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# **Criminal Justice Subcommittee**

**Wednesday, February 5, 2014**

**9:00 AM**

**404 HOB**

**Will Weatherford**  
Speaker

**Matt Gaetz**  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Wednesday, February 05, 2014 09:00 am  
**End Date and Time:** Wednesday, February 05, 2014 11:30 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.50 hrs

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

CS/HB 47 Spiny Lobster by Agriculture & Natural Resources Subcommittee, Raschein  
HB 99 Sentencing for Controlled Substance Violations by Edwards, Hood  
HB 139 Volunteers for Organized Youth Sports and Recreational Programs by Jones, S.  
HB 409 Offenses Against Vulnerable Persons by Passidomo  
HB 515 Public Assistance Fraud by Smith

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

PCB CRJS 14-01 -- Juvenile Justice  
PCB CRJS 14-08 -- Juvenile Sentencing

**NOTICE FINALIZED on 01/29/2014 16:14 by Bowen.Erika**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 47 Spiny Lobster  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee; Raschein and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

Pursuant to the Florida Fish and Wildlife Conservation Commission's (FWC) Rules, both the commercial and recreational spiny lobster seasons run from August 6<sup>th</sup> through March 31<sup>st</sup>. In addition, spiny lobsters may be harvested recreationally during the recreational two-day "sport season," which occurs on the last consecutive Wednesday and Thursday of July each year. FWC's Rules also require spiny lobsters harvested in Florida to remain in a whole condition at all times while on or below the waters of the state. Possession of spiny lobster tails that have been wrung or separated, on or below the waters of the state, is prohibited.

Currently, s. 379.407, F.S., requires any person, firm, or corporation who violates FWC Rule relating to the conservation of marine resources to be punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of no less than \$100 or more than \$500, or by both such fine and imprisonment.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of no less than \$250 or more than \$1,000, or by both fine and imprisonment.

The bill creates s. 379.407(5), F.S., to prohibit the possession of spiny lobsters during the closed season and the possession, while on the water, of spiny lobster tails that have been wrung or separated from the body. The bill creates the following penalties for persons, firms, or corporations that violate this provision:

- A first violation is a second degree misdemeanor. If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.
- A second violation is a first degree misdemeanor, and the violator is subject to a suspension of all license privileges for a period not to exceed 90 days.
- A third violation is a first degree misdemeanor with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for a period not to exceed 6 months.
- A third violation within one year after a second violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- A fourth or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill increases criminal penalties, imposes civil fines, and requires suspension or revocation of licenses for certain offenses relating to spiny lobsters. The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an insignificant negative prison bed impact on the Department of Corrections. The bill may also have a negative jail bed impact, and will negatively impact those who commit violations.

The bill is effective July 1, 2014.

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

STORAGE NAME: h0047b.CRJS.DOCX

DATE: 1/30/2014

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Spiny Lobsters**

One hundred percent of spiny lobsters commercially harvested<sup>1</sup> in the U.S. come from Florida, with approximately 90 percent harvested in the Florida Keys.<sup>2</sup> Chapter 379, F.S., imposes regulations to ensure the long-term sustainability of the spiny lobster, including regulations that require licensure, establish closed seasons and areas, create a lobster trap certificate program, and that impose minimum size limits, gear restrictions, and trap specifications. The Florida Fish and Wildlife Conservation Commission (FWC) regulates spiny lobster fishing that occurs in Florida waters.<sup>3</sup>

##### Harvest Season

According to FWC's Rules, both the commercial and recreational<sup>4</sup> spiny lobster seasons run from August 6<sup>th</sup> through March 31<sup>st</sup>.<sup>5</sup> Consequently, no person is allowed to harvest, attempt to harvest, or have in his possession, regardless of where taken, any spiny lobster during the closed season of April 1 through August 5 of each year.<sup>6</sup> FWC's Rules provide one exception to this prohibition by allowing spiny lobsters to be harvested recreationally during the recreational 2-day "sport season," which occurs on the last consecutive Wednesday and Thursday of July each year.<sup>7</sup>

##### Wrung Tails

FWC's Rules require spiny lobsters harvested in Florida to remain in a whole condition at all times while on or below the waters of the state.<sup>8</sup> Possession of spiny lobster tails that have been wrung or separated, on or below the waters of the state, is prohibited.<sup>9</sup>

##### Penalties

Section 379.407, F.S., requires any person, firm, or corporation who violates any provision of ch. 379, F.S., or any FWC Rule relating to the conservation of marine resources to be punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of no less than \$100 or more than \$500, or by both such fine and imprisonment.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of no less than \$250 or more than \$1,000, or by both fine and imprisonment.

A court must assess additional penalties against any commercial harvester convicted of major violations.<sup>10</sup> For purposes of spiny lobster, a major violation is a violation of statute or FWC Rules that

<sup>1</sup> "Harvest" means the catching or taking of spiny lobster by any means whatsoever, followed by a reduction of such spiny lobster to possession. Spiny lobster that are caught but immediately returned to the water free, alive and unharmed are not harvested. In addition, temporary possession of a spiny lobster for the purpose of measuring it to determine compliance with the minimum size requirements does not constitute harvesting, provided that it is measured immediately after taking, and immediately returned to the water free, alive and unharmed if undersized. Rule 68B-24.002(6), F.A.C.

<sup>2</sup> FWC 2014 analysis. On file with staff.

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

<sup>4</sup> In Florida, in order to commercially harvest spiny lobster, a person must possess a Saltwater Products License, a Restricted Species Endorsement, and either a Spiny Lobster Endorsement (C) or a Lobster Dive Endorsement (CD). Recreational harvesting requires a valid recreational saltwater fishing license and a spiny lobster permit. FWC 2014 analysis. On file with staff

<sup>5</sup> Rule 68B-24.005(1), F.A.C.

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

<sup>7</sup> During the two-day sport season, persons may not harvest spiny lobster by any means other than by diving or with the use of a bully net or hoop net. In Monroe County, persons may not harvest spiny lobster by diving at night (from one hour after official sunset until one hour before official sunrise), or in or from the waters of John Pennekamp Coral Reef State Park. Rule 68B-24.005(2), F.A.C.

<sup>8</sup> Rule 68B-24.003, F.A.C.

<sup>9</sup> *Id.* Unless the spiny lobster are being imported pursuant to Rule 68B-24.0045, F.A.C., or were harvested outside the waters of the state and the wringing or separation was pursuant to a federal permit allowing such wringing or separation.

involves more than 100 illegal spiny lobsters. In such instances, the court must impose an additional penalty of \$10 for each illegal spiny lobster, or part thereof, involved in the violation.<sup>11</sup>

### **Effect of the Bill**

The bill creates s. 379.407(5), F.S., to specify that it is a major violation to possess spiny lobster during the closed season or, while on the water, to possess spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. Any person, firm, or corporation that violates this provision is subject to the following penalties:

- A first violation is a second degree misdemeanor.<sup>12</sup> If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.<sup>13</sup>
- A second violation is a first degree misdemeanor, and the violator is subject to a suspension of all license privileges for a period not to exceed 90 days.
- A third violation is a first degree misdemeanor with a mandatory minimum term of imprisonment of 6 months. The violator may also be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for up to six months.
- A third violation within one year after a second violation is a third degree felony<sup>14</sup> with a mandatory minimum term of imprisonment of one year. The violator must also be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- A fourth or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must also be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill also amends s. 379.401, F.S., to conform a cross-reference.

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

**Section 1.** Amends s. 379.407, F.S., relating to penalties for certain violations relating to spiny lobsters.

**Section 2.** Amends s. 379.401, F.S., conforming a cross-reference.

**Section 3.** Provides an effective date of July 1, 2014.

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

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

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

None.

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

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

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<sup>10</sup> Section 379.407(2), F.S.

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

<sup>12</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>13</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>14</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.

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

1. Revenues:

None.

2. Expenditures:

The bill increases penalties and imposes minimum mandatory terms of imprisonment for certain offenses relating to spiny lobsters. This will have a negative jail bed impact.

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

The bill increases criminal penalties, imposes minimum mandatory terms of imprisonment, imposes civil fines, and requires suspension or revocation of licenses for certain offenses relating to spiny lobsters. Those who commit violations will be impacted by these provisions.

**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:**

This bill does not appear to create a need for rulemaking or require additional rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 14, 2014, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and passed HB 47 favorably as a committee substitute (CS). The CS creates s. 379.407(5), F.S., to prohibit the possession of spiny lobster during the closed season or, while on the water, the possession of spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. The CS increases criminal penalties, imposes minimum mandatory terms of imprisonment, imposes civil fines, and requires suspension or revocation of licenses for those who violate s. 379.407(5), F.S.

This analysis is drafted to the CS as passed by the Agriculture & Natural Resources Subcommittee.

1                   A bill to be entitled  
 2           An act relating to crustaceans; amending s. 379.407,  
 3           F.S.; providing that certain violations relating to  
 4           spiny lobsters and stone crabs are separate and  
 5           distinct offenses; amending s. 379.2431, F.S.;  
 6           conforming a cross-reference; providing an effective  
 7           date.

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

10  
 11           Section 1. Subsection (1) of section 379.407, Florida  
 12   Statutes, is amended to read:

13           379.407 Administration; rules, publications, records;  
 14   penalties; injunctions.—

15           (1) BASE PENALTIES.—Unless otherwise provided by law:—

16           (a) A violation ~~any person, firm, or corporation who~~  
 17   ~~violates any provision of this chapter,~~ or the rules ~~any rule~~ of  
 18   the ~~Fish and Wildlife Conservation~~ commission relating to the  
 19   conservation of marine resources is punishable, ~~shall be~~  
 20   punished:

21           1.(a) Upon a first conviction, by imprisonment for a  
 22   ~~period of~~ not more than 60 days or by a fine of not less than  
 23   \$100 or ~~not~~ more than \$500, or by both such fine and  
 24   imprisonment.

25           2.(b) Upon ~~On~~ a second or subsequent conviction within 12  
 26   months, by imprisonment for not more than 6 months or by a fine  
 27   of not less than \$250 or ~~not~~ more than \$1,000, or by both such  
 28   fine and imprisonment.



29            (b) Each spiny lobster or stone crab taken in violation of  
 30 this chapter or the rules of the commission constitutes a  
 31 separate and distinct violation.

32  
 33 Upon final disposition of an ~~any~~ alleged offense for which a  
 34 citation for a ~~any~~ violation of this chapter or the rules of the  
 35 commission has been issued, the court shall, within 10 days,  
 36 certify the disposition to the commission.

37            Section 2. Paragraph (s) of subsection (2) of section  
 38 379.2431, Florida Statutes, is amended to read:

39            379.2431 Marine animals; regulation.—

40            (2) PROTECTION OF MANATEES OR SEA COWS.—

41            (s) Except as otherwise provided in this paragraph, a ~~any~~  
 42 person violating the provisions of this subsection or a ~~any~~ rule  
 43 or ordinance adopted pursuant to this subsection commits a  
 44 misdemeanor, punishable as provided in s. 379.407(1)(a) ~~or (b)~~.

45            1. A ~~Any~~ person operating a vessel in excess of a posted  
 46 speed limit commits ~~shall be guilty of~~ a civil infraction,  
 47 punishable as provided in s. 327.73, except as provided in  
 48 subparagraph 2.

49            2. This paragraph does not apply to a person ~~persons~~  
 50 violating restrictions governing "No Entry" zones or "Motorboat  
 51 Prohibited" zones, who, if convicted, commits ~~shall be guilty of~~  
 52 a misdemeanor, punishable as provided in s. 379.407(1)(a) ~~or~~  
 53 ~~(b)~~, or, if such violation demonstrates blatant or willful  
 54 action, may be found guilty of harassment as described in  
 55 paragraph (d).

56            3. A person may engage in an ~~any~~ activity otherwise

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57 prohibited by this subsection or a any rule or ordinance adopted  
58 pursuant to this subsection if the activity is reasonably  
59 necessary in order to prevent the loss of human life or a vessel  
60 in distress due to weather conditions or other reasonably  
61 unforeseen circumstances, or in order to render emergency  
62 assistance to a person ~~persons~~ or a vessel in distress.

63       Section 3. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 99 Sentencing for Controlled Substance Violations  
**SPONSOR(S):** Edwards; Hood and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 360

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

### SUMMARY ANALYSIS

Section 893.135, F.S., relates to drug trafficking, which occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into this state; or when a person is knowingly in actual or constructive possession of, a specified quantity of a drug. Generally, drug trafficking offenses are first degree felonies that are subject to mandatory minimum sentences, which vary depending on the type and quantity of drug trafficked. A judge has no discretion to sentence a person below the mandatory minimum sentence.

Paragraph (1)(c) of s. 893.135, F.S., establishes the offense of "trafficking in illegal drugs," and specifically addresses trafficking in morphine, opium, oxycodone, hydrocodone, and hydromorphone. If a person violates s. 893.135(1)(c), F.S., and the quantity involved is:

- 4 grams or more, but less than 14 grams - 3 year minimum mandatory and a \$50,000 fine.
- 14 grams or more, but less than 28 grams - 15 year minimum mandatory and a \$100,000 fine.
- 28 grams or more, but less than 30 kilograms - 25 year minimum mandatory and a \$500,000 fine.

There are numerous prescription medications that are within the scope of s. 893.135(1)(c), F.S., such as vicodin, percocet, etc. As such, a person who unlawfully possesses, purchases, sells, etc., these prescription medications in a trafficking weight may be subject to the mandatory minimum penalties outlined above.

The bill amends s. 893.135(1)(c), F.S., to establish a new offense entitled "illegal trafficking in prescription drugs" that specifically addresses trafficking in oxycodone and hydrocodone or any mixture containing such substances.

The bill provides that a person who violates the newly created offense of "illegal trafficking in prescription drugs" and the quantity involved:

- Is 14 grams or more, but less than 28 grams – 3 year mandatory minimum and a fine of \$50,000.
- Is 28 grams or more, but less than 50 grams – 7 year mandatory minimum and a fine of \$100,000.
- Is 50 grams or more, but less than 200 grams – 15 year mandatory minimum and a fine of \$500,000.
- Is 200 grams or more – 25 year mandatory minimum and a fine of \$750,000.

On January 30, 2014, Criminal Justice Impact Conference determined that there would be a positive prison bed impact to the Department of Corrections (-of 465 beds over five years). This would result in a \$47 million dollar savings over five years.

The bill is effective date July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Drug Trafficking – Generally**

Section 893.135, F.S., creates a variety of drug trafficking offenses. Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into this state; or is knowingly in actual or constructive possession of, a specified quantity of a controlled substance.<sup>1</sup> Section 893.135, F.S., categorizes drug trafficking offenses by drug type as follows:

- Paragraph (1)(a) establishes the offense of “trafficking in cannabis;”
- Paragraph (1)(b) establishes the offense of “trafficking in cocaine;”
- Paragraph (1)(c) establishes the offense of “trafficking in illegal drugs;”
- Paragraph (1)(d) establishes the offense of “trafficking in phencyclidine;”
- Paragraph (1)(e) establishes the offense of “trafficking in methaqualone;”
- Paragraph (1)(f) establishes the offense of “trafficking in amphetamine;”
- Paragraph (1)(g) establishes the offense of “trafficking in flunitrazepam;”
- Paragraph (1)(h) establishes the offense of “trafficking in GHB;”
- Paragraph (1)(i) establishes the offense of “trafficking in GBL;”
- Paragraph (1)(j) establishes the offense of “trafficking in 1,4-butanediol;”
- Paragraph (1)(k) establishes the offense of “trafficking in phenethylamines;” and
- Paragraph (1)(l) establishes the offense of “trafficking in LSD.”

Generally, drug trafficking offenses are first degree felonies<sup>2</sup> that are subject to mandatory minimum terms of imprisonment.<sup>3</sup> The mandatory minimum sentence applicable to a drug trafficking offense depends on the type and quantity of drug trafficked. A sentencing judge has no discretion to sentence a person below the mandatory minimum prison sentences outlined in statute, regardless of any mitigating testimony provided to the court.<sup>4</sup> Only the state attorney has the discretion to waive the mandatory minimum sentence for trafficking offenses.<sup>5</sup>

##### **Trafficking in Illegal Drugs**

Paragraph (1)(c) of s. 893.135, F.S., establishes the offense of “trafficking in illegal drugs,” and specifically addresses trafficking in morphine, opium, oxycodone, hydrocodone, and hydromorphone. The statute provides:

Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as “trafficking in illegal drugs.”<sup>6</sup>

<sup>1</sup> See s. 893.135(1)(a)-(l), F.S.

<sup>2</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>3</sup> Section 893.135, F.S., provides for more severe penalties in certain situations. For example, drug trafficking is a capital felony if, during the commission of the offense, the defendant intentionally killed a person; counseled, commanded, induced, procured, or caused the intentional killing of an individual; or the trafficking led to a natural, though not inevitable, lethal result to another person.

<sup>4</sup> 16 Fla. Prac., Sentencing s. 6:69 (2012-2013 ed.).

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

<sup>6</sup> Section 893.135(10)(c)1., F.S.

If a person violates s. 893.135(1)(c), F.S., and the quantity involved:

- Is 4 grams<sup>7</sup> or more, but less than 14 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.<sup>8</sup>
- Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$100,000.<sup>9</sup>
- Is 28 grams or more, but less than 30 kilograms, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and pay a fine of \$500,000.<sup>10</sup>

There are numerous prescription medications that are within the scope of s. 893.135(1)(c), F.S., such as vicodin, percocet, etc. As such, a person who unlawfully possesses, purchases, sells, etc., these prescription medications in a trafficking weight may be subject to prosecution for drug trafficking under s. 893.135(1)(c), F.S.

### **Weighing Prescription Medications for Drug Trafficking Offenses**

When determining the weight of pills or tablets for trafficking offenses, the weight is determined by the total weight of each pill or tablet multiplied by the number of pills or tablets possessed, sold, etc. The total weight of a pill or tablet includes the weight of the controlled substance in the pill or tablet (e.g., hydrocodone) and the weight of noncontrolled substances or matter in the pill or tablet, such as coating, binders, and nonprescription drugs (e.g., acetaminophen).<sup>11</sup>

In a 2012 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) cited a pill that had a weight of 0.65 grams with 10 milligrams (mg.) of hydrocodone and stated "... [I]t takes 7 pills of 10 mg. hydrocodone, which are large pills with 325 to 750 mg. of acetaminophen, to reach the threshold of 4 grams for a minimum mandatory prison sentence of three years."<sup>12</sup> Based upon this medication, OPPAGA found that 22 pills would meet the 14 gram threshold (15-year mandatory minimum term) and 44 pills would meet the 28 gram threshold (25-year mandatory minimum term).<sup>13</sup>

Due to the different compositions of prescription opioids, noncontrolled substances may add significantly to the total weight of the pill or tablet as, for example, is the case with medication that contains hydrocodone and acetaminophen. When comparing this medication to a sample medication containing oxycodone, which does not contain acetaminophen, OPPAGA found:

"... [I]t takes approximately 31 pills of 30 mg. oxycodone to reach the threshold of 4 grams since this type of oxycodone is a smaller pill and does not include acetaminophen. Thus, it takes more oxycodone pills than hydrocodone pills to trigger a minimum mandatory sentence, even though oxycodone is more potent and likely to lead to adverse outcomes, such as addiction and overdose."<sup>14</sup>

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<sup>7</sup> For the purpose of comparison, the approximate weight of a U.S. currency note, regardless of denomination, is one gram. [www.moneyfactory.gov/faqlibrary.html](http://www.moneyfactory.gov/faqlibrary.html) (last visited on January 26, 2014).

<sup>8</sup> Section 893.135(1)(c)1.a., F.S. This offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(g), F.S.

<sup>9</sup> Section 893.135(1)(c)1.b., F.S. This offense is ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(h), F.S.

<sup>10</sup> Section 893.135(1)(c)1.c., F.S. This offense is ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(i), F.S.

<sup>11</sup> See ss. 893.02(16) and 893.135(6), F.S.

<sup>12</sup> *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Office of Program Policy Analysis and Government Accountability, <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=12-02> (last visited on January 26, 2014). Report No. 12-02 (January, 2012), at p. 5. This report is further cited as "OPPAGA Report."

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Based upon this oxycodone medication, OPPAGA found that 108 pills would meet the 14 gram threshold (15-year mandatory minimum term) and 215 pills would meet the 28 gram threshold (25-year mandatory minimum term).<sup>15</sup>

### **OPPAGA Report: Sample Information Regarding Prescription Drug Trafficking Offenders**

OPPAGA analyzed arrest reports of a sample of 194 offenders admitted to prison in Fiscal Year 2010-11 for opioid trafficking and determined that “almost all (93%) were convicted of trafficking in prescription painkillers... [A]rrests most commonly involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.”<sup>16</sup> OPPAGA provided the following information regarding how most of these arrests occurred:

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant... In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.<sup>17</sup>

The majority of the offenders in OPPAGA’s sample illegally possessed or sold 30 to 90 pills:

For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of the number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to 60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.<sup>18</sup>

Most of the offenders in the OPPAGA sample did not have a prior drug trafficking record and were determined by prison staff to need substance abuse treatment:

Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison... Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses. These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> OPPAGA Report, at p. 3.

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

<sup>18</sup> OPPAGA Report, at p. 4. In a footnote (n. 7, at p. 4) at the end of the second paragraph of this quote, OPPAGA noted: “Law enforcement and other stakeholders reported that pain clinics they would consider as being ‘pill mills’ routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.”

<sup>19</sup> *Id.* In a footnote (n. 8, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: “Prison staff assessed offenders’ risk of recidivism using the risk assessment instrument developed by the Department of Corrections (DOC). Recidivism is defined as return to prison within three years of release.”

## Minimum Mandatory Sentences

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"<sup>20</sup> from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating "circumstances or factors that reasonably justify the downward departure."<sup>21</sup> The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is 30 years, for a second degree felony is 15 years and for a third degree felony is 5 years.<sup>22</sup>

Rule 3.704(c)(26) of the Florida Rules of Criminal Procedure specifies that if the lowest permissible sentence is less than a mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the lowest permissible sentence takes precedence.<sup>23</sup>

With few exceptions, the sentencing court must impose the mandatory minimum term – there is no judicial discretion. There are only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term: when the court sentences a defendant as a youthful offender;<sup>24</sup> and when the state attorney waives the mandatory minimum sentence.<sup>25</sup>

As noted above, the mandatory minimum sentence applicable to a drug trafficking offense depends on the type and quantity of drug trafficked. As shown in the following chart, a person need only possess 4 grams of an illegal substance (prescription drug) to reach the "trafficking in illegal drugs" threshold, while a person must possess a much greater amount of other drugs (cocaine, etc.) to reach the trafficking thresholds.

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<sup>20</sup> Section 921.0022, F.S.

<sup>21</sup> Section 921.0026, F.S.

<sup>22</sup> Section 775.082, F.S.

<sup>23</sup> Rule 3.704(c)(26), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing "floor" for the court and there is no prohibition on earning gain-time. If the court only sentences the defendant to the mandatory term specified by statute, DOC establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. See *Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner's release prior to serving a minimum of 85% of the sentence).

<sup>24</sup> Section 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012).

<sup>25</sup> 16 Fla. Prac., Sentencing s. 6:69 (2012-2013 ed.). The state attorney may also move to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.



Trafficking Provision	First Weight Range	Second Weight Range	Third Weight Range
Trafficking in illegal drugs (includes prescription opioids) (s. 893.135(1)(c)1., F.S.)	3-year mandatory minimum term (4 to 14 grams)	15-year mandatory minimum term (14 to 28 grams)	25-year mandatory minimum term (28 grams to 30 kilograms)
Trafficking in cocaine (s. 893.135(1)(b)1., F.S.)	3-year mandatory minimum term (28 to 200 grams)	7-year mandatory minimum term (200 to 400 grams)	15-year mandatory minimum term (400 grams to 150 kilograms)
Trafficking in phencyclidine (s. 893.135(1)(d)1., F.S.)	3-year mandatory minimum term (28 to 200 grams)	7-year mandatory minimum term (200 to 400 grams)	15-year mandatory minimum term (400 grams or more)
Trafficking in methaqualone (s. 893.135(1)(e)1., F.S.)	3-year mandatory minimum term (200 grams to 5 kilograms)	7-year mandatory minimum term (5 kilograms to less than 25 kilograms)	15-year mandatory minimum term (25 kilograms or more)
Trafficking in amphetamine or methamphetamine (s. 893.135(1)(f)1., F.S.)	3-year mandatory minimum term (14 to 28 grams)	7-year mandatory minimum term (28 to 200 grams)	15-year mandatory minimum term (200 grams or more)

### Effect of the Bill

The bill amends s. 893.135(1)(c), F.S., to remove oxycodone and hydrocodone from the “trafficking in illegal drugs” provisions and to create a new offense entitled “illegal trafficking in prescription drugs.” The new offense specifically addresses trafficking in oxycodone and hydrocodone or any mixture containing any such substances, and provides:

Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in illegal prescription drugs.”

The bill provides that a person who violates the newly created s. 893.135(1)(c)2., F.S., and the quantity involved:

- Is 14 grams or more, but less than 28 grams, must be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.
- Is 28 grams or more, but less than 50 grams, must be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000.
- Is 50 grams or more, but less than 200 grams, must be sentenced to a mandatory minimum term of 15 years and ordered to pay a fine of \$500,000.
- Is 200 grams or more, must be sentenced to a mandatory minimum term of imprisonment of 25 years and pay a fine of \$750,000.

A person who unlawfully possesses, purchases, sells, etc., less than 14 grams of oxycodone or hydrocodone can no longer be charged under s. 893.135, F.S., for “trafficking in illegal substances.”<sup>26</sup>

### B. SECTION DIRECTORY:

Section 1. Designates the title of the bill as the “Elizabeth Dillinger Act.”

<sup>26</sup> Such persons could still be charged for unlawful possession, sale, etc., under s. 893.13, F.S.

Section 2. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 3. 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, Criminal Justice Impact Conference determined that there would be a positive prison bed impact to the Department of Corrections (-of 465 beds over five years). This would result in a \$47 million dollar savings over five years.

### 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:

This 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

1 A bill to be entitled  
 2 An act relating to sentencing for controlled substance  
 3 violations; providing a short title; amending s.  
 4 893.135, F.S.; revising criminal penalties for persons  
 5 engaged in illegal trafficking of prescription drugs  
 6 involving specified quantities of oxycodone or  
 7 hydrocodone; providing an effective date.

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

10  
 11 Section 1. This act may be cited as the Elizabeth  
 12 Dillinger Act."

13 Section 2. Paragraph (c) of subsection (1) of section  
 14 893.135, Florida Statutes, is amended to read:

15 893.135 Trafficking; mandatory sentences; suspension or  
 16 reduction of sentences; conspiracy to engage in trafficking.—

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

19 (c)1. Any person who knowingly sells, purchases,  
 20 manufactures, delivers, or brings into this state, or who is  
 21 knowingly in actual or constructive possession of, 4 grams or  
 22 more of any morphine, opium, ~~oxycodone, hydrocodone,~~  
 23 hydromorphone, or any salt, derivative, isomer, or salt of an  
 24 isomer thereof, including heroin, as described in s.  
 25 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more  
 26 of any mixture containing any such substance, but less than 30

27 kilograms of such substance or mixture, commits a felony of the  
 28 first degree, which felony shall be known as "trafficking in  
 29 illegal drugs," punishable as provided in s. 775.082, s.  
 30 775.083, or s. 775.084. If the quantity involved:

31 a. Is 4 grams or more, but less than 14 grams, such person  
 32 shall be sentenced to a mandatory minimum term of imprisonment  
 33 of 3 years, and the defendant shall be ordered to pay a fine of  
 34 \$50,000.

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

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

43 2. A person who knowingly sells, purchases, manufactures,  
 44 delivers, or brings into this state, or who is knowingly in  
 45 actual or constructive possession of 14 grams or more of  
 46 oxycodone or hydrocodone, or 14 grams or more of a mixture  
 47 containing any such substance, commits a felony of the first  
 48 degree, which felony shall be known as "illegal trafficking in  
 49 prescription drugs," punishable as provided in s. 775.082, s.  
 50 775.083, or s. 775.084. If the quantity involved:

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

53 imprisonment of 3 years, and the defendant shall be ordered to  
 54 pay a fine of \$50,000.

55 b. Is 28 grams or more, but less than 50 grams, such  
 56 person shall be sentenced to a mandatory minimum term of  
 57 imprisonment of 7 years, and the defendant shall be ordered to  
 58 pay a fine of \$100,000.

59 c. Is 50 grams or more, but less than 200 grams, such  
 60 person shall be sentenced to a mandatory minimum term of  
 61 imprisonment of 15 calendar years, and the defendant shall be  
 62 ordered to pay a fine of \$500,000.

63 d. Is 200 grams or more, such person shall be sentenced to  
 64 a mandatory minimum term of imprisonment of 25 calendar years,  
 65 and the defendant shall be ordered to pay a fine of \$750,000.

66 3.2. Any person who knowingly sells, purchases,  
 67 manufactures, delivers, or brings into this state, or who is  
 68 knowingly in actual or constructive possession of, 30 kilograms  
 69 or more of any morphine, opium, ~~oxycodone, hydrocodone,~~  
 70 hydromorphone, or any salt, derivative, isomer, or salt of an  
 71 isomer thereof, including heroin, as described in s.  
 72 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
 73 more of any mixture containing any such substance, commits the  
 74 first degree felony of trafficking in illegal drugs. A person  
 75 who has been convicted of the first degree felony of trafficking  
 76 in illegal drugs under this subparagraph shall be punished by  
 77 life imprisonment and is ineligible for any form of  
 78 discretionary early release except pardon or executive clemency

79 or conditional medical release under s. 947.149. However, if the  
 80 court determines that, in addition to committing any act  
 81 specified in this paragraph:

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

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

88

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

94 4.3- Any person who knowingly brings into this state 60  
 95 kilograms or more of any morphine, opium, ~~oxycodone,~~  
 96 ~~hydrocodone,~~ hydromorphone, or any salt, derivative, isomer, or  
 97 salt of an isomer thereof, including heroin, as described in s.  
 98 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
 99 more of any mixture containing any such substance, and who knows  
 100 that the probable result of such importation would be the death  
 101 of any person, commits capital importation of illegal drugs, a  
 102 capital felony punishable as provided in ss. 775.082 and  
 103 921.142. Any person sentenced for a capital felony under this  
 104 paragraph shall also be sentenced to pay the maximum fine

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105 | provided under subparagraph 1.

106 |       Section 3. This act shall take effect July 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: Criminal Justice  
2 Subcommittee  
3 Representative Edwards offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (c) of subsection (1) of section  
8 893.135, Florida Statutes, is amended to read:

9 893.135 Trafficking; mandatory sentences; suspension or  
10 reduction of sentences; conspiracy to engage in trafficking.—

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

13 (c)1. A Any person who knowingly sells, purchases,  
14 manufactures, delivers, or brings into this state, or who is  
15 knowingly in actual or constructive possession of, 4 grams or  
16 more of any morphine, opium, ~~oxycodone, hydrocodone,~~  
17 hydromorphone, or any salt, derivative, isomer, or salt of an



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18 isomer thereof, including heroin, as described in s.  
19 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more  
20 of any mixture containing any such substance, but less than 30  
21 kilograms of such substance or mixture, commits a felony of the  
22 first degree, which felony shall be known as "trafficking in  
23 illegal drugs," punishable as provided in s. 775.082, s.  
24 775.083, or s. 775.084. If the quantity involved:

25 a. Is 4 grams or more, but less than 14 grams, such person  
26 shall be sentenced to a mandatory minimum term of imprisonment  
27 of 3 years, and ~~the defendant~~ shall be ordered to pay a fine of  
28 \$50,000.

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

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

37 2. A person who knowingly sells, purchases, manufactures,  
38 delivers, or brings into this state, or who is knowingly in  
39 actual or constructive possession of, 14 grams or more of  
40 hydrocodone, or 14 grams or more of any mixture containing any  
41 such substance, commits a felony of the first degree, which  
42 felony shall be known as "trafficking in hydrocodone,"



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43 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

44 If the quantity involved:

45 a. Is 14 grams or more, but less than 28 grams, such  
46 person shall be sentenced to a mandatory minimum term of  
47 imprisonment of 3 years and shall be ordered to pay a fine of  
48 \$50,000.

49 b. Is 28 grams or more, but less than 50 grams, such  
50 person shall be sentenced to a mandatory minimum term of  
51 imprisonment of 7 years and shall be ordered to pay a fine of  
52 \$100,000.

53 c. Is 50 grams or more, but less than 200 grams, such  
54 person shall be sentenced to a mandatory minimum term of  
55 imprisonment of 15 years and shall be ordered to pay a fine of  
56 \$500,000.

57 d. Is 200 grams or more, but less than 30 kilograms, such  
58 person shall be sentenced to a mandatory minimum term of  
59 imprisonment of 25 years and shall be ordered to pay a fine of  
60 \$750,000.

61 3. A person who knowingly sells, purchases, manufactures,  
62 delivers, or brings into this state, or who is knowingly in  
63 actual or constructive possession of, 7 grams or more of  
64 oxycodone, or 7 grams or more of any mixture containing any such  
65 substance, commits a felony of the first degree, which felony  
66 shall be known as "trafficking in oxycodone," punishable as  
67 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
68 quantity involved:



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69        a. Is 7 grams or more, but less than 14 grams, such person  
70 shall be sentenced to a mandatory minimum term of imprisonment  
71 of 3 years and shall be ordered to pay a fine of \$50,000.

72        b. Is 14 grams or more, but less than 25 grams, such  
73 person shall be sentenced to a mandatory minimum term of  
74 imprisonment of 7 years and shall be ordered to pay a fine of  
75 \$100,000.

76        c. Is 25 grams or more, but less than 100 grams, such  
77 person shall be sentenced to a mandatory minimum term of  
78 imprisonment of 15 years and shall be ordered to pay a fine of  
79 \$500,000.

80        d. Is 100 grams or more, but less than 30 kilograms, such  
81 person shall be sentenced to a mandatory minimum term of  
82 imprisonment of 25 years and shall be ordered to pay a fine of  
83 \$750,000.

