~~(8)~~ "Child who has been found to have committed a  
 478 delinquent act" means a child who, under this chapter, is found  
 479 by a court to have committed a violation of law or to be in  
 480 direct or indirect contempt of court, except that this  
 481 definition does not include an act constituting contempt of  
 482 court arising out of a dependency proceeding or a proceeding  
 483 concerning a child or family in need of services.

484 ~~(9) "Child support" means a court ordered obligation,~~  
 485 ~~enforced under chapter 61 and ss. 409.2551-409.2597, for~~  
 486 ~~monetary support for the care, maintenance, training, and~~  
 487 ~~education of a child.~~

488 (10) "Circuit" means any of the 20 judicial circuits as  
 489 set forth in s. 26.021.

490 (11) "Comprehensive assessment" or "assessment" means the  
 491 gathering of information for the evaluation of a juvenile  
 492 offender's or a child's physical, psychological, educational,  
 493 career and technical education ~~vocational~~, and social condition  
 494 and family environment as they relate to the child's need for

495 rehabilitative and treatment services, including substance abuse  
 496 treatment services, mental health services, developmental  
 497 services, literacy services, medical services, family services,  
 498 and other specialized services, as appropriate.

499 (12) "Conditional release" means the care, treatment,  
 500 help, ~~and~~ supervision, and provision of transition-to-adulthood  
 501 services provided to a juvenile released from a residential  
 502 commitment program which is intended to promote rehabilitation  
 503 and prevent recidivism. The purpose of conditional release is to  
 504 protect the public, reduce recidivism, increase responsible  
 505 productive behavior, and provide for a successful transition of  
 506 the youth from the department to his or her ~~the~~ family.  
 507 Conditional release includes, but is not limited to,  
 508 nonresidential community-based programs.

509 (13) "Court," ~~unless otherwise expressly stated,~~ means the  
 510 circuit court assigned to exercise jurisdiction under this  
 511 chapter, unless otherwise expressly stated.

512 (14) "Day treatment" means a nonresidential, community-  
 513 based program designed to provide therapeutic intervention to  
 514 youth who are served by the department, ~~who are~~ placed on  
 515 probation or conditional release, or are committed to the  
 516 minimum-risk nonresidential level. A day treatment program may  
 517 provide educational and career and technical education  
 518 ~~vocational~~ services and shall provide case management services;  
 519 individual, group, and family counseling; training designed to  
 520 address delinquency risk factors; and monitoring of a youth's

521 compliance with, and facilitation of a youth's completion of,  
 522 sanctions if ordered by the court. Program types may include,  
 523 but are not limited to, career programs, marine programs,  
 524 juvenile justice alternative schools, training and  
 525 rehabilitation programs, and gender-specific programs.

526 (15) (a) "Delinquency program" means any intake, probation,  
 527 or similar program; regional detention center or facility; or  
 528 community-based program, whether owned and operated by or  
 529 contracted by the department, or institution owned and operated  
 530 by or contracted by the department, which provides intake,  
 531 supervision, or custody and care of children who are alleged to  
 532 be or who have been found to be delinquent under this chapter.

533 (b) "Delinquency program staff" means supervisory and  
 534 direct care staff of a delinquency program as well as support  
 535 staff who have direct contact with children in a delinquency  
 536 program.

537 ~~(c) "Delinquency prevention programs" means programs~~  
 538 ~~designed for the purpose of reducing the occurrence of~~  
 539 ~~delinquency, including criminal gang activity, and juvenile~~  
 540 ~~arrests. The term excludes arbitration, diversionary or~~  
 541 ~~mediation programs, and community service work or other~~  
 542 ~~treatment available subsequent to a child committing a~~  
 543 ~~delinquent act.~~

544 (16) "Department" means the Department of Juvenile  
 545 Justice.

546 (17) "Designated facility" or "designated treatment

547 facility" means any facility designated by the department to  
 548 provide treatment to juvenile offenders.

549 (18) "Detention care" means the temporary care of a child  
 550 in secure or, nonsecure, ~~or home~~ detention, pending a court  
 551 adjudication or disposition or execution of a court order. There  
 552 are two ~~three~~ types of detention care, as follows:

553 (a) "Secure detention" means temporary custody of the  
 554 child while the child is under the physical restriction of a  
 555 secure detention center or facility pending adjudication,  
 556 disposition, or placement.

557 ~~(b) "Nonsecure detention" means temporary custody of the~~  
 558 ~~child while the child is in a residential home in the community~~  
 559 ~~in a physically nonrestrictive environment under the supervision~~  
 560 ~~of the Department of Juvenile Justice pending adjudication,~~  
 561 ~~disposition, or placement.~~

562 (b) ~~(e)~~ "Nonsecure detention" ~~"Home detention"~~ means  
 563 temporary, nonsecure custody of the child while the child is  
 564 released to the custody of the parent, guardian, or custodian in  
 565 a physically nonrestrictive environment under the supervision of  
 566 the department staff pending adjudication, disposition, or  
 567 placement. Forms of nonsecure detention include, but are not  
 568 limited to, home detention, electronic monitoring, day reporting  
 569 centers, evening reporting centers, and nonsecure shelters.  
 570 Nonsecure detention may include other requirements imposed by  
 571 the court.

572 (19) "Detention center or facility" means a facility used

573 pending court adjudication or disposition or execution of court  
 574 order for the temporary care of a child alleged or found to have  
 575 committed a violation of law. A detention center or facility may  
 576 provide secure ~~or nonsecure~~ custody. A facility used for the  
 577 commitment of adjudicated delinquents shall not be considered a  
 578 detention center or facility.

579 (20) "Detention hearing" means a hearing for the court to  
 580 determine if a child should be placed in temporary custody, as  
 581 provided for under part V in delinquency cases.

582 (21) "Disposition hearing" means a hearing in which the  
 583 court determines the most appropriate dispositional services in  
 584 the least restrictive available setting provided for under part  
 585 VII, in delinquency cases.

586 (22) "Family" means a collective of persons, consisting of  
 587 a child and a parent, guardian, adult custodian, or adult  
 588 relative, in which:

589 (a) The persons reside in the same house or living unit;  
 590 or

591 (b) The parent, guardian, adult custodian, or adult  
 592 relative has a legal responsibility by blood, marriage, or court  
 593 order to support or care for the child.

594 (23) "Family in need of services" has the same meaning as  
 595 provided in s. 984.03 ~~means a family that has a child for whom~~  
 596 ~~there is no pending investigation into an allegation of abuse,~~  
 597 ~~neglect, or abandonment or no current supervision by the~~  
 598 ~~department or the Department of Children and Family Services for~~

599 ~~an adjudication of dependency or delinquency. The child must~~  
 600 ~~also have been referred to a law enforcement agency or the~~  
 601 ~~department for:~~

602 ~~(a) Running away from parents or legal custodians;~~

603 ~~(b) Persistently disobeying reasonable and lawful demands~~  
 604 ~~of parents or legal custodians, and being beyond their control;~~  
 605 ~~or~~

606 ~~(c) Habitual truancy from school.~~

607 ~~(24) "Foster care" means care provided a child in a foster~~  
 608 ~~family or boarding home, group home, agency boarding home, child~~  
 609 ~~care institution, or any combination thereof.~~

610 ~~(25) "Habitually truant" means that:~~

611 ~~(a) The child has 15 unexcused absences within 90 calendar~~  
 612 ~~days with or without the knowledge or justifiable consent of the~~  
 613 ~~child's parent or legal guardian, is subject to compulsory~~  
 614 ~~school attendance under s. 1003.21(1) and (2)(a), and is not~~  
 615 ~~exempt under s. 1003.21(3), s. 1003.24, or any other exemptions~~  
 616 ~~specified by law or the rules of the State Board of Education.~~

617 ~~(b) Escalating activities to determine the cause, and to~~  
 618 ~~attempt the remediation, of the child's truant behavior under~~  
 619 ~~ss. 1003.26 and 1003.27 have been completed.~~

620 ~~If a child who is subject to compulsory school attendance is~~  
 621 ~~responsive to the interventions described in ss. 1003.26 and~~  
 622 ~~1003.27 and has completed the necessary requirements to pass the~~  
 623 ~~current grade as indicated in the district pupil progression~~  
 624 ~~plan, the child shall not be determined to be habitually truant~~



625 ~~and shall be passed.~~

626

627 ~~If a child within the compulsory school attendance age has 15~~  
 628 ~~unexcused absences within 90 calendar days or fails to enroll in~~  
 629 ~~school, the state attorney may file a child-in-need-of-services~~  
 630 ~~petition. Before filing a petition, the child must be referred~~  
 631 ~~to the appropriate agency for evaluation. After consulting with~~  
 632 ~~the evaluating agency, the state attorney may elect to file a~~  
 633 ~~child-in-need-of-services petition.~~

634 ~~(c) A school representative, designated according to~~  
 635 ~~school board policy, and a juvenile probation officer of the~~  
 636 ~~department have jointly investigated the truancy problem or, if~~  
 637 ~~that was not feasible, have performed separate investigations to~~  
 638 ~~identify conditions that could be contributing to the truant~~  
 639 ~~behavior; and if, after a joint staffing of the case to~~  
 640 ~~determine the necessity for services, such services were~~  
 641 ~~determined to be needed, the persons who performed the~~  
 642 ~~investigations met jointly with the family and child to discuss~~  
 643 ~~any referral to appropriate community agencies for economic~~  
 644 ~~services, family or individual counseling, or other services~~  
 645 ~~required to remedy the conditions that are contributing to the~~  
 646 ~~truant behavior.~~

647 ~~(d) The failure or refusal of the parent or legal guardian~~  
 648 ~~or the child to participate, or make a good faith effort to~~  
 649 ~~participate, in the activities prescribed to remedy the truant~~  
 650 ~~behavior, or the failure or refusal of the child to return to~~

651 ~~school after participation in activities required by this~~  
 652 ~~subsection, or the failure of the child to stop the truant~~  
 653 ~~behavior after the school administration and the department have~~  
 654 ~~worked with the child as described in s. 1003.27(3) shall be~~  
 655 ~~handled as prescribed in s. 1003.27.~~

656 ~~(26) "Halfway house" means a community-based residential~~  
 657 ~~program for 10 or more committed delinquents at the moderate-~~  
 658 ~~risk commitment level which is operated or contracted by the~~  
 659 ~~department.~~

660 (24) ~~(27)~~ "Intake" means the initial acceptance and  
 661 screening by the department or juvenile assessment center  
 662 personnel of a complaint or a law enforcement report or probable  
 663 cause affidavit of delinquency, ~~family in need of services, or~~  
 664 ~~child in need of services~~ to determine the recommendation to be  
 665 taken in the best interests of the child, the family, and the  
 666 community. The emphasis of intake is on diversion and the least  
 667 restrictive available services. Consequently, intake includes  
 668 such alternatives as:

669 (a) The disposition of the complaint, report, or probable  
 670 cause affidavit without court or public agency action or  
 671 judicial handling when appropriate.

672 (b) The referral of the child to another public or private  
 673 agency when appropriate.

674 (c) The recommendation by the department juvenile  
 675 ~~probation officer~~ of judicial handling when appropriate and  
 676 warranted.

677        (25)~~(28)~~ "Judge" means the circuit judge exercising  
 678 jurisdiction pursuant to this chapter.

679        (26)~~(29)~~ "Juvenile justice continuum" includes, but is not  
 680 limited to, ~~delinquency~~ prevention programs and services  
 681 designed for the purpose of preventing or reducing delinquent  
 682 acts, including criminal activity by criminal gangs, and  
 683 juvenile arrests, as well as programs and services targeted at  
 684 children who have committed delinquent acts, and children who  
 685 have previously been committed to residential treatment programs  
 686 for delinquents. The term includes children-in-need-of-services  
 687 and families-in-need-of-services programs under chapter 984;  
 688 conditional release; substance abuse and mental health programs;  
 689 educational and career programs; recreational programs;  
 690 community services programs; community service work programs;  
 691 mother-infant programs; and alternative dispute resolution  
 692 programs serving children at risk of delinquency and their  
 693 families, whether offered or delivered by state or local  
 694 governmental entities, public or private for-profit or not-for-  
 695 profit organizations, or religious or charitable organizations.

696        (27)~~(30)~~ "Juvenile probation officer" means the authorized  
 697 agent of the department who performs the intake, case  
 698 management, or supervision functions.

699        (28)~~(31)~~ "Legal custody or guardian" means a legal status  
 700 created by court order or letter of guardianship which vests in  
 701 a custodian of the person or guardian, whether an agency or an  
 702 individual, the right to have physical custody of the child and

703 the right and duty to protect, train, and discipline the child  
 704 and to provide him or her with food, shelter, education, and  
 705 ordinary medical, dental, psychiatric, and psychological care.

706 (29)~~(32)~~ "Licensed child-caring agency" means a person,  
 707 society, association, or agency licensed by the Department of  
 708 Children and Families ~~Family Services~~ to care for, receive, and  
 709 board children.

710 (30)~~(33)~~ "Licensed health care professional" means a  
 711 physician licensed under chapter 458, an osteopathic physician  
 712 licensed under chapter 459, a nurse licensed under part I of  
 713 chapter 464, a physician assistant licensed under chapter 458 or  
 714 chapter 459, or a dentist licensed under chapter 466.

715 (31)~~(34)~~ "Likely to injure oneself" means that, as  
 716 evidenced by violent or other actively self-destructive  
 717 behavior, it is more likely than not that within a 24-hour  
 718 period the child will attempt to commit suicide or inflict  
 719 serious bodily harm on himself or herself.

720 (32)~~(35)~~ "Likely to injure others" means that it is more  
 721 likely than not that within a 24-hour period the child will  
 722 inflict serious and unjustified bodily harm on another person.

723 (33)~~(36)~~ "Mediation" means a process whereby a neutral  
 724 third person called a mediator acts to encourage and facilitate  
 725 the resolution of a dispute between two or more parties. It is  
 726 an informal and nonadversarial process with the objective of  
 727 helping the disputing parties reach a mutually acceptable and  
 728 voluntary agreement. In mediation, decisionmaking authority

729 rests with the parties. The role of the mediator includes, but  
 730 is not limited to, assisting the parties in identifying issues,  
 731 fostering joint problem solving, and exploring settlement  
 732 alternatives.

733 (34)~~(37)~~ "Mother-infant program" means a residential  
 734 program designed to serve the needs of juvenile mothers or  
 735 expectant juvenile mothers who are committed as delinquents,  
 736 which is operated or contracted by the department. A mother-  
 737 infant program facility must be licensed as a child care  
 738 facility under s. 402.308 and must provide the services and  
 739 support necessary to enable each juvenile mother committed to  
 740 the facility to provide for the needs of her infants who, upon  
 741 agreement of the mother, may accompany her in the program.

742 (35)~~(38)~~ "Necessary medical treatment" means care which is  
 743 necessary within a reasonable degree of medical certainty to  
 744 prevent the deterioration of a child's condition or to alleviate  
 745 immediate pain of a child.

746 (36)~~(39)~~ "Next of kin" means an adult relative of a child  
 747 who is the child's brother, sister, grandparent, aunt, uncle, or  
 748 first cousin.

749 (37)~~(40)~~ "Ordinary medical care" means medical procedures  
 750 that are administered or performed on a routine basis and  
 751 include, but are not limited to, inoculations, physical  
 752 examinations, remedial treatment for minor illnesses and  
 753 injuries, preventive services, medication management, chronic  
 754 disease detection and treatment, and other medical procedures

755 that are administered or performed on a routine basis and do not  
 756 involve hospitalization, surgery, the use of general anesthesia,  
 757 or the provision of psychotropic medications.

758 (38)~~(41)~~ "Parent" means a woman who gives birth to a child  
 759 and a man whose consent to the adoption of the child would be  
 760 required under s. 63.062(1). If a child has been legally  
 761 adopted, the term "parent" means the adoptive mother or father  
 762 of the child. The term does not include an individual whose  
 763 parental relationship to the child has been legally terminated,  
 764 or an alleged or prospective parent, unless the parental status  
 765 falls within the terms of either s. 39.503(1) or s. 63.062(1).

766 (39)~~(42)~~ "Preliminary screening" means the gathering of  
 767 preliminary information to be used in determining a child's need  
 768 for further evaluation or assessment or for referral for other  
 769 substance abuse services through means such as psychosocial  
 770 interviews; urine and breathalyzer screenings; and reviews of  
 771 available educational, delinquency, and dependency records of  
 772 the child.

773 ~~(43) "Preventive services" means social services and other~~  
 774 ~~supportive and rehabilitative services provided to the parent of~~  
 775 ~~the child, the legal guardian of the child, or the custodian of~~  
 776 ~~the child and to the child for the purpose of averting the~~  
 777 ~~removal of the child from the home or disruption of a family~~  
 778 ~~which will or could result in the placement of a child in foster~~  
 779 ~~care. Social services and other supportive and rehabilitative~~  
 780 ~~services shall promote the child's need for a safe, continuous,~~

781 ~~stable living environment and shall promote family autonomy and~~  
 782 ~~shall strengthen family life as the first priority whenever~~  
 783 ~~possible.~~

784 (40) "Prevention" means programs, strategies, initiatives,  
 785 and networks designed to keep children from making initial or  
 786 further contact with the juvenile justice system.

787 ~~(41)(44)~~ "Probation" means the legal status of probation  
 788 created by law and court order in cases involving a child who  
 789 has been found to have committed a delinquent act. Probation is  
 790 an individualized program in which the freedom of the child is  
 791 limited and the child is restricted to noninstitutional quarters  
 792 or restricted to the child's home in lieu of commitment to the  
 793 custody of the department. Youth on probation may be assessed  
 794 and classified for placement in day-treatment probation programs  
 795 designed for youth who represent a minimum risk to themselves  
 796 and public safety and do not require placement and services in a  
 797 residential setting.

798 ~~(42)(45)~~ "Relative" means a grandparent, great-  
 799 grandparent, sibling, first cousin, aunt, uncle, great-aunt,  
 800 great-uncle, niece, or nephew, whether related by the whole or  
 801 half blood, by affinity, or by adoption. The term does not  
 802 include a stepparent.

803 ~~(43)(47)~~ "Respite" means a placement that is available for  
 804 the care, custody, and placement of a youth charged with  
 805 domestic violence as an alternative to secure detention or for  
 806 placement of a youth when a shelter bed for a child in need of

807 services or a family in need of services is unavailable.