84        4. A Any person who knowingly sells, purchases,  
85 manufactures, delivers, or brings into this state, or who is  
86 knowingly in actual or constructive possession of, 30 kilograms  
87 or more of any morphine, opium, oxycodone, hydrocodone,  
88 hydromorphone, or any salt, derivative, isomer, or salt of an  
89 isomer thereof, including heroin, as described in s.  
90 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
91 more of any mixture containing any such substance, commits the  
92 first degree felony of trafficking in illegal drugs. A person  
93 who has been convicted of the first degree felony of trafficking  
94 in illegal drugs under this subparagraph shall be punished by



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95 life imprisonment and is ineligible for any form of  
96 discretionary early release except pardon or executive clemency  
97 or conditional medical release under s. 947.149. However, if the  
98 court determines that, in addition to committing any act  
99 specified in this paragraph:

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

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

106  
107 such person commits the capital felony of trafficking in illegal  
108 drugs, punishable as provided in ss. 775.082 and 921.142. A Any  
109 person sentenced for a capital felony under this paragraph shall  
110 also be sentenced to pay the maximum fine provided under  
111 subparagraph 1.

112 ~~5.3-~~ A Any person who knowingly brings into this state 60  
113 kilograms or more of any morphine, opium, oxycodone,  
114 hydrocodone, hydromorphone, or any salt, derivative, isomer, or  
115 salt of an isomer thereof, including heroin, as described in s.  
116 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
117 more of any mixture containing any such substance, and who knows  
118 that the probable result of such importation would be the death  
119 of a any person, commits capital importation of illegal drugs, a  
120 capital felony punishable as provided in ss. 775.082 and



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121 921.142. A Any person sentenced for a capital felony under this  
122 paragraph shall also be sentenced to pay the maximum fine  
123 provided under subparagraph 1.

124 Section 2. Paragraphs (g), (h), and (i) of subsection (3)  
125 of section 921.0022, Florida Statutes, are amended to read:

126 921.0022 Criminal Punishment Code; offense severity  
127 ranking chart.-

128 (3) OFFENSE SEVERITY RANKING CHART

129 (g) LEVEL 7

130

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with

131

132

133



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134 siren and lights activated.

135 327.35(3)(c)2. 3rd Vessel BUI resulting in serious  
bodily injury.

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

136 409.920 3rd Medicaid provider fraud;  
(2)(b)1.a. \$10,000 or less.

137 409.920 2nd Medicaid provider fraud; more  
(2)(b)1.b. than \$10,000, but less than  
\$50,000.

138 456.065(2) 3rd Practicing a health care  
profession without a license.

139 456.065(2) 2nd Practicing a health care  
profession without a license  
which results in serious bodily  
injury.

140



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141	458.327(1)	3rd	Practicing medicine without a license.
142	459.013(1)	3rd	Practicing osteopathic medicine without a license.
143	460.411(1)	3rd	Practicing chiropractic medicine without a license.
144	461.012(1)	3rd	Practicing podiatric medicine without a license.
145	462.17	3rd	Practicing naturopathy without a license.
146	463.015(1)	3rd	Practicing optometry without a license.
147	464.016(1)	3rd	Practicing nursing without a license.
148	465.015(2)	3rd	Practicing pharmacy without a license.
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.





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149  
467.201 3rd Practicing midwifery without a  
license.

150  
468.366 3rd Delivering respiratory care  
services without a license.

151  
483.828(1) 3rd Practicing as clinical  
laboratory personnel without a  
license.

152  
483.901(9) 3rd Practicing medical physics  
without a license.

153  
484.013(1)(c) 3rd Preparing or dispensing optical  
devices without a prescription.

154  
484.053 3rd Dispensing hearing aids without  
a license.

155  
494.0018(2) 1st Conviction of any violation of  
ss. 494.001-494.0077 in which  
the total money and property  
unlawfully obtained exceeded  
\$50,000 and there were five or  
more victims.



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156

560.123(8)(b)1. 3rd Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

157

560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

158

655.50(10)(b)1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

159

775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

160

775.21(10)(b) 3rd Sexual predator working where children regularly congregate.

161



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162	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
163	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
164	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
165	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).





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174  
784.081(1) 1st Aggravated battery on specified  
official or employee.

175  
784.082(1) 1st Aggravated battery by detained  
person on visitor or other  
detainee.

176  
784.083(1) 1st Aggravated battery on code  
inspector.

177  
787.06(3)(a) 1st Human trafficking using  
coercion for labor and  
services.

178  
787.06(3)(e) 1st Human trafficking using  
coercion for labor and services  
by the transfer or transport of  
any individual from outside  
Florida to within the state.

179  
790.07(4) 1st Specified weapons violation  
subsequent to previous  
conviction of s. 790.07(1) or  
(2).

180



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181 790.16(1) 1st Discharge of a machine gun  
under specified circumstances.

182 790.165(2) 2nd Manufacture, sell, possess, or  
deliver hoax bomb.

183 790.165(3) 2nd Possessing, displaying, or  
threatening to use any hoax  
bomb while committing or  
attempting to commit a felony.

184 790.166(3) 2nd Possessing, selling, using, or  
attempting to use a hoax weapon  
of mass destruction.

185 790.166(4) 2nd Possessing, displaying, or  
threatening to use a hoax  
weapon of mass destruction  
while committing or attempting  
to commit a felony.

186 790.23 1st,PBL Possession of a firearm by a  
person who qualifies for the  
penalty enhancements provided  
for in s. 874.04.



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187	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
188	796.03	2nd	Procuring any person under 16 years for prostitution.
189	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
190	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
191	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
192	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
	810.02(3)(b)	2nd	Burglary of unoccupied



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193			dwelling; unarmed; no assault or battery.
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
194			
	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
195			
	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
196			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
197			
	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
198			





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199	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
200	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
201	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
202	812.131 (2) (a)	2nd	Robbery by sudden snatching.
203	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
204	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
205	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
	817.234 (9)	2nd	Organizing, planning, or participating in an intentional



## Amendment No. 1

206			motor vehicle collision.
	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
207			
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
208			
	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
209			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
210			
	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
211			



## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 99 (2014)

## Amendment No. 1

212	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
213	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
214	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
215	838.015	2nd	Bribery.
216	838.016	2nd	Unlawful compensation or reward for official behavior.
217	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
218	838.22	2nd	Bid tampering.
219	843.0855 (2)	3rd	Impersonation of a public officer or employee.
	843.0855 (3)	3rd	Unlawful simulation of legal

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220			process.
	843.0855(4)	3rd	Intimidation of a public officer or employee.
221			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
222			
	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
223			
	872.06	2nd	Abuse of a dead human body.
224			
	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
225			
	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
226			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug



## Amendment No. 1

prohibited under s.

893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)4.)  
within 1,000 feet of a child  
care facility, school, or  
state, county, or municipal  
park or publicly owned  
recreational facility or  
community center.

227

893.13(1)(e)1.           1st    Sell, manufacture, or deliver  
cocaine or other drug  
prohibited under s.  
893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)4.,  
within 1,000 feet of property  
used for religious services or  
a specified business site.

228

893.13(4)(a)            1st    Deliver to minor cocaine (or  
other s. 893.03(1)(a), (1)(b),  
(1)(d), (2)(a), (2)(b), or  
(2)(c)4. drugs).

229

893.135(1)(a)1.        1st    Trafficking in cannabis, more  
than 25 lbs., less than 2,000



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lbs.

230

893.135 1st Trafficking in cocaine, more  
(1) (b) 1.a. than 28 grams, less than 200  
grams.

231

893.135 1st Trafficking in illegal drugs,  
(1) (c) 1.a. more than 4 grams, less than 14  
grams.

893.135(1)(c)2.a. 1st Trafficking in hydrocodone, 14  
grams or more, less than 28  
grams.

893.135(1)(c)2.b. 1st Trafficking in hydrocodone, 28  
grams or more, less than 50  
grams.

893.135(1)(c)3.a. 1st Trafficking in oxycodone, 7  
grams or more, less than 14  
grams.

893.135(1)(c)3.b. 1st Trafficking in oxycodone, 14  
grams or more, less than 25  
grams.

232



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233

234

893.135(1)(d)1. 1st Trafficking in phencyclidine,  
more than 28 grams, less than  
200 grams.

235

893.135(1)(e)1. 1st Trafficking in methaqualone,  
more than 200 grams, less than  
5 kilograms.

236

893.135(1)(f)1. 1st Trafficking in amphetamine,  
more than 14 grams, less than  
28 grams.

237

893.135 1st Trafficking in flunitrazepam, 4  
(1)(g)1.a. grams or more, less than 14  
grams.

238

893.135 1st Trafficking in gamma-  
(1)(h)1.a. hydroxybutyric acid (GHB), 1  
kilogram or more, less than 5  
kilograms.

239

893.135 1st Trafficking in 1,4-Butanediol,  
(1)(j)1.a. 1 kilogram or more, less than 5



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240 kilograms.

241 893.135 1st Trafficking in Phenethylamines,  
(1) (k) 2.a. 10 grams or more, less than 200  
grams.

242 893.1351(2) 2nd Possession of place for  
trafficking in or manufacturing  
of controlled substance.

243 896.101(5) (a) 3rd Money laundering, financial  
transactions exceeding \$300 but  
less than \$20,000.

244 896.104(4) (a) 1. 3rd Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions exceeding \$300 but  
less than \$20,000.

245 943.0435(4) (c) 2nd Sexual offender vacating  
permanent residence; failure to  
comply with reporting  
requirements.

943.0435(8) 2nd Sexual offender; remains in





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246 state after indicating intent  
to leave; failure to comply  
with reporting requirements.

943.0435(9)(a) 3rd Sexual offender; failure to  
comply with reporting  
requirements.

247 943.0435(13) 3rd Failure to report or providing  
false information about a  
sexual offender; harbor or  
conceal a sexual offender.

248 943.0435(14) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification.

249 944.607(9) 3rd Sexual offender; failure to  
comply with reporting  
requirements.

250 944.607(10)(a) 3rd Sexual offender; failure to  
submit to the taking of a  
digitized photograph.

251



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252 944.607(12) 3rd Failure to report or providing  
false information about a  
sexual offender; harbor or  
conceal a sexual offender.

253 944.607(13) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification.

254 985.4815(10) 3rd Sexual offender; failure to  
submit to the taking of a  
digitized photograph.

255 985.4815(12) 3rd Failure to report or providing  
false information about a  
sexual offender; harbor or  
conceal a sexual offender.

256 985.4815(13) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification.

257 (h) LEVEL 8

258



## Amendment No. 1

	Florida Statute	Felony Degree	Description
259	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
260	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
261	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
262	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
263	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
264	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
265	560.125 (5) (b)	2nd	Money transmitter business by



Amendment No. 1

266  
655.50(10)(b)2.      2nd      Unauthorized person, currency  
or payment instruments totaling  
or exceeding \$20,000, but less  
than \$100,000.

267  
777.03(2)(a)      1st      Accessory after the fact,  
capital felony.

268  
782.04(4)      2nd      Killing of human without design  
when engaged in act or attempt  
of any felony other than arson,  
sexual battery, robbery,  
burglary, kidnapping,  
aggravated fleeing or eluding  
with serious bodily injury or  
death, aircraft piracy, or  
unlawfully discharging bomb.

269  
782.051(2)      1st      Attempted felony murder while  
perpetrating or attempting to



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270 perpetrate a felony not  
enumerated in s. 782.04(3).

271 782.071(1)(b) 1st Committing vehicular homicide  
and failing to render aid or  
give information.

272 782.072(2) 1st Committing vessel homicide and  
failing to render aid or give  
information.

273 787.06(3)(b) 1st Human trafficking using  
coercion for commercial sexual  
activity.

274 787.06(3)(c) 1st Human trafficking using  
coercion for labor and services  
of an unauthorized alien.

275 787.06(3)(f) 1st Human trafficking using  
coercion for commercial sexual  
activity by the transfer or  
transport of any individual  
from outside Florida to within  
the state.



## Amendment No. 1

276 790.161(3) 1st Discharging a destructive  
device which results in bodily  
harm or property damage.

277 794.011(5) 2nd Sexual battery, victim 12 years  
or over, offender does not use  
physical force likely to cause  
serious injury.

278 794.08(3) 2nd Female genital mutilation,  
removal of a victim younger  
than 18 years of age from this  
state.

279 800.04(4) 2nd Lewd or lascivious battery.

280 806.01(1) 1st Maliciously damage dwelling or  
structure by fire or explosive,  
believing person in structure.

281 810.02(2)(a) 1st,PBL Burglary with assault or  
battery.

282 810.02(2)(b) 1st,PBL Burglary; armed with explosives  
or dangerous weapon.



## Amendment No. 1

283	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
284	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
285	812.13(2)(b)	1st	Robbery with a weapon.
286	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
287	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
288	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document;



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289			defendant is incarcerated or under supervision.
	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
290			
	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
291			
	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
292			
	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
293			
	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
294			
	837.02(2)	2nd	Perjury in official proceedings

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295			relating to prosecution of a capital felony.
	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
296			
	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
297			
	860.16	1st	Aircraft piracy.
298			
	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
299			
	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
300			
	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in



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s. 893.03(1)(a) or (b).

301

893.135(1)(a)2.      1st      Trafficking in cannabis, more  
than 2,000 lbs., less than  
10,000 lbs.

302

893.135              1st      Trafficking in cocaine, more  
(1)(b)1.b.            than 200 grams, less than 400  
grams.

303

893.135              1st      Trafficking in illegal drugs,  
(1)(c)1.b.            more than 14 grams, less than  
28 grams.

893.135(1)(c)2.c.      1st      Trafficking in hydrocodone, 50  
grams or more, less than 200  
grams.

893.135(1)(c)3.c.      1st      Trafficking in oxycodone, 25  
grams or more, less than 100  
grams.

304

893.135              1st      Trafficking in phencyclidine,  
(1)(d)1.b.            more than 200 grams, less than  
400 grams.

305



## Amendment No. 1

306 893.135 1st Trafficking in methaqualone,  
(1)(e)1.b. more than 5 kilograms, less  
than 25 kilograms.

307 893.135 1st Trafficking in amphetamine,  
(1)(f)1.b. more than 28 grams, less than  
200 grams.

308 893.135 1st Trafficking in flunitrazepam,  
(1)(g)1.b. 14 grams or more, less than 28  
grams.

309 893.135 1st Trafficking in gamma-  
(1)(h)1.b. hydroxybutyric acid (GHB), 5  
kilograms or more, less than 10  
kilograms.

310 893.135 1st Trafficking in 1,4-Butanediol,  
(1)(j)1.b. 5 kilograms or more, less than  
10 kilograms.

311 893.135 1st Trafficking in Phenethylamines,  
(1)(k)2.b. 200 grams or more, less than  
400 grams.

893.1351(3) 1st Possession of a place used to



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312 manufacture controlled  
substance when minor is present  
or resides there.

313 895.03 (1) 1st Use or invest proceeds derived  
from pattern of racketeering  
activity.

314 895.03 (2) 1st Acquire or maintain through  
racketeering activity any  
interest in or control of any  
enterprise or real property.

315 895.03 (3) 1st Conduct or participate in any  
enterprise through pattern of  
racketeering activity.

316 896.101 (5) (b) 2nd Money laundering, financial  
transactions totaling or  
exceeding \$20,000, but less  
than \$100,000.

896.104 (4) (a) 2. 2nd Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or



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exceeding \$20,000 but less than  
\$100,000.

317

318 (i) LEVEL 9

319

Florida

Felony

Statute

Degree

Description

320

316.193

1st

DUI manslaughter; failing to  
render aid or give information.

(3) (c) 3.b.

321

327.35 (3) (c) 3.b.

1st

BUI manslaughter; failing to  
render aid or give information.

322

409.920

1st

Medicaid provider fraud;  
\$50,000 or more.

(2) (b) 1.c.

323

499.0051 (9)

1st

Knowing sale or purchase of  
contraband prescription drugs  
resulting in great bodily harm.

324

560.123 (8) (b) 3.

1st

Failure to report currency or  
payment instruments totaling or  
exceeding \$100,000 by money  
transmitter.

325

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326 560.125(5)(c) 1st Money transmitter business by  
unauthorized person, currency,  
or payment instruments totaling  
or exceeding \$100,000.

327 655.50(10)(b)3. 1st Failure to report financial  
transactions totaling or  
exceeding \$100,000 by financial  
institution.

328 775.0844 1st Aggravated white collar crime.

329 782.04(1) 1st Attempt, conspire, or solicit  
to commit premeditated murder.

330 782.04(3) 1st,PBL Accomplice to murder in  
connection with arson, sexual  
battery, robbery, burglary,  
aggravated fleeing or eluding  
with serious bodily injury or  
death, and other specified  
felonies.

782.051(1) 1st Attempted felony murder while  
perpetrating or attempting to  
perpetrate a felony enumerated



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in s. 782.04(3).

331

782.07(2) 1st Aggravated manslaughter of an elderly person or disabled adult.

332

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.

333

787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.

334

787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere with performance of any governmental or political function.

335

787.02(3)(a) 1st False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.



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336 787.06(3)(d) 1st Human trafficking using coercion for commercial sexual activity of an unauthorized alien.

337 787.06(3)(g) 1st,PBL Human trafficking for commercial sexual activity of a child under the age of 18.

338 787.06(4) 1st Selling or buying of minors into human trafficking.

339 790.161 1st Attempted capital destructive device offense.

340 790.166(2) 1st,PBL Possessing, selling, using, or attempting to use a weapon of mass destruction.

341 794.011(2) 1st Attempted sexual battery; victim less than 12 years of age.

342 794.011(2) Life Sexual battery; offender younger than 18 years and





Amendment No. 1

commits sexual battery on a  
person less than 12 years.

343

794.011(4)           1st     Sexual battery; victim 12 years  
or older, certain  
circumstances.

344

794.011(8)(b)       1st     Sexual battery; engage in  
sexual conduct with minor 12 to  
18 years by person in familial  
or custodial authority.

345

794.08(2)           1st     Female genital mutilation;  
victim younger than 18 years of  
age.

346

796.035             1st     Selling or buying of minors  
into prostitution.

347

800.04(5)(b)       Life     Lewd or lascivious molestation;  
victim less than 12 years;  
offender 18 years or older.

348

812.13(2)(a)       1st,PBL     Robbery with firearm or other  
deadly weapon.

349

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350 812.133(2)(a) 1st,PBL Carjacking; firearm or other  
deadly weapon.

351 812.135(2)(b) 1st Home-invasion robbery with  
weapon.

352 817.535(3)(b) 1st Filing false lien or other  
unauthorized document; second  
or subsequent offense; property  
owner is a public officer or  
employee.

353 817.535(4)(a)2. 1st Filing false claim or other  
unauthorized document;  
defendant is incarcerated or  
under supervision.

354 817.535(5)(b) 1st Filing false lien or other  
unauthorized document; second  
or subsequent offense; owner of  
the property incurs financial  
loss as a result of the false  
instrument.

817.568(7) 2nd, Fraudulent use of personal  
PBL identification information of



Amendment No. 1

an individual under the age of  
18 by his or her parent, legal  
guardian, or person exercising  
custodial authority.

355

827.03 (2) (a) 1st Aggravated child abuse.

356

847.0145 (1) 1st Selling, or otherwise  
transferring custody or  
control, of a minor.

357

847.0145 (2) 1st Purchasing, or otherwise  
obtaining custody or control,  
of a minor.

358

859.01 1st Poisoning or introducing  
bacteria, radioactive  
materials, viruses, or chemical  
compounds into food, drink,  
medicine, or water with intent  
to kill or injure another  
person.

359

893.135 1st Attempted capital trafficking  
offense.

360

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361 893.135(1)(a)3. 1st Trafficking in cannabis, more  
than 10,000 lbs.

893.135 1st Trafficking in cocaine, more  
(1)(b)1.c. than 400 grams, less than 150  
kilograms.

362 893.135 1st Trafficking in illegal drugs,  
(1)(c)1.c. more than 28 grams, less than  
30 kilograms.

893.135(1)(c)2.d. 1st Trafficking in hydrocodone, 200  
grams or more, less than 30  
kilograms.

893.135(1)(c)3.d. 1st Trafficking in oxycodone, 100  
grams or more, less than 30  
kilograms.

363 893.135 1st Trafficking in phencyclidine,  
(1)(d)1.c. more than 400 grams.

364 893.135 1st Trafficking in methaqualone,  
(1)(e)1.c. more than 25 kilograms.

365

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366 893.135 1st Trafficking in amphetamine,  
(1) (f) 1.c. more than 200 grams.

367 893.135 1st Trafficking in gamma-  
(1) (h) 1.c. hydroxybutyric acid (GHB), 10  
kilograms or more.

368 893.135 1st Trafficking in 1,4-Butanediol,  
(1) (j) 1.c. 10 kilograms or more.

369 893.135 1st Trafficking in Phenethylamines,  
(1) (k) 2.c. 400 grams or more.

370 896.101(5) (c) 1st Money laundering, financial  
instruments totaling or  
exceeding \$100,000.

371 896.104(4) (a) 3. 1st Structuring transactions to  
372 evade reporting or registration  
373 requirements, financial  
374 transactions totaling or  
exceeding \$100,000.

371 Section 3. For the purpose of incorporating the amendment  
372 made by this act to section 893.135, Florida Statutes, in a  
373  
374



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375 reference thereto, paragraph (a) of subsection (2) and paragraph  
376 (a) of subsection (3) of section 775.087, Florida Statutes, is  
377 reenacted to read:

378 775.087 Possession or use of weapon; aggravated battery;  
379 felony reclassification; minimum sentence.—

380 (2)(a)1. Any person who is convicted of a felony or an  
381 attempt to commit a felony, regardless of whether the use of a  
382 weapon is an element of the felony, and the conviction was for:

- 383 a. Murder;
- 384 b. Sexual battery;
- 385 c. Robbery;
- 386 d. Burglary;
- 387 e. Arson;
- 388 f. Aggravated assault;
- 389 g. Aggravated battery;
- 390 h. Kidnapping;
- 391 i. Escape;
- 392 j. Aircraft piracy;
- 393 k. Aggravated child abuse;
- 394 l. Aggravated abuse of an elderly person or disabled  
395 adult;
- 396 m. Unlawful throwing, placing, or discharging of a  
397 destructive device or bomb;
- 398 n. Carjacking;
- 399 o. Home-invasion robbery;
- 400 p. Aggravated stalking;

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401 q. Trafficking in cannabis, trafficking in cocaine,  
402 capital importation of cocaine, trafficking in illegal drugs,  
403 capital importation of illegal drugs, trafficking in  
404 phencyclidine, capital importation of phencyclidine, trafficking  
405 in methaqualone, capital importation of methaqualone,  
406 trafficking in amphetamine, capital importation of amphetamine,  
407 trafficking in flunitrazepam, trafficking in gamma-  
408 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
409 trafficking in Phenethylamines, or other violation of s.  
410 893.135(1); or

411 r. Possession of a firearm by a felon

412  
413 and during the commission of the offense, such person actually  
414 possessed a "firearm" or "destructive device" as those terms are  
415 defined in s. 790.001, shall be sentenced to a minimum term of  
416 imprisonment of 10 years, except that a person who is convicted  
417 for aggravated assault, possession of a firearm by a felon, or  
418 burglary of a conveyance shall be sentenced to a minimum term of  
419 imprisonment of 3 years if such person possessed a "firearm" or  
420 "destructive device" during the commission of the offense.  
421 However, if an offender who is convicted of the offense of  
422 possession of a firearm by a felon has a previous conviction of  
423 committing or attempting to commit a felony listed in s.  
424 775.084(1)(b)1. and actually possessed a firearm or destructive  
425 device during the commission of the prior felony, the offender



Amendment No. 1

426 shall be sentenced to a minimum term of imprisonment of 10  
427 years.

428 2. Any person who is convicted of a felony or an attempt  
429 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
430 regardless of whether the use of a weapon is an element of the  
431 felony, and during the course of the commission of the felony  
432 such person discharged a "firearm" or "destructive device" as  
433 defined in s. 790.001 shall be sentenced to a minimum term of  
434 imprisonment of 20 years.

435 3. Any person who is convicted of a felony or an attempt  
436 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
437 regardless of whether the use of a weapon is an element of the  
438 felony, and during the course of the commission of the felony  
439 such person discharged a "firearm" or "destructive device" as  
440 defined in s. 790.001 and, as the result of the discharge, death  
441 or great bodily harm was inflicted upon any person, the  
442 convicted person shall be sentenced to a minimum term of  
443 imprisonment of not less than 25 years and not more than a term  
444 of imprisonment of life in prison.

445 (3)(a)1. Any person who is convicted of a felony or an  
446 attempt to commit a felony, regardless of whether the use of a  
447 firearm is an element of the felony, and the conviction was for:

- 448 a. Murder;
- 449 b. Sexual battery;
- 450 c. Robbery;
- 451 d. Burglary;





## Amendment No. 1

- 452 e. Arson;
- 453 f. Aggravated assault;
- 454 g. Aggravated battery;
- 455 h. Kidnapping;
- 456 i. Escape;
- 457 j. Sale, manufacture, delivery, or intent to sell,  
458 manufacture, or deliver any controlled substance;
- 459 k. Aircraft piracy;
- 460 l. Aggravated child abuse;
- 461 m. Aggravated abuse of an elderly person or disabled  
462 adult;
- 463 n. Unlawful throwing, placing, or discharging of a  
464 destructive device or bomb;
- 465 o. Carjacking;
- 466 p. Home-invasion robbery;
- 467 q. Aggravated stalking; or
- 468 r. Trafficking in cannabis, trafficking in cocaine,  
469 capital importation of cocaine, trafficking in illegal drugs,  
470 capital importation of illegal drugs, trafficking in  
471 phencyclidine, capital importation of phencyclidine, trafficking  
472 in methaqualone, capital importation of methaqualone,  
473 trafficking in amphetamine, capital importation of amphetamine,  
474 trafficking in flunitrazepam, trafficking in gamma-  
475 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
476 trafficking in Phenethylamines, or other violation of s.  
477 893.135(1);

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## Amendment No. 1

478

479 and during the commission of the offense, such person possessed  
480 a semiautomatic firearm and its high-capacity detachable box  
481 magazine or a machine gun as defined in s. 790.001, shall be  
482 sentenced to a minimum term of imprisonment of 15 years.

483 2. Any person who is convicted of a felony or an attempt  
484 to commit a felony listed in subparagraph (a)1., regardless of  
485 whether the use of a weapon is an element of the felony, and  
486 during the course of the commission of the felony such person  
487 discharged a semiautomatic firearm and its high-capacity box  
488 magazine or a "machine gun" as defined in s. 790.001 shall be  
489 sentenced to a minimum term of imprisonment of 20 years.

490 3. Any person who is convicted of a felony or an attempt  
491 to commit a felony listed in subparagraph (a)1., regardless of  
492 whether the use of a weapon is an element of the felony, and  
493 during the course of the commission of the felony such person  
494 discharged a semiautomatic firearm and its high-capacity box  
495 magazine or a "machine gun" as defined in s. 790.001 and, as the  
496 result of the discharge, death or great bodily harm was  
497 inflicted upon any person, the convicted person shall be  
498 sentenced to a minimum term of imprisonment of not less than 25  
499 years and not more than a term of imprisonment of life in  
500 prison.

501 Section 4. For the purpose of incorporating the amendment  
502 made by this act to section 893.135, Florida Statutes, in a  
503 reference thereto, paragraph (a) of subsection (1) and



## Amendment No. 1

504 subsections (3) and (4) of section 782.04, Florida Statutes, are  
505 reenacted to read:

506 782.04 Murder.—

507 (1)(a) The unlawful killing of a human being:

508 1. When perpetrated from a premeditated design to effect  
509 the death of the person killed or any human being;

510 2. When committed by a person engaged in the perpetration  
511 of, or in the attempt to perpetrate, any:

512 a. Trafficking offense prohibited by s. 893.135(1),

513 b. Arson,

514 c. Sexual battery,

515 d. Robbery,

516 e. Burglary,

517 f. Kidnapping,

518 g. Escape,

519 h. Aggravated child abuse,

520 i. Aggravated abuse of an elderly person or disabled  
521 adult,

522 j. Aircraft piracy,

523 k. Unlawful throwing, placing, or discharging of a  
524 destructive device or bomb,

525 l. Carjacking,

526 m. Home-invasion robbery,

527 n. Aggravated stalking,

528 o. Murder of another human being,



## Amendment No. 1

- 529 p. Resisting an officer with violence to his or her  
530 person,
- 531 q. Aggravated fleeing or eluding with serious bodily  
532 injury or death,
- 533 r. Felony that is an act of terrorism or is in furtherance  
534 of an act of terrorism; or
- 535 3. Which resulted from the unlawful distribution of any  
536 substance controlled under s. 893.03(1), cocaine as described in  
537 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
538 compound, derivative, or preparation of opium, or methadone by a  
539 person 18 years of age or older, when such drug is proven to be  
540 the proximate cause of the death of the user,  
541  
542 is murder in the first degree and constitutes a capital felony,  
543 punishable as provided in s. 775.082.
- 544 (3) When a human being is killed during the perpetration  
545 of, or during the attempt to perpetrate, any:
- 546 (a) Trafficking offense prohibited by s. 893.135(1),  
547 (b) Arson,  
548 (c) Sexual battery,  
549 (d) Robbery,  
550 (e) Burglary,  
551 (f) Kidnapping,  
552 (g) Escape,  
553 (h) Aggravated child abuse,



## Amendment No. 1

- 554 (i) Aggravated abuse of an elderly person or disabled  
555 adult,
- 556 (j) Aircraft piracy,
- 557 (k) Unlawful throwing, placing, or discharging of a  
558 destructive device or bomb,
- 559 (l) Carjacking,
- 560 (m) Home-invasion robbery,
- 561 (n) Aggravated stalking,
- 562 (o) Murder of another human being,
- 563 (p) Aggravated fleeing or eluding with serious bodily  
564 injury or death,
- 565 (q) Resisting an officer with violence to his or her  
566 person, or
- 567 (r) Felony that is an act of terrorism or is in  
568 furtherance of an act of terrorism,  
569
- 570 by a person other than the person engaged in the perpetration of  
571 or in the attempt to perpetrate such felony, the person  
572 perpetrating or attempting to perpetrate such felony commits  
573 murder in the second degree, which constitutes a felony of the  
574 first degree, punishable by imprisonment for a term of years not  
575 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
576 775.084.
- 577 (4) The unlawful killing of a human being, when  
578 perpetrated without any design to effect death, by a person



## Amendment No. 1

579 engaged in the perpetration of, or in the attempt to perpetrate,  
580 any felony other than any:

581 (a) Trafficking offense prohibited by s. 893.135(1),

582 (b) Arson,

583 (c) Sexual battery,

584 (d) Robbery,

585 (e) Burglary,

586 (f) Kidnapping,

587 (g) Escape,

588 (h) Aggravated child abuse,

589 (i) Aggravated abuse of an elderly person or disabled

590 adult,

591 (j) Aircraft piracy,

592 (k) Unlawful throwing, placing, or discharging of a

593 destructive device or bomb,

594 (l) Unlawful distribution of any substance controlled

595 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,

596 or opium or any synthetic or natural salt, compound, derivative,

597 or preparation of opium by a person 18 years of age or older,

598 when such drug is proven to be the proximate cause of the death

599 of the user,

600 (m) Carjacking,

601 (n) Home-invasion robbery,

602 (o) Aggravated stalking,

603 (p) Murder of another human being,



Amendment No. 1

604 (q) Aggravated fleeing or eluding with serious bodily  
605 injury or death,

606 (r) Resisting an officer with violence to his or her  
607 person, or

608 (s) Felony that is an act of terrorism or is in  
609 furtherance of an act of terrorism,

610

611 is murder in the third degree and constitutes a felony of the  
612 second degree, punishable as provided in s. 775.082, s. 775.083,  
613 or s. 775.084.

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

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Remove everything before the enacting clause and insert:  
An act relating to controlled substances; amending s. 893.135,  
F.S.; providing that a person who knowingly sells, purchases,  
manufactures, delivers, or brings into this state specified  
quantities of hydrocodone or oxycodone, or who is knowingly in  
actual or constructive possession of specified quantities of  
hydrocodone or oxycodone, commits the offense of "trafficking in  
hydrocodone," or "trafficking in oxycodone," respectively;  
providing criminal penalties; amending s. 921.0022, F.S.;  
ranking the offenses of trafficking in hydrocodone and  
trafficking in oxycodone for purposes of the criminal punishment  
code; reenacting s. 775.087(2)(a) and (3)(a), F.S., relating to



## Amendment No. 1

630 mandatory minimum sentences for the possession or use of a  
631 weapon during the commission of certain offenses, to incorporate  
632 the amendments made to s. 893.135, F.S., in a reference thereto;  
633 reenacting s. 782.04(1)(a), (3) and (4), F.S., relating to the  
634 classification of a murder committed during the commission of  
635 certain offenses, to incorporate the amendments made to s.  
636 893.135, F.S., in a reference thereto; providing an effective  
637 date.





Amendment No. 1a

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: Criminal Justice  
 2 Subcommittee  
 3 Representative Hood offered the following:

4  
 5 **Amendment to Amendment (306301) by Representative Edwards**  
 6 **(with title amendment)**

7 Between lines 123 and 124 of the amendment, insert:

8 Section 2. Section 893.1352, Florida Statutes, is created  
 9 to read:

10 893.1352 Affirmative Defenses.— It is an affirmative  
 11 defense to a prosecution under s. 893.13(1), (2), (3), (4), (5),  
 12 (6), (7)1., (7)4., (7)5., (7)8.; s. 893.135(1)(a); s. 893.1351;  
 13 s. 893.147; and s. 893.149 that:

14 (1) The offense involved a plant of the genus Cannabis that  
 15 contains .5 percent or less of tetrahydrocannabinol and more  
 16 than 15 percent of cannabidiol; the seeds thereof; the resin  
 17 extracted from any part of such plant; or any compound,



Amendment No. 1a

18 manufacture, salt, derivative, mixture, or preparation of such  
19 plant or its seeds or resin;

20 (2) The person committing the offense intended that the  
21 Cannabis described in subsection (1) be consumed by a person in  
22 a non-smoking manner; and

23 (3) The person committing the offense intended that the  
24 Cannabis described in subsection (1) be consumed by a person at  
25 the direction of a physician licensed pursuant to chapter 458.

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**T I T L E   A M E N D M E N T**

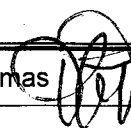
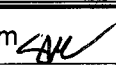
31 Remove line 626 of the amendment and insert:  
32 providing criminal penalties; creating s. 893.1352, F.S.;  
33 creating an affirmative defense for specified controlled  
34 substance offenses; amending s. 921.0022, F.S.;

35



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 139 Volunteers for Organized Youth Sports and Recreational Programs  
**SPONSOR(S):** Jones, S.  
**TIED BILLS:** IDEN./SIM. BILLS: SB 358

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

### 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 all volunteers, regardless of how many hours the volunteer may work within a calendar year. The bill expands which entities must perform these screenings to include not only youth athletic teams, but also any other youth recreational programs using publicly owned facilities. The bill prohibits the authority from delegating the screening responsibility to an individual team or program.

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.

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:

##### **Present Situation**

##### 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 must conduct a limited background screening on each current or prospective athletic coach for a "youth athletic team"<sup>1</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>2</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 the Florida Department of Law Enforcement (FDLE)<sup>3</sup> and the United States Department of Justice (DOJ)<sup>4, 5</sup>

The sanctioning authority must disqualify any applicant from acting as an athletic coach if the applicant appears in either registry.<sup>6</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>7</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>8</sup>

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>9</sup>

Florida law does not currently require volunteers (other than coaches for independent youth athletic teams) to be background screened, nor is there a law that requires a sanctioning authority to screen volunteers for private organized youth recreational programs that are not athletic programs. However, other state laws may suggest that such background screenings must occur, or may prohibit or limit a sexual offender's contact with minors altogether.

##### Background Screenings for Employment at Parks, Playgrounds, and Daycare Centers

Current Florida law provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person through the registration information regarding sexual predators and sexual

<sup>1</sup> The term "youth athletic team" is not defined in statute.

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

<sup>3</sup> <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited January 28, 2014).

<sup>4</sup> <http://www.nsopr.gov/?AspxAutoDetectCookieSupport=1> (last visited January 28, 2014).

<sup>5</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>6</sup> Section 943.0438(2)(b), F.S.

<sup>7</sup> Section 943.0438(2)(c), F.S.

<sup>8</sup> Section 943.0438(2)(d), F.S.

<sup>9</sup> Section 943.0438(3), F.S.

offenders maintained by DOJ.<sup>10</sup> If the DOJ site is unavailable, then the search must be made through the registration information regarding sexual predators and sexual offenders maintained by FDLE.<sup>11</sup>

#### Prohibited Employment for Registered Sexual Predators

Existing law provides that it is a third-degree felony<sup>12</sup> 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>13</sup> Similar prohibitions apply to certain sexual offenders and sexual predators on community supervision.<sup>14</sup>

#### **Proposed Changes**

The bill expands the current background screening requirements of s. 943.0438, F.S., to include all volunteers, regardless of how many hours the volunteer may work within a calendar year. The bill expands which entities must perform these screenings to include not only youth athletic teams, but also any other youth recreational programs using publicly owned facilities. The bill prohibits the authority from delegating the screening responsibility to an individual team or program.

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.

## **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.

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<sup>10</sup> Section 943.04351, F.S. This search is not required if the position otherwise requires a state and national criminal history background check.

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

<sup>12</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>13</sup> Section 775.21(10)(b), F.S.

<sup>14</sup> *See e.g.*, s. 948.30(1)(f) and 947.1405(7)(a)6., 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 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**

N/A

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A bill to be entitled  
 An act relating to volunteers for organized youth sports and recreational programs; amending s. 943.0438, F.S.; defining the terms "volunteer" and "youth sports or recreation authority"; expanding provisions relating to athletic coaches for independent sanctioning authorities to require youth sports or recreation authorities to conduct specified background screening of all volunteers with any youth athletic team or organized youth recreational program using publicly owned facilities; providing that the duty may not be delegated; requiring that specified documentation be maintained for a specified period by such authorities; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 943.0438, Florida Statutes, is amended to read:

943.0438 Volunteers ~~Athletic coaches~~ for organized youth sports and recreation ~~independent sanctioning~~ authorities.-

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

(a) "Volunteer" ~~Athletic coach~~" means a person who:

1. Is authorized by a youth sports or recreation ~~an independent sanctioning~~ authority to work ~~for 20 or more hours within a calendar year~~, whether for compensation or as a volunteer, for a youth athletic team or organized youth



29 recreational program using publicly owned facilities based in  
 30 this state; and

31 2. Has direct contact with one or more minors on the youth  
 32 athletic team.

33 (b) "Youth sports or recreation ~~Independent sanctioning~~  
 34 authority" means a private, nongovernmental entity that  
 35 organizes, operates, or coordinates a youth athletic team or  
 36 organized youth recreational program using publicly owned  
 37 facilities in this state if the team or program includes one or  
 38 more minors and is not affiliated with a private school as  
 39 defined in s. 1002.01.

40 (2) A youth sports or recreation ~~An independent~~  
 41 ~~sanctioning~~ authority shall:

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

56 a. The Department of Law Enforcement under s. 943.043; and

57           b. The Attorney General of the United States under 42  
58 U.S.C. s. 16920.

59           2. For purposes of this section, a background screening  
60 conducted by a commercial consumer reporting agency in  
61 compliance with the federal Fair Credit Reporting Act using the  
62 identifying information referenced in subparagraph 1. and that  
63 includes searching that information against the sexual predator  
64 and sexual offender Internet sites listed in sub-subparagraphs  
65 1.a. and b. are shall be deemed to satisfy in compliance with  
66 the requirements of this paragraph section.

67           (b) Disqualify any person from acting as a volunteer an  
68 ~~athletic coach~~ if he or she is identified on a registry  
69 described in paragraph (a).

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

74           (d) Maintain for at least 5 years documentation of:

75           1. The results for each person screened under paragraph  
76 (a); and

77           2. The written notice of disqualification provided to each  
78 person under paragraph (c).

79           (e) Adopt guidelines to educate volunteers athletic  
80 ~~coaches~~, officials, administrators, and youth athletes and their  
81 parents or guardians of the nature and risk of concussion and  
82 head injury.

83           (f) Adopt bylaws or policies that require the parent or  
84 guardian of a youth who is participating in athletic competition

85 | or other recreational programs or who is a candidate for an  
 86 | athletic team or recreational program to sign and return an  
 87 | informed consent that explains the nature and risk of concussion  
 88 | and head injury, including the risk of continuing to play after  
 89 | concussion or head injury, each year before participating in  
 90 | athletic competition or other recreational programs or engaging  
 91 | in any practice, tryout, workout, or other physical activity  
 92 | associated with the youth's candidacy for an athletic team or  
 93 | recreational program.

94 | (g) Adopt bylaws or policies that require each youth  
 95 | athlete or recreational program participant who is suspected of  
 96 | sustaining a concussion or head injury in a practice or  
 97 | competition to be immediately removed from the activity. A youth  
 98 | athlete or recreational program participant who ~~is~~ ~~has been~~  
 99 | removed from an activity may not return to practice or  
 100 | competition until the youth or participant submits to a  
 101 | volunteer or volunteer supervisor ~~the athletic coach~~ a written  
 102 | medical clearance to return stating that he or she ~~the youth~~  
 103 | ~~athlete~~ no longer exhibits signs, symptoms, or behaviors  
 104 | consistent with a concussion or other head injury. Medical  
 105 | clearance must be authorized by the appropriate health care  
 106 | practitioner trained in the diagnosis, evaluation, and  
 107 | management of concussions as defined by the Sports Medicine  
 108 | Advisory Committee of the Florida High School Athletic  
 109 | Association.

110 | (3) In a civil action for the death of, or injury or  
 111 | damage to, a third person caused by the intentional tort of a  
 112 | volunteer ~~an athletic coach~~ that relates to alleged sexual

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2014

113 misconduct by the volunteer ~~athletic coach~~, there is a  
 114 rebuttable presumption that the youth sports or recreation  
 115 ~~independent sanctioning~~ authority was not negligent in  
 116 authorizing the volunteer ~~athletic coach~~ if the authority  
 117 complied with the background screening and disqualification  
 118 requirements of subsection (2) before ~~prior to~~ such  
 119 authorization.

120 (4) The Legislature encourages youth sports and recreation  
 121 ~~independent sanctioning~~ authorities ~~for youth athletic teams~~ to  
 122 participate in the Volunteer and Employee Criminal History  
 123 System, as authorized by the National Child Protection Act of  
 124 1993 and s. 943.0542.

125 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	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Jones, S. offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (1) and paragraphs (a), (b), (c),  
 8 and (d) of subsection (2) of section 943.0438, Florida Statutes,  
 9 are amended to read:

10 943.0438 Athletic coaches for independent sanctioning  
 11 authorities.—

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

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

14 1. Is authorized by an independent sanctioning authority  
 15 to work as a coach, assistant coach, or referee for 20 or more  
 16 hours within a calendar year, whether for compensation or as a  
 17 volunteer, for a youth athletic team based in this state; and



## Amendment No. 1

18           2. Has direct contact with one or more minors on the youth  
19 athletic team.

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

25           (2) An independent sanctioning authority shall:

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

40           a. The Department of Law Enforcement under s. 943.043; and

41           b. The Attorney General of the United States under 42  
42 U.S.C. s. 16920.



## Amendment No. 1

43 2. For purposes of this section, a background screening  
44 conducted by a commercial consumer reporting agency in  
45 compliance with the federal Fair Credit Reporting Act using the  
46 identifying information referenced in subparagraph 1. ~~and that~~  
47 includes a Level 1 background screening and a search of  
48 ~~searching~~ that information against the sexual predator and  
49 sexual offender Internet sites listed in sub-subparagraphs 1.a.  
50 and b. shall be deemed to satisfy in compliance with the  
51 requirements of this paragraph ~~section~~.

52 (b) Disqualify any person from acting as an athletic coach  
53 as provided in s. 435.03 or if he or she is identified on a  
54 registry described in paragraph (a). The authority may allow a  
55 person disqualified under this paragraph to act as an athletic  
56 coach if it determines that the person meets the requirements  
57 for an exemption from disqualification under s. 435.07.

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

62 (d) Maintain for at least 5 years documentation of:

63 1. The results for each person screened under paragraph  
64 (a); and

65 2. The written notice of disqualification provided to each  
66 person under paragraph (c).

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

68



Amendment No. 1

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

Remove everything before the enacting clause and insert:

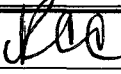

An act relating to athletic coaches for youth athletic teams; amending s. 943.0438, F.S.; revising the definition of "athletic coach"; expanding provisions relating to athletic coaches for independent sanctioning authorities to require such sanctioning authorities to conduct specified background screening of certain athletic coaches of youth athletic teams; providing that the duty may not be delegated; providing for disqualification; providing for exemption from disqualification; requiring that specified documentation be maintained for a specified period by such sanctioning authorities; providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 409 Offenses Against Vulnerable Persons  
**SPONSOR(S):** Passidomo  
**TIED BILLS:** IDEN./SIM. BILLS: SB 588

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

### SUMMARY ANALYSIS

Section 825.103(1), F.S., defines "exploitation of an elderly person or disabled adult," (vulnerable adults) as:

- (a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, a vulnerable adult's property with the intent to temporarily or permanently deprive the adult of the use, benefit, or possession of the property, or to benefit someone other than the vulnerable adult, by a person who stands in a position of trust and confidence with the adult, or has a business relationship with the adult;
- (c) Breaching a fiduciary duty to a vulnerable adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

The penalty for violating s. 825.103(1), F.S., depends of the value of the property involved in the exploitation.

The bill amends paragraph (a) to delete the requirement that a person use deception or intimidation to obtain or use a vulnerable adult's funds, assets, or property. The bill amends paragraph (c) to specify that "unlawful appropriation" occurs when a vulnerable adult does not receive reciprocal financial value in goods or services, or violates specified duties for fiduciaries appointed under chs. 709, 736, and 744, F.S.

The bill creates additional instances that constitute "exploitation of an elderly person or disabled adult" by adding the following paragraphs to s. 825.103(1), F.S.:

- (d) Misappropriating, misusing, or unauthorized transferring of moneys belonging to a vulnerable adult from a personal or joint account in which the vulnerable adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer;
- (e) Intentionally or negligently failing to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the vulnerable adult.

The bill also amends s. 825.103, F.S., to:

- Decrease the property threshold values for exploitation of vulnerable adults offenses;
- Create a permissive presumption that any inter vivos property transfer of more than \$10,000 to a person the vulnerable adult has known less than two years is a result of exploitation if the vulnerable person did not receive reciprocal value in goods or services; and
- Require the court in specified cases to return the vulnerable adult's property before trial if, after conducting an evidentiary hearing, the court makes certain findings.

The bill also amends s. 90.803(24), F.S., limiting the admissibility of an out-of-court statement to instances when the vulnerable adult is unavailable as a witness for trial.

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

The bill is effective October 1, 2014.

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

STORAGE NAME: h0409.CRJS.DOCX

DATE: 1/28/2014

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Elderly and Disabled Populations**

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the United States- 40,300,000, or 13% of the total population.<sup>1</sup> In 2010, Florida had the highest proportion of people over the age of 65, making up 17% of the total state population.<sup>2</sup>

In 2011, there were 11,468,487 people aged 18 to 64 in Florida.<sup>3</sup> Of that number of people, 1,131,661, or 9.9%, people had at least one disability.<sup>4</sup> The number of individuals aged 65 and older in Florida in 2011 totaled 3,296,861.<sup>5</sup> Of that number of people, 1,136,372, or 34.5%, had at least one disability.<sup>6</sup>

Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. Individuals who survive to the age of 65 can be expected to live another 19.2 years.<sup>7</sup> As the population of elderly and disabled persons in Florida increases, so does the pool of potential victims of abuse.

##### **Financial Exploitation of Elderly Persons and Disabled Adults**

According to the National Center on Elder Abuse, financial exploitation of the elderly includes “the illegal or improper use of an elder’s funds, property, or assets.”<sup>8</sup> For example, forging an older person’s signature, misusing or stealing an older person’s money or possessions, coercing or deceiving an older person into signing a document, and improperly using a conservatorship, guardianship, or power of attorney are examples of financial exploitation.<sup>9</sup> Similar offenses are often committed against disabled adults, who can be equally vulnerable to financial crimes.

Financial exploitation of the elderly and disabled is reported less than other forms of abuse. It is believed that only 1 in 14 cases of financial exploitation against disabled adults are reported and that the yearly number of cases nationwide could exceed 850,000.<sup>10</sup> The “typical” victim of financial exploitation is between 70 and 89 years of age, Caucasian, female, frail, and cognitively impaired.<sup>11</sup> It has been estimated that the financial loss to victims as a result of these types of crimes is at least \$2.9 billion nationwide.<sup>12</sup>

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<sup>1</sup> Administration on Aging, National Center for Elder Abuse, *America’s Growing Elderly Population*, available at [www.ncea.aoa.gov/Library/Data/index.aspx](http://www.ncea.aoa.gov/Library/Data/index.aspx) (citing U.S. Department of Commerce, U.S. Census Bureau, *The older population: 2010*, 2011, Publication C2010BR-09) (last visited on February 3, 2014).

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

<sup>3</sup> U.S. Department of Commerce, U.S. Census Bureau, American FactFinder, *Selected Social Characteristics in the U.S.-Florida-2011 American Community Survey 1 year estimates*, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_1YR\\_DP02&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP02&prodType=table) (last visited on February 3, 2014).

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

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

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

<sup>7</sup> *Id.* at page 24.

<sup>8</sup> The National Center on Elder Abuse, *Types of Abuse- Financial or Material Exploitation*, <http://ncea.aoa.gov/faq/index.aspx> (last visited on February 3, 2014).

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

<sup>10</sup> MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, *Broken Trust: Elders, Family, and Finances, A Study on Elder Financial Abuse Prevention*, March 2009, page 8; see also The National Committee for the Prevention of Elder Abuse and The National Adult Protective Services Association, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*, February 2006, page 20.

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

<sup>12</sup> Andrew Jay McClurg, *Preying on the Graying: A Statutory Presumption to Prosecute Elder Financial Exploitation*, *Hastings Law Journal*, Vol. 65, No. 4 at 125 (2014) (on file with the Criminal Justice Subcommittee). This report is further cited as “*Preying on the Graying*.”

## Florida Law – “Exploitation of an Elderly Person or Disabled Adult”

Section 825.101, F.S., defines the following terms:

- “Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability to provide adequately for his or her own care is impaired; and
- “Disabled adult” means a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.

Section 825.103(1), F.S., defines exploitation of an elderly person or disabled adult (vulnerable adult) as:

- (a) Knowingly, by deception<sup>13</sup> or intimidation,<sup>14</sup> obtaining or using, or endeavoring to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the vulnerable adult, by a person who:
  - Stands in a position of trust and confidence with the vulnerable adult; or
  - Has a business relationship with the vulnerable adult;
- (b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the vulnerable adult, by a person who knows or reasonably should know that the vulnerable adult lacks the capacity to consent;<sup>15</sup> or
- (c) Breaching a fiduciary duty to a vulnerable adult by the person’s guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

If the funds, assets, or property involved in a violation of the offense are:

- Valued at \$100,000 or more, it is a first degree felony;<sup>16</sup>
- Valued at \$20,000 or more but less than \$100,000, it is a second degree felony;<sup>17</sup> and
- Valued at less than \$20,000, it is a third degree felony.<sup>18</sup>

The offenses listed above are currently ranked at level 8, level 7, and level 6, respectively, for purposes of the Criminal Punishment Code offense severity ranking chart.<sup>19</sup>

<sup>13</sup> Section 825.101(3), F.S., defines “deception” as misrepresenting or concealing a material fact relating to: services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult; terms of a contract or agreement entered into with an elderly person or disabled adult; or an existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.

<sup>14</sup> Section 825.101(8), F.S., defines “intimidation” as the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

<sup>15</sup> Section 825.101(9), F.S., defines “lacks capacity to consent” as an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person’s or disabled adult’s person or property.

<sup>16</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>17</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>18</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>19</sup> The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant’s sentence is calculated based, in part, on points assigned for the offense severity ranking. The points are added in order to determine the “lowest permissible sentence” for the offense. Section 921.0022, F.S.

### Effect of the Bill

The bill amends paragraph (a) of the definition of "exploitation of an elderly person or disabled adult" F.S., to delete the requirement that a person use *deception or intimidation* to obtain or use a vulnerable adult's funds, assets, or property.<sup>20</sup> This will allow a prosecutor to pursue charges against an individual who exploits a vulnerable adult in a broader range of instances.

The bill amends paragraph (c) of the definition of "exploitation of an elderly person or disabled adult" to specify that "unlawful appropriation" occurs when a vulnerable adult:

- Does not receive reciprocal financial value in goods or services; or
- Violates specified duties for fiduciaries appointed under chs. 709, 736, and 744, F.S.

The bill creates additional instances that constitute "exploitation of an elderly person or disabled adult" by adding the following paragraphs:

- (d) Misappropriating, misusing, or unauthorized transferring of moneys belonging to a vulnerable adult from a *personal or joint account* in which the vulnerable adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer; and
- (e) Intentionally or negligently failing to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver<sup>21</sup> or a person who stands in a position of trust and confidence with the vulnerable adult.

The bill amends the property threshold amounts applicable to s. 825.103, F.S. If the funds, assets, or property involved in a violation of the offense are:

- Valued at \$50,000 or more, it is a first degree felony;
- Valued at \$10,000 or more but less than \$50,000, it is a second degree felony; and
- Valued at less than \$10,000, it is a third degree felony.

In cases where the taking of or loss of the vulnerable adult's property is valued at more than \$5,000 and the property belonging to the victim is seized from the defendant pursuant to a search warrant, the bill requires the court to:

- Conduct an evidentiary hearing to determine if the defendant unlawfully obtained the victim's property; and
- Order that the property be returned to the victim before trial if the court finds, by a preponderance of the evidence, that the defendant unlawfully obtained the property.

The evidentiary hearing is for restitution purposes only, and the court's finding that the defendant unlawfully obtained the property is inadmissible at trial and does not give rise to any inference that the defendant has committed an offense under s. 825.103, F.S.

The bill makes conforming changes to ss. 775.0844 and 921.0022, F.S., and reenacts s. 772.11, F.S., relating to civil remedy for theft or exploitation, to incorporate changes made by the bill.

### **Permissive Presumption for Financial Exploitation of Elderly Persons**

#### *Permissive Presumptions*

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence.<sup>22</sup> A presumption is derived from another fact or group of facts that has

<sup>20</sup> The bill also deletes the definitions of the terms "deception" and "intimidation" as they are no longer applicable to ch. 825, F.S.

<sup>21</sup> Section 825.101(2), F.S., defines "caregiver" to mean a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in s. 825.101(7), F.S.

<sup>22</sup> *Ibarrondo v. State*, 1 So.3d 226, 232 (Fla. 5th DCA 2008) ("A presumption permits or requires a fact finder to assume the existence of a presumed or ultimate fact after certain basic or preliminary facts have already been established."); *Hack v. Janes*, 878 So.2d 440 (Fla. 5th DCA 2004).

been proven in the action.<sup>23</sup> There are two types of presumptions: conclusive presumptions, which *require* the jury to find the presumed fact if the underlying facts are proved; and permissive presumptions, which *allow*, but do not require, the jury to find the presumed fact if it finds the underlying fact to be true.<sup>24</sup>

Hundreds of presumptions exist in American jurisprudence.<sup>25</sup> There are several premises that support the creation of presumptions in the law, including fairness, the desire to advance substantive policies, and the need for some device to resolve certain issues that could not otherwise be resolved due to a lack of proof.<sup>26</sup> The strongest justification for most presumptions is the probabilistic determination that the existence of certain facts can be logically inferred from other facts.<sup>27</sup>

#### *Prosecutions of Financial Exploitation of Elderly Persons*

Prosecutions under s. 825.103, F.S., often face significant roadblocks due to the difficulty in proving that what may superficially look like voluntary gifts or loans is actually exploitation.<sup>28</sup> Exploited elders frequently are unable, and sometimes unwilling, to effectively assist prosecutors.<sup>29</sup> Prosecutions are further complicated by the fact that the transactions often occur in secret, and that often times the elderly person may not be a good witness as a result of cognitive or other impairments.<sup>30</sup>

Section 825.103, F.S., does not currently provide any presumptions.

#### Effect of the Bill

The bill creates a permissive presumption in s. 825.103, F.S., that an inter vivos transfer of money or property by a person 65 or older with the following characteristics was the result of exploitation:

- The property transferred is valued in excess of \$10,000 at the time of the transfer;<sup>31</sup>
- The property is transferred to a nonrelative who knew the elderly person for fewer than 2 years before the first transfer; and
- The elderly person did not receive reciprocal value in goods or services from the transfer.

This presumption applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan. However, the presumption does not apply to a valid loan *evidenced in writing* that includes definite repayment dates, unless repayment of such loan is in default, in whole or in part, for more than 65 days. The bill provides exemptions from the presumption for:

- Persons who are in the business of making loans; or
- Bona fide charitable donations to nonprofit organizations that qualify for tax exempt status under the Internal Revenue Code.

The bill also requires the court to instruct the jury that:

- They may, but are not required to, draw an inference of exploitation upon proof beyond a reasonable doubt of the facts listed in this subsection;
- They must not find a defendant guilty unless persuaded that each element of the offense has been proved beyond a reasonable doubt; and
- The presumption imposes no burden of proof on the defendant.

This presumption does not apply to disabled adults.

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<sup>23</sup> *Id.*

<sup>24</sup> *Marcolini v. State*, 673 So.2d 3, 5 (Fla. 1996); *see also State v. Rygwelski*, 899 So.2d 498, 501(Fla. 2nd DCA 2005) and *Ibarrondo*, at 232.

<sup>25</sup> *Preying on the Graying*, at 125.

<sup>26</sup> *Id.*

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

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

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

<sup>30</sup> *Id.* at 106.

<sup>31</sup> The bill provides that it does not matter whether the transfer was made in a single transaction or multiple transactions.

## Hearsay Exception for Vulnerable Adults

### *Hearsay in Criminal Cases*

"Hearsay" is a statement,<sup>32</sup> other than one made by the declarant<sup>33</sup> while testifying at trial or a hearing,<sup>34</sup> offered in evidence to prove the truth of the matter asserted.<sup>35</sup> Currently, hearsay statements are not admissible at trial unless a statutory exception applies.<sup>36</sup>

Section 90.803(24), F.S., creates a hearsay exception specifically relating to vulnerable adults. The statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a vulnerable adult describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant vulnerable adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;<sup>37</sup> and
- The vulnerable adult either:
  - Testifies; or
  - Is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability must include a finding by the court that the vulnerable adult's participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1), F.S.<sup>38</sup>

The party seeking to introduce a hearsay statement under the exception at s. 90.803, F.S., bears the burden of establishing that the declarant is unavailable as a witness at a pretrial hearing.<sup>39</sup>

### *Confrontation Clause and the Admissibility of Hearsay Statements*

In the time since the hearsay exception for vulnerable adults was enacted,<sup>40</sup> the United States Supreme Court (Court) has held the admission of certain out-of-court statements violates the Confrontation Clause of the Sixth Amendment.<sup>41,42</sup> In *Crawford*, the Court held that before an out-of-

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<sup>32</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; see s. 90.801(1)(a), F.S.

<sup>33</sup> The "declarant" is the person who made the statement; see s. 90.801(1)(b), F.S.

<sup>34</sup> Often referred to simply as an "out-of-court statement."

<sup>35</sup> Section 90.801(1)(c), F.S.

<sup>36</sup> Section 90.802, F.S.

<sup>37</sup> In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate.

<sup>38</sup> Section 90.804(1), F.S., specifies that "unavailability as a witness" means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

<sup>39</sup> See *Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).

<sup>40</sup> The hearsay exception in s. 90.803(24), F.S., was enacted by the Legislature in 1995. *Conner v. State*, 748 So.2d 950, 957 (Fla. 1999).

<sup>41</sup> *Crawford v. Washington*, 124 S.Ct. 1354 (2004).

<sup>42</sup> The Sixth Amendment of the U.S. Constitution provides, in part: "In all criminal prosecutions....the accused shall enjoy the right to....be confronted with the witnesses against him."

court statement that is testimonial in nature<sup>43</sup> can be admissible in a criminal proceeding the Confrontation Clause requires the:

- Declarant to be unavailable,<sup>44</sup> and
- Defendant to have had a prior opportunity to cross-examine such declarant.

The Court later held that the distinction of whether evidence is testimonial or nontestimonial in nature rests on the primary purpose of the statement, specifically:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the 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>45</sup>

Further, in *State v. Hosty*, the Florida Supreme Court has examined s. 90.803(24), F.S., in light of *Crawford* and held that the Confrontation Clause requires the declarant to be unavailable for testimonial hearsay statements to be admissible.<sup>46</sup>

The statute is not currently in conformance with these ruling since it states certain hearsay statements may be admitted even if the declarant testifies.

#### Effect of the Bill

The bill amends s. 90.803(24), F.S., deleting the language that allows a testimonial hearsay statement to be admissible even if the declarant testifies, thus conforming this exception to the holding in *Crawford* and *Hosty*.

Even though not stated in the statute, the requirement that the accused must have a prior opportunity to cross examine still applies to the admission of these types of statements through case law.

#### B. SECTION DIRECTORY:

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

Section 2. Amends s. 825.101, F.S., relating to definitions.

Section 3. Amends s. 825.103, F.S., relating to exploitation of an elderly person or disabled adult; penalties.

Section 4. Amends s. 775.0844, F.S., relating to White Collar Crime Victim Protection Act.

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

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<sup>43</sup> The Court held that “testimonial evidence” includes at a minimum “prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.” *Crawford*, at 1374. The Court also cited to other opinions it has rendered about what constitutes “testimonial evidence,” including affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; or extrajudicial statements... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions. *Crawford*, at 1364.

<sup>44</sup> The Florida Supreme Court has held that “in order for a witness to be unavailable for confrontation purposes, the State must make a good faith showing of attempting to secure the witness. This includes going to reasonable lengths to procure the witness.” *State v. Johnson*, 982 So.2d 672 (Fla. 2008), citing *Ohio v. Roberts*, 100 S.Ct. 2531 (1980).

<sup>45</sup> *Davis v. Washington*, 126 S.Ct. 2266 (2006).

<sup>46</sup> 944 So.2d 255 (Fla. 2006).



Section 6. Reenacts s. 772.11, F.S., relating to civil remedy for theft or exploitation.

Section 7. 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 January 30, 2014, the Criminal Justice Impact Conference determined that the bill will have an indeterminate negative prison bed impact on the Department of Corrections.

### 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.

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

The bill provides a mechanism in specified instances for the court to return a vulnerable person's stolen property prior to trial. As a result, the victims of these crimes could be made whole at a much earlier stage in the litigation process than otherwise possible.

### C. 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:

The Due Process Clauses of the United States and Florida Constitutions require the State to prove every element of a criminal offense beyond a reasonable doubt.<sup>47</sup> Conclusive presumptions that shift the burden of persuasion as to a statutorily defined element of the offense to the defendant are impermissible under the Due Process Clause.<sup>48</sup> Permissive presumptions can be constitutional, but only if they do not shift the burden of persuasion to the defendant.<sup>49</sup>

<sup>47</sup> *Burttram v. State*, 780 So.2d 224 (Fla. 2nd DCA 2001).

<sup>48</sup> *Francis v. Franklin*, 105 S.Ct. 1965, 1971 (1985); *Sandstrom v. Montana*, 99 S.Ct. 2450, 2459 (1979); *State v. Rolle*, 560 So.2d 1154, 1159 (Fla. 1990); and *Tatum v. State*, 857 So.2d 331 (Fla. 2nd DCA 2003).

<sup>49</sup> *County Court of Ulster County, N. Y. v. Allen*, 99 S.Ct. 2213 (1979).

When reviewing a permissive presumption, the United States Supreme Court requires the challenging party challenging to demonstrate its invalidity as applied.<sup>50</sup> Since a permissive presumption allows the trier of fact free to accept or reject the inference and does not shift the burden of proof, the only instance that affects the application of the “beyond a reasonable doubt” standard is if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference.<sup>51</sup> This is the only situation where any risk that an explanation of the permissible inference to a jury, or its use by a jury, has caused the presumptively rational fact finder to make an erroneous factual determination.<sup>52</sup>

For a permissive inference to withstand constitutional challenge, a rational connection must exist between the facts in the record and the ultimate fact to be presumed.<sup>53</sup> A permissive presumption will be upheld if it can be said with substantial assurance that the presumed fact is more likely to flow from the proved fact on which it is made to depend.<sup>54</sup>

The bill creates a permissive presumption of exploitation if the State proves the occurrence of an inter vivos transfer in excess of \$10,000 by an elderly person to someone the elderly person knew less than two years, which did not result in receipt of reciprocal value in goods or services. To the extent that the bill relieves the State of their obligation to prove the elements of a specified instance of exploitation of an elderly person beyond a reasonable doubt, the presumption could be challenged as being unconstitutional.

#### B. RULE-MAKING AUTHORITY:

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

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

1) Lines 125 and 126: Current law references “unauthorized appropriation,” but the new language added to s. 825.103, F.S., uses “unlawful appropriation.” The two terms should be consistent.

2) Lines 128 and 160: The bill uses the term “reciprocal financial value in goods or services,” but does not define the term. This term is also not defined elsewhere in Florida Statutes. Without defining this term, it could be interpreted in a variety of ways, including an exact dollar for dollar value, a reasonable financial value, fair market value, etc.

3) Line 129: The bill provides that an unlawful appropriation occurs when “the elderly person or disabled adult...violates any of these duties.” The portion of the bill that references violating specific duties should be applied to the fiduciary, rather than the vulnerable adult, who is the victim in these cases.

4) Line 145: The bill provides that exploitation occurs from the misappropriation, etc. of moneys belonging to an elderly person or disabled adult from a joint account. Generally, joint accounts provide equal rights to all parties on the account, regardless of who deposited the money. Section 655.80, F.S., creates convenience accounts, which are a specific type of joint account that allow other parties (agents) to be added to a bank account, but the (individual) principal retains full ownership rights over the money they deposit. The agents on the account are able to deposit or withdraw funds or draw checks on the account to assist the principal with financial duties. The bill as written applies to all joint accounts when it appears that the bill intends to apply to convenience accounts.

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<sup>50</sup> *U.S. v. Gainey*, 85 S.Ct. 754,757 (1965); *Turner v. U.S.*, 90 S.Ct. 642, 653 (1970); *Barnes v. U.S.*, 93 S.Ct. 2357, 2362 (1793).

<sup>51</sup> *Allen*, at 2225.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*; See also *Marcolini v. State*, 673 So.2d 3 (Fla. 1996).

<sup>54</sup> *State v. Brake*, 796 So.2d 522 (Fla. 2001).

5) Lines 179-181: The bill states that the jury "shall also be told that in no event may they find a defendant guilty unless persuaded that each element of the offense has been proved beyond a reasonable doubt." This language is unnecessary since this is the standard in all criminal cases, through both statutory and case law.