808 (44)~~(46)~~ "Restrictiveness level" means the level of  
 809 programming and security provided by programs that service the  
 810 supervision, custody, care, and treatment needs of committed  
 811 children. Sections 985.601(10) and 985.721 apply to children  
 812 placed in programs at any residential commitment level. The  
 813 restrictiveness levels of commitment are as follows:

814 (a) Minimum-risk nonresidential.—Programs or program  
 815 models at this commitment level work with youth who remain in  
 816 the community and participate at least 5 days per week in a day  
 817 treatment program. Youth assessed and classified for programs at  
 818 this commitment level represent a minimum risk to themselves and  
 819 public safety and do not require placement and services in  
 820 residential settings. Youth in this level have full access to,  
 821 and reside in, the community. Youth who have been found to have  
 822 committed delinquent acts that involve firearms, that are sexual  
 823 offenses, or that would be life felonies or first degree  
 824 felonies if committed by an adult may not be committed to a  
 825 program at this level.

826 ~~(b) Low risk residential. Programs or program models at~~  
 827 ~~this commitment level are residential but may allow youth to~~  
 828 ~~have unsupervised access to the community. Residential~~  
 829 ~~facilities shall have no more than 165 beds each, including~~  
 830 ~~campus style programs, unless those campus style programs~~  
 831 ~~include more than one level of restrictiveness, provide~~  
 832 ~~multilevel education and treatment programs using different~~



833 ~~treatment protocols, and have facilities that coexist separately~~  
 834 ~~in distinct locations on the same property. Youth assessed and~~  
 835 ~~classified for placement in programs at this commitment level~~  
 836 ~~represent a low risk to themselves and public safety but do~~  
 837 ~~require placement and services in residential settings. Children~~  
 838 ~~who have been found to have committed delinquent acts that~~  
 839 ~~involve firearms, delinquent acts that are sexual offenses, or~~  
 840 ~~delinquent acts that would be life felonies or first degree~~  
 841 ~~felonies if committed by an adult shall not be committed to a~~  
 842 ~~program at this level.~~

843 (b)(e) Nonsecure Moderate-risk residential.—Programs or  
 844 program models at this commitment level are residential but may  
 845 allow youth to have supervised access to the community.  
 846 Facilities at this commitment level are either environmentally  
 847 secure, staff secure, or are hardware-secure with walls,  
 848 fencing, or locking doors. Residential facilities at this  
 849 commitment level shall have no more than 90 ~~165~~ beds each,  
 850 including campus-style programs, unless those campus-style  
 851 programs include more than one ~~level of restrictiveness, provide~~  
 852 ~~multilevel education and treatment program programs~~ using  
 853 different treatment protocols, and have facilities that coexist  
 854 separately in distinct locations on the same property.  
 855 Facilities at this commitment level shall provide 24-hour awake  
 856 supervision, custody, care, and treatment of residents. Youth  
 857 assessed and classified for placement in programs at this  
 858 commitment level represent a low or moderate risk to public

859 safety and require close supervision. The staff at a facility at  
 860 this commitment level may seclude a child who is a physical  
 861 threat to himself or herself or others. Mechanical restraint may  
 862 also be used when necessary.

863 ~~(c)(d)~~ High-risk residential.—Programs or program models  
 864 at this commitment level are residential and do not allow youth  
 865 to have access to the community, except that temporary release  
 866 providing community access for up to 72 continuous hours may be  
 867 approved by a court for a youth who has made successful progress  
 868 in his or her program in order for the youth to attend a family  
 869 emergency or, during the final 60 days of his or her placement,  
 870 to visit his or her home, enroll in school or a career and  
 871 technical education ~~vocational~~ program, complete a job  
 872 interview, or participate in a community service project. High-  
 873 risk residential facilities are hardware-secure with perimeter  
 874 fencing and locking doors. Residential facilities at this  
 875 commitment level shall have no more than 90 ~~165~~ beds each,  
 876 including campus-style programs, unless those campus-style  
 877 programs include more than one ~~level of restrictiveness, provide~~  
 878 ~~multilevel education and treatment~~ program programs using  
 879 different treatment protocols, and have facilities that coexist  
 880 separately in distinct locations on the same property.  
 881 Facilities at this commitment level shall provide 24-hour awake  
 882 supervision, custody, care, and treatment of residents. Youth  
 883 assessed and classified for this level of placement require  
 884 close supervision in a structured residential setting. Placement

885 in programs at this level is prompted by a concern for public  
 886 safety that outweighs placement in programs at lower commitment  
 887 levels. The staff at a facility at this commitment level may  
 888 seclude a child who is a physical threat to himself or herself  
 889 or others. Mechanical restraint may also be used when necessary.  
 890 The facility may provide for single cell occupancy, except that  
 891 youth may be housed together during prerelease transition.

892 (d)(e) Maximum-risk residential.—Programs or program  
 893 models at this commitment level include juvenile correctional  
 894 facilities and juvenile prisons. The programs at this commitment  
 895 level are long-term residential and do not allow youth to have  
 896 access to the community. Facilities at this commitment level are  
 897 maximum-custody, hardware-secure with perimeter security fencing  
 898 and locking doors. Residential facilities at this commitment  
 899 level shall have no more than 90 ~~165~~ beds each, including  
 900 campus-style programs, unless those campus-style programs  
 901 include more than one ~~level of restrictiveness, provide~~  
 902 ~~multilevel education and treatment program programs~~ using  
 903 different treatment protocols, and have facilities that coexist  
 904 separately in distinct locations on the same property.  
 905 Facilities at this commitment level shall provide 24-hour awake  
 906 supervision, custody, care, and treatment of residents. The  
 907 staff at a facility at this commitment level may seclude a child  
 908 who is a physical threat to himself or herself or others.  
 909 Mechanical restraint may also be used when necessary. Facilities  
 910 at this commitment level ~~The facility~~ shall provide for single

911 cell occupancy, except that youth may be housed together during  
 912 prerelease transition. Youth assessed and classified for this  
 913 level of placement require close supervision in a maximum  
 914 security residential setting. Placement in a program at this  
 915 level is prompted by a demonstrated need to protect the public.

916 (45)~~(48)~~ "Secure detention center or facility" means a  
 917 physically restricting facility for the temporary care of  
 918 children, pending adjudication, disposition, or placement.

919 (46)~~(49)~~ "Shelter" means a place for the temporary care of  
 920 a child who is alleged to be or who has been found to be  
 921 delinquent.

922 ~~(50) "Shelter hearing" means a hearing provided for under~~  
 923 ~~s. 984.14 in family-in-need-of-services cases or child-in-need-~~  
 924 ~~of-services cases.~~

925 ~~(51) "Staff-secure shelter" means a facility in which a~~  
 926 ~~child is supervised 24 hours a day by staff members who are~~  
 927 ~~awake while on duty. The facility is for the temporary care and~~  
 928 ~~assessment of a child who has been found to be dependent, who~~  
 929 ~~has violated a court order and been found in contempt of court,~~  
 930 ~~or whom the Department of Children and Family Services is unable~~  
 931 ~~to properly assess or place for assistance within the continuum~~  
 932 ~~of services provided for dependent children.~~

933 (47)~~(52)~~ "Substance abuse" means using, without medical  
 934 reason, any psychoactive or mood-altering drug, including  
 935 alcohol, in such a manner as to induce impairment resulting in  
 936 dysfunctional social behavior.

937            (48)~~(53)~~ "Taken into custody" means the status of a child  
 938 immediately when temporary physical control over the child is  
 939 attained by a person authorized by law, pending the child's  
 940 release, detention, placement, or other disposition as  
 941 authorized by law.

942            (49)~~(54)~~ "Temporary legal custody" means the relationship  
 943 that a juvenile court creates between a child and an adult  
 944 relative of the child, adult nonrelative approved by the court,  
 945 or other person until a more permanent arrangement is ordered.  
 946 Temporary legal custody confers upon the custodian the right to  
 947 have temporary physical custody of the child and the right and  
 948 duty to protect, train, and discipline the child and to provide  
 949 the child with food, shelter, and education, and ordinary  
 950 medical, dental, psychiatric, and psychological care, unless  
 951 these rights and duties are otherwise enlarged or limited by the  
 952 court order establishing the temporary legal custody  
 953 relationship.

954            (50)~~(55)~~ "Temporary release" means the terms and  
 955 conditions under which a child is temporarily released from a  
 956 residential commitment facility or allowed home visits. If the  
 957 temporary release is from a nonsecure ~~moderate-risk~~ residential  
 958 facility, a high-risk residential facility, or a maximum-risk  
 959 residential facility, the terms and conditions of the temporary  
 960 release must be approved by the child, the court, and the  
 961 facility. ~~The term includes periods during which the child is~~  
 962 ~~supervised pursuant to a conditional release program or a period~~

963 ~~during which the child is supervised by a juvenile probation~~  
 964 ~~officer or other nonresidential staff of the department or staff~~  
 965 ~~employed by an entity under contract with the department.~~

966 (51) ~~(56)~~ "Transition-to-adulthood services" means services  
 967 that are provided for youth in the custody of the department or  
 968 under the supervision of the department and that have the  
 969 objective of instilling the knowledge, skills, and aptitudes  
 970 essential to a socially integrated, self-supporting adult life.  
 971 The services may include, but are not limited to:

972 (a) Assessment of the youth's ability and readiness for  
 973 adult life.

974 (b) A plan for the youth to acquire the knowledge,  
 975 information, and counseling necessary to make a successful  
 976 transition to adulthood.

977 (c) Services that have proven effective toward achieving  
 978 the transition to adulthood.

979 (52) "Trauma-informed care" means services that are  
 980 provided to children with a history of trauma, recognizing the  
 981 symptoms of trauma and acknowledging the role that trauma has  
 982 played in the child's life. Trauma may include, but is not  
 983 limited to, community and school violence, physical or sexual  
 984 abuse, neglect, medical difficulties, and domestic violence.

985 (53) ~~(57)~~ "Violation of law" or "delinquent act" means a  
 986 violation of any law of this state, the United States, or any  
 987 other state which is a misdemeanor or a felony or a violation of  
 988 a county or municipal ordinance which would be punishable by

989 incarceration if the violation were committed by an adult.

990 (54)~~(58)~~ "Waiver hearing" means a hearing provided for  
991 under s. 985.556(4).

992 Section 4. Subsections (4) and (5) of section 985.0301,  
993 Florida Statutes, are amended to read:

994 985.0301 Jurisdiction.—

995 (4)(a) Petitions alleging delinquency shall be filed in  
996 the county where the delinquent act or violation of law  
997 occurred. The ~~, but the~~ circuit court for that county may  
998 transfer the case to the circuit court of the circuit in which  
999 the child resides or will reside at the time of detention or  
1000 placement for dispositional purposes. A child who has been  
1001 detained may ~~shall~~ be transferred to the appropriate detention  
1002 center or facility in the circuit in which the child resides or  
1003 will reside at the time of detention ~~or other placement directed~~  
1004 ~~by the receiving court.~~

1005 (b) The jurisdiction to be exercised by the court when a  
1006 child is taken into custody before the filing of a petition  
1007 under subsection (2) shall be exercised by the circuit court for  
1008 the county in which the child is taken into custody, which court  
1009 shall have personal jurisdiction of the child and the child's  
1010 parent or legal guardian. Upon the filing of a petition in the  
1011 appropriate circuit court, the court that is exercising initial  
1012 jurisdiction of the person of the child shall, if the child has  
1013 been detained, immediately order the child to be transferred to  
1014 the detention center or facility or other placement as ordered

1015 by the court having subject matter jurisdiction of the case.

1016 (5) (a) Notwithstanding s. ss. 743.07, 985.43, 985.433,  
 1017 985.435, 985.439, and 985.441, and except as provided in  
 1018 paragraph (b) ss. 985.461 and 985.465 and paragraph (f), when  
 1019 the jurisdiction of any child who is alleged to have committed a  
 1020 delinquent act or violation of law is obtained, the court shall  
 1021 retain jurisdiction to dispose a case, unless relinquished by  
 1022 its order, until the child reaches 19 years of age, with the  
 1023 same power over the child which the court had before the child  
 1024 became an adult. ~~For the purposes of s. 985.461, the court may~~  
 1025 ~~retain jurisdiction for an additional 365 days following the~~  
 1026 ~~child's 19th birthday if the child is participating in~~  
 1027 ~~transition to adulthood services. The additional services do not~~  
 1028 ~~extend involuntary court-sanctioned residential commitment and~~  
 1029 ~~therefore require voluntary participation by the affected youth.~~

1030 (b) The court shall retain jurisdiction, Notwithstanding  
 1031 ss. 743.07 and 985.455(3), the term of any order placing a child  
 1032 in a probation program must be until the child's 19th birthday  
 1033 unless relinquished by its own order:

1034 1. Over a child on probation until the child reaches 19  
 1035 years of age he or she is released by the court on the motion of  
 1036 an interested party or on his or her own motion.

1037 2. Over a child committed to the department until the  
 1038 child reaches 21 years of age, specifically for the purpose of  
 1039 allowing the child to complete the commitment program, including  
 1040 conditional release supervision.



1041 (c) The court shall retain jurisdiction over a juvenile  
 1042 sexual offender, as defined in s. 985.475, who has been placed  
 1043 on community-based treatment alternative with supervision or who  
 1044 has been placed in a program or facility for juvenile sexual  
 1045 offenders, pursuant to s. 985.48, until the juvenile sexual  
 1046 offender reaches 21 years of age, specifically for the purpose  
 1047 of allowing the juvenile to complete the program.

1048 ~~(c) Notwithstanding ss. 743.07 and 985.455(3), the term of~~  
 1049 ~~the commitment must be until the child is discharged by the~~  
 1050 ~~department or until he or she reaches the age of 21 years.~~  
 1051 ~~Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441,~~  
 1052 ~~985.455, and 985.513, and except as provided in this section, a~~  
 1053 ~~child may not be held under a commitment from a court under s.~~  
 1054 ~~985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming~~  
 1055 ~~21 years of age.~~

1056 ~~(d) The court may retain jurisdiction over a child~~  
 1057 ~~committed to the department for placement in a juvenile prison~~  
 1058 ~~or in a high-risk or maximum-risk residential commitment program~~  
 1059 ~~to allow the child to participate in a juvenile conditional~~  
 1060 ~~release program pursuant to s. 985.46. The jurisdiction of the~~  
 1061 ~~court may not be retained after the child's 22nd birthday.~~  
 1062 ~~However, if the child is not successful in the conditional~~  
 1063 ~~release program, the department may use the transfer procedure~~  
 1064 ~~under s. 985.441(4).~~

1065 ~~(e) The court may retain jurisdiction over a child~~  
 1066 ~~committed to the department for placement in an intensive~~

1067 ~~residential treatment program for 10-year-old to 13-year-old~~  
 1068 ~~offenders, in the residential commitment program in a juvenile~~  
 1069 ~~prison or in a residential sex offender program until the child~~  
 1070 ~~reaches the age of 21. If the court exercises this jurisdiction~~  
 1071 ~~retention, it shall do so solely for the purpose of the child~~  
 1072 ~~completing the intensive residential treatment program for 10-~~  
 1073 ~~year-old to 13-year-old offenders, in the residential commitment~~  
 1074 ~~program in a juvenile prison, or in a residential sex offender~~  
 1075 ~~program. Such jurisdiction retention does not apply for other~~  
 1076 ~~programs, other purposes, or new offenses.~~

1077 ~~(f) The court may retain jurisdiction over a child~~  
 1078 ~~committed to a juvenile correctional facility or a juvenile~~  
 1079 ~~prison until the child reaches the age of 21 years, specifically~~  
 1080 ~~for the purpose of allowing the child to complete such program.~~

1081 ~~(g) The court may retain jurisdiction over a juvenile~~  
 1082 ~~sexual offender who has been placed in a program or facility for~~  
 1083 ~~juvenile sexual offenders until the juvenile sexual offender~~  
 1084 ~~reaches the age of 21, specifically for the purpose of~~  
 1085 ~~completing the program.~~

1086 (d) ~~(h)~~ The court may retain jurisdiction over a child and  
 1087 the child's parent or legal guardian whom the court has ordered  
 1088 to pay restitution until the restitution order is satisfied. To  
 1089 retain jurisdiction, the court shall enter a restitution order,  
 1090 which is separate from any disposition or order of commitment,  
 1091 on or prior to the date that the court's jurisdiction would  
 1092 cease under this section. The contents of the restitution order

1093 shall be limited to the child's name and address, the name and  
 1094 address of the parent or legal guardian, the name and address of  
 1095 the payee, the case number, the date and amount of restitution  
 1096 ordered, any amount of restitution paid, the amount of  
 1097 restitution due and owing, and a notation that costs, interest,  
 1098 penalties, and attorney fees may also be due and owing. The  
 1099 terms of the restitution order are subject to s. 775.089(5).

1100 ~~(e)(i)~~ This subsection does not prevent the exercise of  
 1101 jurisdiction by any court having jurisdiction of the child if  
 1102 the child, after becoming an adult, commits a violation of law.

1103 Section 5. Subsections (2) and (4) of section 985.037,  
 1104 Florida Statutes, are amended to read:

1105 985.037 Punishment for contempt of court; alternative  
 1106 sanctions.—

1107 (2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may  
 1108 be placed in a secure detention facility for purposes of  
 1109 punishment for contempt of court if alternative sanctions are  
 1110 unavailable or inappropriate, or if the child has already been  
 1111 ordered to serve an alternative sanction but failed to comply  
 1112 with the sanction. A delinquent child who has been held in  
 1113 direct or indirect contempt may be placed in a secure detention  
 1114 facility not to exceed 5 days for a first offense and not to  
 1115 exceed 15 days for a second or subsequent offense.

1116 (4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE  
 1117 PROCESS.—

1118 (a) If a child is charged with direct contempt of court,

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1119 including traffic court, the court may impose an authorized  
 1120 sanction immediately. The court must hold a hearing to determine  
 1121 if the child committed direct contempt. Due process must be  
 1122 afforded to the child during this hearing.

1123 (b) If a child is charged with indirect contempt of court,  
 1124 the court must hold a hearing within 24 hours to determine  
 1125 whether the child committed indirect contempt of a valid court  
 1126 order. At the hearing, the following due process rights must be  
 1127 provided to the child:

1128 1. Right to a copy of the order to show cause alleging  
 1129 facts supporting the contempt charge.

1130 2. Right to an explanation of the nature and the  
 1131 consequences of the proceedings.

1132 3. Right to legal counsel and the right to have legal  
 1133 counsel appointed by the court if the juvenile is indigent,  
 1134 under s. 985.033.

1135 4. Right to confront witnesses.

1136 5. Right to present witnesses.

1137 6. Right to have a transcript or record of the proceeding.

1138 7. Right to appeal to an appropriate court.

1139

1140 The child's parent or guardian may address the court regarding  
 1141 the due process rights of the child. Upon motion by the defense  
 1142 attorney or state attorney, the court shall review the placement  
 1143 of the child ~~every 72 hours~~ to determine whether it is  
 1144 appropriate for the child to remain in the facility.