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

1                                   A bill to be entitled  
 2           An act relating to offenses against vulnerable  
 3           persons; amending s. 90.803, F.S.; revising when an  
 4           out of court statement by an elderly person or  
 5           disabled adult is admissible in certain proceedings;  
 6           amending s. 825.101, F.S.; revising and deleting  
 7           definitions; amending s. 825.103, F.S.; deleting a  
 8           requirement that property of an elderly person or  
 9           disabled adult be obtained by deception or  
 10          intimidation in order to constitute exploitation of  
 11          such a person; specifying additional circumstances  
 12          that constitute a breach of a fiduciary duty and  
 13          specifying when an unlawful appropriation occurs;  
 14          creating a presumption that certain inter vivos  
 15          transfers are a result of exploitation; providing  
 16          exceptions; providing for jury instructions concerning  
 17          the presumption; revising the valuation of funds,  
 18          assets, or property involved for various degrees of  
 19          offenses of exploitation of an elderly person or  
 20          disabled adult; providing for return of property  
 21          seized from a defendant to the victim before trial in  
 22          certain circumstances; amending ss. 775.0844 and  
 23          921.0022, F.S.; conforming provisions to changes made  
 24          by the act; reenacting s. 772.11(1), F.S., relating to  
 25          a civil remedy for theft or exploitation, to  
 26          incorporate the amendments made by the act to s.

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27 825.103, F.S., in a reference thereto; providing an  
 28 effective date.

29

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

31

32 Section 1. Paragraph (a) of subsection (24) of section  
 33 90.803, Florida Statutes, is amended to read:

34 90.803 Hearsay exceptions; availability of declarant  
 35 immaterial.—The provision of s. 90.802 to the contrary  
 36 notwithstanding, the following are not inadmissible as evidence,  
 37 even though the declarant is available as a witness:

38 (24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR  
 39 DISABLED ADULT.—

40 (a) Unless the source of information or the method or  
 41 circumstances by which the statement is reported indicates a  
 42 lack of trustworthiness, an out-of-court statement made by an  
 43 elderly person or disabled adult, as defined in s. 825.101,  
 44 describing any act of abuse or neglect, any act of exploitation,  
 45 the offense of battery or aggravated battery or assault or  
 46 aggravated assault or sexual battery, or any other violent act  
 47 on the declarant elderly person or disabled adult, not otherwise  
 48 admissible, is admissible in evidence in any civil or criminal  
 49 proceeding if:

50 1. The court finds in a hearing conducted outside the  
 51 presence of the jury that the time, content, and circumstances  
 52 of the statement provide sufficient safeguards of reliability.

53 In making its determination, the court may consider the mental  
 54 and physical age and maturity of the elderly person or disabled  
 55 adult, the nature and duration of the abuse or offense, the  
 56 relationship of the victim to the offender, the reliability of  
 57 the assertion, the reliability of the elderly person or disabled  
 58 adult, and any other factor deemed appropriate; and

59 2. The elderly person or disabled adult ~~either:~~

60 ~~a. Testifies; or~~

61 ~~b.~~ is unavailable as a witness, provided that there is  
 62 corroborative evidence of the abuse or offense. Unavailability  
 63 shall include a finding by the court that the elderly person's  
 64 or disabled adult's participation in the trial or proceeding  
 65 would result in a substantial likelihood of severe emotional,  
 66 mental, or physical harm, in addition to findings pursuant to s.  
 67 90.804(1).

68 Section 2. Subsections (2), (3), and (8) of section  
 69 825.101, Florida Statutes, are amended to read:

70 825.101 Definitions.—As used in this chapter:

71 (2) "Caregiver" means a person who has been entrusted with  
 72 or has assumed responsibility for the care or the property of an  
 73 elderly person or disabled adult. "Caregiver" includes, but is  
 74 not limited to, relatives, court-appointed or voluntary  
 75 guardians, adult household members, neighbors, health care  
 76 providers, and employees and volunteers of facilities as defined  
 77 in subsection (6)~~(7)~~.

78 ~~(3) "Deception" means:~~

79 ~~(a) Misrepresenting or concealing a material fact relating~~  
 80 ~~to:~~

81 ~~1. Services rendered, disposition of property, or use of~~  
 82 ~~property, when such services or property are intended to benefit~~  
 83 ~~an elderly person or disabled adult;~~

84 ~~2. Terms of a contract or agreement entered into with an~~  
 85 ~~elderly person or disabled adult; or~~

86 ~~3. An existing or preexisting condition of any property~~  
 87 ~~involved in a contract or agreement entered into with an elderly~~  
 88 ~~person or disabled adult; or~~

89 ~~(b) Using any misrepresentation, false pretense, or false~~  
 90 ~~promise in order to induce, encourage, or solicit an elderly~~  
 91 ~~person or disabled adult to enter into a contract or agreement.~~

92 ~~(8) "Intimidation" means the communication by word or act~~  
 93 ~~to an elderly person or disabled adult that the elderly person~~  
 94 ~~or disabled adult will be deprived of food, nutrition, clothing,~~  
 95 ~~shelter, supervision, medicine, medical services, money, or~~  
 96 ~~financial support or will suffer physical violence.~~

97 Section 3. Section 825.103, Florida Statutes, is amended  
 98 to read:

99 825.103 Exploitation of an elderly person or disabled  
 100 adult; penalties.-

101 (1) "Exploitation of an elderly person or disabled adult"  
 102 means:

103 (a) ~~Knowingly, by deception or intimidation,~~ obtaining or  
 104 using, or endeavoring to obtain or use, an elderly person's or

105 disabled adult's funds, assets, or property with the intent to  
 106 temporarily or permanently deprive the elderly person or  
 107 disabled adult of the use, benefit, or possession of the funds,  
 108 assets, or property, or to benefit someone other than the  
 109 elderly person or disabled adult, by a person who:

110 1. Stands in a position of trust and confidence with the  
 111 elderly person or disabled adult; or

112 2. Has a business relationship with the elderly person or  
 113 disabled adult;

114 (b) Obtaining or using, endeavoring to obtain or use, or  
 115 conspiring with another to obtain or use an elderly person's or  
 116 disabled adult's funds, assets, or property with the intent to  
 117 temporarily or permanently deprive the elderly person or  
 118 disabled adult of the use, benefit, or possession of the funds,  
 119 assets, or property, or to benefit someone other than the  
 120 elderly person or disabled adult, by a person who knows or  
 121 reasonably should know that the elderly person or disabled adult  
 122 lacks the capacity to consent; or

123 (c) Breach of a fiduciary duty to an elderly person or  
 124 disabled adult by the person's guardian or agent under a power  
 125 of attorney which results in an unauthorized appropriation,  
 126 sale, or transfer of property. An unlawful appropriation under  
 127 this paragraph occurs when the elderly person or disabled adult  
 128 does not receive reciprocal financial value in goods or  
 129 services, or violates any of these duties:

130 1. For agents appointed under chapter 709:



- 131        a. Committing fraud in obtaining their appointments;  
 132        b. Abusing their powers;  
 133        c. Wasting, embezzling, or intentionally mismanaging the  
 134 assets of the ward or beneficiary of the trust; or  
 135        d. Acting contrary to the principal's sole benefit or best  
 136 interest.
- 137        2. For guardians and trustees appointed under chapter 736  
 138 or chapter 744:
- 139        a. Committing fraud in obtaining their appointments;  
 140        b. Abusing their powers; or  
 141        c. Wasting, embezzling, or intentionally mismanaging the  
 142 assets of the ward or beneficiary of the trust.
- 143        (d) Misappropriating, misusing, or unauthorized  
 144 transferring of moneys belonging to an elderly person or  
 145 disabled adult from a personal or joint account in which the  
 146 elderly person or disabled adult placed the funds, owned the  
 147 funds, and was the sole contributor or payee of the funds before  
 148 the misappropriation, misuse, or unauthorized transfer.
- 149        (e) Intentionally or negligently failing to effectively  
 150 use an elderly person's or disabled adult's income and assets  
 151 for the necessities required for that person's support and  
 152 maintenance, by a caregiver or a person who stands in a position  
 153 of trust and confidence with the elderly person or disabled  
 154 adult.
- 155        (2) Any inter vivos transfer of money or property valued  
 156 in excess of \$10,000 at the time of the transfer, whether in a

157 single transaction or multiple transactions, by a person age 65  
158 or older to a nonrelative whom the transferor knew for fewer  
159 than 2 years before the first transfer and for which the  
160 transferor did not receive reciprocal value in goods or services  
161 creates a permissive presumption that the transfer was the  
162 result of exploitation.

163 (a) This subsection applies regardless of whether the  
164 transfer or transfers are denoted by the parties as a gift or  
165 loan, except that it does not apply to a valid loan evidenced in  
166 writing that includes definite repayment dates. However, if  
167 repayment of any such loan is in default, in whole or in part,  
168 for more than 65 days, the presumption of this subsection  
169 applies.

170 (b) This subsection does not apply to:

171 1. Persons who are in the business of making loans.

172 2. Bona fide charitable donations to nonprofit  
173 organizations that qualify for tax exempt status under the  
174 Internal Revenue Code.

175 (c) In a criminal case to which this subsection applies,  
176 if the trial is by jury, jurors shall be instructed that they  
177 may, but are not required to, draw an inference of exploitation  
178 upon proof beyond a reasonable doubt of the facts listed in this  
179 subsection. They shall also be told that in no event may they  
180 find a defendant guilty unless persuaded that each element of  
181 the offense has been proved beyond a reasonable doubt. The  
182 presumption of this subsection imposes no burden of proof on the

183 defendant.

184 (3)~~(2)~~(a) If the funds, assets, or property involved in  
 185 the exploitation of the elderly person or disabled adult is  
 186 valued at \$50,000 ~~\$100,000~~ or more, the offender commits a  
 187 felony of the first degree, punishable as provided in s.  
 188 775.082, s. 775.083, or s. 775.084.

189 (b) If the funds, assets, or property involved in the  
 190 exploitation of the elderly person or disabled adult is valued  
 191 at \$10,000 ~~\$20,000~~ or more, but less than \$50,000 ~~\$100,000~~, the  
 192 offender commits a felony of the second degree, punishable as  
 193 provided in s. 775.082, s. 775.083, or s. 775.084.

194 (c) If the funds, assets, or property involved in the  
 195 exploitation of an elderly person or disabled adult is valued at  
 196 less than \$10,000 ~~\$20,000~~, the offender commits a felony of the  
 197 third degree, punishable as provided in s. 775.082, s. 775.083,  
 198 or s. 775.084.

199 (4) If a person is charged with financial exploitation of  
 200 an elderly person or disabled adult that involves the taking of  
 201 or loss of property valued at more than \$5,000 and property  
 202 belonging to a victim is seized from the defendant pursuant to a  
 203 search warrant, the court shall hold an evidentiary hearing and  
 204 determine, by a preponderance of the evidence, whether the  
 205 defendant unlawfully obtained the victim's property. If the  
 206 court finds that the property was unlawfully obtained, the court  
 207 may order it returned to the victim for restitution purposes  
 208 before trial on the charge. This determination is inadmissible

209 in evidence at trial on the charge and does not give rise to any  
 210 inference that the defendant has committed an offense under this  
 211 section.

212 Section 4. Paragraph (a) of subsection (5) of section  
 213 775.0844, Florida Statutes, is amended to read:

214 775.0844 White Collar Crime Victim Protection Act.—

215 (5) Any person who commits an aggravated white collar  
 216 crime as defined in this section and in so doing either:

217 (a) Victimized 10 or more elderly persons, as defined in  
 218 s. 825.101~~(5)~~;

219  
 220 and thereby obtains or attempts to obtain \$50,000 or more,  
 221 commits a felony of the first degree, punishable as provided in  
 222 s. 775.082, s. 775.083, or s. 775.084.

223 Section 5. Paragraphs (f), (g), and (h) of subsection (3)  
 224 of section 921.0022, Florida Statutes, are amended to read:

225 921.0022 Criminal Punishment Code; offense severity  
 226 ranking chart.—

227 (3) OFFENSE SEVERITY RANKING CHART

228 (f) LEVEL 6

229

Florida	Felony	
Statute	Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent

230

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			conviction.
231	499.0051(3)	2nd	Knowing forgery of pedigree papers.
232	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
233	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
234	775.0875(1)	3rd	Taking firearm from law enforcement officer.
235	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
236	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
237	784.041	3rd	Felony battery; domestic battery by strangulation.
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239	784.048 (3)	3rd	Aggravated stalking; credible threat.
240	784.048 (5)	3rd	Aggravated stalking of person under 16.
241	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
242	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
243	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
244	784.081 (2)	2nd	Aggravated assault on specified official or employee.
245	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
246	784.083 (2)	2nd	Aggravated assault on code inspector.

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247	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
248	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
249	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
250	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
251	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
252	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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253	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
254	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
255	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
256	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
257	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
258	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000,



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			grand theft in 2nd degree.
259	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
260	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
261	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
262	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
263	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
264	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
265	825.102(3)(c)	3rd	Neglect of an elderly person or

			disabled adult.
266	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
267	<u>825.103(3)(c)</u> <del>825.103(2)(e)</del>	3rd	Exploiting an elderly person or disabled adult and property is valued at less than <u>\$10,000</u> <del>\$20,000</del> .
268	827.03(2)(c)	3rd	Abuse of a child.
269	827.03(2)(d)	3rd	Neglect of a child.
270	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
271	836.05	2nd	Threats; extortion.
272	836.10	2nd	Written threats to kill or do bodily injury.
273	843.12	3rd	Aids or assists person to

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			escape.
274	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
275	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
276	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
277	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
278	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
279			

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280	944.40	2nd	Escapes.
281	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
282	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
283	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
284	(g) LEVEL 7		
285	Florida Statute	Felony Degree	Description
286	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
287	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
288	316.1935(3)(b)	1st	Causing serious bodily injury

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			or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
289	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
290	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
291	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
292	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
293	456.065(2)	3rd	Practicing a health care

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294			profession without a license.
	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
295			
	458.327 (1)	3rd	Practicing medicine without a license.
296			
	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
297			
	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
298			
	461.012 (1)	3rd	Practicing podiatric medicine without a license.
299			
	462.17	3rd	Practicing naturopathy without a license.
300			
	463.015 (1)	3rd	Practicing optometry without a license.
301			

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

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302	464.016(1)	3rd	Practicing nursing without a license.
303	465.015(2)	3rd	Practicing pharmacy without a license.
304	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
305	467.201	3rd	Practicing midwifery without a license.
306	468.366	3rd	Delivering respiratory care services without a license.
307	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
308	483.901(9)	3rd	Practicing medical physics without a license.
309	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

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310	484.053	3rd	Dispensing hearing aids without a license.
311	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
312	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
313	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
314	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.



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315	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
316	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
317	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
318	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
319	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

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320	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
321	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
322	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
323	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
324	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
325	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
325	784.048 (7)	3rd	Aggravated stalking; violation

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326	784.07(2)(d)	1st	of court order. Aggravated battery on law enforcement officer.
327	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
328	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
329	784.081(1)	1st	Aggravated battery on specified official or employee.
330	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
331	784.083(1)	1st	Aggravated battery on code inspector.
332	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
333			

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334	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
335	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
336	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
337	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
338	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
339	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

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340	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
341	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
342	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
343	796.03	2nd	Procuring any person under 16 years for prostitution.
344	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

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345	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
346	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
347	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
348	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
349	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
350	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law

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			enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
351	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
352	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
353	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
354	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
355	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
356			

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357	812.131(2)(a)	2nd	Robbery by sudden snatching.
358	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
359	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
360	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
361	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
362	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the



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			insolvency of that entity.
363	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
364	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
365	<u>825.103 (3) (b)</u> <del>825.103 (2) (b)</del>	2nd	Exploiting an elderly person or disabled adult and property is valued at <u>\$10,000</u> <del>\$20,000</del> or more, but less than <u>\$50,000</u> <del>\$100,000</del> .
366	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
367	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
368	837.05 (2)	3rd	Giving false information about

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			alleged capital felony to a law enforcement officer.
369			
	838.015	2nd	Bribery.
370			
	838.016	2nd	Unlawful compensation or reward for official behavior.
371			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
372			
	838.22	2nd	Bid tampering.
373			
	843.0855(2)	3rd	Impersonation of a public officer or employee.
374			
	843.0855(3)	3rd	Unlawful simulation of legal process.
375			
	843.0855(4)	3rd	Intimidation of a public officer or employee.
376			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
377			

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378	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
379	872.06	2nd	Abuse of a dead human body.
380	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
381	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

382	893.13(1)(e)1.	1st	community center. Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
383	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
384	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
385	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
386	893.135	1st	Trafficking in illegal drugs,

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387	(1)(c)1.a.		more than 4 grams, less than 14 grams.
388	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
389	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
390	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
391	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
392	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
	893.135	1st	Trafficking in 1,4-Butanediol,

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393	(1)(j)1.a.		1 kilogram or more, less than 5 kilograms.
394	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
395	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
396	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
397	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
398	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.

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399	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
400	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
401	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
402	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
403	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a

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			digitized photograph.
404	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
405	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
406	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
407	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
408	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
409			



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410 (h) LEVEL 8

411

Florida	Felony	
Statute	Degree	Description

412

316.193	2nd	DUI manslaughter.
(3) (c) 3.a.		

413

316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
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414

327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
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415

499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
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416

499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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417

560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money
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418			transmitter.
	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
419			
	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
420			
	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
421			
	782.04 (4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or

422			unlawfully discharging bomb.
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
423			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
424			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
425			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
426			
	787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
427			
	787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual

			activity by the transfer or transport of any individual from outside Florida to within the state.
428	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
429	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
430	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
431	800.04(4)	2nd	Lewd or lascivious battery.
432	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
433			

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434	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
435	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
436	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
437	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
438	812.13 (2) (b)	1st	Robbery with a weapon.
439	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
440	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.

441	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
442	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
443	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
444	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
445	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
	825.1025(2)	2nd	Lewd or lascivious battery upon

			an elderly person or disabled adult.
446	<u>825.103(3)(a)</u>	1st	Exploiting an elderly person or disabled adult and property is valued at <u>\$50,000</u> <del>\$100,000</del> or more.
	<del>825.103(2)(a)</del>		
447	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
448	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
449	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
450	860.16	1st	Aircraft piracy.
451	893.13(1)(b)	1st	Sell or deliver in excess of 10

			grams of any substance specified in s. 893.03(1)(a) or (b).
452	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
453	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
454	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
455	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
456	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
457	893.135	1st	Trafficking in phencyclidine,



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458	(1) (d) 1.b.	1st	more than 200 grams, less than 400 grams.
459	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
460	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
461	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
462	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
463	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
	893.135	1st	Trafficking in Phenethylamines,

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464	(1) (k) 2.b.		200 grams or more, less than 400 grams.
465	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
466	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
467	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
468	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
469	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

896.104(4)(a)2.        2nd     Structuring transactions to  
 evade reporting or registration  
 requirements, financial  
 transactions totaling or  
 exceeding \$20,000 but less than  
 \$100,000.

470

471            Section 6. For the purpose of incorporating the amendment  
 472 made by this act to section 825.103, Florida Statutes, in a  
 473 reference thereto, subsection (1) of section 772.11, Florida  
 474 Statutes, is reenacted to read:

475            772.11 Civil remedy for theft or exploitation.—

476            (1) Any person who proves by clear and convincing evidence  
 477 that he or she has been injured in any fashion by reason of any  
 478 violation of ss. 812.012-812.037 or s. 825.103(1) has a cause of  
 479 action for threefold the actual damages sustained and, in any  
 480 such action, is entitled to minimum damages in the amount of  
 481 \$200, and reasonable attorney's fees and court costs in the  
 482 trial and appellate courts. Before filing an action for damages  
 483 under this section, the person claiming injury must make a  
 484 written demand for \$200 or the treble damage amount of the  
 485 person liable for damages under this section. If the person to  
 486 whom a written demand is made complies with such demand within  
 487 30 days after receipt of the demand, that person shall be given  
 488 a written release from further civil liability for the specific  
 489 act of theft or exploitation by the person making the written

490 demand. Any person who has a cause of action under this section  
491 may recover the damages allowed under this section from the  
492 parents or legal guardian of any unemancipated minor who lives  
493 with his or her parents or legal guardian and who is liable for  
494 damages under this section. Punitive damages may not be awarded  
495 under this section. The defendant is entitled to recover  
496 reasonable attorney's fees and court costs in the trial and  
497 appellate courts upon a finding that the claimant raised a claim  
498 that was without substantial fact or legal support. In awarding  
499 attorney's fees and costs under this section, the court may not  
500 consider the ability of the opposing party to pay such fees and  
501 costs. This section does not limit any right to recover  
502 attorney's fees or costs provided under any other law.

503 Section 7. This act shall take effect October 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: Criminal Justice  
 2 Subcommittee

3 Representative Passidomo offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 126-181 and insert:

7 sale, or transfer of property. An unauthorized appropriation  
 8 under this paragraph occurs when the elderly person or disabled  
 9 adult does not receive the reasonably equivalent financial value  
 10 in goods or services, or when the fiduciary violates any of  
 11 these duties:

12 1. For agents appointed under chapter 709:

13 a. Committing fraud in obtaining their appointments;

14 b. Abusing their powers;

15 c. Wasting, embezzling, or intentionally mismanaging the  
 16 assets of the ward or beneficiary of the trust; or



Amendment No. 1

17 d. Acting contrary to the principal's sole benefit or best  
18 interest.

19 2. For guardians and trustees appointed under chapter 736  
20 or chapter 744:

21 a. Committing fraud in obtaining their appointments;

22 b. Abusing their powers; or

23 c. Wasting, embezzling, or intentionally mismanaging the  
24 assets of the ward or beneficiary of the trust.

25 (d) Misappropriating, misusing, or transferring without  
26 authorization money belonging to an elderly person or disabled  
27 adult from an account in which the elderly person or disabled  
28 adult placed the funds, owned the funds, and was the sole  
29 contributor or payee of the funds before the misappropriation,  
30 misuse, or unauthorized transfer. This paragraph only applies  
31 to the following types of accounts:

32 1. Personal accounts;

33 2. Joint accounts created with the intent that only the  
34 elderly person or disabled adult enjoys all rights, interests,  
35 and claims to moneys deposited into such account; or

36 3. Convenience accounts created in accordance with s.  
37 655.80.

38 (e) Intentionally or negligently failing to effectively  
39 use an elderly person's or disabled adult's income and assets  
40 for the necessities required for that person's support and  
41 maintenance, by a caregiver or a person who stands in a position



Amendment No. 1

42 of trust and confidence with the elderly person or disabled  
43 adult.

44 (2) Any inter vivos transfer of money or property valued  
45 in excess of \$10,000 at the time of the transfer, whether in a  
46 single transaction or multiple transactions, by a person age 65  
47 or older to a nonrelative whom the transferor knew for fewer  
48 than 2 years before the first transfer and for which the  
49 transferor did not receive the reasonably equivalent financial  
50 value in goods or services creates a permissive presumption that  
51 the transfer was the result of exploitation.

52 (a) This subsection applies regardless of whether the  
53 transfer or transfers are denoted by the parties as a gift or  
54 loan, except that it does not apply to a valid loan evidenced in  
55 writing that includes definite repayment dates. However, if  
56 repayment of any such loan is in default, in whole or in part,  
57 for more than 65 days, the presumption of this subsection  
58 applies.

59 (b) This subsection does not apply to:

- 60 1. Persons who are in the business of making loans.  
61 2. Bona fide charitable donations to nonprofit  
62 organizations that qualify for tax exempt status under the  
63 Internal Revenue Code.

64 (c) In a criminal case to which this subsection applies,  
65 if the trial is by jury, jurors shall be instructed that they  
66 may, but are not required to, draw an inference of exploitation



Amendment No. 1

67 upon proof beyond a reasonable doubt of the facts listed in this  
68 subsection. The

69

70

71

72

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73

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

74

Remove line 13 and insert:

75

specifying when an unauthorized appropriation occurs;

76





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: Criminal Justice  
 2 Subcommittee

3 Representative Passidomo offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 67 and 68, insert:

7 Section 2. Subsections (6) and (7) of section 817.568,  
 8 Florida Statutes, are amended to read:

9 817.568 Criminal use of personal identification  
 10 information.—

11 (6) Any person who willfully and without authorization  
 12 fraudulently uses personal identification information concerning  
 13 an individual who is less than 18 years of age, or 60 years of  
 14 age or older, without first obtaining the consent of that  
 15 individual or of his or her legal guardian commits a felony of  
 16 the second degree, punishable as provided in s. 775.082, s.  
 17 775.083, or s. 775.084.



Amendment No. 2

18 (7) Any person who is in the relationship of parent or  
19 legal guardian, or who otherwise exercises custodial authority  
20 over an individual who is less than 18 years of age, or 60 years  
21 of age or older, who willfully and fraudulently uses personal  
22 identification information of that individual commits a felony  
23 of the second degree, punishable as provided in s. 775.082, s.  
24 775.083, or s. 775.084.

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

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Between lines 5 and 6, insert:

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amending s. 817.568, F.S.; expanding the application of

33

fraudulently using personal identification information of

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specified victims without the consent of the individual or the

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individual's legal guardian to include persons 60 years of age

36

or older;

37



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 515 Public Assistance Fraud  
**SPONSOR(S):** Smith  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>jj</i>	Cunningham <i>zuc</i>
2) Healthy Families Subcommittee			
3) Appropriations Committee			
4) Judiciary Committee			

**SUMMARY ANALYSIS**

Section 414.39, F.S., establishes a variety of crimes involving public assistance fraud. 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) Make 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) Make 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 Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates a new first and second degree felony offense relating to public assistance fraud. The bill may also have a fiscal impact on DCF (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, food assistance, Medicaid, or optional state supplementation program.<sup>1</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>2</sup>:

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

- Fail, 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;
- Fail 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
- Aid and abet another person in the commission of any such act.

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

- Use, transfer, acquire, traffic, alter, forge, or possess;
- Attempt to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aid and abet 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 they:

- Fraudulently misappropriate, attempt to misappropriate, or aid and abet 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 misappropriate, attempt to misappropriate, or aid or abet 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 they:

- Knowingly file, attempt to file, or aid and abet 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 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;

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<sup>1</sup> Section 414.0252(10), F.S.

<sup>2</sup> Section 414.411, F.S.

- Knowingly fail to credit the state or its agent for payments received from social security, insurance, or other sources; or
- In any way knowingly receive, attempt to receive, or aid and abet 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:

- 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>3</sup> or
- 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>4</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:

- Makes it a second degree felony<sup>5</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.
- Makes it a first degree felony<sup>6</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, F.S.<sup>7</sup> The bill specifies that a person who receives a reward is not eligible to receive funds pursuant to the Florida False Claims Act for Medicaid fraud for which the reward was received.<sup>8</sup>

<sup>3</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>4</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>5</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>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 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>8</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.

## 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>9</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 school students, that meet specified technical, income, and asset requirements.<sup>10</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>11</sup> sets forth criteria for determining how much TCA a person is entitled to, and establishes how TCA may be calculated and paid. The statute also contains a multitude of prohibitions and restrictions. For example:

- 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 by the end of the 5-day period that begins on the date it becomes clear to the parent or caretaker relative 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 the department 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>12</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>13</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.

<sup>9</sup> Section 414.0252(12), F.S.

<sup>10</sup> <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on January 29, 2014).

<sup>11</sup> DCF determines if the families meet such requirements. Section 414.095(1), F.S.

<sup>12</sup> Section 414.095(14), F.S.

<sup>13</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.

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

Section 3. 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:

- Additional revenues may be received due to bill's reward provisions, but that an anticipated amount is not available at this time.
- 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>14</sup>

#### 2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates a new first and second degree felony offense relating to public assistance fraud.

According to DCF:

- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S., 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 cause the need for additional funding sources 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 when it initiated a reward program in the first year. DCF PBI currently receives an average of 26,400 online and telephonic fraud reports annually and projects an additional 7 staff are 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 / 2000 hrs per yr	5.03
Current hourly cost for Financial Specialist (contractor)	\$16.10
Expected additional cost (\$16.10 * 2000 hrs * 5)	\$161,000
Additional DCF Staffing Need	
1 FTE: Rewards Program Manager (OMC I – SES)	
1 OPS ACCESS Integrity Investigator (ESS II)	
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

<sup>14</sup> DCF's Bill Analysis of HB 515 (2014)(on file with the Criminal Justice Subcommittee).



Technology (Software Programming)	\$85,000
Contracted Services (6 Financial Specialists)	\$161,000
DMS-Human Resources Services Surcharge	\$344
<b>Total</b>	<b>\$349,182</b>

Estimates are based on what a similar increase to that of the AG reward program was established and that the actual impact may deviate from this amount.

- Notification to TCA recipients regarding out of state use will annually cost an estimated \$3,500.<sup>15</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 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., to implement and enforce the provisions of ch. 414, F.S.

<sup>15</sup> *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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 an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Subsections (1) through (5) of section 414.39,  
 23           Florida Statutes, are amended, and subsection (11) is added to  
 24           that section, to read:

25           414.39 Fraud.—

26           (1) Any person who knowingly:

27 (a) Fails, by false statement, misrepresentation,  
 28 impersonation, or other fraudulent means, to disclose a material  
 29 fact used in making a determination as to such person's  
 30 qualification to receive public assistance under any state or  
 31 federally funded assistance program;

32 (b) Fails to disclose a change in circumstances in order  
 33 to obtain or continue to receive any such public assistance to  
 34 which he or she is not entitled or in an amount larger than that  
 35 to which he or she is entitled; or

36 (c) Aids and abets another person in the commission of any  
 37 such act,

38  
 39 commits ~~is guilty of~~ a crime and shall be punished as provided  
 40 in subsection (5).

41 (2) Any person who knowingly:

42 (a) Uses, transfers, acquires, traffics, alters, forges,  
 43 or possesses; or ~~or~~

44 (b) Attempts to use, transfer, acquire, traffic, alter,  
 45 forge, or possess; or

46 (c) Aids and abets another person in the use, transfer,  
 47 acquisition, traffic, alteration, forgery, or possession of,  
 48  
 49 a food assistance identification card, an authorization,  
 50 including, but not limited to, an electronic authorization, for  
 51 the expenditure of food assistance benefits, a certificate of  
 52 eligibility for medical services, or a Medicaid identification

53 card in any manner not authorized by law commits a crime and  
 54 shall be punished as provided in subsection (5).

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

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

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

73  
 74 commits ~~is guilty of~~ a crime and shall be punished as provided  
 75 in subsection (5).

76 (4) Any person who:

77 (a) Knowingly files, attempts to file, or aids and abets  
 78 in the filing of, a claim for services to a recipient of public

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

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

88 (c) In any way knowingly receives, attempts to receive, or  
 89 aids and abets in the receipt of, unauthorized payment or other  
 90 unauthorized public assistance or authorization or  
 91 identification to obtain public assistance as provided herein,  
 92  
 93 commits ~~is guilty of~~ a crime and shall be punished as provided  
 94 in subsection (5).

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

101 (b) If the value of the public assistance or  
 102 identification wrongfully received, retained, misappropriated,  
 103 sought, or used is of an aggregate value of \$200 or more, but  
 104 less than \$20,000 in any 12 consecutive months, such person

105 | commits a felony of the third degree, punishable as provided in  
 106 | s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

129 |       (11)(a) Subject to availability of funds, the department  
 130 | or the director of the Office of Public Benefits Integrity

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

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

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

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

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

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

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

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

153 414.095 Determining eligibility for temporary cash  
 154 assistance.—

155 (14) PROHIBITIONS AND RESTRICTIONS.—

156 (k) Use of temporary cash assistance benefits out of state



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2014

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

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

172 Section 3. This act shall take effect October 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 14-01 Juvenile Justice  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cox <i>[Signature]</i>	Cunningham <i>[Signature]</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 fiscal impact on DJJ. DJJ has stated that they expect to be able to handle the increased costs within their existing resources. See FISCAL COMMENTS.

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 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 (currently 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; 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 most impactful points along the juvenile justice continuum.

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.);
- 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);

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<sup>1</sup> *History of the Juvenile Justice System in Florida*, <http://www.djj.state.fl.us/about-us/history> (last accessed on December 6, 2013).

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

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

- 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 utilize 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 re-traumatization 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 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.

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;
- “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.

<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.

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;
- 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;

<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 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 11)**

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 prevention decreases recidivism by addressing the needs of at-risk youth and their families, prevents further involvement in the juvenile justice system, protects public safety, and facilitates successful re-entry into the community. 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 to acquire skills needed to find meaningful employment, including assistance in finding a suitable employer for the child; and
- 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.

<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.

### **Intake Process (Sections 9 and 10)**

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 an initial assessment that may be followed by a full mental health, 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 12 through 18)**

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;
- 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

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<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.

<sup>21</sup> Section 985.25, F.S.



“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, nonsecure shelters, and may include other requirements imposed by the court.

The bill authorizes DJJ to develop evening reporting centers (centers), 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.

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:

<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.

- 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 19 through 25)**

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 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 nonsuitability 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

<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.

<sup>35</sup> Section 985.433(6), F.S.

<sup>36</sup> Section 985.433, F.S.

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 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.

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<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.

## 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>

### *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

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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 January 17, 2014).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

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 last 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.

#### 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>

#### *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:

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<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.

- Utilize 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).

### **Fingerprinting and Photographing (Section 8)**

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 28, 32, 33, 35, 36, 37, 38 and 39)**

#### 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.

<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.

### *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 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;
- 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.

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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.

<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. See *Comprehensive Accountability Reports*, <http://www.djj.state.fl.us/research/reports/car> (last visited on January 21, 2014).

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 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 to appropriately interact with youth and provide such care;”

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<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.

<sup>79</sup> Section 985.66(3), F.S.



- 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>

#### *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.

<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.

<sup>83</sup> Section 985.682(1), F.S.

<sup>84</sup> Section 985.682(2), F.S.

### 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 utilized for the continuing repair and maintenance of DJJ facilities.

### **Payment of Medical Expenses for Detained Youth (Section 34)**

#### 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 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

<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 January 22, 2014).

<sup>86</sup> *Fee Schedules – General Information*, <http://www.cms.gov/FeeScheduleGenInfo/> (Last visited on January 23, 2014)

<sup>87</sup> *Prospective Payment System – General Information*, <http://www.cms.gov/ProspMedicareFeeSvcPmtGen/> (Last visited on January 23, 2014)

<sup>88</sup> Chapter 2008-153, L.O.F.

<sup>89</sup> Created by ch. 2009-63, L.O.F.