1145 (c) The court may not order that a child be placed in a  
1146 secure detention facility for punishment for contempt unless the  
1147 court determines that an alternative sanction is inappropriate  
1148 or unavailable or that the child was initially ordered to an  
1149 alternative sanction and did not comply with the alternative  
1150 sanction. The court is encouraged to order a child to perform  
1151 community service, up to the maximum number of hours, where  
1152 appropriate before ordering that the child be placed in a secure  
1153 detention facility as punishment for contempt of court.

1154 (d) In addition to any other sanction imposed under this  
1155 section, the court may direct the Department of Highway Safety  
1156 and Motor Vehicles to withhold issuance of, or suspend, a  
1157 child's driver ~~driver's~~ license or driving privilege. The court  
1158 may order that a child's driver ~~driver's~~ license or driving  
1159 privilege be withheld or suspended for up to 1 year for a first  
1160 offense of contempt and up to 2 years for a second or subsequent  
1161 offense. If the child's driver ~~driver's~~ license or driving  
1162 privilege is suspended or revoked for any reason at the time the  
1163 sanction for contempt is imposed, the court shall extend the  
1164 period of suspension or revocation by the additional period  
1165 ordered under this paragraph. If the child's driver ~~driver's~~  
1166 license is being withheld at the time the sanction for contempt  
1167 is imposed, the period of suspension or revocation ordered under  
1168 this paragraph shall begin on the date on which the child is  
1169 otherwise eligible to drive.

1170 Section 6. Paragraph (a) of subsection (1) of section

1171 985.039, Florida Statutes, is amended to read:

1172 985.039 Cost of supervision; cost of care.—

1173 (1) Except as provided in subsection (3) or subsection  
1174 (4):

1175 (a) When any child is placed into nonsecure ~~home~~  
1176 detention, probation, or other supervision status with the  
1177 department, or is committed to the minimum-risk nonresidential  
1178 restrictiveness level, the court shall order the parent of such  
1179 child to pay to the department a fee for the cost of the  
1180 supervision of such child in the amount of \$1 per day for each  
1181 day that the child is in such status.

1182 Section 7. Subsection (5) of section 985.045, Florida  
1183 Statutes, is amended to read:

1184 985.045 Court records.—

1185 (5) This chapter does not prohibit a circuit court from  
1186 providing a restitution order containing the information  
1187 prescribed in s. 985.0301(5)(d) ~~985.0301(5)(h)~~ to a collection  
1188 court or a private collection agency for the sole purpose of  
1189 collecting unpaid restitution ordered in a case in which the  
1190 circuit court has retained jurisdiction over the child and the  
1191 child's parent or legal guardian. The collection court or  
1192 private collection agency shall maintain the confidential status  
1193 of the information to the extent such confidentiality is  
1194 provided by law.

1195 Section 8. Paragraph (d) of subsection (1) and subsection  
1196 (3) of section 985.101, Florida Statutes, are amended to read:

1197 985.101 Taking a child into custody.—

1198 (1) A child may be taken into custody under the following  
1199 circumstances:

1200 (d) By a law enforcement officer who has probable cause to  
1201 believe that the child is in violation of the conditions of the  
1202 child's probation, nonsecure ~~home~~ detention, postcommitment  
1203 probation, or conditional release supervision; has absconded  
1204 from nonresidential commitment; or has escaped from residential  
1205 commitment.

1206

1207 Nothing in this subsection shall be construed to allow the  
1208 detention of a child who does not meet the detention criteria in  
1209 part V.

1210 (3) When a child is taken into custody as provided in this  
1211 section, the person taking the child into custody shall attempt  
1212 to notify the parent, guardian, or legal custodian of the child.  
1213 The person taking the child into custody shall continue such  
1214 attempt until the parent, guardian, or legal custodian of the  
1215 child is notified or the child is delivered to the department ~~a~~  
1216 ~~juvenile probation officer~~ under ss. 985.14 and 985.145,  
1217 whichever occurs first. If the child is delivered to the  
1218 department ~~a juvenile probation officer~~ before the parent,  
1219 guardian, or legal custodian is notified, the department  
1220 ~~juvenile probation officer~~ shall continue the attempt to notify  
1221 until the parent, guardian, or legal custodian of the child is  
1222 notified. Following notification, the parent or guardian must

1223 provide identifying information, including name, address, date  
 1224 of birth, social security number, and driver ~~driver's~~ license  
 1225 number or identification card number of the parent or guardian  
 1226 to the person taking the child into custody or the department  
 1227 ~~juvenile probation officer~~.

1228 Section 9. Section 985.105, Florida Statutes, is repealed.

1229 Section 10. Paragraph (b) of subsection (1) of section  
 1230 985.11, Florida Statutes, is amended to read:

1231 985.11 Fingerprinting and photographing.—

1232 (1)

1233 (b) Unless the child is issued a civil citation or is  
 1234 participating in a similar diversion program pursuant to s.

1235 985.12, a child who is charged with or found to have committed  
 1236 one of the following offenses shall be fingerprinted, and the  
 1237 fingerprints shall be submitted to the Department of Law  
 1238 Enforcement as provided in s. 943.051(3)(b):

1239 1. Assault, as defined in s. 784.011.

1240 2. Battery, as defined in s. 784.03.

1241 3. Carrying a concealed weapon, as defined in s.  
 1242 790.01(1).

1243 4. Unlawful use of destructive devices or bombs, as  
 1244 defined in s. 790.1615(1).

1245 5. Neglect of a child, as defined in s. 827.03(1)(e).

1246 6. Assault on a law enforcement officer, a firefighter, or  
 1247 other specified officers, as defined in s. 784.07(2)(a).

1248 7. Open carrying of a weapon, as defined in s. 790.053.



1249 8. Exposure of sexual organs, as defined in s. 800.03.

1250 9. Unlawful possession of a firearm, as defined in s.

1251 790.22(5).

1252 10. Petit theft, as defined in s. 812.014.

1253 11. Cruelty to animals, as defined in s. 828.12(1).

1254 12. Arson, resulting in bodily harm to a firefighter, as  
1255 defined in s. 806.031(1).

1256 13. Unlawful possession or discharge of a weapon or  
1257 firearm at a school-sponsored event or on school property as  
1258 defined in s. 790.115.

1259

1260 A law enforcement agency may fingerprint and photograph a child  
1261 taken into custody upon probable cause that such child has  
1262 committed any other violation of law, as the agency deems  
1263 appropriate. Such fingerprint records and photographs shall be  
1264 retained by the law enforcement agency in a separate file, and  
1265 these records and all copies thereof must be marked "Juvenile  
1266 Confidential." These records are not available for public  
1267 disclosure and inspection under s. 119.07(1) except as provided  
1268 in ss. 943.053 and 985.04(2), but shall be available to other  
1269 law enforcement agencies, criminal justice agencies, state  
1270 attorneys, the courts, the child, the parents or legal  
1271 custodians of the child, their attorneys, and any other person  
1272 authorized by the court to have access to such records. In  
1273 addition, such records may be submitted to the Department of Law  
1274 Enforcement for inclusion in the state criminal history records

1275 and used by criminal justice agencies for criminal justice  
 1276 purposes. These records may, in the discretion of the court, be  
 1277 open to inspection by anyone upon a showing of cause. The  
 1278 fingerprint and photograph records shall be produced in the  
 1279 court whenever directed by the court. Any photograph taken  
 1280 pursuant to this section may be shown by a law enforcement  
 1281 officer to any victim or witness of a crime for the purpose of  
 1282 identifying the person who committed such crime.

1283 Section 11. Subsection (2) of section 985.14, Florida  
 1284 Statutes, is amended to read:

1285 985.14 Intake and case management system.—

1286 (2) The intake process shall be performed by the  
 1287 department or juvenile assessment center personnel through a  
 1288 case management system. The purpose of the intake process is to  
 1289 assess the child's needs and risks and to determine the most  
 1290 appropriate treatment plan and setting for the child's  
 1291 programmatic needs and risks. The intake process shall consist  
 1292 of a preliminary screening and may be followed by a  
 1293 comprehensive assessment. The comprehensive assessment may  
 1294 consist of a full mental health, cognitive impairment, substance  
 1295 abuse, or psychosexual evaluation. The intake process shall  
 1296 result in choosing the most appropriate services through a  
 1297 balancing of the interests and needs of the child with those of  
 1298 the family and the community ~~public~~. The department ~~juvenile~~  
 1299 ~~probation officer~~ shall be responsible for making informed  
 1300 decisions and recommendations to other agencies, the state

1301 attorney, and the courts so that the child and family may  
 1302 receive the least intrusive service alternative throughout the  
 1303 judicial process. The department shall establish uniform  
 1304 procedures for the department ~~juvenile probation officer~~ to  
 1305 provide a preliminary screening of the child and family for  
 1306 substance abuse and mental health services prior to the filing  
 1307 of a petition or as soon as possible thereafter and prior to a  
 1308 disposition hearing.

1309 Section 12. Section 985.145, Florida Statutes, is amended  
 1310 to read:

1311 985.145 Responsibilities of the department ~~juvenile~~  
 1312 ~~probation officer~~ during intake; screenings and assessments.-

1313 (1) The department ~~juvenile probation officer~~ shall serve  
 1314 as the primary case manager for the purpose of managing,  
 1315 coordinating, and monitoring the services provided to the child.  
 1316 Each program administrator within the Department of Children and  
 1317 Families ~~Family Services~~ shall cooperate with the primary case  
 1318 manager in carrying out the duties and responsibilities  
 1319 described in this section. In addition to duties specified in  
 1320 other sections and through departmental rules, the department  
 1321 ~~assigned juvenile probation officer~~ shall be responsible for the  
 1322 following:

1323 (a) Reviewing probable cause affidavit.-The department  
 1324 ~~juvenile probation officer~~ shall make a preliminary  
 1325 determination as to whether the report, affidavit, or complaint  
 1326 is complete, consulting with the state attorney as may be

1327 necessary. A report, affidavit, or complaint alleging that a  
 1328 child has committed a delinquent act or violation of law shall  
 1329 be made to the intake office operating in the county in which  
 1330 the child is found or in which the delinquent act or violation  
 1331 of law occurred. Any person or agency having knowledge of the  
 1332 facts may make such a written report, affidavit, or complaint  
 1333 and shall furnish to the intake office facts sufficient to  
 1334 establish the jurisdiction of the court and to support a finding  
 1335 by the court that the child has committed a delinquent act or  
 1336 violation of law.

1337 (b) Notification concerning apparent insufficiencies in  
 1338 probable cause affidavit.—In any case where the department  
 1339 ~~juvenile probation officer~~ or the state attorney finds that the  
 1340 report, affidavit, or complaint is insufficient by the standards  
 1341 for a probable cause affidavit, the department ~~juvenile~~  
 1342 ~~probation officer~~ or state attorney shall return the report,  
 1343 affidavit, or complaint, without delay, to the person or agency  
 1344 originating the report, affidavit, or complaint or having  
 1345 knowledge of the facts or to the appropriate law enforcement  
 1346 agency having investigative jurisdiction of the offense, and  
 1347 shall request, and the person or agency shall promptly furnish,  
 1348 additional information in order to comply with the standards for  
 1349 a probable cause affidavit.

1350 (c) Screening.—During the intake process, the department  
 1351 ~~juvenile probation officer~~ shall screen each child or shall  
 1352 cause each child to be screened in order to determine:

1353 1. Appropriateness for release; referral to a diversionary  
 1354 program, including, but not limited to, a teen court program;  
 1355 referral for community arbitration; or referral to some other  
 1356 program or agency for the purpose of nonofficial or nonjudicial  
 1357 handling.

1358 2. The presence of medical, psychiatric, psychological,  
 1359 substance abuse, educational, or career and technical education  
 1360 ~~vocational~~ problems, or other conditions that may have caused  
 1361 the child to come to the attention of law enforcement or the  
 1362 department. The child shall also be screened to determine  
 1363 whether the child poses a danger to himself or herself or others  
 1364 in the community. The results of this screening shall be made  
 1365 available to the court and to court officers. In cases where  
 1366 such conditions are identified and a nonjudicial handling of the  
 1367 case is chosen, the department ~~juvenile probation officer~~ shall  
 1368 attempt to refer the child to a program or agency, together with  
 1369 all available and relevant assessment information concerning the  
 1370 child's precipitating condition.

1371 (d) Completing risk assessment instrument.—The department  
 1372 ~~juvenile probation officer~~ shall ensure that a risk assessment  
 1373 instrument establishing the child's eligibility for detention  
 1374 has been accurately completed and that the appropriate  
 1375 recommendation was made to the court.

1376 (e) Rights.—The department ~~juvenile probation officer~~  
 1377 shall inquire as to whether the child understands his or her  
 1378 rights to counsel and against self-incrimination.

1379 (f) Multidisciplinary assessment.—The department juvenile  
 1380 ~~probation officer~~ shall coordinate the multidisciplinary  
 1381 assessment when required, which includes the classification and  
 1382 placement process that determines the child's priority needs,  
 1383 risk classification, and treatment plan. When sufficient  
 1384 evidence exists to warrant a comprehensive assessment and the  
 1385 child fails to voluntarily participate in the assessment  
 1386 efforts, the department juvenile ~~probation officer~~ shall inform  
 1387 the court of the need for the assessment and the refusal of the  
 1388 child to participate in such assessment. This assessment,  
 1389 classification, and placement process shall develop into the  
 1390 predisposition report.

1391 (g) Comprehensive assessment.—The department juvenile  
 1392 ~~probation officer~~, pursuant to uniform procedures established by  
 1393 the department and upon determining that the report, affidavit,  
 1394 or complaint is complete, shall:

1395 1. Perform the preliminary screening and make referrals  
 1396 for a comprehensive assessment regarding the child's need for  
 1397 substance abuse treatment services, mental health services,  
 1398 intellectual disability services, literacy services, or other  
 1399 educational or treatment services.

1400 2. If indicated by the preliminary screening, provide for  
 1401 a comprehensive assessment of the child and family for substance  
 1402 abuse problems, using community-based licensed programs with  
 1403 clinical expertise and experience in the assessment of substance  
 1404 abuse problems.

1405           3. If indicated by the preliminary screening, provide for  
 1406 a comprehensive assessment of the child and family for mental  
 1407 health problems, using community-based psychologists,  
 1408 psychiatrists, or other licensed mental health professionals who  
 1409 have clinical expertise and experience in the assessment of  
 1410 mental health problems.

1411           (h) Referrals for services.—The department ~~juvenile~~  
 1412 ~~probation officer~~ shall make recommendations for services and  
 1413 facilitate the delivery of those services to the child,  
 1414 including any mental health services, educational services,  
 1415 family counseling services, family assistance services, and  
 1416 substance abuse services.

1417           (i) Recommendation concerning a petition.—Upon determining  
 1418 that the report, affidavit, or complaint complies with the  
 1419 standards of a probable cause affidavit and that the interests  
 1420 of the child and the public will be best served, the department  
 1421 ~~juvenile probation officer~~ may recommend that a delinquency  
 1422 petition not be filed. If such a recommendation is made, the  
 1423 department ~~juvenile probation officer~~ shall advise in writing  
 1424 the person or agency making the report, affidavit, or complaint,  
 1425 the victim, if any, and the law enforcement agency having  
 1426 investigative jurisdiction over the offense of the  
 1427 recommendation; the reasons therefor; and that the person or  
 1428 agency may submit, within 10 days after the receipt of such  
 1429 notice, the report, affidavit, or complaint to the state  
 1430 attorney for special review. The state attorney, upon receiving

1431 a request for special review, shall consider the facts presented  
 1432 by the report, affidavit, or complaint, and by the department  
 1433 ~~juvenile probation officer~~ who made the recommendation that no  
 1434 petition be filed, before making a final decision as to whether  
 1435 a petition or information should or should not be filed.

1436 (j) Completing intake report.—Subject to the interagency  
 1437 agreement authorized under this paragraph, the department ~~the~~  
 1438 ~~juvenile probation officer for each case in which a child is~~  
 1439 ~~alleged to have committed a violation of law or delinquent act~~  
 1440 ~~and is not detained~~ shall submit a written report to the state  
 1441 attorney for each case in which a child is alleged to have  
 1442 committed a violation of law or delinquent act and is not  
 1443 detained. The report shall be submitted within 20 days after the  
 1444 date the child is taken into custody and include ~~,including~~ the  
 1445 original police report, complaint, or affidavit, or a copy  
 1446 thereof, and including a copy of the child's prior juvenile  
 1447 record, ~~within 20 days after the date the child is taken into~~  
 1448 ~~eustody~~. In cases in which the child is in detention, the intake  
 1449 office report must be submitted within 24 hours after the child  
 1450 is placed into detention. The intake office report may include a  
 1451 recommendation that a petition or information be filed or that  
 1452 no petition or information be filed and may set forth reasons  
 1453 for the recommendation. The state attorney and the department  
 1454 may, on a district-by-district basis, enter into interagency  
 1455 agreements denoting the cases that will require a recommendation  
 1456 and those for which a recommendation is unnecessary.



1457 (2) Prior to requesting that a delinquency petition be  
 1458 filed or prior to filing a dependency petition, the department  
 1459 ~~juvenile probation officer~~ may request the parent or legal  
 1460 guardian of the child to attend a course of instruction in  
 1461 parenting skills, training in conflict resolution, and the  
 1462 practice of nonviolence; to accept counseling; or to receive  
 1463 other assistance from any agency in the community which notifies  
 1464 the clerk of the court of the availability of its services.  
 1465 Where appropriate, the department ~~juvenile probation officer~~  
 1466 shall request both parents or guardians to receive such parental  
 1467 assistance. The department ~~juvenile probation officer~~ may, in  
 1468 determining whether to request that a delinquency petition be  
 1469 filed, take into consideration the willingness of the parent or  
 1470 legal guardian to comply with such request. The parent or  
 1471 guardian must provide the department ~~juvenile probation officer~~  
 1472 with identifying information, including the parent's or  
 1473 guardian's name, address, date of birth, social security number,  
 1474 and driver ~~driver's~~ license number or identification card number  
 1475 in order to comply with s. 985.039.

1476 (3) When indicated by the comprehensive assessment, the  
 1477 department is authorized to contract within appropriated funds  
 1478 for services with a local nonprofit community mental health or  
 1479 substance abuse agency licensed or authorized under chapter 394  
 1480 or chapter 397 or other authorized nonprofit social service  
 1481 agency providing related services. The determination of mental  
 1482 health or substance abuse services shall be conducted in

1483 coordination with existing programs providing mental health or  
 1484 substance abuse services in conjunction with the intake office.

1485 (4) Client information resulting from the screening and  
 1486 evaluation shall be documented under rules of the department and  
 1487 shall serve to assist the department ~~juvenile probation officer~~  
 1488 in providing the most appropriate services and recommendations  
 1489 in the least intrusive manner. Such client information shall be  
 1490 used in the multidisciplinary assessment and classification of  
 1491 the child, but such information, and any information obtained  
 1492 directly or indirectly through the assessment process, is  
 1493 inadmissible in court prior to the disposition hearing, unless  
 1494 the child's written consent is obtained. At the disposition  
 1495 hearing, documented client information shall serve to assist the  
 1496 court in making the most appropriate custody, adjudicatory, and  
 1497 dispositional decision.