<sup>90</sup> Chapter 2013-41, L.O.F.

make payments for services to a provider at the current contracted rates through the current 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 41 and 42)**

### 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, 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.

<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 December 10, 2013); *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 December 10, 2013).

<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.

The bill creates s. 985.702, F.S., establishing a new criminal offense 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.

### **Repealers (Sections 7, 29, 30, 31, 40, 45, 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>

<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.

<sup>99</sup> Section 985.105(3), F.S.

<sup>100</sup> Section 985.105(2), F.S.

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.

#### 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

<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.

<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).

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 comply 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.

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. 985.045, F.S., relating to court records.

Section 7. Repeals s. 985.105, F.S., relating to youth custody officer.

Section 7. Amends s. 985.11, F.S., relating to fingerprinting and photographing.

Section 8. Amends s. 985.14, F.S., relating to intake and case management system.

Section 9. Amends s. 985.145, F.S., relating to responsibilities of the juvenile probation officer during intake; screenings and assessments.

<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 January 24, 2013); *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 January 24, 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 10. Creates s. 985.17, F.S., relating to prevention services.
- Section 11. Amends s. 985.24, F.S., relating to use of detention; prohibitions.
- Section 12. Amends s. 985.245, F.S., relating to risk assessment instrument.
- Section 13. Amends s. 985.25, F.S., relating to detention intake.
- Section 14. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.
- Section 15. Amends s. 985.26, F.S., relating to length of detention.
- Section 16. Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.
- Section 17. Amends s. 985.27, F.S., relating to postcommitment detention while awaiting placement.
- Section 18. Amends s. 985.275, F.S., relating to detention of escapee or absconder on authority of the department.
- Section 19. Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.
- Section 20. Amends s. 985.435, F.S., relating to probation and postcommitment probation; community service.
- Section 21. Amends s. 985.439, F.S., relating to violation of probation or postcommitment probation.
- Section 22. Amends s. 985.441, F.S., relating to commitment.
- Section 23. Amends s. 985.46, F.S., relating to conditional release.
- Section 24. Amends s. 985.461, F.S., relating to transition to adulthood.
- Section 25. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.
- Section 26. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.
- Section 27. Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.
- Section 28. Repeals s. 985.605, F.S., relating to prevention service program; monitoring; uniform performance measures.
- Section 29. Repeals s. 985.606, F.S., relating to prevention services providers; performance data collection; reporting.
- Section 30. Repeals s. 985.61, F.S., relating to early delinquency intervention program; criteria.
- Section 31. Amends s. 985.632, F.S., relating to quality assurance and cost effectiveness.
- Section 32. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.
- Section 33. Creates s. 985.6441, F.S., relating to health care services.

Section 34. Amends s. 985.66, F.S., relating to juvenile justice training academies; staff development and training; Juvenile Justice Training Trust Fund.

Section 35. Amends s. 985.664, F.S., relating to juvenile justice circuit advisory boards.

Section 36. Amends s. 985.672, F.S., relating to direct-support organization; definition; use of property; board of directors; audit.

Section 37. Amends s. 985.682, F.S., relating to siting of facilities; study; criteria.

Section 38. Amends s. 985.69, F.S., relating to one-time startup funding for juvenile justice purposes.

Section 39. Repeals s. 985.694, F.S., relating to Juvenile Care and Maintenance Trust Fund.

Section 40. Amends s. 985.701, F.S., relating to sexual misconduct prohibited; reporting required; penalties.

Section 42. Creates s. 985.702, F.S., relating to willful and malicious neglect of a juvenile offender prohibited; reporting required; penalties.

Section 43. Amends s. 985.721, F.S., relating to escapes from a secure detention or residential commitment facility.

Section 44. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 45. Repeals s. 945.75, relating to tours of state correctional facilities for juveniles.

Section 46. Amends s. 121.0515, F.S., relating to Special Risk Class.

Section 47. Provides an effective date of July 1, 2014.

## 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. This could have an indeterminate negative fiscal impact on local government expenditures.



### 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 by 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 found 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 "Invitation to Negotiate" for both of these facilities.<sup>114</sup> The restructuring of these programs is being done within 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 last 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 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. DJJ states that they will absorb these increased costs within existing resources.

The bill allows DJJ to pay expenses in support of innovative programs and activities 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 DSOs 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 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.

<sup>114</sup> DJJ Follow-Up Document, dated (on file with the Criminal Justice Subcommittee).  
STORAGE NAME: pcb01.CRJS.DOCX  
DATE: 2/3/2014

**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**

1                                   A bill to be entitled  
2       An act relating to juvenile justice; amending ss.  
3       985.01 and 985.02, F.S.; revising intent language;  
4       amending s. 985.03, F.S.; revising definitions;  
5       amending s. 985.0301, F.S.; clarifying jurisdiction  
6       age restrictions for youth in the juvenile justice  
7       system; restricting when cases can be transferred to a  
8       different jurisdiction; amending s. 985.037, F.S.;  
9       providing a child may be placed in secure detention  
10      facility for contempt of court; providing due process  
11      to a youth accused of direct contempt; revises  
12      procedure for reviewing a youth's placement in secure  
13      detention for contempt of court; amending s. 985.045,  
14      F.S.; correcting cross-reference citations; repealing  
15      s. 985.105, F.S., relating to the creation, duties,  
16      and qualifications of the department's youth custody  
17      officer; amending s. 985.11, F.S.; revising when  
18      fingerprints must be submitted to the Department of  
19      Law Enforcement; amending s. 985.14, F.S.; revising  
20      the intake process; amending s. 985.145, F.S.;  
21      revising "juvenile probation officer" to "department"  
22      throughout; creating s. 985.17, F.S.; providing intent  
23      language; providing department shall provide  
24      specialized services to minimize likelihood youth will  
25      enter the juvenile justice system; providing the  
26      department must promote the Invest in Children license

27 plate to help fund prevention programs and services;  
 28 providing department monitor state funded programs,  
 29 grants, contracts, appropriations, and activities  
 30 designed to prevent juvenile crime and report annually  
 31 on these measures; limiting expenditure of funds to  
 32 those prevention services that are consistent with the  
 33 law and maximizes public accountability; amending s.  
 34 985.24, F.S.; revising factors to determine if use of  
 35 detention care is appropriate; providing department  
 36 authority to establish evening reporting centers;  
 37 conforming terminology; amending s. 985.245, F.S.;  
 38 conforming terminology; amending s. 985.25, F.S.;  
 39 providing youth shall be held in secure detention  
 40 under certain circumstances; clarifying procedures for  
 41 releasing a youth prior to detention hearing; revision  
 42 "juvenile probation officer" to "department"  
 43 throughout section; conforming terminology; amending  
 44 s. 985.255, F.S.; providing a detention hearing must  
 45 occur within 24 hours of a youth being taken into  
 46 custody; clarifying when a court may order continued  
 47 detention care; revising specified factors for  
 48 ordering continued detention care; clarifying when a  
 49 youth charged with domestic violence can be held in  
 50 secure detention; revising written findings required  
 51 to retain a child charged with domestic violence in  
 52 secure detention; deleting obsolete provisions;

53 amending s. 985.26, F.S.; conforming terminology;  
 54 amending s. 985.265, F.S.; revising procedures for  
 55 transferring a youth's detention status; providing new  
 56 notification requirements for when a child is released  
 57 or transferred from secure detention; revising  
 58 frequency of physical observation checks for youth  
 59 detained in jail facilities; amending s. 985.27, F.S.;  
 60 providing youth pending placement in high risk or  
 61 maximum risk residential commitment must be held in  
 62 secure detention pending placement; conforming  
 63 terminology; amending s. 985.275, F.S.; providing  
 64 department must notify specified parties when a youth  
 65 absconds from commitment program and make reasonable  
 66 effort to locate absconded youth; amending s. 985.433,  
 67 F.S.; revising content of predisposition report;  
 68 conforming terminology; amending s. 985.435, F.S.;  
 69 providing a probation program may include an  
 70 alternative consequence component that may be utilized  
 71 to address noncompliance with the technical conditions  
 72 of probation; providing department must identify  
 73 youths' risk to reoffend if being placed on probation  
 74 or postcommitment probation; amending s. 985.439,  
 75 F.S.; providing department authority to establish  
 76 alternative sanctions for violations of probation;  
 77 conforming terminology; amending s. 985.441, F.S.;  
 78 revising when a youth can be committed as a result of

79 a violation of probation; conforming terminology;  
 80 amending s. 985. 46, F.S.; revising the definition of  
 81 conditional release; clarifying language; amending s.  
 82 985.461, F.S.; expands opportunity for transition-to-  
 83 adulthood services to all youth; revising the  
 84 provisions department may use to support participation  
 85 in transition-to-adulthood services; conforming  
 86 terminology; amending ss. 985.481 and 985.4815, F.S.;  
 87 deleting obsolete date requirement; amending s.  
 88 985.601, F.S.; providing the department's program  
 89 include areas of trauma-informed care, family  
 90 engagement resources, and gender-specific programming;  
 91 providing department may pay the expenses of programs  
 92 that address youths' needs; conforming terminology;  
 93 repealing s. 985.605, F.S.; deleting provisions  
 94 relating to prevention service program; repealing s.  
 95 985.606, F.S.; deleting provisions relating to  
 96 prevention services providers; repealing s. 985.61,  
 97 F.S.; deleting provisions relating to early  
 98 delinquency intervention programs; amending s.  
 99 985.632, F.S.; providing establishment of performance  
 100 accountability system for contract providers;  
 101 providing for the development of comprehensive  
 102 accountability report; providing department will  
 103 prepare and submit the report annually to the  
 104 Legislature; providing content which must be included

105 in the comprehensive accountability report; clarifying  
 106 language of the cost-effectiveness model; clarifying  
 107 language; amending s. 985.644, F.S.; clarifying  
 108 exemption for specified certified law enforcement  
 109 officers, correctional, and correctional probation  
 110 officers from requirement to submit to Level 2  
 111 background screenings; creating s. 985.6441, F.S.;  
 112 creating limitations on the amount the department may  
 113 pay a hospital or health care provider for health care  
 114 services based on a percentage of the Medicare  
 115 allowable rate; amending s. 985.66, F.S.; revising  
 116 staff development and training procedures; expanding  
 117 application of training requirements to contract  
 118 providers who care for youth in department's custody;  
 119 amending s. 985.664, F.S.; deleting obsolete  
 120 provisions relating to the initial selection of the  
 121 juvenile justice circuit advisory board chairs;  
 122 revising procedure for appointing and removing  
 123 juvenile justice circuit advisory board chairs;  
 124 amending s. 985.672, F.S.; revising the use of the  
 125 expenditures of the direct support organization's  
 126 funds; providing direct support organizations may use  
 127 department personnel services for certain services;  
 128 amending s. 985.682, F.S.; deleting obsolete  
 129 provisions regarding the comprehensive study relating  
 130 to the siting of facilities; amending s. 985.694,

131 F.S.; providing for "repair and maintenance" funding;  
 132 repealing s. 985.694, F.S.; deleting provision  
 133 relating to Juvenile Care and Maintenance Trust Fund;  
 134 amending s. 985.701, F.S.; defining the term "juvenile  
 135 offender" for purposes of prohibiting sexual  
 136 misconduct with juvenile offenders; creating s.  
 137 985.702, F.S.; providing definitions; providing for  
 138 the imposition of criminal penalties against specified  
 139 employees who inflict neglect upon juvenile offenders;  
 140 providing enhanced penalties for such treatment that  
 141 results in great bodily harm, permanent disability, or  
 142 permanent disfigurement to a juvenile offender;  
 143 specifying that such conduct constitutes sufficient  
 144 cause for an employee's dismissal from employment;  
 145 prohibiting such employee from future employment with  
 146 the juvenile justice system; providing incident  
 147 reporting requirements; prohibiting an employee who  
 148 witnesses such an incident from knowingly or willfully  
 149 failing to report; prohibiting false reporting,  
 150 preventing another from reporting, or coercing another  
 151 to alter testimony or reports; providing penalties;  
 152 amending s. 985.721, F.S.; correcting cross reference  
 153 citations; amending s. 943.0582, F.S.; clarifying that  
 154 youth are not eligible for expunction if they have  
 155 been charged by a state attorney for other crimes;  
 156 repealing s. 945.75, F.S.; deleting a requirement that



157 the Department of Corrections and counties develop  
 158 programs under which a judge may order juveniles who  
 159 have committed delinquent acts to tour correctional  
 160 facilities; amending s. 121.0515, F.S.; conforming  
 161 provisions to changes made by the act; providing an  
 162 effective date.

163

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

165

166 Section 1. Section 985.01, Florida Statutes, is amended to  
 167 read:

168 985.01 Purposes and intent.—

169 (1) The purposes of this chapter are:

170 (a) To increase public safety by reducing juvenile  
 171 delinquency through effective prevention, intervention, and  
 172 treatment services that strengthen and reform the lives of  
 173 children.

174 (b) To provide judicial and other procedures to assure due  
 175 process through which children, victims, and other interested  
 176 parties are assured fair hearings by a respectful and respected  
 177 court or other tribunal and the recognition, protection, and  
 178 enforcement of their constitutional and other legal rights,  
 179 while ensuring that public safety interests and the authority  
 180 and dignity of the courts are adequately protected.

181 (c) ~~(b)~~ To provide ~~for the care, safety, and protection of~~  
 182 ~~children in~~ an environment that fosters healthy social,

183 emotional, intellectual, educational, and physical development;  
 184 to ensure secure and safe custody; and to promote the health and  
 185 well-being of all children under the state's care.

186 (d) ~~(e)~~ To ensure the protection of society, by providing  
 187 for a comprehensive standardized assessment of the child's needs  
 188 so that the most appropriate control, discipline, punishment,  
 189 and treatment can be administered consistent with the  
 190 seriousness of the act committed, the community's long-term need  
 191 for public safety, the prior record of the child, and the  
 192 specific rehabilitation needs of the child, while also  
 193 providing, whenever possible, restitution to the victim of the  
 194 offense.

195 (e) ~~(d)~~ To preserve and strengthen the child's family ties  
 196 whenever possible, by providing for removal of the child from  
 197 the physical custody of a parent ~~parental custody~~ only when his  
 198 or her welfare or the safety and protection of the public cannot  
 199 be adequately safeguarded without such removal; and, when the  
 200 child is removed from his or her own family, to secure custody,  
 201 care, and discipline for the child as nearly as possible  
 202 equivalent to that which should have been given by the parents,  
 203 ~~and to assure, in all cases in which a child must be permanently~~  
 204 ~~removed from parental custody, that the child be placed in an~~  
 205 ~~approved family home, adoptive home, independent living program,~~  
 206 ~~or other placement that provides the most stable and permanent~~  
 207 ~~living arrangement for the child, as determined by the court.~~

208 (f) ~~(e)~~1. To assure that the adjudication and disposition

209 of a child alleged or found to have committed a violation of  
 210 Florida law be exercised with appropriate discretion and in  
 211 keeping with the seriousness of the offense and the need for  
 212 treatment services, and that all findings made under this  
 213 chapter be based upon facts presented at a hearing that meets  
 214 the constitutional standards of fundamental fairness and due  
 215 process.

216 2. To assure that the sentencing and placement of a child  
 217 tried as an adult be appropriate and in keeping with the  
 218 seriousness of the offense and the child's need for  
 219 rehabilitative services, and that the proceedings and procedures  
 220 applicable to such sentencing and placement be applied within  
 221 the full framework of constitutional standards of fundamental  
 222 fairness and due process.

223 (g)-(f) To provide children committed to the department  
 224 with training in life skills, including career and technical  
 225 education, where appropriate.

226 (h) To care for children in the least restrictive and most  
 227 appropriate service environments.

228 (i) To allocate resources for the most effective programs,  
 229 services, and treatments to ensure that children, their  
 230 families, and their community support systems are connected with  
 231 these programs at the most impactful points along the juvenile  
 232 justice continuum.

233 (2) It is the intent of the Legislature that this chapter  
 234 be liberally interpreted and construed in conformity with its

235 declared purposes.

236 Section 2. Section 985.02, Florida Statutes, is amended to  
 237 read:

238 985.02 Legislative intent for the juvenile justice  
 239 system.—

240 (1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of  
 241 the Legislature that the children of this state be provided with  
 242 the following protections:

243 (a) Protection from abuse, neglect, and exploitation.

244 (b) A permanent and stable home.

245 (c) A safe and nurturing environment which will preserve a  
 246 sense of personal dignity and integrity.

247 (d) Adequate nutrition, shelter, and clothing.

248 (e) Effective treatment to address physical, social, and  
 249 emotional needs, regardless of geographical location.

250 (f) Equal opportunity and access to quality and effective  
 251 education, which will meet the individual needs of each child,  
 252 and to recreation and other community resources to develop  
 253 individual abilities.

254 (g) Access to preventive services.

255 ~~(h) An independent, trained advocate when intervention is~~  
 256 ~~necessary, and a skilled guardian or caretaker in a safe~~  
 257 ~~environment when alternative placement is necessary.~~

258 (h) ~~(i)~~ Gender-specific programming and gender-specific  
 259 program models and services that comprehensively address the  
 260 needs of a targeted gender group.

261 (2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that  
 262 children in the care of the state's ~~dependency and~~ delinquency  
 263 systems need appropriate health care services, that the impact  
 264 of substance abuse on health indicates the need for health care  
 265 services to include substance abuse services where appropriate,  
 266 and that it is in the state's best interest that such children  
 267 be provided the services they need to enable them to become and  
 268 remain independent of state care. In order to provide these  
 269 services, the state's ~~dependency and~~ delinquency systems must  
 270 have the ability to identify and provide appropriate  
 271 intervention and treatment for children with personal or family-  
 272 related substance abuse problems. It is therefore the purpose of  
 273 the Legislature to provide authority for the state to contract  
 274 with community substance abuse treatment providers for the  
 275 development and operation of specialized support and overlay  
 276 services for the ~~dependency and~~ delinquency system systems,  
 277 which will be fully implemented and utilized as resources  
 278 permit.

279 (3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the  
 280 policy of the state with respect to juvenile justice and  
 281 delinquency prevention to first protect the public from acts of  
 282 delinquency. In addition, it is the policy of the state to:

283 (a) Develop and implement effective methods of preventing  
 284 and reducing acts of delinquency, with a focus on maintaining  
 285 and strengthening the family as a whole so that children may  
 286 remain in their homes or communities.

287 (b) Develop and implement effective programs to prevent  
 288 delinquency, to divert children from the traditional juvenile  
 289 justice system, to intervene at an early stage of delinquency,  
 290 and to provide critically needed alternatives to  
 291 institutionalization and deep-end commitment.

292 (c) Provide well-trained personnel, high-quality services,  
 293 and cost-effective programs within the juvenile justice system.

294 (d) Increase the capacity of local governments and public  
 295 and private agencies to conduct rehabilitative treatment  
 296 programs and to provide research, evaluation, and training  
 297 services in the field of juvenile delinquency prevention.

298  
 299 ~~The Legislature intends that detention care, in addition to~~  
 300 ~~providing secure and safe custody, will promote the health and~~  
 301 ~~well-being of the children committed thereto and provide an~~  
 302 ~~environment that fosters their social, emotional, intellectual,~~  
 303 ~~and physical development.~~

304 (4) DETENTION.—

305 (a) The Legislature finds that there is a need for a  
 306 secure placement for certain children alleged to have committed  
 307 a delinquent act. The Legislature finds that detention should be  
 308 used only when less restrictive interim placement alternatives  
 309 prior to adjudication and disposition are not appropriate. The  
 310 Legislature further finds that decisions to detain should be  
 311 based in part on a prudent assessment of risk and be limited to  
 312 situations where there is clear and convincing evidence that a

313 child presents a risk of failing to appear or presents a  
 314 substantial risk of inflicting bodily harm on others as  
 315 evidenced by recent behavior; presents a history of committing a  
 316 serious property offense prior to adjudication, disposition, or  
 317 placement; has acted in direct or indirect contempt of court; or  
 318 requests protection from imminent bodily harm.

319 (b) The Legislature intends that a juvenile found to have  
 320 committed a delinquent act understands the consequences and the  
 321 serious nature of such behavior. Therefore, the Legislature  
 322 finds that secure detention is appropriate to provide punishment  
 323 for children who pose a threat to public safety ~~that discourages~~  
 324 ~~further delinquent behavior~~. The Legislature also finds that  
 325 certain juveniles have committed a sufficient number of criminal  
 326 acts, including acts involving violence to persons, to represent  
 327 sufficient danger to the community to warrant sentencing and  
 328 placement within the adult system. It is the intent of the  
 329 Legislature to establish clear criteria in order to identify  
 330 these juveniles and remove them from the juvenile justice  
 331 system.

332 (5) SITING OF FACILITIES.—

333 (a) The Legislature finds that timely siting and  
 334 development of needed residential facilities for juvenile  
 335 offenders is critical to the public safety of the citizens of  
 336 this state and to the effective rehabilitation of juvenile  
 337 offenders.

338 (b) It is the purpose of the Legislature to guarantee that

339 such facilities are sited and developed within reasonable  
 340 timeframes after they are legislatively authorized and  
 341 appropriated.

342 (c) The Legislature further finds that such facilities  
 343 must be located in areas of the state close to the home  
 344 communities of the children they house in order to ensure the  
 345 most effective rehabilitation efforts, ~~and the most intensive~~  
 346 postrelease supervision, and case management. The placement of  
 347 facilities close to the home communities of the children they  
 348 house is also intended to facilitate family involvement in the  
 349 treatment process. Residential facilities shall have no more  
 350 than 90 ~~165~~ beds each, including campus-style programs, unless  
 351 those campus-style programs include more than one ~~level of~~  
 352 ~~restrictiveness, provide multilevel education and treatment~~  
 353 program programs using different treatment protocols, and have  
 354 facilities that coexist separately in distinct locations on the  
 355 same property.

356 (d) It is the intent of the Legislature that all other  
 357 departments and agencies of the state shall cooperate fully with  
 358 the Department of Juvenile Justice to accomplish the siting of  
 359 facilities for juvenile offenders.

360  
 361 The supervision, counseling, and rehabilitative treatment, ~~and~~  
 362 ~~punitive~~ efforts of the juvenile justice system should avoid the  
 363 inappropriate use of correctional programs and large  
 364 institutions. ~~The Legislature finds that detention services~~



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365 ~~should exceed the primary goal of providing safe and secure~~  
 366 ~~eustody pending adjudication and disposition.~~

367 (6) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—

368 Parents, custodians, and guardians are deemed by the state to be  
 369 responsible for providing their children with sufficient  
 370 support, guidance, and supervision to deter their participation  
 371 in delinquent acts. The state further recognizes that the  
 372 ability of parents, custodians, and guardians to fulfill those  
 373 responsibilities can be greatly impaired by economic, social,  
 374 behavioral, emotional, and related problems. It is therefore the  
 375 policy of the Legislature that it is the state's responsibility  
 376 to ensure that factors impeding the ability of caretakers to  
 377 fulfill their responsibilities are identified through the  
 378 delinquency intake process and that appropriate recommendations  
 379 to address those problems are considered in any judicial or  
 380 nonjudicial proceeding. Nonetheless, as it is also the intent of  
 381 the Legislature to preserve and strengthen the child's family  
 382 ties, it is the policy of the Legislature that the emotional,  
 383 legal, and financial responsibilities of the caretaker with  
 384 regard to the care, custody, and support of the child continue  
 385 while the child is in the physical or legal custody of the  
 386 department.

387 (7) GENDER-SPECIFIC PROGRAMMING.—

388 (a) The Legislature finds that the ~~prevention, treatment,~~  
 389 ~~and rehabilitation~~ needs of children youth served by the  
 390 juvenile justice system are gender-specific. A gender-specific

391 approach is one in which programs, services, and treatments  
 392 comprehensively address the unique developmental needs of a  
 393 targeted gender group under the care of the department. Young  
 394 women and men have different pathways to delinquency, display  
 395 different patterns of offending, and respond differently to  
 396 interventions, treatment, and services.

397 ~~—— (b) Gender specific programming refers to unique program~~  
 398 ~~models and services that comprehensively address the needs of a~~  
 399 ~~targeted gender group. Gender specific services require the~~  
 400 ~~adherence to the principle of equity to ensure that the~~  
 401 ~~different interests of young women and men are recognized and~~  
 402 ~~varying needs are met, with equality as the desired outcome.~~  
 403 Gender-specific interventions focus programming focuses on the  
 404 differences between young females' and young males' social roles  
 405 and responsibilities, positions in society, access to and use of  
 406 resources, history of trauma, and reasons for interaction with  
 407 the juvenile justice system and social codes governing behavior.  
 408 Gender-specific programs increase the effectiveness of programs  
 409 by making interventions more appropriate to the specific needs  
 410 of young women and men and ensuring that these programs do not  
 411 unknowingly create, maintain, or reinforce gender roles or  
 412 relations that may be damaging.

413 (8) TRAUMA-INFORMED CARE.—The Legislature finds that the  
 414 department should utilize trauma-informed care as an approach to  
 415 treating children with histories of trauma. Trauma-informed  
 416 care assists service providers in recognizing the symptoms of

417 trauma and acknowledges the role trauma has played in the  
 418 child's life. Services for children should be based on an  
 419 understanding of the vulnerabilities and triggers of trauma  
 420 survivors that traditional service delivery approaches may  
 421 exacerbate, so that these services and programs can be more  
 422 supportive and avoid re-traumatization. The department should  
 423 use trauma-specific interventions that are designed to address  
 424 the consequences of trauma in the child and to facilitate  
 425 healing.

426 (9) FAMILY AND COMMUNITY ENGAGEMENT.—The Legislature finds  
 427 that families and community support systems are critical to the  
 428 success of children and to ensure they are non-delinquent.  
 429 Therefore, when appropriate, children who can safely be held  
 430 accountable when served and treated in their homes and  
 431 communities should be diverted from more restrictive placements  
 432 within the juvenile justice system. There should be an emphasis  
 433 on strengthening the family and immersing them in their  
 434 community support system. The department should develop  
 435 customized plans that acknowledge the importance of family and  
 436 community support systems. The customized plans should  
 437 recognize a child's individual needs, capitalize on their  
 438 strengths, reduce their risks, and prepare them for a successful  
 439 transition to, and unification with, their family and community  
 440 support system. The child's family must be considered in the  
 441 department's process of assessing the needs, services and  
 442 treatment, and community connections of the children who are

443 involved with the juvenile justice system, or in danger of  
 444 becoming so.

445 Section 3. Section 985.03, Florida Statutes, is amended to  
 446 read:

447 985.03 Definitions.—As used in this chapter, the term:

448 (1) "Abscond" means to hide, conceal, or absent oneself  
 449 from the jurisdiction of the court or supervision of the  
 450 department to avoid prosecution or supervision.

451 (2)-(1) "Addictions receiving facility" means a substance  
 452 abuse service provider as defined in chapter 397.

453 (3)-(2) "Adjudicatory hearing" means a hearing for the  
 454 court to determine whether or not the facts support the  
 455 allegations stated in the petition, as is provided for under s.  
 456 985.35 in delinquency cases.

457 (4)-(3) "Adult" means any natural person other than a  
 458 child.

459 (5)-(4) "Arbitration" means a process whereby a neutral  
 460 third person or panel, called an arbitrator or an arbitration  
 461 panel, considers the facts and arguments presented by the  
 462 parties and renders a decision which may be binding or  
 463 nonbinding.

464 (6)-(5) "Authorized agent" or "designee" of the department  
 465 means a person or agency assigned or designated by the  
 466 department ~~or the Department of Children and Family Services, as~~  
 467 ~~appropriate,~~ to perform duties or exercise powers under this  
 468 chapter and includes contract providers and their employees ~~for~~

469 ~~purposes of providing services to and managing cases of children~~  
 470 ~~in need of services and families in need of services.~~

471 (7) ~~(6)~~ "Child" or "juvenile" or "youth" means any  
 472 ~~unmarried person under the age of 18 who has not been~~  
 473 ~~emancipated by order of the court and who has been found or~~  
 474 ~~alleged to be dependent, in need of services, or from a family~~  
 475 ~~in need of services; or any married or unmarried person who is~~  
 476 ~~alleged to have committed~~ charged with a violation of law  
 477 occurring prior to the time that person reached the age of 18  
 478 years.

479 (8) ~~(7)~~ "Child in need of services" has the same meaning as  
 480 provided in s. 984.03 ~~means a child for whom there is no pending~~  
 481 ~~investigation into an allegation or suspicion of abuse, neglect,~~  
 482 ~~or abandonment; no pending referral alleging the child is~~  
 483 ~~delinquent; or no current supervision by the department or the~~  
 484 ~~Department of Children and Family Services for an adjudication~~  
 485 ~~of dependency or delinquency. The child must also, under this~~  
 486 ~~chapter, be found by the court.~~

487 ~~(a) To have persistently run away from the child's parents~~  
 488 ~~or legal custodians despite reasonable efforts of the child, the~~  
 489 ~~parents or legal custodians, and appropriate agencies to remedy~~  
 490 ~~the conditions contributing to the behavior. Reasonable efforts~~  
 491 ~~shall include voluntary participation by the child's parents or~~  
 492 ~~legal custodians and the child in family mediation, services,~~  
 493 ~~and treatment offered by the department or the Department of~~  
 494 ~~Children and Family Services;~~

495 ~~(b) To be habitually truant from school, while subject to~~  
 496 ~~compulsory school attendance, despite reasonable efforts to~~  
 497 ~~remedy the situation under ss. 1003.26 and 1003.27 and through~~  
 498 ~~voluntary participation by the child's parents or legal~~  
 499 ~~custodians and by the child in family mediation, services, and~~  
 500 ~~treatment offered by the Department of Juvenile Justice or the~~  
 501 ~~Department of Children and Family Services; or~~

502 ~~(c) To have persistently disobeyed the reasonable and~~  
 503 ~~lawful demands of the child's parents or legal custodians, and~~  
 504 ~~to be beyond their control despite efforts by the child's~~  
 505 ~~parents or legal custodians and appropriate agencies to remedy~~  
 506 ~~the conditions contributing to the behavior. Reasonable efforts~~  
 507 ~~may include such things as good faith participation in family or~~  
 508 ~~individual counseling.~~

509 (9) ~~(8)~~ "Child who has been found to have committed a  
 510 delinquent act" means a child who, under this chapter, is found  
 511 by a court to have committed a violation of law or to be in  
 512 direct or indirect contempt of court, except that this  
 513 definition does not include an act constituting contempt of  
 514 court arising out of a dependency proceeding or a proceeding  
 515 concerning a child or family in need of services.

516 ~~(9) "Child support" means a court ordered obligation,~~  
 517 ~~enforced under chapter 61 and ss. 409.2551-409.2597, for~~  
 518 ~~monetary support for the care, maintenance, training, and~~  
 519 ~~education of a child.~~

520 (10) "Circuit" means any of the 20 judicial circuits as

521 set forth in s. 26.021.

522 (11) "Comprehensive assessment" or "assessment" means the  
 523 gathering of information for the evaluation of a juvenile  
 524 offender's or a child's physical, psychological, educational,  
 525 career and technical education vocational, and social condition  
 526 and family environment as they relate to the child's need for  
 527 rehabilitative and treatment services, including substance abuse  
 528 treatment services, mental health services, developmental  
 529 services, literacy services, medical services, family services,  
 530 and other specialized services, as appropriate.

531 (12) "Conditional release" means the care, treatment,  
 532 help, ~~and supervision,~~ and provision of transition-to-adulthood  
 533 services provided to a juvenile released from a residential  
 534 commitment program which is intended to promote rehabilitation  
 535 and prevent recidivism. The purpose of conditional release is to  
 536 protect the public, reduce recidivism, increase responsible  
 537 productive behavior, and provide for a successful transition of  
 538 the youth from the department to his or her ~~the~~ family.  
 539 Conditional release includes, but is not limited to,  
 540 nonresidential community-based programs.

541 (13) "Court," ~~unless otherwise expressly stated,~~ means the  
 542 circuit court assigned to exercise jurisdiction under this  
 543 chapter, unless otherwise expressly stated.

544 (14) "Day treatment" means a nonresidential, community-  
 545 based program designed to provide therapeutic intervention to  
 546 youth served by the department, or who are placed on probation

547 or conditional release, or are committed to the minimum-risk  
 548 nonresidential level. A day treatment program may provide  
 549 educational and career and technical education ~~veational~~  
 550 services and shall provide case management services; individual,  
 551 group, and family counseling; training designed to address  
 552 delinquency risk factors; and monitoring of a youth's compliance  
 553 with, and facilitation of a youth's completion of, sanctions if  
 554 ordered by the court. Program types may include, but are not  
 555 limited to, career programs, marine programs, juvenile justice  
 556 alternative schools, training and rehabilitation programs, and  
 557 gender-specific programs.

558 (15) (a) "Delinquency program" means any intake, probation,  
 559 or similar program; regional detention center or facility; or  
 560 community-based program, whether owned and operated by or  
 561 contracted by the department, or institution owned and operated  
 562 by or contracted by the department, which provides intake,  
 563 supervision, or custody and care of children who are alleged to  
 564 be or who have been found to be delinquent under this chapter.

565 (b) "Delinquency program staff" means supervisory and  
 566 direct care staff of a delinquency program as well as support  
 567 staff who have direct contact with children in a delinquency  
 568 program.

569 ~~(c) "Delinquency prevention programs" means programs~~  
 570 ~~designed for the purpose of reducing the occurrence of~~  
 571 ~~delinquency, including criminal gang activity, and juvenile~~  
 572 ~~arrests. The term excludes arbitration, diversionary or~~



573 ~~mediation programs, and community service work or other~~  
 574 ~~treatment available subsequent to a child committing a~~  
 575 ~~delinquent act.~~

576 (16) "Department" means the Department of Juvenile  
 577 Justice.

578 (17) "Designated facility" or "designated treatment  
 579 facility" means any facility designated by the department to  
 580 provide treatment to juvenile offenders.

581 (18) "Detention care" means the temporary care of a child  
 582 in secure, or nonsecure, ~~or home~~ detention, pending a court  
 583 adjudication or disposition or execution of a court order. There  
 584 are two ~~three~~ types of detention care, as follows:

585 (a) "Secure detention" means temporary custody of the  
 586 child while the child is under the physical restriction of a  
 587 secure detention center or facility pending adjudication,  
 588 disposition, or placement.