1498 (5) If the screening and assessment indicate that the  
 1499 interests of the child and the public will be best served, the  
 1500 department ~~juvenile probation officer~~, with the approval of the  
 1501 state attorney, may refer the child for care, diagnostic, and  
 1502 evaluation services; substance abuse treatment services; mental  
 1503 health services; intellectual disability services; a  
 1504 diversionary, arbitration, or mediation program; community  
 1505 service work; or other programs or treatment services  
 1506 voluntarily accepted by the child and the child's parents or  
 1507 legal guardian. If a child volunteers to participate in any work  
 1508 program under this chapter or volunteers to work in a specified

1509 state, county, municipal, or community service organization  
 1510 supervised work program or to work for the victim, the child is  
 1511 considered an employee of the state for the purposes of  
 1512 liability. In determining the child's average weekly wage,  
 1513 unless otherwise determined by a specific funding program, all  
 1514 remuneration received from the employer is considered a  
 1515 gratuity, and the child is not entitled to any benefits  
 1516 otherwise payable under s. 440.15 regardless of whether the  
 1517 child may be receiving wages and remuneration from other  
 1518 employment with another employer and regardless of the child's  
 1519 future wage-earning capacity.

1520 (6) The victim, if any, and the law enforcement agency  
 1521 that investigated the offense shall be notified immediately by  
 1522 the state attorney of the action taken under subsection (5).

1523 Section 13. Section 985.17, Florida Statutes, is created  
 1524 to read:

1525 985.17 Prevention services.-

1526 (1) The Legislature finds that prevention services  
 1527 decrease recidivism by addressing the needs of at-risk youth and  
 1528 their families, preventing further involvement of such youth in  
 1529 the juvenile justice system, protecting the safety of the  
 1530 public, and facilitating successful reentry of at-risk youth  
 1531 into the community. To assist with decreasing recidivism, the  
 1532 department's prevention services shall strengthen protective  
 1533 factors and reduce risk factors using tested and effective  
 1534 approaches.

1535 (2) A goal of the department's prevention services shall  
 1536 be to develop the capacity for local communities to serve their  
 1537 youth.

1538 (a) The department shall engage faith and community-based  
 1539 organizations to provide a full range of voluntary programs and  
 1540 services to prevent and reduce juvenile delinquency, including,  
 1541 but not limited to, chaplaincy services, crisis intervention  
 1542 counseling, mentoring, and tutoring.

1543 (b) The department shall establish volunteer coordinators  
 1544 in each circuit and encourage the recruitment of volunteers to  
 1545 serve as mentors for youth in department services.

1546 (c) The department shall promote the sale of the Invest in  
 1547 Children license plate to help fund programs and services to  
 1548 prevent juvenile delinquency. The department shall allocate  
 1549 money for programs and services within each county based on that  
 1550 county's proportionate share of the license plate annual use  
 1551 fees collected by the county.

1552 (3) The department's prevention services for youth at risk  
 1553 of becoming delinquent should:

1554 (a) Focus on preventing initial or further involvement of  
 1555 such youth in the juvenile justice system by including services  
 1556 such as literacy services, gender-specific programming,  
 1557 recreational services, and after-school services, and should  
 1558 include targeted services to troubled, truant, ungovernable,  
 1559 abused, trafficked, or runaway youth. To decrease the likelihood  
 1560 that a youth will commit a delinquent act, the department should

1561 use mentoring and may provide specialized services addressing  
 1562 the strengthening of families, job training, and substance  
 1563 abuse.

1564 (b) Address the multiple needs of such youth in order to  
 1565 decrease the prevalence of disproportionate minority  
 1566 representation in the juvenile justice system.

1567 (5) The department shall expend funds related to the  
 1568 prevention services in a manner consistent with the policies  
 1569 expressed in ss. 984.02 and 985.01 and in a manner that  
 1570 maximizes accountability to the public and ensures the  
 1571 documentation of outcomes.

1572 (a) As a condition of receipt of state funds, all entities  
 1573 that receive or use state moneys to fund prevention services  
 1574 through contracts with the department or grants from any entity  
 1575 dispersed by the department shall:

1576 1. Design the programs providing such services to further  
 1577 one or more of the following strategies:

1578 a. Encouraging youth to attend and succeed in school,  
 1579 which may include special assistance and tutoring to address  
 1580 deficiencies in academic performance and collecting outcome data  
 1581 to reveal the number of days youth attended school while  
 1582 participating in the program.

1583 b. Engaging youth in productive and wholesome activities  
 1584 during nonschool hours that build positive character, instill  
 1585 positive values, and enhance educational experiences.

1586 c. Encouraging youth to avoid the use of violence.

1587 d. Assisting youth in acquiring the skills needed to find  
 1588 meaningful employment, which may include assisting the youth in  
 1589 finding a suitable employer.

1590 2. Provide the department with demographic information,  
 1591 dates of services, and types of interventions received by each  
 1592 youth.

1593 (b) The department shall monitor output and outcome  
 1594 measures for each program strategy in paragraph (a) and annually  
 1595 report the outputs and outcomes in the Comprehensive  
 1596 Accountability Report as provided in s. 985.632.

1597 (c) The department shall monitor all state-funded programs  
 1598 that receive or use state moneys to fund the prevention services  
 1599 through contracts or grants with the department for compliance  
 1600 with all provisions in the contracts and grants.

1601 Section 14. Section 985.24, Florida Statutes, is amended  
 1602 to read:

1603 985.24 Use of detention; prohibitions.-

1604 (1) All determinations and court orders regarding the use  
 1605 of ~~secure, nonsecure, or home~~ detention care shall be based  
 1606 primarily upon findings that the child:

1607 (a) Presents a substantial risk of not appearing at a  
 1608 subsequent hearing;

1609 (b) Presents a substantial risk of inflicting bodily harm  
 1610 on others as evidenced by recent behavior, including the illegal  
 1611 possession of a firearm;

1612 (c) Presents a history of committing a property offense

1613 prior to adjudication, disposition, or placement;  
 1614 (d) Has committed contempt of court by:  
 1615 1. Intentionally disrupting the administration of the  
 1616 court;  
 1617 2. Intentionally disobeying a court order; or  
 1618 3. Engaging in a punishable act or speech in the court's  
 1619 presence which shows disrespect for the authority and dignity of  
 1620 the court; or  
 1621 (e) Requests protection from imminent bodily harm.  
 1622 (2) A child alleged to have committed a delinquent act or  
 1623 violation of law may not be placed into secure or nonsecure, ~~or~~  
 1624 ~~home~~ detention care for any of the following reasons:  
 1625 (a) To allow a parent to avoid his or her legal  
 1626 responsibility.  
 1627 (b) To permit more convenient administrative access to the  
 1628 child.  
 1629 (c) To facilitate further interrogation or investigation.  
 1630 (d) Due to a lack of more appropriate facilities.  
 1631 (3) A child alleged to be dependent under chapter 39 may  
 1632 not, under any circumstances, be placed into secure detention  
 1633 care.  
 1634 (4) The department may, within its existing resources,  
 1635 develop nonsecure, nonresidential evening reporting centers as  
 1636 an alternative to placing a child in secure detention. Evening  
 1637 reporting centers may be collocated with a juvenile assessment  
 1638 center. If established, evening reporting centers shall serve

1639 children and families who are awaiting a child's court hearing  
 1640 and, at a minimum, operate during the afternoon and evening  
 1641 hours to provide a highly structured program of supervision.  
 1642 Evening reporting centers may also provide academic tutoring,  
 1643 counseling, family engagement programs, and other activities.

1644 ~~(5)(4)~~ The department shall continue to identify  
 1645 alternatives to secure detention care and shall develop such  
 1646 alternatives and annually submit them to the Legislature for  
 1647 authorization and appropriation.

1648 Section 15. Paragraph (b) of subsection (2) and subsection  
 1649 (4) of section 985.245, Florida Statutes, are amended to read:

1650 985.245 Risk assessment instrument.—

1651 (2)

1652 (b) The risk assessment instrument shall take into  
 1653 consideration, but need not be limited to, prior history of  
 1654 failure to appear, prior offenses, offenses committed pending  
 1655 adjudication, any unlawful possession of a firearm, theft of a  
 1656 motor vehicle or possession of a stolen motor vehicle, and  
 1657 probation status at the time the child is taken into custody.  
 1658 The risk assessment instrument shall also take into  
 1659 consideration appropriate aggravating and mitigating  
 1660 circumstances, and shall be designed to target a narrower  
 1661 population of children than s. 985.255. The risk assessment  
 1662 instrument shall also include any information concerning the  
 1663 child's history of abuse and neglect. The risk assessment shall  
 1664 indicate whether detention care is warranted, and, if detention



1665 care is warranted, whether the child should be placed into  
 1666 secure or, nonsecure, ~~or home~~ detention care.

1667 (4) For a child who is under the supervision of the  
 1668 department through probation, ~~home detention~~, nonsecure  
 1669 detention, conditional release, postcommitment probation, or  
 1670 commitment and who is charged with committing a new offense, the  
 1671 risk assessment instrument may be completed and scored based on  
 1672 the underlying charge for which the child was placed under the  
 1673 supervision of the department and the new offense.

1674 Section 16. Subsection (1) of section 985.25, Florida  
 1675 Statutes, is amended to read:

1676 985.25 Detention intake.-

1677 (1) The department ~~juvenile probation officer~~ shall  
 1678 receive custody of a child who has been taken into custody from  
 1679 the law enforcement agency or court and shall review the facts  
 1680 in the law enforcement report or probable cause affidavit and  
 1681 make such further inquiry as may be necessary to determine  
 1682 whether detention care is appropriate ~~required~~.

1683 (a) During the period of time from the taking of the child  
 1684 into custody to the date of the detention hearing, the initial  
 1685 decision as to the child's placement into secure ~~detention care~~,  
 1686 or nonsecure detention care, ~~or home detention care~~ shall be  
 1687 made by the department ~~juvenile probation officer~~ under ss.  
 1688 985.24 and 985.245(1).

1689 (b) The department ~~juvenile probation officer~~ shall base  
 1690 the decision whether ~~or not~~ to place the child into secure

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1691 ~~detention care, home detention care,~~ or nonsecure detention care  
 1692 on an assessment of risk in accordance with the risk assessment  
 1693 instrument and procedures developed by the department under s.  
 1694 985.245. However, a child charged with possessing or discharging  
 1695 a firearm on school property in violation of s. 790.115 shall be  
 1696 placed in secure detention care. A child who has been taken into  
 1697 custody on three or more separate occasions within a 60-day  
 1698 period shall be placed in secure detention care until the  
 1699 child's detention hearing.

1700 (c) If the final score on the child's risk assessment  
 1701 instrument indicates ~~juvenile probation officer determines that~~  
 1702 ~~a child who is eligible for~~ detention care is appropriate, but  
 1703 the department otherwise determines the child based upon the  
 1704 ~~results of the risk assessment instrument~~ should be released,  
 1705 the department ~~juvenile probation officer~~ shall contact the  
 1706 state attorney, who may authorize release.

1707 (d) If the final score on the risk assessment instrument  
 1708 indicates detention is not appropriate ~~authorized~~, the child may  
 1709 be released by the department ~~juvenile probation officer~~ in  
 1710 accordance with ss. 985.115 and 985.13.

1711  
 1712 Under no circumstances shall the department ~~juvenile probation~~  
 1713 ~~officer~~ or the state attorney or law enforcement officer  
 1714 authorize the detention of any child in a jail or other facility  
 1715 intended or used for the detention of adults, without an order  
 1716 of the court.

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1717 Section 17. Subsections (1) and (2) and paragraphs (a) and  
 1718 (c) of subsection (3) of section 985.255, Florida Statutes, are  
 1719 amended to read:

1720 985.255 Detention criteria; detention hearing.-

1721 (1) Subject to s. 985.25(1), a child taken into custody  
 1722 and placed into secure or nonsecure ~~or home~~ detention care shall  
 1723 be given a hearing within 24 hours after being taken into  
 1724 custody. At the hearing, the court may order continued detention  
 1725 ~~or detained in secure detention care prior to a detention~~  
 1726 ~~hearing may continue to be detained by the court if:~~

1727 (a) The child is alleged to be an escapee from a  
 1728 residential commitment program; or an absconder from a  
 1729 nonresidential commitment program, a probation program, or  
 1730 conditional release supervision; or is alleged to have escaped  
 1731 while being lawfully transported to or from a residential  
 1732 commitment program.

1733 (b) The child is wanted in another jurisdiction for an  
 1734 offense which, if committed by an adult, would be a felony.

1735 (c) The child is charged with a delinquent act or  
 1736 violation of law and requests in writing through legal counsel  
 1737 to be detained for protection from an imminent physical threat  
 1738 to his or her personal safety.

1739 (d) The child is charged with committing an offense of  
 1740 domestic violence as defined in s. 741.28 and is detained as  
 1741 provided in subsection (2).

1742 (e) The child is charged with possession of or discharging

1743 a firearm on school property in violation of s. 790.115 or the  
 1744 illegal possession of a firearm.

1745 (f) The child is charged with a capital felony, a life  
 1746 felony, a felony of the first degree, a felony of the second  
 1747 degree that does not involve a violation of chapter 893, or a  
 1748 felony of the third degree that is also a crime of violence,  
 1749 including any such offense involving the use or possession of a  
 1750 firearm.

1751 (g) The child is charged with any second degree or third  
 1752 degree felony involving a violation of chapter 893 or any third  
 1753 degree felony that is not also a crime of violence, and the  
 1754 child:

- 1755 1. Has a record of failure to appear at court hearings  
 1756 after being properly notified in accordance with the Rules of  
 1757 Juvenile Procedure;
- 1758 2. Has a record of law violations prior to court hearings;
- 1759 3. Has already been detained or has been released and is  
 1760 awaiting final disposition of the case;
- 1761 4. Has a record of violent conduct resulting in physical  
 1762 injury to others; or
- 1763 5. Is found to have been in possession of a firearm.

1764 (h) The child is alleged to have violated the conditions  
 1765 of the child's probation or conditional release supervision.  
 1766 However, a child detained under this paragraph may be held only  
 1767 in a consequence unit as provided in s. 985.439. If a  
 1768 consequence unit is not available, the child shall be placed on

1769 nonsecure ~~home~~ detention with electronic monitoring.

1770 (i) The child is detained on a judicial order for failure  
 1771 to appear and has previously willfully failed to appear, after  
 1772 proper notice:

1773 1. For an adjudicatory hearing on the same case regardless  
 1774 of the results of the risk assessment instrument; or

1775 2. At two or more court hearings of any nature on the same  
 1776 case regardless of the results of the risk assessment  
 1777 instrument.

1778

1779 A child may be held in secure detention for up to 72 hours in  
 1780 advance of the next scheduled court hearing pursuant to this  
 1781 paragraph. The child's failure to keep the clerk of court and  
 1782 defense counsel informed of a current and valid mailing address  
 1783 where the child will receive notice to appear at court  
 1784 proceedings does not provide an adequate ground for excusal of  
 1785 the child's nonappearance at the hearings.

1786 ~~(j) The child is detained on a judicial order for failure~~  
 1787 ~~to appear and has previously willfully failed to appear, after~~  
 1788 ~~proper notice, at two or more court hearings of any nature on~~  
 1789 ~~the same case regardless of the results of the risk assessment~~  
 1790 ~~instrument. A child may be held in secure detention for up to 72~~  
 1791 ~~hours in advance of the next scheduled court hearing pursuant to~~  
 1792 ~~this paragraph. The child's failure to keep the clerk of court~~  
 1793 ~~and defense counsel informed of a current and valid mailing~~  
 1794 ~~address where the child will receive notice to appear at court~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1795 ~~proceedings does not provide an adequate ground for excusal of~~  
 1796 ~~the child's nonappearance at the hearings.~~

1797 (2) A child who is charged with committing an offense that  
 1798 is classified as an act of domestic violence as defined in s.  
 1799 741.28 and whose risk assessment instrument indicates secure  
 1800 detention is not appropriate ~~who does not meet detention~~  
 1801 ~~criteria~~ may be held in secure detention if the court makes  
 1802 specific written findings that:

- 1803 (a) Respite care for the child is not available; or-
- 1804 (b) It is necessary to place the child in secure detention
- 1805 in order to protect the victim from injury.

1806  
 1807 The child may not be held in secure detention under this  
 1808 subsection for more than 48 hours unless ordered by the court.  
 1809 After 48 hours, the court shall hold a hearing if the state  
 1810 attorney or victim requests that secure detention be continued.  
 1811 The child may continue to be held in detention care if the court  
 1812 makes a specific, written finding that respite care is  
 1813 unavailable or it ~~detention care~~ is necessary to protect the  
 1814 victim from injury. However, the child may not be held in  
 1815 detention care beyond the time limits set forth in this section  
 1816 or s. 985.26.

1817 (3) (a) ~~A child who meets any of the criteria in subsection~~  
 1818 ~~(1) and who is ordered to be detained under that subsection~~  
 1819 ~~shall be given a hearing within 24 hours after being taken into~~  
 1820 ~~custody.~~ The purpose of the detention hearing required under

1821 subsection (1) is to determine the existence of probable cause  
1822 that the child has committed the delinquent act or violation of  
1823 law that he or she is charged with and the need for continued  
1824 detention. Unless a child is detained under paragraph (1)(d) or  
1825 paragraph (1)(e), the court shall use the results of the risk  
1826 assessment performed by the department ~~juvenile probation~~  
1827 ~~officer~~ and, based on the criteria in subsection (1), shall  
1828 determine the need for continued detention. ~~A child placed into~~  
1829 ~~secure, nonsecure, or home detention care may continue to be so~~  
1830 ~~detained by the court.~~

1831 (c) Except as provided in s. 790.22(8) or in s. 985.27,  
1832 when a child is placed into secure or nonsecure detention care,  
1833 or into a respite home or other placement pursuant to a court  
1834 order following a hearing, the court order must include specific  
1835 instructions that direct the release of the child from such  
1836 placement no later than 5 p.m. on the last day of the detention  
1837 period specified in s. 985.26 or s. 985.27, whichever is  
1838 applicable, unless the requirements of such applicable provision  
1839 have been met or an order of continuance has been granted under  
1840 s. 985.26(4). If the court order does not include a release  
1841 date, the release date shall be requested from the court on the  
1842 same date that the child is placed in detention care. If a  
1843 subsequent hearing is needed to provide additional information  
1844 to the court for safety planning, the initial order placing the  
1845 child in detention care shall reflect the next detention review  
1846 hearing, which shall be held within 3 calendar days after the

1847 child's initial detention placement.