589 ~~(b) "Nonsecure detention" means temporary custody of the~~  
 590 ~~child while the child is in a residential home in the community~~  
 591 ~~in a physically nonrestrictive environment under the supervision~~  
 592 ~~of the Department of Juvenile Justice pending adjudication,~~  
 593 ~~disposition, or placement.~~

594 ~~(b)(e)~~ "Nonsecure detention" ~~"Home detention"~~ means  
 595 temporary nonsecure custody of the child while the child is  
 596 released to the custody of the parent, guardian, or custodian in  
 597 a physically nonrestrictive environment under the supervision of  
 598 the department staff pending adjudication, disposition, or

599 placement. Forms of nonsecure detention include, but are not  
 600 limited to, home detention, electronic monitoring, day reporting  
 601 centers, evening reporting centers, nonsecure shelters, and may  
 602 include other requirements imposed by the court.

603 (19) "Detention center or facility" means a facility used  
 604 pending court adjudication or disposition or execution of court  
 605 order for the temporary care of a child alleged or found to have  
 606 committed a violation of law. A detention center or facility may  
 607 provide secure ~~or nonsecure~~ custody. A facility used for the  
 608 commitment of adjudicated delinquents shall not be considered a  
 609 detention center or facility.

610 (20) "Detention hearing" means a hearing for the court to  
 611 determine if a child should be placed in temporary custody, as  
 612 provided for under part V in delinquency cases.

613 (21) "Disposition hearing" means a hearing in which the  
 614 court determines the most appropriate dispositional services in  
 615 the least restrictive available setting provided for under part  
 616 VII, in delinquency cases.

617 (22) "Family" means a collective of persons, consisting of  
 618 a child and a parent, guardian, adult custodian, or adult  
 619 relative, in which:

620 (a) The persons reside in the same house or living unit;  
 621 or

622 (b) The parent, guardian, adult custodian, or adult  
 623 relative has a legal responsibility by blood, marriage, or court  
 624 order to support or care for the child.

625           (23) "Family in need of services" has the same meaning as  
 626 provided in s. 984.03 ~~means a family that has a child for whom~~  
 627 ~~there is no pending investigation into an allegation of abuse,~~  
 628 ~~neglect, or abandonment or no current supervision by the~~  
 629 ~~department or the Department of Children and Family Services for~~  
 630 ~~an adjudication of dependency or delinquency. The child must~~  
 631 ~~also have been referred to a law enforcement agency or the~~  
 632 ~~department for.~~

633           ~~(a) Running away from parents or legal custodians;~~

634           ~~(b) Persistently disobeying reasonable and lawful demands~~  
 635 ~~of parents or legal custodians, and being beyond their control;~~  
 636 ~~or~~

637           ~~(c) Habitual truancy from school.~~

638           ~~(24) "Foster care" means care provided a child in a foster~~  
 639 ~~family or boarding home, group home, agency boarding home, child~~  
 640 ~~care institution, or any combination thereof.~~

641           ~~(25) "Habitually truant" means that:~~

642           ~~(a) The child has 15 unexcused absences within 90 calendar~~  
 643 ~~days with or without the knowledge or justifiable consent of the~~  
 644 ~~child's parent or legal guardian, is subject to compulsory~~  
 645 ~~school attendance under s. 1003.21(1) and (2)(a), and is not~~  
 646 ~~exempt under s. 1003.21(3), s. 1003.24, or any other exemptions~~  
 647 ~~specified by law or the rules of the State Board of Education.~~

648           ~~(b) Escalating activities to determine the cause, and to~~  
 649 ~~attempt the remediation, of the child's truant behavior under~~  
 650 ~~ss. 1003.26 and 1003.27 have been completed.~~

651 ~~If a child who is subject to compulsory school attendance is~~  
 652 ~~responsive to the interventions described in ss. 1003.26 and~~  
 653 ~~1003.27 and has completed the necessary requirements to pass the~~  
 654 ~~current grade as indicated in the district pupil progression~~  
 655 ~~plan, the child shall not be determined to be habitually truant~~  
 656 ~~and shall be passed.~~

657

658 ~~If a child within the compulsory school attendance age has 15~~  
 659 ~~unexcused absences within 90 calendar days or fails to enroll in~~  
 660 ~~school, the state attorney may file a child in need of services~~  
 661 ~~petition. Before filing a petition, the child must be referred~~  
 662 ~~to the appropriate agency for evaluation. After consulting with~~  
 663 ~~the evaluating agency, the state attorney may elect to file a~~  
 664 ~~child in need of services petition.~~

665 ~~(c) A school representative, designated according to~~  
 666 ~~school board policy, and a juvenile probation officer of the~~  
 667 ~~department have jointly investigated the truancy problem or, if~~  
 668 ~~that was not feasible, have performed separate investigations to~~  
 669 ~~identify conditions that could be contributing to the truant~~  
 670 ~~behavior; and if, after a joint staffing of the case to~~  
 671 ~~determine the necessity for services, such services were~~  
 672 ~~determined to be needed, the persons who performed the~~  
 673 ~~investigations met jointly with the family and child to discuss~~  
 674 ~~any referral to appropriate community agencies for economic~~  
 675 ~~services, family or individual counseling, or other services~~  
 676 ~~required to remedy the conditions that are contributing to the~~

677 ~~truant behavior.~~

678 ~~(d) The failure or refusal of the parent or legal guardian~~  
 679 ~~or the child to participate, or make a good faith effort to~~  
 680 ~~participate, in the activities prescribed to remedy the truant~~  
 681 ~~behavior, or the failure or refusal of the child to return to~~  
 682 ~~school after participation in activities required by this~~  
 683 ~~subsection, or the failure of the child to stop the truant~~  
 684 ~~behavior after the school administration and the department have~~  
 685 ~~worked with the child as described in s. 1003.27(3) shall be~~  
 686 ~~handled as prescribed in s. 1003.27.~~

687 ~~(26) "Halfway house" means a community based residential~~  
 688 ~~program for 10 or more committed delinquents at the moderate-~~  
 689 ~~risk commitment level which is operated or contracted by the~~  
 690 ~~department.~~

691 ~~(24)-(27)~~ "Intake" means the initial acceptance and  
 692 screening by the department or juvenile assessment center  
 693 personnel of a complaint or a law enforcement report or probable  
 694 cause affidavit of delinquency, ~~family in need of services, or~~  
 695 ~~child in need of services~~ to determine the recommendation to be  
 696 taken in the best interests of the child, the family, and the  
 697 community. The emphasis of intake is on diversion and the least  
 698 restrictive available services. Consequently, intake includes  
 699 such alternatives as:

700 (a) The disposition of the complaint, report, or probable  
 701 cause affidavit without court or public agency action or  
 702 judicial handling when appropriate.

703 (b) The referral of the child to another public or private  
704 agency when appropriate.

705 (c) The recommendation by the department juvenile  
706 ~~probation officer~~ of judicial handling when appropriate and  
707 warranted.

708 (25)~~(28)~~ "Judge" means the circuit judge exercising  
709 jurisdiction pursuant to this chapter.

710 (26)~~(29)~~ "Juvenile justice continuum" includes, but is not  
711 limited to, ~~delinquency~~ prevention programs and services  
712 designed for the purpose of preventing or reducing delinquent  
713 acts, including criminal activity by criminal gangs, and  
714 juvenile arrests, as well as programs and services targeted at  
715 children who have committed delinquent acts, and children who  
716 have previously been committed to residential treatment programs  
717 for delinquents. The term includes children-in-need-of-services  
718 and families-in-need-of-services programs under chapter 984;  
719 conditional release; substance abuse and mental health programs;  
720 educational and career programs; recreational programs;  
721 community services programs; community service work programs;  
722 mother-infant programs; and alternative dispute resolution  
723 programs serving children at risk of delinquency and their  
724 families, whether offered or delivered by state or local  
725 governmental entities, public or private for-profit or not-for-  
726 profit organizations, or religious or charitable organizations.

727 (27)~~(30)~~ "Juvenile probation officer" means the authorized  
728 agent of the department who performs the intake, case

729 management, or supervision functions.

730 (28)~~(31)~~ "Legal custody or guardian" means a legal status  
 731 created by court order or letter of guardianship which vests in  
 732 a custodian of the person or guardian, whether an agency or an  
 733 individual, the right to have physical custody of the child and  
 734 the right and duty to protect, train, and discipline the child  
 735 and to provide him or her with food, shelter, education, and  
 736 ordinary medical, dental, psychiatric, and psychological care.

737 (29)~~(32)~~ "Licensed child-caring agency" means a person,  
 738 society, association, or agency licensed by the Department of  
 739 Children and Families ~~Family Services~~ to care for, receive, and  
 740 board children.

741 (30)~~(33)~~ "Licensed health care professional" means a  
 742 physician licensed under chapter 458, an osteopathic physician  
 743 licensed under chapter 459, a nurse licensed under part I of  
 744 chapter 464, a physician assistant licensed under chapter 458 or  
 745 chapter 459, or a dentist licensed under chapter 466.

746 (31)~~(34)~~ "Likely to injure oneself" means that, as  
 747 evidenced by violent or other actively self-destructive  
 748 behavior, it is more likely than not that within a 24-hour  
 749 period the child will attempt to commit suicide or inflict  
 750 serious bodily harm on himself or herself.

751 (32)~~(35)~~ "Likely to injure others" means that it is more  
 752 likely than not that within a 24-hour period the child will  
 753 inflict serious and unjustified bodily harm on another person.

754 (33)~~(36)~~ "Mediation" means a process whereby a neutral

755 | third person called a mediator acts to encourage and facilitate  
 756 | the resolution of a dispute between two or more parties. It is  
 757 | an informal and nonadversarial process with the objective of  
 758 | helping the disputing parties reach a mutually acceptable and  
 759 | voluntary agreement. In mediation, decisionmaking authority  
 760 | rests with the parties. The role of the mediator includes, but  
 761 | is not limited to, assisting the parties in identifying issues,  
 762 | fostering joint problem solving, and exploring settlement  
 763 | alternatives.

764 |        (34)~~(37)~~ "Mother-infant program" means a residential  
 765 | program designed to serve the needs of juvenile mothers or  
 766 | expectant juvenile mothers who are committed as delinquents,  
 767 | which is operated or contracted by the department. A mother-  
 768 | infant program facility must be licensed as a child care  
 769 | facility under s. 402.308 and must provide the services and  
 770 | support necessary to enable each juvenile mother committed to  
 771 | the facility to provide for the needs of her infants who, upon  
 772 | agreement of the mother, may accompany her in the program.

773 |        (35)~~(38)~~ "Necessary medical treatment" means care which is  
 774 | necessary within a reasonable degree of medical certainty to  
 775 | prevent the deterioration of a child's condition or to alleviate  
 776 | immediate pain of a child.

777 |        (36)~~(39)~~ "Next of kin" means an adult relative of a child  
 778 | who is the child's brother, sister, grandparent, aunt, uncle, or  
 779 | first cousin.

780 |        (37)~~(40)~~ "Ordinary medical care" means medical procedures



781 that are administered or performed on a routine basis and  
 782 include, but are not limited to, inoculations, physical  
 783 examinations, remedial treatment for minor illnesses and  
 784 injuries, preventive services, medication management, chronic  
 785 disease detection and treatment, and other medical procedures  
 786 that are administered or performed on a routine basis and do not  
 787 involve hospitalization, surgery, the use of general anesthesia,  
 788 or the provision of psychotropic medications.

789 (38)~~(41)~~ "Parent" means a woman who gives birth to a child  
 790 and a man whose consent to the adoption of the child would be  
 791 required under s. 63.062(1). If a child has been legally  
 792 adopted, the term "parent" means the adoptive mother or father  
 793 of the child. The term does not include an individual whose  
 794 parental relationship to the child has been legally terminated,  
 795 or an alleged or prospective parent, unless the parental status  
 796 falls within the terms of either s. 39.503(1) or s. 63.062(1).

797 (39)~~(42)~~ "Preliminary screening" means the gathering of  
 798 preliminary information to be used in determining a child's need  
 799 for further evaluation or assessment or for referral for other  
 800 substance abuse services through means such as psychosocial  
 801 interviews; urine and breathalyzer screenings; and reviews of  
 802 available educational, delinquency, and dependency records of  
 803 the child.

804 ~~(43) "Preventive services" means social services and other~~  
 805 ~~supportive and rehabilitative services provided to the parent of~~  
 806 ~~the child, the legal guardian of the child, or the custodian of~~

807 ~~the child and to the child for the purpose of averting the~~  
 808 ~~removal of the child from the home or disruption of a family~~  
 809 ~~which will or could result in the placement of a child in foster~~  
 810 ~~care. Social services and other supportive and rehabilitative~~  
 811 ~~services shall promote the child's need for a safe, continuous,~~  
 812 ~~stable living environment and shall promote family autonomy and~~  
 813 ~~shall strengthen family life as the first priority whenever~~  
 814 ~~possible.~~

815 (40) "Prevention" means programs, strategies, initiatives,  
 816 and networks designed to keep children from making initial or  
 817 further contact with the juvenile justice system.

818 (41)-(44) "Probation" means the legal status of probation  
 819 created by law and court order in cases involving a child who  
 820 has been found to have committed a delinquent act. Probation is  
 821 an individualized program in which the freedom of the child is  
 822 limited and the child is restricted to noninstitutional quarters  
 823 or restricted to the child's home in lieu of commitment to the  
 824 custody of the department. Youth on probation may be assessed  
 825 and classified for placement in day-treatment probation programs  
 826 designed for youth who represent a minimum risk to themselves  
 827 and public safety and do not require placement and services in a  
 828 residential setting.

829 (42)-(45) "Relative" means a grandparent, great-  
 830 grandparent, sibling, first cousin, aunt, uncle, great-aunt,  
 831 great-uncle, niece, or nephew, whether related by the whole or  
 832 half blood, by affinity, or by adoption. The term does not

833 include a stepparent.

834 (43)~~(46)~~ "Restrictiveness level" means the level of  
 835 programming and security provided by programs that service the  
 836 supervision, custody, care, and treatment needs of committed  
 837 children. Sections 985.601(10) and 985.721 apply to children  
 838 placed in programs at any residential commitment level. The  
 839 restrictiveness levels of commitment are as follows:

840 (a) Minimum-risk nonresidential.—Programs or program  
 841 models at this commitment level work with youth who remain in  
 842 the community and participate at least 5 days per week in a day  
 843 treatment program. Youth assessed and classified for programs at  
 844 this commitment level represent a minimum risk to themselves and  
 845 public safety and do not require placement and services in  
 846 residential settings. Youth in this level have full access to,  
 847 and reside in, the community. Youth who have been found to have  
 848 committed delinquent acts that involve firearms, that are sexual  
 849 offenses, or that would be life felonies or first degree  
 850 felonies if committed by an adult may not be committed to a  
 851 program at this level.

852 ~~(b) Low risk residential. Programs or program models at~~  
 853 ~~this commitment level are residential but may allow youth to~~  
 854 ~~have unsupervised access to the community. Residential~~  
 855 ~~facilities shall have no more than 165 beds each, including~~  
 856 ~~campus style programs, unless these campus style programs~~  
 857 ~~include more than one level of restrictiveness, provide~~  
 858 ~~multilevel education and treatment programs using different~~

859 ~~treatment protocols, and have facilities that coexist separately~~  
 860 ~~in distinct locations on the same property. Youth assessed and~~  
 861 ~~classified for placement in programs at this commitment level~~  
 862 ~~represent a low risk to themselves and public safety but do~~  
 863 ~~require placement and services in residential settings. Children~~  
 864 ~~who have been found to have committed delinquent acts that~~  
 865 ~~involve firearms, delinquent acts that are sexual offenses, or~~  
 866 ~~delinquent acts that would be life felonies or first degree~~  
 867 ~~felonies if committed by an adult shall not be committed to a~~  
 868 ~~program at this level.~~

869       (b) ~~(e)~~ Nonsecure Moderate risk residential.—Programs or  
 870 program models at this commitment level are residential but may  
 871 allow youth to have supervised access to the community.  
 872 Facilities at this commitment level are either environmentally  
 873 secure, staff secure, or are hardware-secure with walls,  
 874 fencing, or 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 placement in programs at this  
 884 commitment level represent a low or moderate risk to public

885 safety and require close supervision. The staff at a facility at  
 886 this commitment level may seclude a child who is a physical  
 887 threat to himself or herself or others. Mechanical restraint may  
 888 also be used when necessary.

889 (c)~~(d)~~ High-risk residential.—Programs or program models  
 890 at this commitment level are residential and do not allow youth  
 891 to have access to the community, except that temporary release  
 892 providing community access for up to 72 continuous hours may be  
 893 approved by a court for a youth who has made successful progress  
 894 in his or her program in order for the youth to attend a family  
 895 emergency or, during the final 60 days of his or her placement,  
 896 to visit his or her home, enroll in school or a career and  
 897 technical education ~~vocational~~ program, complete a job  
 898 interview, or participate in a community service project. High-  
 899 risk residential facilities are hardware-secure with perimeter  
 900 fencing and locking doors. Residential facilities at this  
 901 commitment level shall have no more than 90 ~~165~~ beds each,  
 902 including campus-style programs, unless those campus-style  
 903 programs include more than one level of ~~restrictiveness~~, provide  
 904 ~~multilevel education and treatment~~ program programs using  
 905 different treatment protocols, and have facilities that coexist  
 906 separately in distinct locations on the same property.  
 907 Facilities at this commitment level shall provide 24-hour awake  
 908 supervision, custody, care, and treatment of residents. Youth  
 909 assessed and classified for this level of placement require  
 910 close supervision in a structured residential setting. Placement

911 in programs at this level is prompted by a concern for public  
 912 safety that outweighs placement in programs at lower commitment  
 913 levels. The staff at a facility at this commitment level may  
 914 seclude a child who is a physical threat to himself or herself  
 915 or others. Mechanical restraint may also be used when necessary.  
 916 The facility may provide for single cell occupancy, except that  
 917 youth may be housed together during prerelease transition.

918 (d) ~~(e)~~ Maximum-risk residential.—Programs or program  
 919 models at this commitment level include juvenile correctional  
 920 facilities and juvenile prisons. The programs at this commitment  
 921 level are long-term residential and do not allow youth to have  
 922 access to the community. Facilities at this commitment level are  
 923 maximum-custody, hardware-secure with perimeter security fencing  
 924 and locking doors. Residential facilities at this commitment  
 925 level shall have no more than 90 ~~165~~ beds each, including  
 926 campus-style programs, unless those campus-style programs  
 927 include more than one ~~level of restrictiveness,~~ provide  
 928 ~~multilevel education and treatment program programs~~ using  
 929 different treatment protocols, and have facilities that coexist  
 930 separately in distinct locations on the same property.  
 931 Facilities at this commitment level shall provide 24-hour awake  
 932 supervision, custody, care, and treatment of residents. The  
 933 staff at a facility at this commitment level may seclude a child  
 934 who is a physical threat to himself or herself or others.  
 935 Mechanical restraint may also be used when necessary. Facilities  
 936 at this commitment level ~~The facility~~ shall provide for single

937 cell occupancy, except that youth may be housed together during  
 938 prerelease transition. Youth assessed and classified for this  
 939 level of placement require close supervision in a maximum  
 940 security residential setting. Placement in a program at this  
 941 level is prompted by a demonstrated need to protect the public.

942 (44)~~(47)~~ "Respite" means a placement that is available for  
 943 the care, custody, and placement of a youth charged with  
 944 domestic violence as an alternative to secure detention or for  
 945 placement of a youth when a shelter bed for a child in need of  
 946 services or a family in need of services is unavailable.

947 (45)~~(48)~~ "Secure detention center or facility" means a  
 948 physically restricting facility for the temporary care of  
 949 children, pending adjudication, disposition, or placement.

950 (46)~~(49)~~ "Shelter" means a place for the temporary care of  
 951 a child who is alleged to be or who has been found to be  
 952 delinquent.

953 ~~(50) "Shelter hearing" means a hearing provided for under~~  
 954 ~~s. 984.14 in family in need of services cases or child in need~~  
 955 ~~of services cases.~~

956 ~~(51) "Staff secure shelter" means a facility in which a~~  
 957 ~~child is supervised 24 hours a day by staff members who are~~  
 958 ~~awake while on duty. The facility is for the temporary care and~~  
 959 ~~assessment of a child who has been found to be dependent, who~~  
 960 ~~has violated a court order and been found in contempt of court,~~  
 961 ~~or whom the Department of Children and Family Services is unable~~  
 962 ~~to properly assess or place for assistance within the continuum~~

963 ~~of services provided for dependent children.~~

964       (47)~~(52)~~ "Substance abuse" means using, without medical  
 965 reason, any psychoactive or mood-altering drug, including  
 966 alcohol, in such a manner as to induce impairment resulting in  
 967 dysfunctional social behavior.

968       (48)~~(53)~~ "Taken into custody" means the status of a child  
 969 immediately when temporary physical control over the child is  
 970 attained by a person authorized by law, pending the child's  
 971 release, detention, placement, or other disposition as  
 972 authorized by law.

973       (49)~~(54)~~ "Temporary legal custody" means the relationship  
 974 that a juvenile court creates between a child and an adult  
 975 relative of the child, adult nonrelative approved by the court,  
 976 or other person until a more permanent arrangement is ordered.  
 977 Temporary legal custody confers upon the custodian the right to  
 978 have temporary physical custody of the child and the right and  
 979 duty to protect, train, and discipline the child and to provide  
 980 the child with food, shelter, and education, and ordinary  
 981 medical, dental, psychiatric, and psychological care, unless  
 982 these rights and duties are otherwise enlarged or limited by the  
 983 court order establishing the temporary legal custody  
 984 relationship.

985       (50)~~(55)~~ "Temporary release" means the terms and  
 986 conditions under which a child is temporarily released from a  
 987 residential commitment facility or allowed home visits. If the  
 988 temporary release is from a nonsecure ~~moderate-risk~~ residential



989 facility, a high-risk residential facility, or a maximum-risk  
 990 residential facility, the terms and conditions of the temporary  
 991 release must be approved by the child, the court, and the  
 992 facility. ~~The term includes periods during which the child is~~  
 993 ~~supervised pursuant to a conditional release program or a period~~  
 994 ~~during which the child is supervised by a juvenile probation~~  
 995 ~~officer or other nonresidential staff of the department or staff~~  
 996 ~~employed by an entity under contract with the department.~~

997 (51) ~~(56)~~ "Transition-to-adulthood services" means services  
 998 that are provided for youth in the custody of the department or  
 999 under the supervision of the department and that have the  
 1000 objective of instilling the knowledge, skills, and aptitudes  
 1001 essential to a socially integrated, self-supporting adult life.  
 1002 The services may include, but are not limited to:

1003 (a) Assessment of the youth's ability and readiness for  
 1004 adult life.

1005 (b) A plan for the youth to acquire the knowledge,  
 1006 information, and counseling necessary to make a successful  
 1007 transition to adulthood.

1008 (c) Services that have proven effective toward achieving  
 1009 the transition to adulthood.

1010 (52) "Trauma-informed care" means providing services to  
 1011 children with a history of trauma, which recognizes the symptoms  
 1012 of trauma and acknowledges the role the trauma has played in the  
 1013 child's life. Trauma may include, but is not limited to,  
 1014 community and school violence, physical or sexual abuse,

1015 neglect, medical difficulties, and domestic violence.

1016 (53)-(57) "Violation of law" or "delinquent act" means a  
 1017 violation of any law of this state, the United States, or any  
 1018 other state which is a misdemeanor or a felony or a violation of  
 1019 a county or municipal ordinance which would be punishable by  
 1020 incarceration if the violation were committed by an adult.

1021 (54)-(58) "Waiver hearing" means a hearing provided for  
 1022 under s. 985.556(4).

1023 Section 4. Subsections (4) and (5) of section 985.0301,  
 1024 Florida Statutes, are amended to read:

1025 985.0301 Jurisdiction.—

1026 (4)(a) Petitions alleging delinquency shall be filed in  
 1027 the county where the delinquent act or violation of law  
 1028 occurred. The ~~, but the~~ circuit court for that county may  
 1029 transfer the case to the circuit court of the circuit in which  
 1030 the child resides or will reside at the time of detention or  
 1031 placement for dispositional purposes. A child who has been  
 1032 detained may shall be transferred to the ~~appropriate~~ detention  
 1033 center or facility in the circuit in which the child resides or  
 1034 will reside at the time of detention ~~or other placement directed~~  
 1035 ~~by the receiving court.~~

1036 (b) The jurisdiction to be exercised by the court when a  
 1037 child is taken into custody before the filing of a petition  
 1038 under subsection (2) shall be exercised by the circuit court for  
 1039 the county in which the child is taken into custody, which court  
 1040 shall have personal jurisdiction of the child and the child's

1041 parent or legal guardian. Upon the filing of a petition in the  
 1042 appropriate circuit court, the court that is exercising initial  
 1043 jurisdiction of the person of the child shall, if the child has  
 1044 been detained, immediately order the child to be transferred to  
 1045 the detention center or facility or other placement as ordered  
 1046 by the court having subject matter jurisdiction of the case.

1047 (5) (a) Notwithstanding s. ss. 743.07, 985.43, 985.433,  
 1048 ~~985.435, 985.439, and 985.441,~~ and except as provided in ~~ss.~~  
 1049 ~~985.461 and 985.465 and~~ paragraph (b) and (c) ~~(f),~~ when the  
 1050 jurisdiction of any child who is alleged to have committed a  
 1051 delinquent act or violation of law is obtained, the court shall  
 1052 retain jurisdiction to dispose a case, unless relinquished by  
 1053 its order, until the child reaches 19 years of age, with the  
 1054 same power over the child which the court had before the child  
 1055 became an adult. ~~For the purposes of s. 985.461, the court may~~  
 1056 ~~retain jurisdiction for an additional 365 days following the~~  
 1057 ~~child's 19th birthday if the child is participating in~~  
 1058 ~~transition to adulthood services. The additional services do not~~  
 1059 ~~extend involuntary court sanctioned residential commitment and~~  
 1060 ~~therefore require voluntary participation by the affected youth.~~

1061 (b) The court shall retain jurisdiction, ~~Notwithstanding~~  
 1062 ~~ss. 743.07 and 985.455(3), the term of any order placing a child~~  
 1063 ~~in a probation program must be until the child's 19th birthday~~  
 1064 unless relinquished by its own order, over a child on probation  
 1065 until the child reaches 19 years of age ~~he or she is released by~~  
 1066 ~~the court on the motion of an interested party or on his or her~~

1067 ~~own motion.~~

1068 (c) The court shall retain jurisdiction, unless  
 1069 relinquished by its own order, over a child committed to the  
 1070 department until the child reaches 21 years of age, specifically  
 1071 for the purpose of allowing the child to complete the commitment  
 1072 program, including conditional release supervision.

1073 (d) The court shall retain jurisdiction over a juvenile  
 1074 sexual offender, as defined in s. 985.475, who has been placed  
 1075 on community-based treatment alternative with supervision, or in  
 1076 a program or facility for juvenile sexual offenders, pursuant to  
 1077 s. 985.48, until the juvenile sexual offender reaches 21 years  
 1078 of age, specifically for the purpose of completing the program.

1079 ~~(e) Notwithstanding ss. 743.07 and 985.455(3), the term of~~  
 1080 ~~the commitment must be until the child is discharged by the~~  
 1081 ~~department or until he or she reaches the age of 21 years.~~  
 1082 ~~Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441,~~  
 1083 ~~985.455, and 985.513, and except as provided in this section, a~~  
 1084 ~~child may not be held under a commitment from a court under s.~~  
 1085 ~~985.439, s. 985.441(1) (a) or (b), or s. 985.455 after becoming~~  
 1086 ~~21 years of age.~~

1087 ~~(d) The court may retain jurisdiction over a child~~  
 1088 ~~committed to the department for placement in a juvenile prison~~  
 1089 ~~or in a high risk or maximum risk residential commitment program~~  
 1090 ~~to allow the child to participate in a juvenile conditional~~  
 1091 ~~release program pursuant to s. 985.46. The jurisdiction of the~~  
 1092 ~~court may not be retained after the child's 22nd birthday.~~

1093 ~~However, if the child is not successful in the conditional~~  
 1094 ~~release program, the department may use the transfer procedure~~  
 1095 ~~under s. 985.441(4).~~

1096 ~~(e) The court may retain jurisdiction over a child~~  
 1097 ~~committed to the department for placement in an intensive~~  
 1098 ~~residential treatment program for 10 year old to 13 year old~~  
 1099 ~~offenders, in the residential commitment program in a juvenile~~  
 1100 ~~prison or in a residential sex offender program until the child~~  
 1101 ~~reaches the age of 21. If the court exercises this jurisdiction~~  
 1102 ~~retention, it shall do so solely for the purpose of the child~~  
 1103 ~~completing the intensive residential treatment program for 10-~~  
 1104 ~~year old to 13 year old offenders, in the residential commitment~~  
 1105 ~~program in a juvenile prison, or in a residential sex offender~~  
 1106 ~~program. Such jurisdiction retention does not apply for other~~  
 1107 ~~programs, other purposes, or new offenses.~~

1108 ~~(f) The court may retain jurisdiction over a child~~  
 1109 ~~committed to a juvenile correctional facility or a juvenile~~  
 1110 ~~prison until the child reaches the age of 21 years, specifically~~  
 1111 ~~for the purpose of allowing the child to complete such program.~~

1112 ~~(g) The court may retain jurisdiction over a juvenile~~  
 1113 ~~sexual offender who has been placed in a program or facility for~~  
 1114 ~~juvenile sexual offenders until the juvenile sexual offender~~  
 1115 ~~reaches the age of 21, specifically for the purpose of~~  
 1116 ~~completing the program.~~

1117 ~~(e)~~(h) The court may retain jurisdiction over a child and  
 1118 the child's parent or legal guardian whom the court has ordered

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1119 to pay restitution until the restitution order is satisfied. To  
 1120 retain jurisdiction, the court shall enter a restitution order,  
 1121 which is separate from any disposition or order of commitment,  
 1122 on or prior to the date that the court's jurisdiction would  
 1123 cease under this section. The contents of the restitution order  
 1124 shall be limited to the child's name and address, the name and  
 1125 address of the parent or legal guardian, the name and address of  
 1126 the payee, the case number, the date and amount of restitution  
 1127 ordered, any amount of restitution paid, the amount of  
 1128 restitution due and owing, and a notation that costs, interest,  
 1129 penalties, and attorney fees may also be due and owing. The  
 1130 terms of the restitution order are subject to s. 775.089(5).

1131 (f)~~(i)~~ This subsection does not prevent the exercise of  
 1132 jurisdiction by any court having jurisdiction of the child if  
 1133 the child, after becoming an adult, commits a violation of law.

1134 Section 5. Subsections (2) and (4) of section 985.037,  
 1135 Florida Statutes, are amended to read:

1136 985.037 Punishment for contempt of court; alternative  
 1137 sanctions.—

1138 (2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may  
 1139 be placed in a secure detention facility for purposes of  
 1140 punishment for contempt of court if alternative sanctions are  
 1141 unavailable or inappropriate, or if the child has already been  
 1142 ordered to serve an alternative sanction but failed to comply  
 1143 with the sanction. A delinquent child who has been held in  
 1144 direct or indirect contempt may be placed in a secure detention

1145 facility not to exceed 5 days for a first offense and not to  
 1146 exceed 15 days for a second or subsequent offense.

1147 (4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE  
 1148 PROCESS.—

1149 (a) If a child is charged with direct contempt of court,  
 1150 including traffic court, the court may impose an authorized  
 1151 sanction immediately. The court must hold a hearing to determine  
 1152 if the child committed direct contempt. Due process must be  
 1153 afforded to the child during this hearing.

1154 (b) If a child is charged with indirect contempt of court,  
 1155 the court must hold a hearing within 24 hours to determine  
 1156 whether the child committed indirect contempt of a valid court  
 1157 order. At the hearing, the following due process rights must be  
 1158 provided to the child:

1159 1. Right to a copy of the order to show cause alleging  
 1160 facts supporting the contempt charge.

1161 2. Right to an explanation of the nature and the  
 1162 consequences of the proceedings.

1163 3. Right to legal counsel and the right to have legal  
 1164 counsel appointed by the court if the juvenile is indigent,  
 1165 under s. 985.033.

1166 4. Right to confront witnesses.

1167 5. Right to present witnesses.

1168 6. Right to have a transcript or record of the proceeding.

1169 7. Right to appeal to an appropriate court.

1170

1171 The child's parent or guardian may address the court regarding  
 1172 the due process rights of the child. Upon motion by the defense  
 1173 attorney or state attorney, the court shall review the placement  
 1174 of the child ~~every 72 hours~~ to determine whether it is  
 1175 appropriate for the child to remain in the facility.

1176 (c) The court may not order that a child be placed in a  
 1177 secure detention facility for punishment for contempt unless the  
 1178 court determines that an alternative sanction is inappropriate  
 1179 or unavailable or that the child was initially ordered to an  
 1180 alternative sanction and did not comply with the alternative  
 1181 sanction. The court is encouraged to order a child to perform  
 1182 community service, up to the maximum number of hours, where  
 1183 appropriate before ordering that the child be placed in a secure  
 1184 detention facility as punishment for contempt of court.

1185 (d) In addition to any other sanction imposed under this  
 1186 section, the court may direct the Department of Highway Safety  
 1187 and Motor Vehicles to withhold issuance of, or suspend, a  
 1188 child's driver's license or driving privilege. The court may  
 1189 order that a child's driver's license or driving privilege be  
 1190 withheld or suspended for up to 1 year for a first offense of  
 1191 contempt and up to 2 years for a second or subsequent offense.  
 1192 If the child's driver's license or driving privilege is  
 1193 suspended or revoked for any reason at the time the sanction for  
 1194 contempt is imposed, the court shall extend the period of  
 1195 suspension or revocation by the additional period ordered under  
 1196 this paragraph. If the child's driver's license is being



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1197 withheld at the time the sanction for contempt is imposed, the  
 1198 period of suspension or revocation ordered under this paragraph  
 1199 shall begin on the date on which the child is otherwise eligible  
 1200 to drive.