1848 Section 18. Subsections (1), (2), and (3) of section  
1849 985.26, Florida Statutes, are amended to read:

1850 985.26 Length of detention.—

1851 (1) A child may not be placed into or held in secure or  
1852 nonsecure, ~~or home~~ detention care for longer than 24 hours  
1853 unless the court orders such detention care, and the order  
1854 includes specific instructions that direct the release of the  
1855 child from such detention care, in accordance with s. 985.255.  
1856 The order shall be a final order, reviewable by appeal under s.  
1857 985.534 and the Florida Rules of Appellate Procedure. Appeals of  
1858 such orders shall take precedence over other appeals and other  
1859 pending matters.

1860 (2) A child may not be held in secure or nonsecure, ~~or~~  
1861 ~~home~~ detention care under a special detention order for more  
1862 than 21 days unless an adjudicatory hearing for the case has  
1863 been commenced in good faith by the court. However, upon good  
1864 cause being shown that the nature of the charge requires  
1865 additional time for the prosecution or defense of the case, the  
1866 court may extend the length of detention for an additional 9  
1867 days if the child is charged with an offense that would be, if  
1868 committed by an adult, a capital felony, a life felony, a felony  
1869 of the first degree, or a felony of the second degree involving  
1870 violence against any individual.

1871 (3) Except as provided in subsection (2), a child may not  
1872 be held in secure or nonsecure, ~~or home~~ detention care for more



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1873 than 15 days following the entry of an order of adjudication.

1874 Section 19. Section 985.265, Florida Statutes, is amended  
1875 to read:

1876 985.265 Detention transfer and release; education; adult  
1877 jails.—

1878 (1) If a child is detained under this part, the department  
1879 may transfer the child from nonsecure ~~or home~~ detention care to  
1880 secure detention care only if significantly changed  
1881 circumstances warrant such transfer.

1882 (2) If a child is on release status and not detained under  
1883 this part, the child may be placed into secure or nonsecure, ~~or~~  
1884 ~~home~~ detention care only pursuant to a court hearing in which  
1885 the original risk assessment instrument and the, rescored based  
1886 ~~on~~ newly discovered evidence or changed circumstances are  
1887 introduced into evidence with a rescored risk assessment  
1888 instrument with the results recommending detention, is  
1889 ~~introduced into evidence.~~

1890 (3) (a) When a juvenile sexual offender is placed in  
1891 detention, detention staff shall provide appropriate monitoring  
1892 and supervision to ensure the safety of other children in the  
1893 facility.

1894 (b) When a juvenile ~~sexual offender, under this~~  
1895 ~~subsection,~~ is released from secure detention or transferred to  
1896 ~~home detention or~~ nonsecure detention, detention staff shall  
1897 immediately notify the appropriate law enforcement agency, and  
1898 school personnel, and victim if the juvenile is charged with

1899 committing any of the following offenses or attempting to commit  
 1900 any of the following offenses:

- 1901 1. Murder, under s. 782.04;
- 1902 2. Sexual battery, under chapter 794;
- 1903 3. Stalking, under s. 784.048; or
- 1904 4. Domestic violence, as defined in s. 741.28.

1905 (4)(a) While a child who is currently enrolled in school  
 1906 is in nonsecure ~~or home~~ detention care, the child shall continue  
 1907 to attend school unless otherwise ordered by the court.

1908 (b) While a child is in secure detention care, the child  
 1909 shall receive education commensurate with his or her grade level  
 1910 and educational ability.

1911 (5) The court shall order the delivery of a child to a  
 1912 jail or other facility intended or used for the detention of  
 1913 adults:

1914 (a) When the child has been transferred or indicted for  
 1915 criminal prosecution as an adult under part X, except that the  
 1916 court may not order or allow a child alleged to have committed a  
 1917 misdemeanor who is being transferred for criminal prosecution  
 1918 pursuant to either s. 985.556 or s. 985.557 to be detained or  
 1919 held in a jail or other facility intended or used for the  
 1920 detention of adults; however, such child may be held temporarily  
 1921 in a detention facility; or

1922 (b) When a child taken into custody in this state is  
 1923 wanted by another jurisdiction for prosecution as an adult.

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1925 | The child shall be housed separately from adult inmates to  
 1926 | prohibit a child from having regular contact with incarcerated  
 1927 | adults, including trustees. "Regular contact" means sight and  
 1928 | sound contact. Separation of children from adults shall permit  
 1929 | no more than haphazard or accidental contact. The receiving jail  
 1930 | or other facility shall contain a separate section for children  
 1931 | and shall have an adequate staff to supervise and monitor the  
 1932 | child's activities at all times. Supervision and monitoring of  
 1933 | children includes physical observation and documented checks by  
 1934 | jail or receiving facility supervisory personnel at intervals  
 1935 | not to exceed 10 ~~15~~ minutes. This subsection does not prohibit  
 1936 | placing two or more children in the same cell. Under no  
 1937 | circumstances shall a child be placed in the same cell with an  
 1938 | adult.

1939 |         Section 20. Section 985.27, Florida Statutes, is amended  
 1940 | to read:

1941 |         985.27 Postdisposition ~~Postcommitment~~ detention while  
 1942 | awaiting commitment placement.-

1943 |         (1) The court must place all children who are adjudicated  
 1944 | and awaiting placement in a commitment program in detention  
 1945 | care. Children who are in ~~home detention care or~~ nonsecure  
 1946 | detention care may be placed on electronic monitoring.

1947 |         ~~(a) A child who is awaiting placement in a low-risk~~  
 1948 | ~~residential program must be removed from detention within 5~~  
 1949 | ~~days, excluding Saturdays, Sundays, and legal holidays. Any~~  
 1950 | ~~child held in secure detention during the 5 days must meet~~

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1951 ~~detention admission criteria under this part. A child who is~~  
 1952 ~~placed in home detention care, nonsecure detention care, or home~~  
 1953 ~~or nonsecure detention care with electronic monitoring, while~~  
 1954 ~~awaiting placement in a minimum-risk or low-risk program, may be~~  
 1955 ~~held in secure detention care for 5 days, if the child violates~~  
 1956 ~~the conditions of the home detention care, the nonsecure~~  
 1957 ~~detention care, or the electronic monitoring agreement. For any~~  
 1958 ~~subsequent violation, the court may impose an additional 5 days~~  
 1959 ~~in secure detention care.~~

1960       (a) ~~(b)~~ A child who is awaiting placement in a nonsecure  
 1961 ~~moderate-risk~~ residential program must be removed from detention  
 1962 within 5 days, excluding Saturdays, Sundays, and legal holidays.  
 1963 Any child held in secure detention during the 5 days must meet  
 1964 detention admission criteria under this part. The department may  
 1965 seek an order from the court authorizing continued detention for  
 1966 a specific period of time necessary for the appropriate  
 1967 residential placement of the child. However, such continued  
 1968 detention in secure detention care may not exceed 15 days after  
 1969 entry of the commitment order, excluding Saturdays, Sundays, and  
 1970 legal holidays, and except as otherwise provided in this  
 1971 section. A child who is placed in ~~home detention care,~~ nonsecure  
 1972 ~~detention care,~~ or ~~home~~ or nonsecure detention care with  
 1973 electronic monitoring, while awaiting placement in a nonsecure  
 1974 residential ~~moderate-risk~~ program, may be held in secure  
 1975 detention care for 5 days, if the child violates the conditions  
 1976 of the ~~home detention care,~~ the nonsecure detention care, or the

1977 | electronic monitoring agreement. For any subsequent violation,  
 1978 | the court may impose an additional 5 days in secure detention  
 1979 | care.

1980 |        ~~(b)~~~~(e)~~ If the child is committed to a high-risk  
 1981 | residential program, the child must be held in secure detention  
 1982 | care until placement or commitment is accomplished.

1983 |        ~~(c)~~~~(d)~~ If the child is committed to a maximum-risk  
 1984 | residential program, the child must be held in secure detention  
 1985 | care until placement or commitment is accomplished.

1986 |        (2) Regardless of detention status, a child being  
 1987 | transported by the department to a residential commitment  
 1988 | facility of the department may be placed in secure detention  
 1989 | overnight, not to exceed a 24-hour period, for the specific  
 1990 | purpose of ensuring the safe delivery of the child to his or her  
 1991 | residential commitment program, court, appointment, transfer, or  
 1992 | release.

1993 |        Section 21. Subsection (1) of section 985.275, Florida  
 1994 | Statutes, is amended to read:

1995 |        985.275 Detention of escapee or absconder on authority of  
 1996 | the department.—

1997 |        (1) If an authorized agent of the department has  
 1998 | reasonable grounds to believe that any delinquent child  
 1999 | committed to the department has escaped from a residential  
 2000 | commitment facility or from being lawfully transported thereto  
 2001 | or therefrom, or has absconded from a nonresidential commitment  
 2002 | facility, the agent shall notify law enforcement and, if the

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2003 offense would require notification under chapter 960, notify the  
 2004 victim. The agent shall make every reasonable effort as  
 2005 permitted within existing resources provided to the department  
 2006 to locate the delinquent child and the child may be returned to  
 2007 the facility ~~take the child into active custody and may deliver~~  
 2008 ~~the child to the facility~~ or, if it is closer, to a detention  
 2009 center for return to the facility. However, a child may not be  
 2010 held in detention longer than 24 hours, excluding Saturdays,  
 2011 Sundays, and legal holidays, unless a special order so directing  
 2012 is made by the judge after a detention hearing resulting in a  
 2013 finding that detention is required based on the criteria in s.  
 2014 985.255. The order shall state the reasons for such finding. The  
 2015 reasons shall be reviewable by appeal or in habeas corpus  
 2016 proceedings in the district court of appeal.

2017 Section 22. Paragraph (b) of subsection (4), paragraph (h)  
 2018 of subsection (6), and paragraph (a) of subsection (7) of  
 2019 section 985.433, Florida Statutes, are amended to read:

2020 985.433 Disposition hearings in delinquency cases.—When a  
 2021 child has been found to have committed a delinquent act, the  
 2022 following procedures shall be applicable to the disposition of  
 2023 the case:

2024 (4) Before the court determines and announces the  
 2025 disposition to be imposed, it shall:

2026 (b) Discuss with the child his or her compliance with any  
 2027 predisposition ~~home~~ release plan or other plan imposed since the  
 2028 date of the offense.

2029 (6) The first determination to be made by the court is a  
 2030 determination of the suitability or nonsuitability for  
 2031 adjudication and commitment of the child to the department. This  
 2032 determination shall include consideration of the recommendations  
 2033 of the department, which may include a predisposition report.  
 2034 The predisposition report shall include, whether as part of the  
 2035 child's multidisciplinary assessment, classification, and  
 2036 placement process components or separately, evaluation of the  
 2037 following criteria:

2038 (h) The child's educational status, including, but not  
 2039 limited to, the child's strengths, abilities, and unmet and  
 2040 special educational needs. The report shall identify appropriate  
 2041 educational and career ~~vocational~~ goals for the child. Examples  
 2042 of appropriate goals include:

- 2043 1. Attainment of a high school diploma or its equivalent.
- 2044 2. Successful completion of literacy courses ~~course(s)~~.
- 2045 3. Successful completion of career and technical education  
 2046 courses ~~vocational course(s)~~.
- 2047 4. Successful attendance and completion of the child's  
 2048 current grade or recovery of credits of classes the child  
 2049 previously failed, if enrolled in school.
- 2050 5. Enrollment in an apprenticeship or a similar program.

2051  
 2052 It is the intent of the Legislature that the criteria set forth  
 2053 in this subsection are general guidelines to be followed at the  
 2054 discretion of the court and not mandatory requirements of

2055 procedure. It is not the intent of the Legislature to provide  
 2056 for the appeal of the disposition made under this section.

2057 (7) If the court determines that the child should be  
 2058 adjudicated as having committed a delinquent act and should be  
 2059 committed to the department, such determination shall be in  
 2060 writing or on the record of the hearing. The determination shall  
 2061 include a specific finding of the reasons for the decision to  
 2062 adjudicate and to commit the child to the department, including  
 2063 any determination that the child was a member of a criminal  
 2064 gang.

2065 (a) The department ~~juvenile probation officer~~ shall  
 2066 recommend to the court the most appropriate placement and  
 2067 treatment plan, specifically identifying the restrictiveness  
 2068 level most appropriate for the child if commitment is  
 2069 recommended. If the court has determined that the child was a  
 2070 member of a criminal gang, that determination shall be given  
 2071 great weight in identifying the most appropriate restrictiveness  
 2072 level for the child. The court shall consider the department's  
 2073 recommendation in making its commitment decision.

2074 Section 23. Subsections (4) through (6) of section  
 2075 985.435, Florida Statutes, are renumbered as subsections (5)  
 2076 through (7), respectively, subsection (3) and present subsection  
 2077 (4) of that section are amended, and a new subsection (4) is  
 2078 added to that section, to read:

2079 985.435 Probation and postcommitment probation; community  
 2080 service.-



2081           (3) A probation program must also include a rehabilitative  
 2082 program component such as a requirement of participation in  
 2083 substance abuse treatment or in a school or career and technical  
 2084 education ~~other educational~~ program. The nonconsent of the child  
 2085 to treatment in a substance abuse treatment program in no way  
 2086 precludes the court from ordering such treatment. Upon the  
 2087 recommendation of the department at the time of disposition, or  
 2088 subsequent to disposition pursuant to the filing of a petition  
 2089 alleging a violation of the child's conditions of postcommitment  
 2090 probation, the court may order the child to submit to random  
 2091 testing for the purpose of detecting and monitoring the use of  
 2092 alcohol or controlled substances.

2093           (4) A probation program may also include an alternative  
 2094 consequence component to address instances in which a child is  
 2095 noncompliant with technical conditions of his or her probation,  
 2096 but has not committed any new violations of law. The alternative  
 2097 consequence component is designed to provide swift and  
 2098 appropriate consequences to any noncompliance with technical  
 2099 conditions of probation. If the probation program includes this  
 2100 component, specific consequences that apply to noncompliance  
 2101 with specific technical conditions of probation must be detailed  
 2102 in the disposition order.

2103           ~~(5)(4)~~ An identification of the child's risk of  
 2104 reoffending ~~A classification scale for levels of supervision~~  
 2105 shall be provided by the department, taking into account the  
 2106 child's needs and risks relative to probation supervision

2107 requirements to reasonably ensure the public safety. Probation  
 2108 programs for children shall be supervised by the department or  
 2109 by any other person or agency specifically authorized by the  
 2110 court. These programs must include, but are not limited to,  
 2111 structured or restricted activities as described in this section  
 2112 and s. 985.439, and shall be designed to encourage the child  
 2113 toward acceptable and functional social behavior.

2114 Section 24. Subsections (1) and (4) of section 985.439,  
 2115 Florida Statutes, are amended to read:

2116 985.439 Violation of probation or postcommitment  
 2117 probation.-

2118 (1)(a) This section is applicable when the court has  
 2119 jurisdiction over a child on probation or postcommitment  
 2120 probation, regardless of adjudication ~~an adjudicated delinquent~~  
 2121 ~~child.~~

2122 (b) If the conditions of the probation program or the  
 2123 postcommitment probation program are violated, the department or  
 2124 the state attorney may bring the child before the court on a  
 2125 petition alleging a violation of the program. A ~~Any~~ child who  
 2126 violates the conditions of probation or postcommitment probation  
 2127 must be brought before the court if sanctions are sought.

2128 (4) Upon the child's admission, or if the court finds  
 2129 after a hearing that the child has violated the conditions of  
 2130 probation or postcommitment probation, the court shall enter an  
 2131 order revoking, modifying, or continuing probation or  
 2132 postcommitment probation. In each such case, the court shall

2133 enter a new disposition order and, in addition to the sanctions  
 2134 set forth in this section, may impose any sanction the court  
 2135 could have imposed at the original disposition hearing. If the  
 2136 child is found to have violated the conditions of probation or  
 2137 postcommitment probation, the court may:

2138 (a) Place the child in a consequence unit in that judicial  
 2139 circuit, if available, for up to 5 days for a first violation  
 2140 and up to 15 days for a second or subsequent violation.

2141 (b) Place the child in nonsecure ~~on home~~ detention with  
 2142 electronic monitoring. However, this sanction may be used only  
 2143 if a residential consequence unit is not available.

2144 (c) If the violation of probation is technical in nature  
 2145 and not a new violation of law, place the child in an  
 2146 alternative consequence program designed to provide swift and  
 2147 appropriate consequences to any further violations of probation.

2148 1. Alternative consequence programs shall be established,  
 2149 within existing resources, at the local level in coordination  
 2150 with law enforcement agencies, the chief judge of the circuit,  
 2151 the state attorney, and the public defender.

2152 2. Alternative consequence programs may be operated by an  
 2153 entity such as a law enforcement agency, the department, a  
 2154 juvenile assessment center, a county or municipality, or another  
 2155 entity selected by the department.

2156 3. Upon placing a child in an alternative consequence  
 2157 program, the court must approve specific consequences for  
 2158 specific violations of the conditions of probation.

2159        ~~(d)~~~~(e)~~ Modify or continue the child's probation program or  
 2160 postcommitment probation program.

2161        ~~(e)~~~~(d)~~ Revoke probation or postcommitment probation and  
 2162 commit the child to the department.

2163        Section 25. Subsection (2) of section 985.441, Florida  
 2164 Statutes, is amended to read:

2165        985.441 Commitment.—

2166        (2) Notwithstanding subsection (1), the court having  
 2167 jurisdiction over an adjudicated delinquent child whose  
 2168 ~~underlying~~ offense is was a misdemeanor, or a child who is  
 2169 currently on probation for a misdemeanor, may not commit the  
 2170 child for any misdemeanor offense or any probation violation  
 2171 that is technical in nature and not a new violation of law at a  
 2172 restrictiveness level other than minimum-risk nonresidential  
 2173 ~~unless the probation violation is a new violation of law~~  
 2174 ~~constituting a felony~~. However, the court may commit such child  
 2175 to a nonsecure ~~low risk or moderate risk~~ residential placement  
 2176 if:

2177        (a) The child has previously been adjudicated or had  
 2178 adjudication withheld for a felony offense;

2179        (b) The child has previously been adjudicated or had  
 2180 adjudication withheld for three or more misdemeanor offenses  
 2181 within the previous 18 months;

2182        (c) The child is before the court for disposition for a  
 2183 violation of s. 800.03, s. 806.031, or s. 828.12; or

2184        (d) The court finds by a preponderance of the evidence

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2185 that the protection of the public requires such placement or  
 2186 that the particular needs of the child would be best served by  
 2187 such placement. Such finding must be in writing.

2188 Section 26. Paragraph (a) of subsection (1) and subsection  
 2189 (5) of section 985.46, Florida Statutes, are amended to read:

2190 985.46 Conditional release.—

2191 (1) The Legislature finds that:

2192 (a) Conditional release is the care, treatment, help, ~~and~~  
 2193 supervision, and provision of transition-to-adulthood services  
 2194 to ~~provided~~ juveniles released from residential commitment  
 2195 programs to promote rehabilitation and prevent recidivism.

2196 (5) Participation in the educational program by students  
 2197 of compulsory school attendance age pursuant to s. 1003.21(1)  
 2198 and (2)(a) is mandatory for juvenile justice youth on  
 2199 conditional release or postcommitment probation status. A  
 2200 student of noncompulsory school-attendance age who has not  
 2201 received a high school diploma or its equivalent must  
 2202 participate in an ~~the~~ educational program or career and  
 2203 technical education course. A youth who has received a high  
 2204 school diploma or its equivalent and is not employed must  
 2205 participate in workforce development or other career or  
 2206 technical education or attend a community college or a  
 2207 university while in the program, subject to available funding.

2208 Section 27. Subsections (1) through (5) of section  
 2209 985.461, Florida Statutes, are amended to read:

2210 985.461 Transition to adulthood.—

2211 (1) The Legislature finds that ~~elder~~ youth are faced with  
 2212 the need to learn how to support themselves within legal means  
 2213 and overcome the stigma of being delinquent. In most cases,  
 2214 parents expedite this transition. It is the intent of the  
 2215 Legislature that the department provide ~~elder~~ youth in its  
 2216 custody or under its supervision with opportunities for  
 2217 participating in transition-to-adulthood services while in the  
 2218 department's commitment programs or in probation or conditional  
 2219 release programs in the community. These services should be  
 2220 reasonable and appropriate for the youths' respective ages or  
 2221 special needs and provide activities that build life skills and  
 2222 increase the ability to live independently and become self-  
 2223 sufficient.

2224 (2) Youth served by the department who are in the custody  
 2225 of the Department of Children and Families ~~Family Services~~ and  
 2226 who entered juvenile justice placement from a foster care  
 2227 placement, if otherwise eligible, may receive independent living  
 2228 transition services pursuant to s. 409.1451. Court-ordered  
 2229 commitment or probation with the department is not a barrier to  
 2230 eligibility for the array of services available to a youth who  
 2231 is in the dependency foster care system only.

2232 (3) For a dependent child in the foster care system,  
 2233 adjudication for delinquency does not, by itself, disqualify  
 2234 such child for eligibility in the Department of Children and  
 2235 Families' ~~Family Services'~~ independent living program.

2236 (4) As part of the child's treatment plan, the department

2237 may provide transition-to-adulthood services to children  
 2238 released from residential commitment. To support participation  
 2239 in transition-to-adulthood services and subject to  
 2240 appropriation, the department may:

2241 (a) Assess the child's skills and abilities to live  
 2242 independently and become self-sufficient. The specific services  
 2243 to be provided shall be determined using an assessment of his or  
 2244 her readiness for adult life.

2245 (b) Use community reentry teams to assist in the  
 2246 development of ~~Develop~~ a list of age-appropriate activities and  
 2247 responsibilities to be incorporated in the child's written case  
 2248 plan for any youth ~~17 years of age or older~~ who is under the  
 2249 custody or supervision of the department. Community reentry  
 2250 teams may include representatives from school districts, law  
 2251 enforcement, workforce development services, community-based  
 2252 service providers, and the youth's family. Such community  
 2253 reentry teams must be created within existing resources provided  
 2254 to the department. Activities may include, but are not limited  
 2255 to, life skills training, including training to develop banking  
 2256 and budgeting skills, interviewing and career planning skills,  
 2257 parenting skills, personal health management, and time  
 2258 management or organizational skills; educational support;  
 2259 employment training; and counseling.

2260 (c) Provide information related to social security  
 2261 insurance benefits and public assistance.

2262 (d) Request parental or guardian permission for the youth

2263 to participate in transition-to-adulthood services. Upon such  
 2264 consent, age-appropriate activities shall be incorporated into  
 2265 the youth's written case plan. This plan may include specific  
 2266 goals and objectives and shall be reviewed and updated at least  
 2267 quarterly. If the parent or guardian is cooperative, the plan  
 2268 may not interfere with the parent's or guardian's rights to  
 2269 nurture and train his or her child in ways that are otherwise in  
 2270 compliance with the law and court order.

2271 (e) Contract for transition-to-adulthood services that  
 2272 include residential services and assistance and allow the child  
 2273 to live independently of the daily care and supervision of an  
 2274 adult in a setting that is not licensed under s. 409.175. A  
 2275 child under the care or supervision of the department ~~who has~~  
 2276 ~~reached 17 years of age but is not yet 19 years of age~~ is  
 2277 eligible for such services if he or she does not pose a danger  
 2278 to the public and is able to demonstrate minimally sufficient  
 2279 skills and aptitude for living under decreased adult  
 2280 supervision, as determined by the department, using established  
 2281 procedures and assessments.

2282 (f) Assist the child in building a portfolio of  
 2283 educational and vocational accomplishments, necessary  
 2284 identification, résumés, and cover letters in an effort to  
 2285 enhance the child's employability.

2286 (g) Collaborate with school district contacts to  
 2287 facilitate appropriate educational services based on the child's  
 2288 identified needs.



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2289 (5) For a child ~~who is 17 years of age or older,~~ under the  
 2290 department's care or supervision, and without benefit of parents  
 2291 or legal guardians capable of assisting the child in the  
 2292 transition to adult life, the department may provide an  
 2293 assessment to determine the child's skills and abilities to live  
 2294 independently and become self-sufficient. Based on the  
 2295 assessment and within existing resources, services and training  
 2296 may be provided in order to develop the necessary skills and  
 2297 abilities ~~before the child's 18th birthday.~~

2298 Section 28. Paragraph (b) of subsection (3) of section  
 2299 985.481, Florida Statutes, is amended to read:

2300 985.481 Sexual offenders adjudicated delinquent;  
 2301 notification upon release.-

2302 (3)

2303 (b) ~~No later than November 1, 2007,~~ The department must  
 2304 make the information described in subparagraph (a)1. available  
 2305 electronically to the Department of Law Enforcement in its  
 2306 database and in a format that is compatible with the  
 2307 requirements of the Florida Crime Information Center.

2308 Section 29. Subsection (5) of section 985.4815, Florida  
 2309 Statutes, is amended to read:

2310 985.4815 Notification to Department of Law Enforcement of  
 2311 information on juvenile sexual offenders.-

2312 (5) In addition to notification and transmittal  
 2313 requirements imposed by any other provision of law, the  
 2314 department shall compile information on any sexual offender and

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2315 provide the information to the Department of Law Enforcement. ~~No~~  
 2316 ~~later than November 1, 2007,~~ The department must make the  
 2317 information available electronically to the Department of Law  
 2318 Enforcement in its database in a format that is compatible with  
 2319 the requirements of the Florida Crime Information Center.

2320 Section 30. Subsection (1) of section 985.514, Florida  
 2321 Statutes, is amended to read:

2322 985.514 Responsibility for cost of care; fees.-

2323 (1) When any child is placed into secure or nonsecure ~~home~~  
 2324 detention care or into other placement for the purpose of being  
 2325 supervised by the department pursuant to a court order following  
 2326 a detention hearing, the court shall order the child's parents  
 2327 to pay fees to the department as provided in s. 985.039.

2328 Section 31. Paragraph (a) of subsection (3) and paragraph  
 2329 (a) of subsection (9) of section 985.601, Florida Statutes, are  
 2330 amended to read:

2331 985.601 Administering the juvenile justice continuum.-

2332 (3)(a) The department shall develop or contract for  
 2333 diversified and innovative programs to provide rehabilitative  
 2334 treatment, including early intervention and prevention,  
 2335 diversion, comprehensive intake, case management, diagnostic and  
 2336 classification assessments, trauma-informed care, individual and  
 2337 family counseling, family engagement resources and programs,  
 2338 gender-specific programming, shelter care, diversified detention  
 2339 care emphasizing alternatives to secure detention, diversified  
 2340 probation, halfway houses, foster homes, community-based

2341 substance abuse treatment services, community-based mental  
 2342 health treatment services, community-based residential and  
 2343 nonresidential programs, mother-infant programs, and  
 2344 environmental programs. The department may pay expenses in  
 2345 support of innovative programs and activities that address  
 2346 identified needs and the well-being of children in the  
 2347 department's care or under its supervision, subject to the  
 2348 requirements of chapters 215, 216, and 287. Each program shall  
 2349 place particular emphasis on reintegration and conditional  
 2350 release for all children in the program.

2351 (9)(a) The department shall operate a statewide,  
 2352 regionally administered system of detention services for  
 2353 children, in accordance with a comprehensive plan for the  
 2354 regional administration of all detention services in the state.  
 2355 The plan must provide for the maintenance of adequate  
 2356 availability of detention services for all counties. The plan  
 2357 must cover all the department's operating circuits, with each  
 2358 operating circuit having access to a secure facility and  
 2359 nonsecure ~~and home~~ detention programs, and the plan may be  
 2360 altered or modified by the Department of Juvenile Justice as  
 2361 necessary.

2362 Section 32. Sections 985.605, 985.606, and 985.61, Florida  
 2363 Statutes, are repealed.

2364 Section 33. Section 985.632, Florida Statutes, is amended  
 2365 to read:

2366 985.632 Quality improvement ~~assurance~~ and cost-

2367 | effectiveness; Comprehensive Accountability Report.-

2368 |       (1) INTENT.-It is the intent of the Legislature that the  
 2369 | department establish a performance accountability system for  
 2370 | each provider who contracts with the department for the delivery  
 2371 | of services to children. The contract shall include both output  
 2372 | measures, such as the number of children served, and outcome  
 2373 | measures, including program completion and postcompletion  
 2374 | recidivism. Each contractor shall report performance results to  
 2375 | the department annually. The department's Bureau of Research and  
 2376 | Planning shall summarize performance results from all contracts  
 2377 | and report the information to the Legislature annually in the  
 2378 | Comprehensive Accountability Report. The report shall:

2379 |       (a) Ensure that information be provided to decisionmakers  
 2380 | in a timely manner so that resources are allocated to programs  
 2381 | that of the department which achieve desired performance levels.

2382 |       (b) Provide information about the cost of such programs  
 2383 | and their differential effectiveness so that the quality of such  
 2384 | programs can be compared and improvements made continually.

2385 |       (c) Provide information to aid in developing related  
 2386 | policy issues and concerns.

2387 |       (d) Provide information to the public about the  
 2388 | effectiveness of such programs in meeting established goals and  
 2389 | objectives.

2390 |       (e) Provide a basis for a system of accountability so that  
 2391 | each child ~~client~~ is afforded the best programs to meet his or  
 2392 | her needs.

2393 (f) Improve service delivery to children through the use  
 2394 of technical assistance clients.

2395 (g) Modify or eliminate activities or programs that are  
 2396 not effective.

2397 (h) Collect and analyze available statistical data for the  
 2398 purpose of ongoing evaluation of all programs.

2399 (2) DEFINITIONS.—As used in this section, the term:

2400 ~~(a) "Client" means any person who is being provided~~  
 2401 ~~treatment or services by the department or by a provider under~~  
 2402 ~~contract with the department.~~

2403 (a) "Program" means any facility or service for youth that  
 2404 is operated by the department or by a provider under contract  
 2405 with the department.

2406 (b) "Program component" means an aggregation of generally  
 2407 related objectives which, because of their special character,  
 2408 related workload, and interrelated output, can logically be  
 2409 considered an entity for purposes of organization, management,  
 2410 accounting, reporting, and budgeting.

2411 ~~(c) "Program effectiveness" means the ability of the~~  
 2412 ~~program to achieve desired client outcomes, goals, and~~  
 2413 ~~objectives.~~

2414 (c) "Program group" means a collection of programs with  
 2415 sufficient similarity of functions, services, and youth to  
 2416 permit appropriate comparison amongst programs within the group.

2417 (3) COMPREHENSIVE ACCOUNTABILITY REPORT.—The department,  
 2418 in consultation with contract service providers, shall develop

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2419 and use a standard methodology for annually measuring,  
 2420 evaluating, and reporting program outputs and youth outcomes for  
 2421 each program and program group. The standard methodology must:

2422 (a) Include common terminology and operational definitions  
 2423 for measuring the performance of system and program  
 2424 administration, program outputs, and program outcomes.

2425 (b) Specify program outputs for each program and for each  
 2426 program group within the juvenile justice continuum.

2427 (c) Specify desired child outcomes and methods by which to  
 2428 measure child outcomes for each program and program group  
 2429 ~~annually collect and report cost data for every program operated~~  
 2430 ~~or contracted by the department. The cost data shall conform to~~  
 2431 ~~a format approved by the department and the Legislature. Uniform~~  
 2432 ~~cost data shall be reported and collected for state-operated and~~  
 2433 ~~contracted programs so that comparisons can be made among~~  
 2434 ~~programs. The department shall ensure that there is accurate~~  
 2435 ~~cost accounting for state-operated services including market-~~  
 2436 ~~equivalent rent and other shared cost. The cost of the~~  
 2437 ~~educational program provided to a residential facility shall be~~  
 2438 ~~reported and included in the cost of a program. The department~~  
 2439 ~~shall submit an annual cost report to the President of the~~  
 2440 ~~Senate, the Speaker of the House of Representatives, the~~  
 2441 ~~Minority Leader of each house of the Legislature, the~~  
 2442 ~~appropriate substantive and fiscal committees of each house of~~  
 2443 ~~the Legislature, and the Governor, no later than December 1 of~~  
 2444 ~~each year. Cost-benefit analysis for educational programs will~~

2445 | ~~be developed and implemented in collaboration with and in~~  
 2446 | ~~cooperation with the Department of Education, local providers,~~  
 2447 | ~~and local school districts. Cost data for the report shall~~  
 2448 | ~~include data collected by the Department of Education for the~~  
 2449 | ~~purposes of preparing the annual report required by s.~~  
 2450 | ~~1003.52(19).~~

2451 |       (4) ~~(a)~~ COST-EFFECTIVENESS MODEL.—The department, in  
 2452 | consultation with the Office of Economic and Demographic  
 2453 | Research and contract service providers, shall develop a cost-  
 2454 | effectiveness model and apply the model to each commitment  
 2455 | program. ~~Program recidivism rates shall be a component of the~~  
 2456 | ~~model.~~

2457 |       (a) The cost-effectiveness model shall compare program  
 2458 | costs to expected and actual child recidivism rates ~~client~~  
 2459 | ~~outcomes and program outputs.~~ It is the intent of the  
 2460 | Legislature that continual development efforts take place to  
 2461 | improve the validity and reliability of the cost-effectiveness  
 2462 | model.

2463 |       (b) The department shall rank commitment programs based on  
 2464 | the cost-effectiveness model, performance measures, and  
 2465 | adherence to quality improvement standards and shall ~~submit a~~  
 2466 | report this data in the annual Comprehensive Accountability  
 2467 | Report to the appropriate substantive and fiscal committees of  
 2468 | ~~each house of the Legislature by December 31 of each year.~~

2469 |       (c) Based on reports of the department on child ~~client~~  
 2470 | outcomes and program outputs and on the department's most recent

2471 cost-effectiveness rankings, the department may terminate a  
 2472 program operated by the department or a provider if the program  
 2473 has failed to achieve a minimum standard ~~threshold~~ of program  
 2474 effectiveness. This paragraph does not preclude the department  
 2475 from terminating a contract as provided under this section or as  
 2476 otherwise provided by law or contract, and does not limit the  
 2477 department's authority to enter into or terminate a contract.

2478 (d) In collaboration with the Office of Economic and  
 2479 Demographic Research, and contract service providers, the  
 2480 department shall develop a work plan to refine the cost-  
 2481 effectiveness model so that the model is consistent with the  
 2482 performance-based program budgeting measures approved by the  
 2483 Legislature to the extent the department deems appropriate. The  
 2484 department shall notify the Office of Program Policy Analysis  
 2485 and Government Accountability of any meetings to refine the  
 2486 model.

2487 (e) Contingent upon specific appropriation, the  
 2488 department, in consultation with the Office of Economic and  
 2489 Demographic Research, and contract service providers, shall:

2490 1. Construct a profile of each commitment program that  
 2491 uses the results of the quality improvement data portion of the  
 2492 Comprehensive Accountability ~~assurance~~ Report required by this  
 2493 section, the cost-effectiveness data portion of the  
 2494 Comprehensive Accountability Report required in this subsection,  
 2495 and other reports available to the department.

2496 2. Target, for a more comprehensive evaluation, any



2497 commitment program that has achieved consistently high, low, or  
 2498 disparate ratings in the reports required under subparagraph 1.  
 2499 and target, for technical assistance, any commitment program  
 2500 that has achieved low or disparate ratings in the reports  
 2501 required under subparagraph 1.

2502 3. Identify the essential factors that contribute to the  
 2503 high, low, or disparate program ratings.

2504 4. Use the results of these evaluations in developing or  
 2505 refining juvenile justice programs or program models, child  
 2506 ~~client~~ outcomes and program outputs, provider contracts, quality  
 2507 improvement assurance standards, and the cost-effectiveness  
 2508 model.

2509 (5) QUALITY IMPROVEMENT.—The department shall:

2510 (a) Establish a comprehensive quality improvement  
 2511 ~~assurance~~ system for each program operated by the department or  
 2512 operated by a provider under contract with the department. Each  
 2513 contract entered into by the department must provide for quality  
 2514 improvement assurance.

2515 (b) Provide operational definitions of and criteria for  
 2516 quality improvement assurance for each specific program  
 2517 component.

2518 (c) Establish quality improvement assurance goals and  
 2519 objectives for each specific program component.

2520 (d) Establish the information and specific data elements  
 2521 required for the quality improvement assurance program.

2522 (e) Develop a quality improvement assurance manual of

2523 specific, standardized terminology and procedures to be followed  
 2524 by each program.

2525 (f) Evaluate each program operated by the department or a  
 2526 provider under a contract with the department annually and  
 2527 establish minimum standards ~~thresholds~~ for each program  
 2528 component. If a provider fails to meet the established minimum  
 2529 standards ~~thresholds~~, such failure shall cause the department to  
 2530 cancel the provider's contract unless the provider achieves  
 2531 compliance with minimum standards ~~thresholds~~ within 6 months or  
 2532 unless there are documented extenuating circumstances. In  
 2533 addition, the department may not contract with the same provider  
 2534 for the canceled service for a period of 12 months. If a  
 2535 department-operated program fails to meet the established  
 2536 minimum standards ~~thresholds~~, the department must take necessary  
 2537 and sufficient steps to ensure and document program changes to  
 2538 achieve compliance with the established minimum standards  
 2539 ~~thresholds~~. If the department-operated program fails to achieve  
 2540 compliance with the established minimum standards ~~thresholds~~  
 2541 within 6 months and if there are no documented extenuating  
 2542 circumstances, the department must notify the Executive Office  
 2543 of the Governor and the Legislature of the corrective action  
 2544 taken. Appropriate corrective action may include, but is not  
 2545 limited to:

- 2546 1. Contracting out for the services provided in the  
 2547 program;
- 2548 2. Initiating appropriate disciplinary action against all

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2549 employees whose conduct or performance is deemed to have  
 2550 materially contributed to the program's failure to meet  
 2551 established minimum standards ~~thresholds~~;

2552 3. Redesigning the program; or

2553 4. Realigning the program.