1201 Section 6. Subsection (5) of section 985.045, Florida  
 1202 Statutes, is amended to read:

1203 985.045 Court records.—

1204 (5) This chapter does not prohibit a circuit court from  
 1205 providing a restitution order containing the information  
 1206 prescribed in s. 985.0301(5)(e) ~~985.0301(5)(h)~~ to a collection  
 1207 court or a private collection agency for the sole purpose of  
 1208 collecting unpaid restitution ordered in a case in which the  
 1209 circuit court has retained jurisdiction over the child and the  
 1210 child's parent or legal guardian. The collection court or  
 1211 private collection agency shall maintain the confidential status  
 1212 of the information to the extent such confidentiality is  
 1213 provided by law.

1214 Section 7. Section 985.105, Florida Statutes, is repealed.

1215 Section 8. Paragraph (b) of subsection (1) of section  
 1216 985.11, Florida Statutes, is amended to read:

1217 985.11 Fingerprinting and photographing.—

1218 (1)

1219 (b) Unless the child is issued a civil citation or is  
 1220 participating in a similar diversion program pursuant to s.  
 1221 985.12, A child who is charged with or found to have committed  
 1222 one of the following offenses shall be fingerprinted, and the

1223 fingerprints shall be submitted to the Department of Law  
 1224 Enforcement as provided in s. 943.051(3)(b):

- 1225 1. Assault, as defined in s. 784.011.
- 1226 2. Battery, as defined in s. 784.03.
- 1227 3. Carrying a concealed weapon, as defined in s.  
 1228 790.01(1).
- 1229 4. Unlawful use of destructive devices or bombs, as  
 1230 defined in s. 790.1615(1).
- 1231 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 1232 6. Assault on a law enforcement officer, a firefighter, or  
 1233 other specified officers, as defined in s. 784.07(2)(a).
- 1234 7. Open carrying of a weapon, as defined in s. 790.053.
- 1235 8. Exposure of sexual organs, as defined in s. 800.03.
- 1236 9. Unlawful possession of a firearm, as defined in s.  
 1237 790.22(5).
- 1238 10. Petit theft, as defined in s. 812.014.
- 1239 11. Cruelty to animals, as defined in s. 828.12(1).
- 1240 12. Arson, resulting in bodily harm to a firefighter, as  
 1241 defined in s. 806.031(1).
- 1242 13. Unlawful possession or discharge of a weapon or  
 1243 firearm at a school-sponsored event or on school property as  
 1244 defined in s. 790.115.

1245

1246 A law enforcement agency may fingerprint and photograph a child  
 1247 taken into custody upon probable cause that such child has  
 1248 committed any other violation of law, as the agency deems

1249 appropriate. Such fingerprint records and photographs shall be  
 1250 retained by the law enforcement agency in a separate file, and  
 1251 these records and all copies thereof must be marked "Juvenile  
 1252 Confidential." These records are not available for public  
 1253 disclosure and inspection under s. 119.07(1) except as provided  
 1254 in ss. 943.053 and 985.04(2), but shall be available to other  
 1255 law enforcement agencies, criminal justice agencies, state  
 1256 attorneys, the courts, the child, the parents or legal  
 1257 custodians of the child, their attorneys, and any other person  
 1258 authorized by the court to have access to such records. In  
 1259 addition, such records may be submitted to the Department of Law  
 1260 Enforcement for inclusion in the state criminal history records  
 1261 and used by criminal justice agencies for criminal justice  
 1262 purposes. These records may, in the discretion of the court, be  
 1263 open to inspection by anyone upon a showing of cause. The  
 1264 fingerprint and photograph records shall be produced in the  
 1265 court whenever directed by the court. Any photograph taken  
 1266 pursuant to this section may be shown by a law enforcement  
 1267 officer to any victim or witness of a crime for the purpose of  
 1268 identifying the person who committed such crime.

1269 Section 9. Subsection (2) of section 985.14, Florida  
 1270 Statutes, is amended to read:

1271 985.14 Intake and case management system.—

1272 (2) The intake process shall be performed by the  
 1273 department or juvenile assessment center personnel through a  
 1274 case management system. The purpose of the intake process is to

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1275 assess the child's needs and risks and to determine the most  
 1276 appropriate treatment plan and setting for the child's  
 1277 programmatic needs and risks. The intake process shall consist  
 1278 of an initial assessment and may be followed by a full mental  
 1279 health, substance abuse, and/or psychosexual evaluation. The  
 1280 intake process shall result in choosing the most appropriate  
 1281 services through a balancing of the interests and needs of the  
 1282 child with those of the family and the community public. The  
 1283 juvenile probation officer shall be responsible for making  
 1284 informed decisions and recommendations to other agencies, the  
 1285 state attorney, and the courts so that the child and family may  
 1286 receive the least intrusive service alternative throughout the  
 1287 judicial process. The department shall establish uniform  
 1288 procedures for the juvenile probation officer to provide a  
 1289 preliminary screening of the child and family for substance  
 1290 abuse and mental health services prior to the filing of a  
 1291 petition or as soon as possible thereafter and prior to a  
 1292 disposition hearing.

1293 Section 10. Section 985.145, Florida Statutes, is amended  
 1294 to read:

1295 985.145 Responsibilities of the department juvenile  
 1296 ~~probation officer~~ during intake; screenings and assessments.-

1297 (1) The department juvenile probation officer shall serve  
 1298 as the primary case manager for the purpose of managing,  
 1299 coordinating, and monitoring the services provided to the child.  
 1300 Each program administrator within the Department of Children and

1301 Families ~~Family Services~~ shall cooperate with the primary case  
 1302 manager in carrying out the duties and responsibilities  
 1303 described in this section. In addition to duties specified in  
 1304 other sections and through departmental rules, the department  
 1305 ~~assigned juvenile probation officer~~ shall be responsible for the  
 1306 following:

1307 (a) Reviewing probable cause affidavit.—The department  
 1308 ~~juvenile probation officer~~ shall make a preliminary  
 1309 determination as to whether the report, affidavit, or complaint  
 1310 is complete, consulting with the state attorney as may be  
 1311 necessary. A report, affidavit, or complaint alleging that a  
 1312 child has committed a delinquent act or violation of law shall  
 1313 be made to the intake office operating in the county in which  
 1314 the child is found or in which the delinquent act or violation  
 1315 of law occurred. Any person or agency having knowledge of the  
 1316 facts may make such a written report, affidavit, or complaint  
 1317 and shall furnish to the intake office facts sufficient to  
 1318 establish the jurisdiction of the court and to support a finding  
 1319 by the court that the child has committed a delinquent act or  
 1320 violation of law.

1321 (b) Notification concerning apparent insufficiencies in  
 1322 probable cause affidavit.—In any case where the department  
 1323 ~~juvenile probation officer~~ or the state attorney finds that the  
 1324 report, affidavit, or complaint is insufficient by the standards  
 1325 for a probable cause affidavit, the department ~~juvenile~~  
 1326 ~~probation officer~~ or state attorney shall return the report,

1327 affidavit, or complaint, without delay, to the person or agency  
 1328 originating the report, affidavit, or complaint or having  
 1329 knowledge of the facts or to the appropriate law enforcement  
 1330 agency having investigative jurisdiction of the offense, and  
 1331 shall request, and the person or agency shall promptly furnish,  
 1332 additional information in order to comply with the standards for  
 1333 a probable cause affidavit.

1334 (c) Screening.—During the intake process, the department  
 1335 ~~juvenile probation officer~~ shall screen each child or shall  
 1336 cause each child to be screened in order to determine:

1337 1. Appropriateness for release; referral to a diversionary  
 1338 program, including, but not limited to, a teen court program;  
 1339 referral for community arbitration; or referral to some other  
 1340 program or agency for the purpose of nonofficial or nonjudicial  
 1341 handling.

1342 2. The presence of medical, psychiatric, psychological,  
 1343 substance abuse, educational, or career and technical education  
 1344 ~~vocational~~ problems, or other conditions that may have caused  
 1345 the child to come to the attention of law enforcement or the  
 1346 department. The child shall also be screened to determine  
 1347 whether the child poses a danger to himself or herself or others  
 1348 in the community. The results of this screening shall be made  
 1349 available to the court and to court officers. In cases where  
 1350 such conditions are identified and a nonjudicial handling of the  
 1351 case is chosen, the department ~~juvenile probation officer~~ shall  
 1352 attempt to refer the child to a program or agency, together with

1353 all available and relevant assessment information concerning the  
 1354 child's precipitating condition.

1355 (d) Completing risk assessment instrument.—The department  
 1356 ~~juvenile probation officer~~ shall ensure that a risk assessment  
 1357 instrument establishing the child's eligibility for detention  
 1358 has been accurately completed and that the appropriate  
 1359 recommendation was made to the court.

1360 (e) Rights.—The department ~~juvenile probation officer~~  
 1361 shall inquire as to whether the child understands his or her  
 1362 rights to counsel and against self-incrimination.

1363 (f) Multidisciplinary assessment.—The department ~~juvenile~~  
 1364 ~~probation officer~~ shall coordinate the multidisciplinary  
 1365 assessment when required, which includes the classification and  
 1366 placement process that determines the child's priority needs,  
 1367 risk classification, and treatment plan. When sufficient  
 1368 evidence exists to warrant a comprehensive assessment and the  
 1369 child fails to voluntarily participate in the assessment  
 1370 efforts, the department ~~juvenile probation officer~~ shall inform  
 1371 the court of the need for the assessment and the refusal of the  
 1372 child to participate in such assessment. This assessment,  
 1373 classification, and placement process shall develop into the  
 1374 predisposition report.

1375 (g) Comprehensive assessment.—The department ~~juvenile~~  
 1376 ~~probation officer~~, pursuant to uniform procedures established by  
 1377 the department and upon determining that the report, affidavit,  
 1378 or complaint is complete, shall:

1379 1. Perform the preliminary screening and make referrals  
 1380 for a comprehensive assessment regarding the child's need for  
 1381 substance abuse treatment services, mental health services,  
 1382 intellectual disability services, literacy services, or other  
 1383 educational or treatment services.

1384 2. If indicated by the preliminary screening, provide for  
 1385 a comprehensive assessment of the child and family for substance  
 1386 abuse problems, using community-based licensed programs with  
 1387 clinical expertise and experience in the assessment of substance  
 1388 abuse problems.

1389 3. If indicated by the preliminary screening, provide for  
 1390 a comprehensive assessment of the child and family for mental  
 1391 health problems, using community-based psychologists,  
 1392 psychiatrists, or other licensed mental health professionals who  
 1393 have clinical expertise and experience in the assessment of  
 1394 mental health problems.

1395 (h) Referrals for services.—The department ~~juvenile~~  
 1396 ~~probation officer~~ shall make recommendations for services and  
 1397 facilitate the delivery of those services to the child,  
 1398 including any mental health services, educational services,  
 1399 family counseling services, family assistance services, and  
 1400 substance abuse services.

1401 (i) Recommendation concerning a petition.—Upon determining  
 1402 that the report, affidavit, or complaint complies with the  
 1403 standards of a probable cause affidavit and that the interests  
 1404 of the child and the public will be best served, the department



1405 ~~juvenile probation officer~~ may recommend that a delinquency  
 1406 petition not be filed. If such a recommendation is made, the  
 1407 department ~~juvenile probation officer~~ shall advise in writing  
 1408 the person or agency making the report, affidavit, or complaint,  
 1409 the victim, if any, and the law enforcement agency having  
 1410 investigative jurisdiction over the offense of the  
 1411 recommendation; the reasons therefor; and that the person or  
 1412 agency may submit, within 10 days after the receipt of such  
 1413 notice, the report, affidavit, or complaint to the state  
 1414 attorney for special review. The state attorney, upon receiving  
 1415 a request for special review, shall consider the facts presented  
 1416 by the report, affidavit, or complaint, and by the department  
 1417 ~~juvenile probation officer~~ who made the recommendation that no  
 1418 petition be filed, before making a final decision as to whether  
 1419 a petition or information should or should not be filed.

1420 (j) Completing intake report.—Subject to the interagency  
 1421 agreement authorized under this paragraph, ~~the juvenile~~  
 1422 ~~probation officer for each case in which a child is alleged to~~  
 1423 ~~have committed a violation of law or delinquent act and is not~~  
 1424 ~~detained~~ the department shall submit a written report to the  
 1425 state attorney for each case in which a child is alleged to have  
 1426 committed a violation of law or delinquent act and is not  
 1427 detained. The report shall be submitted within 20 days after  
 1428 the date the child is taken into custody and include ~~including~~  
 1429 the original police report, complaint, or affidavit, or a copy  
 1430 thereof, and ~~including~~ a copy of the child's prior juvenile

1431 record, ~~within 20 days after the date the child is taken into~~  
 1432 ~~eustody~~. In cases in which the child is in detention, the intake  
 1433 office report must be submitted within 24 hours after the child  
 1434 is placed into detention. The intake office report may include a  
 1435 recommendation that a petition or information be filed or that  
 1436 no petition or information be filed and may set forth reasons  
 1437 for the recommendation. The state attorney and the department  
 1438 may, on a district-by-district basis, enter into interagency  
 1439 agreements denoting the cases that will require a recommendation  
 1440 and those for which a recommendation is unnecessary.

1441 (2) Prior to requesting that a delinquency petition be  
 1442 filed or prior to filing a dependency petition, the department  
 1443 ~~juvenile probation officer~~ may request the parent or legal  
 1444 guardian of the child to attend a course of instruction in  
 1445 parenting skills, training in conflict resolution, and the  
 1446 practice of nonviolence; to accept counseling; or to receive  
 1447 other assistance from any agency in the community which notifies  
 1448 the clerk of the court of the availability of its services.  
 1449 Where appropriate, the department ~~juvenile probation officer~~  
 1450 shall request both parents or guardians to receive such parental  
 1451 assistance. The department ~~juvenile probation officer~~ may, in  
 1452 determining whether to request that a delinquency petition be  
 1453 filed, take into consideration the willingness of the parent or  
 1454 legal guardian to comply with such request. The parent or  
 1455 guardian must provide the department ~~juvenile probation officer~~  
 1456 with identifying information, including the parent's or

1457 guardian's name, address, date of birth, social security number,  
 1458 and driver's license number or identification card number in  
 1459 order to comply with s. 985.039.

1460 (3) When indicated by the comprehensive assessment, the  
 1461 department is authorized to contract within appropriated funds  
 1462 for services with a local nonprofit community mental health or  
 1463 substance abuse agency licensed or authorized under chapter 394  
 1464 or chapter 397 or other authorized nonprofit social service  
 1465 agency providing related services. The determination of mental  
 1466 health or substance abuse services shall be conducted in  
 1467 coordination with existing programs providing mental health or  
 1468 substance abuse services in conjunction with the intake office.

1469 (4) Client information resulting from the screening and  
 1470 evaluation shall be documented under rules of the department and  
 1471 shall serve to assist the department ~~juvenile probation officer~~  
 1472 in providing the most appropriate services and recommendations  
 1473 in the least intrusive manner. Such client information shall be  
 1474 used in the multidisciplinary assessment and classification of  
 1475 the child, but such information, and any information obtained  
 1476 directly or indirectly through the assessment process, is  
 1477 inadmissible in court prior to the disposition hearing, unless  
 1478 the child's written consent is obtained. At the disposition  
 1479 hearing, documented client information shall serve to assist the  
 1480 court in making the most appropriate custody, adjudicatory, and  
 1481 dispositional decision.

1482 (5) If the screening and assessment indicate that the

1483 interests of the child and the public will be best served, the  
 1484 department ~~juvenile probation officer~~, with the approval of the  
 1485 state attorney, may refer the child for care, diagnostic, and  
 1486 evaluation services; substance abuse treatment services; mental  
 1487 health services; intellectual disability services; a  
 1488 diversionary, arbitration, or mediation program; community  
 1489 service work; or other programs or treatment services  
 1490 voluntarily accepted by the child and the child's parents or  
 1491 legal guardian. If a child volunteers to participate in any work  
 1492 program under this chapter or volunteers to work in a specified  
 1493 state, county, municipal, or community service organization  
 1494 supervised work program or to work for the victim, the child is  
 1495 considered an employee of the state for the purposes of  
 1496 liability. In determining the child's average weekly wage,  
 1497 unless otherwise determined by a specific funding program, all  
 1498 remuneration received from the employer is considered a  
 1499 gratuity, and the child is not entitled to any benefits  
 1500 otherwise payable under s. 440.15 regardless of whether the  
 1501 child may be receiving wages and remuneration from other  
 1502 employment with another employer and regardless of the child's  
 1503 future wage-earning capacity.

1504 (6) The victim, if any, and the law enforcement agency  
 1505 that investigated the offense shall be notified immediately by  
 1506 the state attorney of the action taken under subsection (5).

1507 Section 11. Section 985.17, Florida Statutes, is created  
 1508 to read:

1509 985.17 Prevention services.—

1510 (1) Prevention decreases recidivism by addressing the  
 1511 needs of at-risk youth and their families, prevents further  
 1512 involvement into the juvenile justice system, protects public  
 1513 safety, and facilitates successful re-entry into the community.  
 1514 To assist with decreasing recidivism, the department's  
 1515 prevention services should strengthen protective factors, reduce  
 1516 risk factors, and should utilize tested and effective  
 1517 approaches.

1518 (2) The department's prevention services shall be to  
 1519 develop capacity for local communities to serve their youth.

1520 (a) The department shall engage faith and community-based  
 1521 organizations to provide a full range of voluntary programs and  
 1522 services to prevent and reduce juvenile delinquency, including,  
 1523 but not limited to, chaplaincy services, crisis intervention  
 1524 counseling, mentoring, and tutoring.

1525 (b) The department shall establish volunteer coordinators  
 1526 in each circuit and encourage the recruitment of volunteers to  
 1527 serve as mentors for youth in department services.

1528 (c) The department shall promote the Invest in Children  
 1529 license plate to help fund programs and services to prevent  
 1530 juvenile delinquency. The department shall allocate moneys for  
 1531 programs and services within each county based on that county's  
 1532 proportionate share of the license plate annual use fee  
 1533 collected by the county.

1534 (3) The department's prevention services for youth at risk

1535 of becoming delinquent should focus on preventing initial or  
 1536 further involvement into the juvenile justice system by  
 1537 including services such as literacy services, gender-specific  
 1538 programming, recreational and after-school services, and should  
 1539 include targeted services to troubled, truant, ungovernable,  
 1540 abused, trafficked, or runaway youth. To decrease the likelihood  
 1541 that a youth will commit a delinquent act, the department should  
 1542 utilize mentoring and may provide specialized services  
 1543 addressing the strengthening of families, job training, and  
 1544 substance abuse.

1545 (4) The department's prevention services should address  
 1546 the multiple needs of youth at risk of becoming delinquent in  
 1547 order to decrease the prevalence of disproportionate minority  
 1548 representation in the juvenile justice system.

1549 (5) The department shall expend funds related to the  
 1550 prevention services in a manner consistent with the policies  
 1551 expressed in ss. 984.02 and 985.01 and in a manner that  
 1552 maximizes accountability to the public and ensures the  
 1553 documentation of outcomes.

1554 (a) As a condition of receipt of state funds, all  
 1555 entities that receive or use state moneys to fund prevention  
 1556 services through contracts with the department or grants from  
 1557 any entity dispersed by the department shall:

1558 1. Design the programs providing such services to further  
 1559 one or more of the following strategies:

1560 a. Encouraging youth to attend and succeed in school,

1561 which may include special assistance and tutoring to address  
 1562 deficiencies in academic performance and collecting outcome data  
 1563 to reveal the number of days youth attended school while  
 1564 participating in the program.

1565 b. Engaging youth in productive and wholesome activities  
 1566 during non-school hours that build positive character, instill  
 1567 positive values, and enhance educational experiences.

1568 c. Encouraging youth to avoid the use of violence.

1569 d. Assisting youth to acquire skills needed to find  
 1570 meaningful employment, which may include assistance in finding a  
 1571 suitable employer for the youth.

1572 2. Provide the department with demographic information,  
 1573 dates of services, and the type of interventions received by  
 1574 each youth.

1575 (b) The department shall monitor output and outcome  
 1576 measures for each program strategy in paragraph (a) and annually  
 1577 report the outputs and outcomes in the Comprehensive  
 1578 Accountability Report.

1579 (c) The department shall monitor all state-funded programs  
 1580 that receive or use state moneys to fund the juvenile  
 1581 delinquency prevention services through contracts or grants with  
 1582 the department for compliance with all provisions in the  
 1583 contracts and grants.

1584 Section 12. Section 985.24, Florida Statutes, is amended  
 1585 to read:

1586 985.24 Use of detention; prohibitions.—

1587 (1) All determinations and court orders regarding the use  
 1588 of ~~secure, nonsecure, or home~~ detention care shall be based  
 1589 primarily upon findings that the child:

1590 (a) Presents a substantial risk of not appearing at a  
 1591 subsequent hearing;

1592 (b) Presents a substantial risk of inflicting bodily harm  
 1593 on others as evidenced by recent behavior, including the illegal  
 1594 possession of a firearm;

1595 (c) Presents a history of committing a property offense  
 1596 prior to adjudication, disposition, or placement;

1597 (d) Has committed contempt of court by:

1598 1. Intentionally disrupting the administration of the  
 1599 court;

1600 2. Intentionally disobeying a court order; or

1601 3. Engaging in a punishable act or speech in the court's  
 1602 presence which shows disrespect for the authority and dignity of  
 1603 the court; or

1604 (e) Requests protection from imminent bodily harm.

1605 (2) A child alleged to have committed a delinquent act or  
 1606 violation of law may not be placed into ~~secure, or nonsecure, or~~  
 1607 ~~home~~ detention care for any of the following reasons:

1608 (a) To allow a parent to avoid his or her legal  
 1609 responsibility.

1610 (b) To permit more convenient administrative access to the  
 1611 child.

1612 (c) To facilitate further interrogation or investigation.



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1613 (d) Due to a lack of more appropriate facilities.

1614 (3) A child alleged to be dependent under chapter 39 may  
 1615 not, under any circumstances, be placed into secure detention  
 1616 care.

1617 (4) The department is authorized, within the department's  
 1618 existing resources, to develop non-secure, non-residential  
 1619 evening reporting centers as an alternative to placing a child  
 1620 in secure detention. Evening reporting centers may be collocated  
 1621 with a juvenile assessment center. If established, evening  
 1622 reporting centers shall serve children and families who are  
 1623 awaiting a child's court hearing and, at a minimum, operate  
 1624 during the afternoon and evening hours to provide a highly  
 1625 structured program of supervision. Evening reporting centers  
 1626 may also provide academic tutoring, counseling, family  
 1627 engagement programs, and other activities.

1628 ~~(5)~~(4) The department shall continue to identify  
 1629 alternatives to secure detention care and shall develop such  
 1630 alternatives and annually submit them to the Legislature for  
 1631 authorization and appropriation.

1632 Section 13. Paragraph (b) of subsection (2) and subsection  
 1633 (4) of section 985.245, Florida Statutes, are amended to read:

1634 985.245 Risk assessment instrument.—

1635 (2)

1636 (b) The risk assessment instrument shall take into  
 1637 consideration, but need not be limited to, prior history of  
 1638 failure to appear, prior offenses, offenses committed pending

1639 adjudication, any unlawful possession of a firearm, theft of a  
 1640 motor vehicle or possession of a stolen motor vehicle, and  
 1641 probation status at the time the child is taken into custody.  
 1642 The risk assessment instrument shall also take into  
 1643 consideration appropriate aggravating and mitigating  
 1644 circumstances, and shall be designed to target a narrower  
 1645 population of children than s. 985.255. The risk assessment  
 1646 instrument shall also include any information concerning the  
 1647 child's history of abuse and neglect. The risk assessment shall  
 1648 indicate whether detention care is warranted, and, if detention  
 1649 care is warranted, whether the child should be placed into  
 1650 secure, or nonsecure, ~~or home~~ detention care.

1651 (4) For a child who is under the supervision of the  
 1652 department through probation, ~~home detention~~, nonsecure  
 1653 detention, conditional release, postcommitment probation, or  
 1654 commitment and who is charged with committing a new offense, the  
 1655 risk assessment instrument may be completed and scored based on  
 1656 the underlying charge for which the child was placed under the  
 1657 supervision of the department and the new offense.

1658 Section 14. Subsection (1) of section 985.25, Florida  
 1659 Statutes, is amended to read:

1660 985.25 Detention intake.—

1661 (1) The department ~~juvenile probation officer~~ shall  
 1662 receive custody of a child who has been taken into custody from  
 1663 the law enforcement agency or court and shall review the facts  
 1664 in the law enforcement report or probable cause affidavit and

1665 make such further inquiry as may be necessary to determine  
 1666 whether detention care is appropriate ~~required~~.

1667 (a) During the period of time from the taking of the child  
 1668 into custody to the date of the detention hearing, the initial  
 1669 decision as to the child's placement into ~~secure detention care,~~  
 1670 or nonsecure detention care, ~~or home detention care~~ shall be  
 1671 made by the department ~~juvenile probation officer~~ under ss.  
 1672 985.24 and 985.245(1).

1673 (b) The department ~~juvenile probation officer~~ shall base  
 1674 the decision whether or not to place the child into secure  
 1675 ~~detention care, home detention care,~~ or nonsecure detention care  
 1676 on an assessment of risk in accordance with the risk assessment  
 1677 instrument and procedures developed by the department under s.  
 1678 985.245. However, a child charged with possessing or discharging  
 1679 a firearm on school property in violation of s. 790.115 shall be  
 1680 placed in secure detention care. Any child who has been taken  
 1681 into custody on three or more separate occasions within a 60 day  
 1682 period shall be placed in secure detention care until the  
 1683 child's detention hearing.

1684 (c) If the ~~juvenile probation officer~~ determines that a  
 1685 ~~child~~ final score on the child's risk assessment instrument  
 1686 indicates who is eligible for detention care is appropriate, but  
 1687 the department otherwise determines the child based upon the  
 1688 ~~results of the risk assessment instrument~~ should be released,  
 1689 the department ~~juvenile probation officer~~ shall contact the  
 1690 state attorney, who may authorize release.

1691            (d) If the final score on the risk assessment instrument  
 1692 indicates detention is not appropriate ~~authorized~~, the child may  
 1693 be released by the department juvenile probation officer in  
 1694 accordance with ss. 985.115 and 985.13.

1695  
 1696 Under no circumstances shall the department juvenile probation  
 1697 ~~officer~~ or the state attorney or law enforcement officer  
 1698 authorize the detention of any child in a jail or other facility  
 1699 intended or used for the detention of adults, without an order  
 1700 of the court.

1701            Section 15. Paragraphs (d), (e), (h), (i), and (j) of  
 1702 subsection (1), subsection (2), and paragraphs (a) and (c) of  
 1703 subsection (3) of section 985.255, Florida Statutes, are amended  
 1704 to read:

1705            985.255 Detention criteria; detention hearing.—

1706            (1) Subject to s. 985.25(1), a child taken into custody  
 1707 and placed into secure or nonsecure ~~or home~~ detention care shall  
 1708 be given a hearing within 24 hours after being taken into  
 1709 custody. At the hearing, the court may order continued  
 1710 detention ~~or detained in secure detention care prior to a~~  
 1711 ~~detention hearing may continue to be detained by the court if:~~

1712            (d) The child is charged with committing an offense of  
 1713 domestic violence as defined in s. 741.28 and is detained as  
 1714 provided in subsection (2).

1715            (e) The child is charged with possession or discharging a  
 1716 firearm on school property in violation of s. 790.115, or the

1717 illegal possession of a firearm.

1718 (h) The child is alleged to have violated the conditions  
 1719 of the child's probation or conditional release supervision.  
 1720 However, a child detained under this paragraph may be held only  
 1721 in a consequence unit as provided in s. 985.439. If a  
 1722 consequence unit is not available, the child shall be placed on  
 1723 nonsecure ~~home~~ detention with electronic monitoring.

1724 (i) The child is detained on a judicial order for failure  
 1725 to appear and has previously willfully failed to appear, after  
 1726 proper notice:

1727 1. for an adjudicatory hearing on the same case regardless  
 1728 of the results of the risk assessment instrument; or

1729 2. at two or more court hearings of any nature on the same  
 1730 case regardless of the results of the risk assessment  
 1731 instrument.

1732  
 1733 A child may be held in secure detention for up to 72 hours in  
 1734 advance of the next scheduled court hearing pursuant to this  
 1735 paragraph. The child's failure to keep the clerk of court and  
 1736 defense counsel informed of a current and valid mailing address  
 1737 where the child will receive notice to appear at court  
 1738 proceedings does not provide an adequate ground for excusal of  
 1739 the child's nonappearance at the hearings.

1740 ~~(j) The child is detained on a judicial order for failure~~  
 1741 ~~to appear and has previously willfully failed to appear, after~~  
 1742 ~~proper notice, at two or more court hearings of any nature on~~

1743 ~~the same case regardless of the results of the risk assessment~~  
 1744 ~~instrument. A child may be held in secure detention for up to 72~~  
 1745 ~~hours in advance of the next scheduled court hearing pursuant to~~  
 1746 ~~this paragraph. The child's failure to keep the clerk of court~~  
 1747 ~~and defense counsel informed of a current and valid mailing~~  
 1748 ~~address where the child will receive notice to appear at court~~  
 1749 ~~proceedings does not provide an adequate ground for excusal of~~  
 1750 ~~the child's nonappearance at the hearings.~~

1751 (2) A child who is charged with committing an offense of  
 1752 domestic violence as defined in s. 741.28 and whose risk  
 1753 assessment instrument indicates secure detention is not  
 1754 appropriate ~~who does not meet detention criteria~~ may be held in  
 1755 secure detention if the court makes specific written findings  
 1756 that:

- 1757 (a) Respite care for the child is not available.
- 1758 (b) It is necessary to place the child in secure detention
- 1759 in order to protect the victim from injury.

1760  
 1761 The child may not be held in secure detention under this  
 1762 subsection for more than 48 hours unless ordered by the court.  
 1763 After 48 hours, the court shall hold a hearing if the state  
 1764 attorney or victim requests that secure detention be continued.  
 1765 The child may continue to be held in detention care if the court  
 1766 makes a specific, written finding that respite care is  
 1767 unavailable and it ~~detention care~~ is necessary to protect the  
 1768 victim from injury. However, the child may not be held in

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1769 detention care beyond the time limits set forth in this section  
 1770 or s. 985.26.

1771 (3) (a) ~~A child who meets any of the criteria in subsection~~  
 1772 ~~(1) and who is ordered to be detained under that subsection~~  
 1773 ~~shall be given a hearing within 24 hours after being taken into~~  
 1774 ~~eustody.~~ The purpose of the detention hearing required under  
 1775 subsection (1) is to determine the existence of probable cause  
 1776 that the child has committed the delinquent act or violation of  
 1777 law that he or she is charged with and the need for continued  
 1778 detention. Unless a child is detained under paragraph (1) (d) or  
 1779 paragraph (1) (e), the court shall use the results of the risk  
 1780 assessment performed by the department juvenile probation  
 1781 ~~officer~~ and, based on the criteria in subsection (1), shall  
 1782 determine the need for continued detention. ~~A child placed into~~  
 1783 ~~secure, nonsecure, or home detention care may continue to be so~~  
 1784 ~~detained by the court.~~

1785 (c) Except as provided in s. 790.22(8) or in s. 985.27,  
 1786 when a child is placed into secure or nonsecure detention care,  
 1787 or into a respite home or other placement pursuant to a court  
 1788 order following a hearing, the court order must include specific  
 1789 instructions that direct the release of the child from such  
 1790 placement no later than 5 p.m. on the last day of the detention  
 1791 period specified in s. 985.26 or s. 985.27, whichever is  
 1792 applicable, unless the requirements of such applicable provision  
 1793 have been met or an order of continuance has been granted under  
 1794 s. 985.26(4). If the court order does not include a date of

1795 release, the release date should be requested of the court on  
 1796 the same date the child was placed in detention care. If a  
 1797 subsequent hearing is needed to provide additional information  
 1798 to the court for safety planning, the initial order placing the  
 1799 child in detention care should reflect the next detention review  
 1800 hearing, which should be held within three calendar days of the  
 1801 child's initial detention placement.

1802 Section 16. Subsections (1), (2), and (3) of section  
 1803 985.26, Florida Statutes, are amended to read:

1804 985.26 Length of detention.—

1805 (1) A child may not be placed into or held in secure, or  
 1806 ~~nonsecure, or home~~ detention care for longer than 24 hours  
 1807 unless the court orders such detention care, and the order  
 1808 includes specific instructions that direct the release of the  
 1809 child from such detention care, in accordance with s. 985.255.  
 1810 The order shall be a final order, reviewable by appeal under s.  
 1811 985.534 and the Florida Rules of Appellate Procedure. Appeals of  
 1812 such orders shall take precedence over other appeals and other  
 1813 pending matters.

1814 (2) A child may not be held in secure, or nonsecure, ~~or~~  
 1815 ~~home~~ detention care under a special detention order for more  
 1816 than 21 days unless an adjudicatory hearing for the case has  
 1817 been commenced in good faith by the court. However, upon good  
 1818 cause being shown that the nature of the charge requires  
 1819 additional time for the prosecution or defense of the case, the  
 1820 court may extend the length of detention for an additional 9



1821 days if the child is charged with an offense that would be, if  
 1822 committed by an adult, a capital felony, a life felony, a felony  
 1823 of the first degree, or a felony of the second degree involving  
 1824 violence against any individual.

1825 (3) Except as provided in subsection (2), a child may not  
 1826 be held in secure, or nonsecure, ~~or home~~ detention care for more  
 1827 than 15 days following the entry of an order of adjudication.

1828 Section 17. Section 985.265, Florida Statutes, is amended  
 1829 to read:

1830 985.265 Detention transfer and release; education; adult  
 1831 jails.-

1832 (1) If a child is detained under this part, the department  
 1833 may transfer the child from nonsecure ~~or home~~ detention care to  
 1834 secure detention care only if significantly changed  
 1835 circumstances warrant such transfer.