2554 (6) COMPREHENSIVE ACCOUNTABILITY REPORT SUBMISSION.—The  
 2555 department shall submit the Comprehensive Accountability Report  
 2556 ~~an annual report~~ to the President of the Senate, the Speaker of  
 2557 the House of Representatives, the Minority Leader of each house  
 2558 of the Legislature, the appropriate substantive and fiscal  
 2559 committees of each house of the Legislature, and the Governor,  
 2560 no later than February 1 of each year. The Comprehensive  
 2561 Accountability Report ~~annual report~~ must contain, at a minimum,  
 2562 for each specific program component: a comprehensive description  
 2563 of the population served by the program; a specific description  
 2564 of the services provided by the program; cost; a comparison of  
 2565 expenditures to federal and state funding; immediate and long-  
 2566 range concerns; and recommendations to maintain, expand,  
 2567 improve, modify, or eliminate each program component so that  
 2568 changes in services lead to enhancement in program quality. The  
 2569 department shall ensure the reliability and validity of the  
 2570 information contained in the report.

2571 (7)-(6) ONGOING EVALUATIONS; REPORTS.—The department shall  
 2572 collect and analyze available statistical data for the purpose  
 2573 of ongoing evaluation of all programs. The department shall  
 2574 provide the Legislature with necessary information and reports

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2575 | to enable the Legislature to make informed decisions regarding  
 2576 | the effectiveness of, and any needed changes in, services,  
 2577 | programs, policies, and laws.

2578 |         Section 34. Paragraph (a) of subsection (1) and paragraph  
 2579 | (b) of subsection (3) of section 985.644, Florida Statutes, are  
 2580 | amended to read:

2581 |         985.644 Departmental contracting powers; personnel  
 2582 | standards and investigation ~~screening~~.-

2583 |         (1) The department may contract with the Federal  
 2584 | Government, other state departments and agencies, county and  
 2585 | municipal governments and agencies, public and private agencies,  
 2586 | and private individuals and corporations in carrying out the  
 2587 | purposes of, and the responsibilities established in, this  
 2588 | chapter.

2589 |         (a) Each contract entered into by the department for  
 2590 | services delivered on an appointment or intermittent basis by a  
 2591 | provider that does not have regular custodial responsibility for  
 2592 | children and each contract with a school for ~~before or after~~care  
 2593 | services must ensure that all owners, operators, and personnel  
 2594 | who have direct contact with children are subject to level 2  
 2595 | background screening pursuant to chapter 435.

2596 |         (3)

2597 |         (b) ~~Except for~~ Law enforcement, correctional, and  
 2598 | correctional probation officers, certified pursuant to s.  
 2599 | 943.13, are not required to submit to level 2 screenings as long  
 2600 | as they are currently employed by a law enforcement agency or

2601 correctional facility. ~~to whom s. 943.13(5) applies,~~ The  
 2602 department shall electronically submit to the Department of Law  
 2603 Enforcement:

2604 1. Fingerprint information obtained during the employment  
 2605 screening required by subparagraph (a)1.

2606 2. Fingerprint information for all persons employed by the  
 2607 department, or by a provider under contract with the department,  
 2608 in delinquency facilities, services, or programs if such  
 2609 fingerprint information has not previously been electronically  
 2610 submitted pursuant to this section ~~to the Department of Law~~  
 2611 ~~Enforcement under this paragraph.~~

2612 Section 35. Section 985.6441, Florida Statutes, is created  
 2613 to read:

2614 985.6441 Health care services.-

2615 (1) As used in this section, the term:

2616 (a) "Health care provider" has the same meaning as  
 2617 provided in s. 766.105.

2618 (b) "Hospital" means a hospital licensed under chapter  
 2619 395.

2620 (2) When compensating health care providers, the  
 2621 department must comply with the following reimbursement  
 2622 limitations:

2623 (a) Payments to a hospital or a health care provider may  
 2624 not exceed 110 percent of the Medicare allowable rate for any  
 2625 health care services provided if there is no contract between  
 2626 the department and the hospital or the health care provider

2627 providing services at a hospital.

2628 (b)1. The department may continue to make payments for  
 2629 health care services at the contracted rates for contracts  
 2630 executed before July 1, 2014, through the current term of the  
 2631 contract if a contract has been executed between the department  
 2632 and a hospital or a health care provider providing services at a  
 2633 hospital.

2634 2. Payments may not exceed 110 percent of the Medicare  
 2635 allowable rate after the current term of the contract expires or  
 2636 after the contract is renewed during the 2013-2014 fiscal year.

2637 (c) Payments may not exceed 110 percent of the Medicare  
 2638 allowable rate under a contract executed on or after July 1,  
 2639 2014, between the department and a hospital or a health care  
 2640 provider providing services at a hospital.

2641 (d) Notwithstanding paragraphs (a)-(c), the department may  
 2642 pay up to 125 percent of the Medicare allowable rate for health  
 2643 care services at a hospital that reports, or has reported, a  
 2644 negative operating margin for the previous fiscal year to the  
 2645 Agency for Health Care Administration through hospital-audited  
 2646 financial data.

2647 Section 36. Subsections (1), (2), and (3) of section  
 2648 985.66, Florida Statutes, are amended to read:

2649 985.66 Juvenile justice training ~~academies~~; staff  
 2650 development and training; Juvenile Justice Training Trust Fund.-

2651 (1) LEGISLATIVE PURPOSE.-In order to enable the state to  
 2652 provide a systematic approach to staff development and training

2653 for judges, state attorneys, public defenders, law enforcement  
 2654 officers, school district personnel, and juvenile justice  
 2655 program staff that will meet the needs of such persons in their  
 2656 discharge of duties while at the same time meeting the  
 2657 requirements for the American Correction Association  
 2658 accreditation by the Commission on Accreditation for  
 2659 Corrections, it is the purpose of the Legislature to require the  
 2660 department to establish, maintain, and oversee the operation of  
 2661 juvenile justice training, programs, and courses ~~academies~~ in  
 2662 the state. The purpose of the Legislature in establishing staff  
 2663 development and training programs is to provide employees of the  
 2664 department, any private or public entity, or contract providers  
 2665 who provide services or care for children under the  
 2666 responsibility of the department with the knowledge and skills  
 2667 needed to appropriately interact with children and provide such  
 2668 care and services ~~foster better staff morale and reduce~~  
 2669 ~~mistreatment and aggressive and abusive behavior in delinquency~~  
 2670 ~~programs~~; to positively impact the recidivism of children in the  
 2671 juvenile justice system; and to afford greater protection of the  
 2672 public through an improved level of services delivered by a  
 2673 professionally trained juvenile justice ~~program~~ staff to  
 2674 children who are alleged to be or who have been found to be  
 2675 delinquent.

2676 (2) STAFF DEVELOPMENT AND TRAINING.—The department shall:

2677 (a) Designate the number and location of the training  
 2678 programs and courses; assess, design, ~~academies,~~ develop,

2679 | implement, evaluate, maintain, and update the curriculum to be  
 2680 | used in the training of juvenile justice ~~program~~ staff;  
 2681 | establish timeframes for participation in and completion of  
 2682 | training by juvenile justice ~~program~~ staff; develop, implement,  
 2683 | score, analyze, maintain, and update job-related examinations;  
 2684 | develop, implement, analyze, and update the types and  
 2685 | frequencies ~~for~~ of evaluations of the training programs,  
 2686 | courses, and instructors academies; and manage approve, modify,  
 2687 | ~~or disapprove~~ the budget and contracts for all the training  
 2688 | deliverables academies, and the contractor to be selected to  
 2689 | ~~organize and operate the training academies and to provide the~~  
 2690 | ~~training curriculum.~~

2691 |         (b) Establish uniform minimum job-related preservice and  
 2692 | inservice training courses and examinations for juvenile justice  
 2693 | program staff.

2694 |         (c) Consult and cooperate with the state or any political  
 2695 | subdivision; any private entity or contractor; and with private  
 2696 | and public universities, colleges, community colleges, and other  
 2697 | educational institutions concerning the development of juvenile  
 2698 | justice training and programs or courses of instruction,  
 2699 | including, but not limited to, education and training in the  
 2700 | areas of juvenile justice.

2701 |         (d) Enter into contracts and agreements with other  
 2702 | agencies, organizations, associations, corporations,  
 2703 | individuals, or federal agencies as necessary in the execution  
 2704 | of the powers of the department or the performance of its



2705 duties.

2706 (3) JUVENILE JUSTICE TRAINING PROGRAM.—The department  
 2707 shall establish a certifiable program for juvenile justice  
 2708 training pursuant to this section, and all department program  
 2709 staff and providers who deliver direct care services pursuant to  
 2710 contract with the department shall be required to participate in  
 2711 and successfully complete the department-approved program of  
 2712 training pertinent to their areas of responsibility. Judges,  
 2713 state attorneys, and public defenders, law enforcement officers,  
 2714 ~~and school district personnel, and employees of contract~~  
 2715 providers who provide services or care for children under the  
 2716 responsibility of the department may participate in such  
 2717 training program. For the juvenile justice program staff, the  
 2718 department shall, based on a job-task analysis:

2719 (a) Design, implement, maintain, evaluate, and revise a  
 2720 basic training program, including a competency-based  
 2721 examination, for the purpose of providing minimum employment  
 2722 training qualifications for all juvenile justice personnel. All  
 2723 program staff of the department and providers who deliver  
 2724 direct-care services who are hired after October 1, 1999, must  
 2725 meet the following minimum requirements:

- 2726 1. Be at least 19 years of age.
- 2727 2. Be a high school graduate or its equivalent as  
 2728 determined by the department.
- 2729 3. Not have been convicted of any felony or a misdemeanor  
 2730 involving perjury or a false statement, or have received a

2731 dishonorable discharge from any of the Armed Forces of the  
 2732 United States. Any person who, after September 30, 1999, pleads  
 2733 guilty or nolo contendere to or is found guilty of any felony or  
 2734 a misdemeanor involving perjury or false statement is not  
 2735 eligible for employment, notwithstanding suspension of sentence  
 2736 or withholding of adjudication. Notwithstanding this  
 2737 subparagraph, any person who pled nolo contendere to a  
 2738 misdemeanor involving a false statement before October 1, 1999,  
 2739 and who has had such record of that plea sealed or expunged is  
 2740 not ineligible for employment for that reason.

2741       4. Abide by all ~~the provisions~~ of s. 985.644(1) regarding  
 2742 fingerprinting and background investigations and other screening  
 2743 requirements for personnel.

2744       5. Execute and submit to the department an affidavit-of-  
 2745 application form, adopted by the department, attesting to his or  
 2746 her compliance with subparagraphs 1.-4. The affidavit must be  
 2747 executed under oath and constitutes an official statement under  
 2748 s. 837.06. The affidavit must include conspicuous language that  
 2749 the intentional false execution of the affidavit constitutes a  
 2750 misdemeanor of the second degree. The employing agency shall  
 2751 retain the affidavit.

2752       (b) Design, implement, maintain, evaluate, and revise an  
 2753 advanced training program, including a competency-based  
 2754 examination for each training course, which is intended to  
 2755 enhance knowledge, skills, and abilities related to job  
 2756 performance.

2757 (c) Design, implement, maintain, evaluate, and revise a  
 2758 career development training program, including a competency-  
 2759 based examination for each training course. Career development  
 2760 courses are intended to prepare personnel for promotion.

2761 (d) The department is encouraged to design, implement,  
 2762 maintain, evaluate, and revise juvenile justice training  
 2763 courses, or to enter into contracts for such training courses,  
 2764 that are intended to provide for the safety and well-being of  
 2765 both citizens and juvenile offenders.

2766 Section 37. Subsection (5) of section 985.664, Florida  
 2767 Statutes, is amended to read:

2768 985.664 Juvenile justice circuit advisory boards.-

2769 ~~(5)(a) To form the initial juvenile justice circuit~~  
 2770 ~~advisory board, the Secretary of Juvenile Justice, in~~  
 2771 ~~consultation with the juvenile justice county councils in~~  
 2772 ~~existence on October 1, 2013, shall appoint the chair of the~~  
 2773 ~~board, who must meet the board membership requirements in~~  
 2774 ~~subsection (4). Within 45 days after being appointed, the chair~~  
 2775 ~~shall appoint the remaining members to the juvenile justice~~  
 2776 ~~circuit advisory board and submit the appointments to the~~  
 2777 ~~department for approval.~~

2778 ~~(b) Thereafter,~~ When a vacancy in the office of the chair  
 2779 occurs, ~~the Secretary of Juvenile Justice, in consultation with~~  
 2780 the juvenile justice circuit advisory board, shall appoint a new  
 2781 chair, who must meet the board membership requirements in  
 2782 subsection (4). The chair shall appoint members to vacant seats

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2783 within 45 days after the vacancy and submit the appointments to  
 2784 the department for approval. The chair shall serve at the  
 2785 pleasure of the Secretary of Juvenile Justice.

2786 Section 38. Subsections (1) and (4) of section 985.672,  
 2787 Florida Statutes, are amended to read:

2788 985.672 Direct-support organization; definition; use of  
 2789 property; board of directors; audit.-

2790 (1) DEFINITION.—As used in this section, the term "direct-  
 2791 support organization" means an organization whose sole purpose  
 2792 is to support the juvenile justice system and which is:

2793 (a) A corporation not-for-profit incorporated under  
 2794 chapter 617 and which is approved by the Department of State;

2795 (b) Organized and operated to conduct programs and  
 2796 activities; to raise funds; to request and receive grants,  
 2797 gifts, and bequests of moneys; to acquire, receive, hold,  
 2798 invest, and administer, in its own name, securities, funds,  
 2799 objects of value, or other property, real or personal; and to  
 2800 make expenditures to or for the direct or indirect benefit of  
 2801 the Department of Juvenile Justice or the juvenile justice  
 2802 system operated by a county commission or a circuit board;

2803 (c) Determined by the Department of Juvenile Justice to be  
 2804 consistent with the goals of the juvenile justice system, in the  
 2805 best interest of the state, and in accordance with the adopted  
 2806 goals and mission of the Department of Juvenile Justice.

2807  
 2808 Expenditures of the organization shall be ~~expressly~~ used for the

2809 prevention ~~to prevent~~ and amelioration of ~~ameliorate~~ juvenile  
 2810 delinquency. The expenditures of the direct-support organization  
 2811 may not be used for the purpose of lobbying as defined in s.  
 2812 11.045.

2813 (4) USE OF PROPERTY.—The department may permit, without  
 2814 charge, appropriate use of fixed property, ~~and~~ facilities, and  
 2815 personnel services of the juvenile justice system by the direct-  
 2816 support organization, subject to ~~the provisions of~~ this section.  
 2817 For the purposes of this subsection, the term "personnel  
 2818 services" includes full-time or part-time personnel, as well as  
 2819 payroll processing services.

2820 (a) The department may prescribe any condition with which  
 2821 the direct-support organization must comply in order to use  
 2822 fixed property or facilities of the juvenile justice system.

2823 (b) The department may not permit the use of any fixed  
 2824 property or facilities of the juvenile justice system by the  
 2825 direct-support organization if it does not provide equal  
 2826 membership and employment opportunities to all persons  
 2827 regardless of race, color, religion, sex, age, or national  
 2828 origin.

2829 (c) The department shall adopt rules prescribing the  
 2830 procedures by which the direct-support organization is governed  
 2831 and any conditions with which a direct-support organization must  
 2832 comply to use property or facilities of the department.

2833 Section 39. Subsections (1) through (4) and subsection (9)  
 2834 of section 985.682, Florida Statutes, are amended to read:

2835 985.682 Siting of facilities; study; criteria.-  
 2836 ~~(1) The department is directed to conduct or contract for~~  
 2837 ~~a statewide comprehensive study to determine current and future~~  
 2838 ~~needs for all types of facilities for children committed to the~~  
 2839 ~~custody, care, or supervision of the department under this~~  
 2840 ~~chapter.~~  
 2841 ~~(2) The study shall assess, rank, and designate~~  
 2842 ~~appropriate sites, and shall be reflective of the different~~  
 2843 ~~purposes and uses for all facilities, based upon the following~~  
 2844 ~~criteria:~~  
 2845 ~~(a) Current and future estimates of children originating~~  
 2846 ~~from each county;~~  
 2847 ~~(b) Current and future estimates of types of delinquent~~  
 2848 ~~acts committed in each county;~~  
 2849 ~~(c) Geographic location of existing facilities;~~  
 2850 ~~(d) Availability of personnel within the local labor~~  
 2851 ~~market;~~  
 2852 ~~(e) Current capacity of facilities in the area;~~  
 2853 ~~(f) Total usable and developable acreage of various sites~~  
 2854 ~~based upon the use and purpose of the facility;~~  
 2855 ~~(g) Accessibility of each site to existing utility,~~  
 2856 ~~transportation, law enforcement, health care, fire protection,~~  
 2857 ~~refuse collection, water, and sewage disposal services;~~  
 2858 ~~(h) Susceptibility of each site to flooding hazards or~~  
 2859 ~~other adverse natural environmental consequences;~~  
 2860 ~~(i) Site location in relation to desirable and undesirable~~

2861 ~~proximity to other public facilities, including schools;~~  
 2862 ~~(j) Patterns of residential growth and projected~~  
 2863 ~~population growth; and~~  
 2864 ~~(k) Such other criteria as the department, in conjunction~~  
 2865 ~~with local governments, deems appropriate.~~  
 2866 ~~(3) The department shall recommend certification of the~~  
 2867 ~~study by the Governor and Cabinet within 2 months after its~~  
 2868 ~~receipt.~~  
 2869 ~~(4) Upon certification of the study by the Governor and~~  
 2870 ~~Cabinet, the department shall notify those counties designated~~  
 2871 ~~as being in need of a facility.~~  
 2872 (5) ~~(9)~~ The Governor and Cabinet shall consider the  
 2873 following when determining whether to grant the appeal from the  
 2874 decision of the local government on the requested modification:  
 2875 (a) The record of the proceedings before the local  
 2876 government.  
 2877 (b) Reports and studies by any other agency relating to  
 2878 matters within the jurisdiction of such agency which may be  
 2879 potentially affected by the proposed site.  
 2880 (c) Existing ~~The statewide study, as established in~~  
 2881 ~~subsection (1); other existing studies,~~ + reports and information  
 2882 maintained by the department as the Governor and Cabinet may  
 2883 request addressing the feasibility and availability of  
 2884 alternative sites in the general area, + and the need for a  
 2885 facility in the area based on the average number of petitions,  
 2886 commitments, and transfers into the criminal court from the

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2887 county to state facilities for the most recent 3 calendar years.

2888 Section 40. Section 985.69, Florida Statutes, is amended  
 2889 to read:

2890 985.69 Repair and maintenance ~~One-time startup~~ funding for  
 2891 juvenile justice purposes.—Funds from juvenile justice  
 2892 appropriations may be used ~~utilized~~ as ~~one-time startup~~ funding  
 2893 for juvenile justice purposes that include, but are not limited  
 2894 to, remodeling or renovation of existing facilities,  
 2895 ~~construction costs, leasing costs,~~ purchase of equipment and  
 2896 furniture, site development, and other necessary and reasonable  
 2897 costs associated with the repair and maintenance ~~startup~~ of  
 2898 facilities or programs.

2899 Section 41. Section 985.694, Florida Statutes, is  
 2900 repealed.

2901 Section 42. Paragraph (a) of subsection (1) of section  
 2902 985.701, Florida Statutes, is amended to read:

2903 985.701 Sexual misconduct prohibited; reporting required;  
 2904 penalties.—

2905 (1)(a)1. As used in this section ~~subsection~~, the term:

2906 a. "Sexual misconduct" means fondling the genital area,  
 2907 groin, inner thighs, buttocks, or breasts of a person; the oral,  
 2908 anal, or vaginal penetration by or union with the sexual organ  
 2909 of another; or the anal or vaginal penetration of another by any  
 2910 other object. The term does not include an act done for a bona  
 2911 fide medical purpose or an internal search conducted in the  
 2912 lawful performance of duty by an employee of the department or



2913 an employee of a provider under contract with the department.

2914 b. "Employee" includes paid staff members, volunteers, and  
 2915 interns who work in a department program or a program operated  
 2916 by a provider under a contract.

2917 c. "Juvenile offender" means any person of any age who is  
 2918 detained or supervised by, or committed to the custody of, the  
 2919 department.

2920 2. An employee who engages in sexual misconduct with a  
 2921 juvenile offender ~~detained or supervised by, or committed to the~~  
 2922 ~~custody of, the department~~ commits a felony of the second  
 2923 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 2924 775.084. An employee may be found guilty of violating this  
 2925 subsection without having committed the crime of sexual battery.

2926 3. The consent of the juvenile offender to any act of  
 2927 sexual misconduct is not a defense to prosecution under this  
 2928 subsection.

2929 4. This subsection does not apply to an employee of the  
 2930 department, or an employee of a provider under contract with the  
 2931 department, who:

2932 a. Is legally married to a juvenile offender who is  
 2933 detained or supervised by, or committed to the custody of, the  
 2934 department.

2935 b. Has no reason to believe that the person with whom the  
 2936 employee engaged in sexual misconduct is a juvenile offender  
 2937 ~~detained or supervised by, or committed to the custody of, the~~  
 2938 ~~department.~~

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2939 Section 43. Effective October 1, 2014, section 985.702,  
 2940 Florida Statutes, is created to read:

2941 985.702 Willful and malicious neglect of a juvenile  
 2942 offender prohibited; reporting required; penalties.-

2943 (1) As used in this section, the term:

2944 (a) "Employee" means a paid staff member, volunteer, or  
 2945 intern who works in a department program or a program operated  
 2946 by a provider under a contract with the department.

2947 (b) "Juvenile offender" means any person of any age who is  
 2948 detained by, or committed to the custody of, the department.

2949 (c) "Neglect" means:

2950 1. An employee's failure or omission to provide a juvenile  
 2951 offender with the proper level of care, supervision, and  
 2952 services necessary to maintain the juvenile offender's physical  
 2953 and mental health, including, but not limited to, adequate food,  
 2954 nutrition, clothing, shelter, supervision, medicine, and medical  
 2955 services; or

2956 2. An employee's failure to make a reasonable effort to  
 2957 protect a juvenile offender from abuse, neglect, or exploitation  
 2958 by another person.

2959 (2) (a) An employee who willfully and maliciously neglects  
 2960 a juvenile offender without causing great bodily harm, permanent  
 2961 disability, or permanent disfigurement commits a felony of the  
 2962 third degree, punishable as provided in s. 775.082, s. 775.083,  
 2963 or s. 775.084.

2964 (b) An employee who willfully and maliciously neglects a

2965 juvenile offender and in so doing causes great bodily harm,  
 2966 permanent disability, or permanent disfigurement commits a  
 2967 felony of the second degree, punishable as provided in s.  
 2968 775.082, s. 775.083, or s. 775.084.

2969 (c) Notwithstanding prosecution, any violation of  
 2970 paragraph (a) or paragraph (b), as determined by the Public  
 2971 Employees Relations Commission, constitutes sufficient cause  
 2972 under s. 110.227 for dismissal from employment with the  
 2973 department, and such person may not again be employed in any  
 2974 capacity in the juvenile justice system.

2975 (3) An employee who witnesses the infliction of neglect  
 2976 upon a juvenile offender shall immediately report the incident  
 2977 to the department's incident hotline and prepare, date, and sign  
 2978 an independent report that specifically describes the nature of  
 2979 the incident, the location and time of the incident, and the  
 2980 persons involved in the incident. The employee shall deliver the  
 2981 report to the employee's supervisor or program director, who  
 2982 must provide copies to the department's inspector general and  
 2983 the circuit juvenile justice manager. The inspector general  
 2984 shall immediately conduct an appropriate administrative  
 2985 investigation, and, if there is probable cause to believe that a  
 2986 violation of subsection (2) has occurred, the inspector general  
 2987 shall notify the state attorney in the circuit in which the  
 2988 incident occurred.

2989 (4) (a) A person who is required to prepare a report under  
 2990 this section who knowingly or willfully fails to do so, or who

2991 knowingly or willfully prevents another person from doing so,  
 2992 commits a misdemeanor of the first degree, punishable as  
 2993 provided in s. 775.082 or s. 775.083.

2994 (b) A person who knowingly or willfully submits  
 2995 inaccurate, incomplete, or untruthful information with respect  
 2996 to a report required under this section commits a misdemeanor of  
 2997 the first degree, punishable as provided in s. 775.082 or s.  
 2998 775.083.

2999 (c) A person who knowingly or willfully coerces or  
 3000 threatens any other person with the intent to alter testimony or  
 3001 a written report regarding an incident of neglect upon a  
 3002 juvenile offender commits a felony of the third degree,  
 3003 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3004 Section 44. Subsection (2) of section 985.721, Florida  
 3005 Statutes, is amended to read:

3006 985.721 Escapes from secure detention or residential  
 3007 commitment facility.—An escape from:

3008 (2) Any residential commitment facility described in s.  
 3009 985.03(44) ~~985.03(46)~~, maintained for the custody, treatment,  
 3010 punishment, or rehabilitation of children found to have  
 3011 committed delinquent acts or violations of law; or

3012  
 3013 constitutes escape within the intent and meaning of s. 944.40  
 3014 and is a felony of the third degree, punishable as provided in  
 3015 s. 775.082, s. 775.083, or s. 775.084.

3016 Section 45. Paragraphs (c) and (f) of subsection (3) of

3017 section 943.0582, Florida Statutes, are amended to read:

3018 943.0582 Prearrest, postarrest, or teen court diversion  
 3019 program expunction.—

3020 (3) The department shall expunge the nonjudicial arrest  
 3021 record of a minor who has successfully completed a prearrest or  
 3022 postarrest diversion program if that minor:

3023 (c) Submits to the department, with the application, an  
 3024 official written statement from the state attorney for the  
 3025 county in which the arrest occurred certifying that he or she  
 3026 has successfully completed that county's prearrest or postarrest  
 3027 diversion program, that his or her participation in the program  
 3028 was based on an arrest for a nonviolent misdemeanor, and that he  
 3029 or she has not otherwise been charged by the state attorney with  
 3030 or found to have committed any criminal offense or comparable  
 3031 ordinance violation.

3032 (f) Has never, prior to filing the application for  
 3033 expunction, been charged by the state attorney with or been  
 3034 found to have committed any criminal offense or comparable  
 3035 ordinance violation.

3036 Section 46. Section 945.75, Florida Statutes, is repealed.

3037 Section 47. Paragraphs (h) through (k) of subsection (3)  
 3038 of section 121.0515, Florida Statutes, are redesignated as  
 3039 paragraphs (g) through (j), respectively, and paragraphs (e)  
 3040 through (i) of subsection (2), present paragraphs (g) and (k) of  
 3041 subsection (3), paragraph (b) of subsection (5), paragraph (d)  
 3042 of subsection (8), and paragraph (c) of subsection (10) of that

3043 section are amended to read:

3044 121.0515 Special Risk Class.—

3045 (2) MEMBERSHIP.—

3046 ~~(e) Effective July 1, 2001, "special risk member" includes~~  
 3047 ~~any member who is employed as a youth custody officer by the~~  
 3048 ~~Department of Juvenile Justice and meets the special criteria~~  
 3049 ~~set forth in paragraph (3)(g).~~

3050 (e)(f) Effective October 1, 2005, through June 30, 2008,  
 3051 the member must be employed by a law enforcement agency or  
 3052 medical examiner's office in a forensic discipline and meet the  
 3053 special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

3054 (f)(g) Effective July 1, 2008, the member must be employed  
 3055 by the Department of Law Enforcement in the crime laboratory or  
 3056 by the Division of State Fire Marshal in the forensic laboratory  
 3057 and meet the special criteria set forth in paragraph (3)(h)  
 3058 ~~(3)(i)~~.

3059 (g)(h) Effective July 1, 2008, the member must be employed  
 3060 by a local government law enforcement agency or medical  
 3061 examiner's office and meet the special criteria set forth in  
 3062 paragraph (3)(i) ~~(3)(j)~~.

3063 (h)(i) Effective August 1, 2008, "special risk member"  
 3064 includes any member who meets the special criteria for continued  
 3065 membership set forth in paragraph (3)(j) ~~(3)(k)~~.

3066 (3) CRITERIA.—A member, to be designated as a special risk  
 3067 member, must meet the following criteria:

3068 ~~(g) Effective July 1, 2001, the member must be employed as~~

3069 ~~a youth custody officer and be certified, or required to be~~  
 3070 ~~certified, in compliance with s. 943.1395. In addition, the~~  
 3071 ~~member's primary duties and responsibilities must be the~~  
 3072 ~~supervised custody, surveillance, control, investigation,~~  
 3073 ~~apprehension, arrest, and counseling of assigned juveniles~~  
 3074 ~~within the community;~~

3075 (j)~~(k)~~ The member must have already qualified for and be  
 3076 actively participating in special risk membership under  
 3077 paragraph (a), paragraph (b), or paragraph (c), must have  
 3078 suffered a qualifying injury as defined in this paragraph, must  
 3079 not be receiving disability retirement benefits as provided in  
 3080 s. 121.091(4), and must satisfy the requirements of this  
 3081 paragraph.

3082 1. The ability to qualify for the class of membership  
 3083 defined in paragraph (2) (h) ~~(2) (i)~~ occurs when two licensed  
 3084 medical physicians, one of whom is a primary treating physician  
 3085 of the member, certify the existence of the physical injury and  
 3086 medical condition that constitute a qualifying injury as defined  
 3087 in this paragraph and that the member has reached maximum  
 3088 medical improvement after August 1, 2008. The certifications  
 3089 from the licensed medical physicians must include, at a minimum,  
 3090 that the injury to the special risk member has resulted in a  
 3091 physical loss, or loss of use, of at least two of the following:  
 3092 left arm, right arm, left leg, or right leg; and:

3093 a. That this physical loss or loss of use is total and  
 3094 permanent, except if the loss of use is due to a physical injury

3095 to the member's brain, in which event the loss of use is  
 3096 permanent with at least 75 percent loss of motor function with  
 3097 respect to each arm or leg affected.

3098 b. That this physical loss or loss of use renders the  
 3099 member physically unable to perform the essential job functions  
 3100 of his or her special risk position.

3101 c. That, notwithstanding this physical loss or loss of  
 3102 use, the individual can perform the essential job functions  
 3103 required by the member's new position, as provided in  
 3104 subparagraph 3.

3105 d. That use of artificial limbs is not possible or does  
 3106 not alter the member's ability to perform the essential job  
 3107 functions of the member's position.

3108 e. That the physical loss or loss of use is a direct  
 3109 result of a physical injury and not a result of any mental,  
 3110 psychological, or emotional injury.

3111 2. For the purposes of this paragraph, "qualifying injury"  
 3112 means an injury sustained in the line of duty, as certified by  
 3113 the member's employing agency, by a special risk member that  
 3114 does not result in total and permanent disability as defined in  
 3115 s. 121.091(4)(b). An injury is a qualifying injury if the injury  
 3116 is a physical injury to the member's physical body resulting in  
 3117 a physical loss, or loss of use, of at least two of the  
 3118 following: left arm, right arm, left leg, or right leg.  
 3119 Notwithstanding any other provision of this section, an injury  
 3120 that would otherwise qualify as a qualifying injury is not



3121 considered a qualifying injury if and when the member ceases  
 3122 employment with the employer for whom he or she was providing  
 3123 special risk services on the date the injury occurred.

3124 3. The new position, as described in sub-subparagraph  
 3125 1.c., that is required for qualification as a special risk  
 3126 member under this paragraph is not required to be a position  
 3127 with essential job functions that entitle an individual to  
 3128 special risk membership. Whether a new position as described in  
 3129 sub-subparagraph 1.c. exists and is available to the special  
 3130 risk member is a decision to be made solely by the employer in  
 3131 accordance with its hiring practices and applicable law.

3132 4. This paragraph does not grant or create additional  
 3133 rights for any individual to continued employment or to be hired  
 3134 or rehired by his or her employer that are not already provided  
 3135 within the Florida Statutes, the State Constitution, the  
 3136 Americans with Disabilities Act, if applicable, or any other  
 3137 applicable state or federal law.

3138 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

3139 (b) Any member who is a special risk member on July 1,  
 3140 2008, and who became eligible to participate under paragraph  
 3141 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk  
 3142 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or  
 3143 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk  
 3144 designation removed and thereafter shall be a Regular Class  
 3145 member and earn only Regular Class membership credit. The  
 3146 department may review the special risk designation of members to

3147 determine whether or not those members continue to meet the  
 3148 criteria for Special Risk Class membership.

3149 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

3150 (d) Notwithstanding any other provision of this  
 3151 subsection, this subsection does not apply to any special risk  
 3152 member who qualifies for continued membership pursuant to  
 3153 paragraph (3) (j) ~~(3) (k)~~.

3154 (10) CREDIT FOR UPGRADED SERVICE.—

3155 (c) Any member of the Special Risk Class who has earned  
 3156 creditable service through June 30, 2008, in another membership  
 3157 class of the Florida Retirement System in a position with the  
 3158 Department of Law Enforcement or the Division of State Fire  
 3159 Marshal and became covered by the Special Risk Class as  
 3160 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government  
 3161 law enforcement agency or medical examiner's office and became  
 3162 covered by the Special Risk Class as described in paragraph  
 3163 (3) (i) ~~(3) (j)~~, which service is within the purview of the  
 3164 Special Risk Class, and is employed in such position on or after  
 3165 July 1, 2008, may purchase additional retirement credit to  
 3166 upgrade such service to Special Risk Class service, to the  
 3167 extent of the percentages of the member's average final  
 3168 compensation provided in s. 121.091(1)(a)2. The cost for such  
 3169 credit must be an amount representing the actuarial accrued  
 3170 liability for the difference in accrual value during the  
 3171 affected period of service. The cost shall be calculated using  
 3172 the discount rate and other relevant actuarial assumptions that

3173 were used to value the Florida Retirement System Pension Plan  
 3174 liabilities in the most recent actuarial valuation. The division  
 3175 shall ensure that the transfer sum is prepared using a formula  
 3176 and methodology certified by an enrolled actuary. The cost must  
 3177 be paid immediately upon notification by the division. The local  
 3178 government employer may purchase the upgraded service credit on  
 3179 behalf of the member if the member has been employed by that  
 3180 employer for at least 3 years.

3181 Section 48. Paragraph (a) of subsection (4) of section  
 3182 316.635, Florida Statutes, is amended to read:

3183 316.635 Courts having jurisdiction over traffic  
 3184 violations; powers relating to custody and detention of minors.-

3185 (4) A minor who willfully fails to appear before any court  
 3186 or judicial officer as required by written notice to appear is  
 3187 guilty of contempt of court. Upon a finding by a court, after  
 3188 notice and a hearing, that a minor is in contempt of court for  
 3189 willful failure to appear pursuant to a valid notice to appear,  
 3190 the court may:

3191 (a) For a first offense, order the minor to serve up to 5  
 3192 days in a staff-secure shelter as defined in chapter 984 ~~or~~  
 3193 ~~chapter 985~~ or, if space in a staff-secure shelter is  
 3194 unavailable, in a secure juvenile detention center.

3195 Section 49. Paragraph (a) of subsection (2) of section  
 3196 318.143, Florida Statutes, is amended to read:

3197 318.143 Sanctions for infractions by minors.-

3198 (2) Failure to comply with one or more of the sanctions

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3199 | imposed by the court constitutes contempt of court. Upon a  
 3200 | finding by the court, after notice and a hearing, that a minor  
 3201 | is in contempt of court for failure to comply with court-ordered  
 3202 | sanctions, the court may:

3203 |       (a) For a first offense, order the minor to serve up to 5  
 3204 | days in a staff-secure shelter as defined in chapter 984 ~~or~~  
 3205 | ~~chapter 985~~ or, if space in a staff-secure shelter is  
 3206 | unavailable, in a secure juvenile detention center.

3207 |       Section 50. Except as otherwise expressly provided in this  
 3208 | act, this act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Pilon offered the following:

3  
 4 **Amendment**  
 5 Remove line 241 and insert:  
 6 to residential programs, unless the court deems such placement  
 7 appropriate.

8



Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Pilon offered the following:

**Amendment**

Remove lines 1803-1813 and insert:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention  
in order to protect the victim from injury.

9  
 10 The child may not be held in secure detention under this  
 11 subsection for more than 48 hours unless ordered by the court.  
 12 After 48 hours, the court shall hold a hearing if the state  
 13 attorney or victim requests that secure detention be continued.  
 14 The child may continue to be held in detention care if the court  
 15 makes a specific, written finding that detention care is  
 16 necessary to protect the

17