1836 (2) If a child is on release status and not detained under  
 1837 this part, the child may be placed into secure, or nonsecure, ~~or~~  
 1838 ~~home~~ detention care only pursuant to a court hearing in which  
 1839 the original risk assessment instrument, and the rescored based  
 1840 on newly discovered evidence or changed circumstances are  
 1841 introduced into evidence with a rescored risk assessment  
 1842 instrument with the results recommending detention, is  
 1843 ~~introduced into evidence.~~

1844 (3)(a) When a juvenile sexual offender is placed in  
 1845 detention, detention staff shall provide appropriate monitoring  
 1846 and supervision to ensure the safety of other children in the

1847 facility.

1848 (b) When a juvenile ~~sexual offender, under this~~  
 1849 ~~subsection,~~ is released from secure detention or transferred to  
 1850 ~~home detention or~~ nonsecure detention, detention staff shall  
 1851 immediately notify the appropriate law enforcement agency, and  
 1852 school personnel, and victim, if the juvenile is charged with  
 1853 any of the following offenses, or attempt to commit the  
 1854 following offenses:

- 1855 1. Murder, under s. 782.04;
- 1856 2. Sexual battery, under ch. 794;
- 1857 3. Stalking, under s. 784.048; or
- 1858 4. Domestic violence, as defined in s. 741.28.

1859 (4)(a) While a child who is currently enrolled in school  
 1860 is in nonsecure ~~or home~~ detention care, the child shall continue  
 1861 to attend school unless otherwise ordered by the court.

1862 (b) While a child is in secure detention care, the child  
 1863 shall receive education commensurate with his or her grade level  
 1864 and educational ability.

1865 (5) The court shall order the delivery of a child to a  
 1866 jail or other facility intended or used for the detention of  
 1867 adults:

1868 (a) When the child has been transferred or indicted for  
 1869 criminal prosecution as an adult under part X, except that the  
 1870 court may not order or allow a child alleged to have committed a  
 1871 misdemeanor who is being transferred for criminal prosecution  
 1872 pursuant to either s. 985.556 or s. 985.557 to be detained or

1873 held in a jail or other facility intended or used for the  
 1874 detention of adults; however, such child may be held temporarily  
 1875 in a detention facility; or

1876 (b) When a child taken into custody in this state is  
 1877 wanted by another jurisdiction for prosecution as an adult.

1878

1879 The child shall be housed separately from adult inmates to  
 1880 prohibit a child from having regular contact with incarcerated  
 1881 adults, including trustees. "Regular contact" means sight and  
 1882 sound contact. Separation of children from adults shall permit  
 1883 no more than haphazard or accidental contact. The receiving jail  
 1884 or other facility shall contain a separate section for children  
 1885 and shall have an adequate staff to supervise and monitor the  
 1886 child's activities at all times. Supervision and monitoring of  
 1887 children includes physical observation and documented checks by  
 1888 jail or receiving facility supervisory personnel at intervals  
 1889 not to exceed 10 ~~15~~ minutes. This subsection does not prohibit  
 1890 placing two or more children in the same cell. Under no  
 1891 circumstances shall a child be placed in the same cell with an  
 1892 adult.

1893 Section 18. Section 985.27, Florida Statutes, is amended  
 1894 to read:

1895 985.27 Post disposition ~~Postcommitment~~ detention while  
 1896 awaiting commitment placement.—

1897 (1) The court must place all children who are adjudicated  
 1898 and awaiting placement in a commitment program in detention

1899 care. Children who are in ~~home detention care~~ or nonsecure  
 1900 detention care may be placed on electronic monitoring.

1901 (a) ~~A child who is awaiting placement in a low risk~~  
 1902 ~~residential program must be removed from detention within 5~~  
 1903 ~~days, excluding Saturdays, Sundays, and legal holidays. Any~~  
 1904 ~~child held in secure detention during the 5 days must meet~~  
 1905 ~~detention admission criteria under this part. A child who is~~  
 1906 ~~placed in home detention care, nonsecure detention care, or home~~  
 1907 ~~or nonsecure detention care with electronic monitoring, while~~  
 1908 ~~awaiting placement in a minimum risk or low risk program, may be~~  
 1909 ~~held in secure detention care for 5 days, if the child violates~~  
 1910 ~~the conditions of the home detention care, the nonsecure~~  
 1911 ~~detention care, or the electronic monitoring agreement. For any~~  
 1912 ~~subsequent violation, the court may impose an additional 5 days~~  
 1913 ~~in secure detention care.~~

1914 (b) A child who is awaiting placement in a nonsecure  
 1915 ~~moderate-risk~~ residential program must be removed from detention  
 1916 within 5 days, excluding Saturdays, Sundays, and legal holidays.  
 1917 Any child held in secure detention during the 5 days must meet  
 1918 detention admission criteria under this part. The department may  
 1919 seek an order from the court authorizing continued detention for  
 1920 a specific period of time necessary for the appropriate  
 1921 residential placement of the child. However, such continued  
 1922 detention in secure detention care may not exceed 15 days after  
 1923 entry of the commitment order, excluding Saturdays, Sundays, and  
 1924 legal holidays, and except as otherwise provided in this

1925 section. A child who is placed in ~~home detention care~~, nonsecure  
 1926 detention care, or ~~home or~~ nonsecure detention care with  
 1927 electronic monitoring, while awaiting placement in a nonsecure  
 1928 residential moderate-risk program, may be held in secure  
 1929 detention care for 5 days, if the child violates the conditions  
 1930 of the ~~home detention care~~, the nonsecure detention care, or the  
 1931 electronic monitoring agreement. For any subsequent violation,  
 1932 the court may impose an additional 5 days in secure detention  
 1933 care.

1934 (b)-(e) If the child is committed to a high-risk  
 1935 residential program, the child must be held in secure detention  
 1936 care until placement or commitment is accomplished.

1937 (c)-(d) If the child is committed to a maximum-risk  
 1938 residential program, the child must be held in secure detention  
 1939 care until placement or commitment is accomplished.

1940 (2) Regardless of detention status, a child being  
 1941 transported by the department to a residential commitment  
 1942 facility of the department may be placed in secure detention  
 1943 overnight, not to exceed a 24-hour period, for the specific  
 1944 purpose of ensuring the safe delivery of the child to his or her  
 1945 residential commitment program, court, appointment, transfer, or  
 1946 release.

1947 Section 19. Subsection (1) of section 985.275, Florida  
 1948 Statutes, is amended to read:

1949 985.275 Detention of escapee or absconder on authority of  
 1950 the department.—

1951 (1) If an authorized agent of the department has  
 1952 reasonable grounds to believe that any delinquent child  
 1953 committed to the department has escaped from a residential  
 1954 commitment facility or from being lawfully transported thereto  
 1955 or therefrom, or has absconded from a nonresidential commitment  
 1956 facility, the agent shall notify law enforcement; and if the  
 1957 offense would require notification under ch. 960, notify the  
 1958 victim. The agent shall make every reasonable effort as  
 1959 permitted within existing resources provided to the department  
 1960 to locate the delinquent child and the child may be returned to  
 1961 the facility ~~take the child into active custody and may deliver~~  
 1962 ~~the child to the facility~~ or, if it is closer, to a detention  
 1963 center for return to the facility. However, a child may not be  
 1964 held in detention longer than 24 hours, excluding Saturdays,  
 1965 Sundays, and legal holidays, unless a special order so directing  
 1966 is made by the judge after a detention hearing resulting in a  
 1967 finding that detention is required based on the criteria in s.  
 1968 985.255. The order shall state the reasons for such finding. The  
 1969 reasons shall be reviewable by appeal or in habeas corpus  
 1970 proceedings in the district court of appeal.

1971 Section 20. Paragraph (b) of subsection (4), paragraph (h)  
 1972 of subsection (6), and paragraphs (a) and (c) of subsection (7)  
 1973 of section 985.433, Florida Statutes, is amended to read:

1974 985.433 Disposition hearings in delinquency cases.—When a  
 1975 child has been found to have committed a delinquent act, the  
 1976 following procedures shall be applicable to the disposition of

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1977 the case:

1978 (4) Before the court determines and announces the  
 1979 disposition to be imposed, it shall:

1980 (b) Discuss with the child his or her compliance with any  
 1981 predisposition ~~home-release~~ plan or other plan imposed since the  
 1982 date of the offense.

1983 (6) The first determination to be made by the court is a  
 1984 determination of the suitability or nonsuitability for  
 1985 adjudication and commitment of the child to the department. This  
 1986 determination shall include consideration of the recommendations  
 1987 of the department, which may include a predisposition report.  
 1988 The predisposition report shall include, whether as part of the  
 1989 child's multidisciplinary assessment, classification, and  
 1990 placement process components or separately, evaluation of the  
 1991 following criteria:

1992 (h) The child's educational status, including, but not  
 1993 limited to, the child's strengths, abilities, and unmet and  
 1994 special educational needs. The report shall identify appropriate  
 1995 educational and career ~~vocational~~ goals for the child. Examples  
 1996 of appropriate goals include:

- 1997 1. Attainment of a high school diploma or its equivalent.
- 1998 2. Successful completion of literacy course(s).
- 1999 3. Successful completion of career and technical education  
 2000 ~~vocational~~ course(s).
- 2001 4. Successful attendance and completion of the child's  
 2002 current grade or recovery of credits of classes the child

2003 previously failed, if enrolled in school.

2004 5. Enrollment in an apprenticeship or a similar program.

2005

2006 It is the intent of the Legislature that the criteria set forth  
 2007 in this subsection are general guidelines to be followed at the  
 2008 discretion of the court and not mandatory requirements of  
 2009 procedure. It is not the intent of the Legislature to provide  
 2010 for the appeal of the disposition made under this section.

2011 (7) If the court determines that the child should be  
 2012 adjudicated as having committed a delinquent act and should be  
 2013 committed to the department, such determination shall be in  
 2014 writing or on the record of the hearing. The determination shall  
 2015 include a specific finding of the reasons for the decision to  
 2016 adjudicate and to commit the child to the department, including  
 2017 any determination that the child was a member of a criminal  
 2018 gang.

2019 (a) The department ~~juvenile probation officer~~ shall  
 2020 recommend to the court the most appropriate placement and  
 2021 treatment plan, specifically identifying the restrictiveness  
 2022 level most appropriate for the child if commitment is  
 2023 recommended. If the court has determined that the child was a  
 2024 member of a criminal gang, that determination shall be given  
 2025 great weight in identifying the most appropriate restrictiveness  
 2026 level for the child. The court shall consider the department's  
 2027 recommendation in making its commitment decision.

2028 (c) The court may also require that the child be placed in



2029 a probation program following the child's discharge from  
 2030 commitment. Community-based sanctions under subsection (8) may  
 2031 be imposed by the court at the disposition hearing or at any  
 2032 time prior to the child's release from commitment.

2033 Section 21. Subsection (3) and current subsection (4) of  
 2034 section 985.435, Florida Statutes, are amended to read, a new  
 2035 subsection (4) is created, and current subsections (4) through  
 2036 (6) are renumbered to subsections (5) through (7):

2037 985.435 Probation and postcommitment probation; community  
 2038 service.—

2039 (3) A probation program must also include a rehabilitative  
 2040 program component such as a requirement of participation in  
 2041 substance abuse treatment or in a school or ~~other~~ career and  
 2042 technical educational program. The nonconsent of the child to  
 2043 treatment in a substance abuse treatment program in no way  
 2044 precludes the court from ordering such treatment. Upon the  
 2045 recommendation of the department at the time of disposition, or  
 2046 subsequent to disposition pursuant to the filing of a petition  
 2047 alleging a violation of the child's conditions of postcommitment  
 2048 probation, the court may order the child to submit to random  
 2049 testing for the purpose of detecting and monitoring the use of  
 2050 alcohol or controlled substances.

2051 (4) A probation program may also include an alternative  
 2052 consequence component to address instances in which a child is  
 2053 noncompliant with technical conditions of his or her probation,  
 2054 but has not committed any new-law violations. The alternative

2055 consequence component is designed to provide swift and  
 2056 appropriate consequences to any noncompliance with technical  
 2057 conditions of probation. If the probation program includes this  
 2058 component, specific consequences that apply to noncompliance  
 2059 with specific technical conditions of probation must be detailed  
 2060 in the disposition order.

2061 (5) An identification of the child's risk to re-offend A  
 2062 ~~classification scale for levels of supervision~~ shall be provided  
 2063 by the department, taking into account the child's needs and  
 2064 risks relative to probation supervision requirements to  
 2065 reasonably ensure the public safety. Probation programs for  
 2066 children shall be supervised by the department or by any other  
 2067 person or agency specifically authorized by the court. These  
 2068 programs must include, but are not limited to, structured or  
 2069 restricted activities as described in this section and s.  
 2070 985.439, and shall be designed to encourage the child toward  
 2071 acceptable and functional social behavior.

2072 Section 22. Subsection (1) and subsection (4) of section  
 2073 985.439, Florida Statutes, are amended to read:

2074 985.439 Violation of probation or postcommitment  
 2075 probation.—

2076 (1)(a) This section is applicable when the court has  
 2077 jurisdiction over a child on probation or postcommitment  
 2078 probation, regardless of adjudication ~~an adjudicated delinquent~~  
 2079 ~~child.~~

2080 (b) If the conditions of the probation program or the

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2081 postcommitment probation program are violated, the department or  
 2082 the state attorney may bring the child before the court on a  
 2083 petition alleging a violation of the program. Any child who  
 2084 violates the conditions of probation or postcommitment probation  
 2085 must be brought before the court if sanctions are sought.

2086 (4) Upon the child's admission, or if the court finds  
 2087 after a hearing that the child has violated the conditions of  
 2088 probation or postcommitment probation, the court shall enter an  
 2089 order revoking, modifying, or continuing probation or  
 2090 postcommitment probation. In each such case, the court shall  
 2091 enter a new disposition order and, in addition to the sanctions  
 2092 set forth in this section, may impose any sanction the court  
 2093 could have imposed at the original disposition hearing. If the  
 2094 child is found to have violated the conditions of probation or  
 2095 postcommitment probation, the court may:

2096 (a) Place the child in a consequence unit in that judicial  
 2097 circuit, if available, for up to 5 days for a first violation  
 2098 and up to 15 days for a second or subsequent violation.

2099 (b) Place the child in ~~on~~ nonsecure ~~home~~ detention with  
 2100 electronic monitoring. However, this sanction may be used only  
 2101 if a residential consequence unit is not available.

2102 (c) If the violation of probation is technical in nature,  
 2103 and not a new-law violation, place the child in an alternative  
 2104 consequence program designed to provide swift and appropriate  
 2105 consequences to any further violations of probation.

2106 1. Alternative consequence programs shall be established,

2107 within existing resources, at the local level in coordination  
 2108 with law enforcement agencies, the chief judge of the circuit,  
 2109 the state attorney, the public defender.

2110 2. Alternative consequence programs may be operated by an  
 2111 entity such as a law enforcement agency, the department, a  
 2112 juvenile assessment center, a county or municipality, or another  
 2113 entity selected by the department.

2114 3. Upon placing a child in an alternative consequence  
 2115 program, the court must approve specific consequences for  
 2116 specific violations of the conditions of probation.

2117 (d) Modify or continue the child's probation program or  
 2118 postcommitment probation program.

2119 (e) ~~(d)~~ Revoke probation or postcommitment probation and  
 2120 commit the child to the department.

2121 Section 23. Subsection (2) of section 985.441, Florida  
 2122 Statutes, is amended to read:

2123 985.441 Commitment.—

2124 (2) Notwithstanding subsection (1), the court having  
 2125 jurisdiction over an adjudicated delinquent child whose  
 2126 underlying offense is was a misdemeanor, or a child who is  
 2127 currently on probation for a misdemeanor, may not commit the  
 2128 child for any misdemeanor offense or any probation violation  
 2129 that is technical in nature, and not a new-law violation, at a  
 2130 restrictiveness level other than minimum-risk nonresidential  
 2131 ~~unless the probation violation is a new violation of law~~  
 2132 ~~constituting a felony.~~ However, the court may commit such child

2133 to a nonsecure ~~low-risk or moderate-risk~~ residential placement  
 2134 if:

2135 (a) The child has previously been adjudicated or had  
 2136 adjudication withheld for a felony offense;

2137 (b) The child has previously been adjudicated or had  
 2138 adjudication withheld for three or more misdemeanor offenses  
 2139 within the last eighteen months;

2140 (c) The child is before the court for disposition for a  
 2141 violation of s. 800.03, s. 806.031, or s. 828.12; or

2142 (d) The court finds by a preponderance of the evidence  
 2143 that the protection of the public requires such placement or  
 2144 that the particular needs of the child would be best served by  
 2145 such placement. Such finding must be in writing.

2146 Section 24. Paragraph (a) of subsection (1) and subsection  
 2147 (5) of section 985.46, Florida Statutes, are amended to read:

2148 985.46 Conditional release.—

2149 (1) The Legislature finds that:

2150 (a) Conditional release is the care, treatment, help, ~~and~~  
 2151 supervision, and provision of transition-to-adulthood services  
 2152 to provided juveniles released from residential commitment  
 2153 programs to promote rehabilitation and prevent recidivism.

2154 (5) Participation in the educational program by students  
 2155 of compulsory school attendance age pursuant to s. 1003.21(1)  
 2156 and (2)(a) is mandatory for juvenile justice youth on  
 2157 conditional release or postcommitment probation status. A  
 2158 student of noncompulsory school-attendance age who has not

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2159 received a high school diploma or its equivalent must  
 2160 participate in an the educational program or career and  
 2161 technical education courses. A youth who has received a high  
 2162 school diploma or its equivalent and is not employed must  
 2163 participate in workforce development or other career or  
 2164 technical education or attend a community college or a  
 2165 university while in the program, subject to available funding.

2166 Section 25. Subsections (1), (2), (3), (4), and (5) of  
 2167 section 985.461, Florida Statutes, are amended to read:

2168 985.461 Transition to adulthood.—

2169 (1) The Legislature finds that ~~elder~~ youth are faced with  
 2170 the need to learn how to support themselves within legal means  
 2171 and overcome the stigma of being delinquent. In most cases,  
 2172 parents expedite this transition. It is the intent of the  
 2173 Legislature that the department provide ~~elder~~ youth in its  
 2174 custody or under its supervision with opportunities for  
 2175 participating in transition-to-adulthood services while in the  
 2176 department's commitment programs or in probation or conditional  
 2177 release programs in the community. These services should be  
 2178 reasonable and appropriate for the youths' respective ages or  
 2179 special needs and provide activities that build life skills and  
 2180 increase the ability to live independently and become self-  
 2181 sufficient.

2182 (2) Youth served by the department who are in the custody  
 2183 of the Department of Children and Families ~~Family Services~~ and  
 2184 who entered juvenile justice placement from a foster care

2185 placement, if otherwise eligible, may receive independent living  
 2186 transition services pursuant to s. 409.1451. Court-ordered  
 2187 commitment or probation with the department is not a barrier to  
 2188 eligibility for the array of services available to a youth who  
 2189 is in the dependency foster care system only.

2190 (3) For a dependent child in the foster care system,  
 2191 adjudication for delinquency does not, by itself, disqualify  
 2192 such child for eligibility in the Department of Children and  
 2193 Families' Family Services ~~Family Services~~ independent living program.

2194 (4) As part of the child's treatment plan, the department  
 2195 may provide transition-to-adulthood services to children  
 2196 released from residential commitment. To support participation  
 2197 in transition-to-adulthood services and subject to  
 2198 appropriation, the department may:

2199 (a) Assess the child's skills and abilities to live  
 2200 independently and become self-sufficient. The specific services  
 2201 to be provided shall be determined using an assessment of his or  
 2202 her readiness for adult life.

2203 (b) Utilize community re-entry teams to assist in the  
 2204 development of ~~Develop~~ a list of age-appropriate activities and  
 2205 responsibilities to be incorporated in the child's written case  
 2206 plan for any youth ~~17 years of age or older~~ who is under the  
 2207 custody or supervision of the department. Community re-entry  
 2208 teams may include representatives from school districts, law  
 2209 enforcement, workforce development services, community based  
 2210 service providers, and the youth's family. Such community re-

2211 entry teams must be created within existing resources provided  
 2212 to the department. Activities may include, but are not limited  
 2213 to, life skills training, including training to develop banking  
 2214 and budgeting skills, interviewing and career planning skills,  
 2215 parenting skills, personal health management, and time  
 2216 management or organizational skills; educational support;  
 2217 employment training; and counseling.

2218 (c) Provide information related to social security  
 2219 insurance benefits and public assistance.

2220 (d) Request parental or guardian permission for the youth  
 2221 to participate in transition-to-adulthood services. Upon such  
 2222 consent, age-appropriate activities shall be incorporated into  
 2223 the youth's written case plan. This plan may include specific  
 2224 goals and objectives and shall be reviewed and updated at least  
 2225 quarterly. If the parent or guardian is cooperative, the plan  
 2226 may not interfere with the parent's or guardian's rights to  
 2227 nurture and train his or her child in ways that are otherwise in  
 2228 compliance with the law and court order.

2229 (e) Contract for transition-to-adulthood services that  
 2230 include residential services and assistance and allow the child  
 2231 to live independently of the daily care and supervision of an  
 2232 adult in a setting that is not licensed under s. 409.175. A  
 2233 child under the care or supervision of the department ~~who has~~  
 2234 ~~reached 17 years of age but is not yet 19 years of age~~ is  
 2235 eligible for such services if he or she does not pose a danger  
 2236 to the public and is able to demonstrate minimally sufficient



2237 skills and aptitude for living under decreased adult  
 2238 supervision, as determined by the department, using established  
 2239 procedures and assessments.

2240 (f) Assist the child in building a portfolio of educational  
 2241 and vocational accomplishments, necessary identification,  
 2242 resumes and cover letters in an effort to enhance the child's  
 2243 employability.

2244 (g) Collaborate with school district contacts to facilitate  
 2245 appropriate educational services based on the child's identified  
 2246 needs.

2247 (5) For a child ~~who is 17 years of age or older~~, under the  
 2248 department's care or supervision, and without benefit of parents  
 2249 or legal guardians capable of assisting the child in the  
 2250 transition to adult life, the department may provide an  
 2251 assessment to determine the child's skills and abilities to live  
 2252 independently and become self-sufficient. Based on the  
 2253 assessment and within existing resources, services and training  
 2254 may be provided in order to develop the necessary skills and  
 2255 abilities ~~before the child's 18th birthday.~~

2256 Section 26. Paragraph (b) of subsection (3) of section  
 2257 985.481, Florida Statutes, is amended to read:

2258 985.481 Sexual offenders adjudicated delinquent;  
 2259 notification upon release.-

2260 (3)

2261 (b) The ~~No later than November 1, 2007,~~ the department  
 2262 must make the information described in subparagraph (a)1.

2263 available electronically to the Department of Law Enforcement in  
 2264 its database and in a format that is compatible with the  
 2265 requirements of the Florida Crime Information Center.

2266 Section 27. Subsection (5) of section 985.4815, Florida  
 2267 Statutes, is amended to read:

2268 985.4815 Notification to Department of Law Enforcement of  
 2269 information on juvenile sexual offenders.—

2270 (5) In addition to notification and transmittal  
 2271 requirements imposed by any other provision of law, the  
 2272 department shall compile information on any sexual offender and  
 2273 provide the information to the Department of Law Enforcement.  
 2274 The ~~No later than November 1, 2007,~~ the department must make the  
 2275 information available electronically to the Department of Law  
 2276 Enforcement in its database in a format that is compatible with  
 2277 the requirements of the Florida Crime Information Center.

2278 Section 28. Subsection (12) is created and paragraph (a)  
 2279 of subsection (3), and paragraph (a) of subsection (9) of  
 2280 section 985.601, Florida Statutes, are amended to read:

2281 985.601 Administering the juvenile justice continuum.—

2282 (3)(a) The department shall develop or contract for  
 2283 diversified and innovative programs to provide rehabilitative  
 2284 treatment, including early intervention and prevention,  
 2285 diversion, comprehensive intake, case management, diagnostic and  
 2286 classification assessments, trauma-informed care, individual and  
 2287 family counseling, family engagement resources and programs,  
 2288 gender-specific programming, shelter care, diversified detention

2289 care emphasizing alternatives to secure detention, diversified  
 2290 probation, halfway houses, foster homes, community-based  
 2291 substance abuse treatment services, community-based mental  
 2292 health treatment services, community-based residential and  
 2293 nonresidential programs, mother-infant programs, and  
 2294 environmental programs. The department may pay expenses in  
 2295 support of innovative programs and activities that address  
 2296 identified needs and the well-being of children in the  
 2297 department's care or under its supervision subject to chs. 215,  
 2298 216, and 287. Each program shall place particular emphasis on  
 2299 reintegration and conditional release for all children in the  
 2300 program.

2301 (9) (a) The department shall operate a statewide,  
 2302 regionally administered system of detention services for  
 2303 children, in accordance with a comprehensive plan for the  
 2304 regional administration of all detention services in the state.  
 2305 The plan must provide for the maintenance of adequate  
 2306 availability of detention services for all counties. The plan  
 2307 must cover all the department's operating circuits, with each  
 2308 operating circuit having access to a secure facility and  
 2309 nonsecure ~~and home~~ detention programs, and the plan may be  
 2310 altered or modified by the Department of Juvenile Justice as  
 2311 necessary.

2312 Section 29. Section 985.605, Florida Statutes, is  
 2313 repealed.

2314 Section 30. Section 985.606, Florida Statutes, is

2315 repealed.

2316 Section 31. Section 985.61, Florida Statutes, is repealed.

2317 Section 32. Section 985.632, Florida Statutes, is amended

2318 to read:

2319 985.632 Quality improvement ~~assurance~~ and cost-  
 2320 effectiveness.-

2321 (1) It is the intent of the Legislature that the  
 2322 department establish a performance accountability system for  
 2323 each provider who contracts with the department for the delivery  
 2324 of services to children. The contract shall include both output  
 2325 measures, such as the number of children served, and outcome  
 2326 measures including program completion and post-completion  
 2327 recidivism. Each contractor shall report performance results to  
 2328 the department annually. The department's Bureau of Research and  
 2329 Planning shall summarize performance results from all contracts  
 2330 and report the information to the Legislature annually in the  
 2331 Comprehensive Accountability Report. The report shall:

2332 (a) Ensure that information be provided to decisionmakers  
 2333 in a timely manner so that resources are allocated to programs  
 2334 that ~~of the department which~~ achieve desired performance levels.

2335 (b) Provide information about the cost of such programs  
 2336 and their differential effectiveness so that the quality of such  
 2337 programs can be compared and improvements made continually.

2338 (c) Provide information to aid in developing related  
 2339 policy issues and concerns.

2340 (d) Provide information to the public about the

2341 effectiveness of such programs in meeting established goals and  
 2342 objectives.

2343 (e) Provide a basis for a system of accountability so that  
 2344 each child ~~elient~~ is afforded the best programs to meet his or  
 2345 her needs.

2346 (f) Improve service delivery to children elients, through  
 2347 the use of technical assistance.

2348 (g) Modify or eliminate activities or programs that are  
 2349 not effective.

2350 (h) Collect and analyze available statistical data for the  
 2351 purpose of ongoing evaluation of all programs.

2352 (2) As used in this section, the term:

2353 ~~(a) "Client" means any person who is being provided~~  
 2354 ~~treatment or services by the department or by a provider under~~  
 2355 ~~contract with the department.~~

2356 (a) "Program" means any facility or service for youth that  
 2357 is operated by the department or by a provider under contract  
 2358 with the department.

2359 (b) "Program component" means an aggregation of generally  
 2360 related objectives which, because of their special character,  
 2361 related workload, and interrelated output, can logically be  
 2362 considered an entity for purposes of organization, management,  
 2363 accounting, reporting, and budgeting.

2364 ~~(c) "Program effectiveness" means the ability of the~~  
 2365 ~~program to achieve desired client outcomes, goals, and~~  
 2366 ~~objectives.~~

2367 (c) "Program group" means a collection of programs with  
 2368 sufficient similarity of functions, services, and youth to  
 2369 permit appropriate comparison amongst programs within the group.

2370 (3) COMPREHENSIVE ACCOUNTABILITY REPORT.- The department,  
 2371 in consultation with contract service providers, shall develop  
 2372 and use a standard methodology for annually measuring,  
 2373 evaluating, and reporting program outputs and youth outcomes for  
 2374 each program and program group. The standard methodology must:

2375 (a) Include common terminology and operational definitions  
 2376 for measuring the performance of system and program  
 2377 administration, program outputs, and program outcomes.

2378 (b) Specify program outputs for each program and for each  
 2379 program group within the juvenile justice continuum.

2380 (c) Specify desired child outcomes and methods by which to  
 2381 measure child outcomes for each program and program group.  
~~2382 annually collect and report cost data for every program operated~~  
~~2383 or contracted by the department. The cost data shall conform to~~  
~~2384 a format approved by the department and the Legislature. Uniform~~  
~~2385 cost data shall be reported and collected for state operated and~~  
~~2386 contracted programs so that comparisons can be made among~~  
~~2387 programs. The department shall ensure that there is accurate~~  
~~2388 cost accounting for state operated services including market-~~  
~~2389 equivalent rent and other shared cost. The cost of the~~  
~~2390 educational program provided to a residential facility shall be~~  
~~2391 reported and included in the cost of a program. The department~~  
~~2392 shall submit an annual cost report to the President of the~~

2393 ~~Senate, the Speaker of the House of Representatives, the~~  
 2394 ~~Minority Leader of each house of the Legislature, the~~  
 2395 ~~appropriate substantive and fiscal committees of each house of~~  
 2396 ~~the Legislature, and the Governor, no later than December 1 of~~  
 2397 ~~each year. Cost benefit analysis for educational programs will~~  
 2398 ~~be developed and implemented in collaboration with and in~~  
 2399 ~~cooperation with the Department of Education, local providers,~~  
 2400 ~~and local school districts. Cost data for the report shall~~  
 2401 ~~include data collected by the Department of Education for the~~  
 2402 ~~purposes of preparing the annual report required by s.~~  
 2403 ~~1003.52(19).~~

2404 (4)(a) Cost-effectiveness model.— The department, in  
 2405 consultation with the Office of Economic and Demographic  
 2406 Research and contract service providers, shall develop a cost-  
 2407 effectiveness model and apply the model to each commitment  
 2408 program. ~~Program recidivism rates shall be a component of the~~  
 2409 ~~model.~~

2410 (a) The cost-effectiveness model shall compare program  
 2411 costs to expected and actual child recidivism rates ~~elient~~  
 2412 ~~outecomes and program outputs~~. It is the intent of the  
 2413 Legislature that continual development efforts take place to  
 2414 improve the validity and reliability of the cost-effectiveness  
 2415 model.

2416 (b) The department shall rank commitment programs based on  
 2417 the cost-effectiveness model, performance measures, and  
 2418 adherence to quality improvement standards and shall ~~submit a~~

2419 | report this data in the annual Comprehensive Accountability  
 2420 | Report ~~to the appropriate substantive and fiscal committees of~~  
 2421 | ~~each house of the Legislature by December 31 of each year.~~

2422 | (c) Based on reports of the department on child client  
 2423 | outcomes and program outputs and on the department's most recent  
 2424 | cost-effectiveness rankings, the department may terminate a  
 2425 | program operated by the department or a provider if the program  
 2426 | has failed to achieve a minimum standard threshold of program  
 2427 | effectiveness. This paragraph does not preclude the department  
 2428 | from terminating a contract as provided under this section or as  
 2429 | otherwise provided by law or contract, and does not limit the  
 2430 | department's authority to enter into or terminate a contract.

2431 | (d) In collaboration with the Office of Economic and  
 2432 | Demographic Research, and contract service providers, the  
 2433 | department shall develop a work plan to refine the cost-  
 2434 | effectiveness model so that the model is consistent with the  
 2435 | performance-based program budgeting measures approved by the  
 2436 | Legislature to the extent the department deems appropriate. The  
 2437 | department shall notify the Office of Program Policy Analysis  
 2438 | and Government Accountability of any meetings to refine the  
 2439 | model.

2440 | (e) Contingent upon specific appropriation, the  
 2441 | department, in consultation with the Office of Economic and  
 2442 | Demographic Research, and contract service providers, shall:

- 2443 | 1. Construct a profile of each commitment program that
- 2444 | uses the results of the quality improvement assurance report



2445 required by this section, the cost-effectiveness report required  
 2446 in this subsection, and other reports available to the  
 2447 department.

2448         2. Target, for a more comprehensive evaluation, any  
 2449 commitment program that has achieved consistently high, low, or  
 2450 disparate ratings in the reports required under subparagraph 1  
 2451 and target, for technical assistance, any commitment program  
 2452 that has achieved low or disparate ratings in the reports  
 2453 required under subparagraph 1.

2454         3. Identify the essential factors that contribute to the  
 2455 high, low, or disparate program ratings.

2456         4. Use the results of these evaluations in developing or  
 2457 refining juvenile justice programs or program models, child  
 2458 client outcomes and program outputs, provider contracts, quality  
 2459 improvement assurance standards, and the cost-effectiveness  
 2460 model.

2461         (5) The department shall:

2462             (a) Establish a comprehensive quality improvement  
 2463 assurance system for each program operated by the department or  
 2464 operated by a provider under contract with the department. Each  
 2465 contract entered into by the department must provide for quality  
 2466 improvement assurance.

2467             (b) Provide operational definitions of and criteria for  
 2468 quality improvement assurance for each specific program  
 2469 component.

2470             (c) Establish quality improvement assurance goals and

2471 objectives for each specific program component.

2472 (d) Establish the information and specific data elements  
 2473 required for the quality improvement ~~assurance~~ program.

2474 (e) Develop a quality improvement ~~assurance~~ manual of  
 2475 specific, standardized terminology and procedures to be followed  
 2476 by each program.

2477 (f) Evaluate each program operated by the department or a  
 2478 provider under a contract with the department annually and  
 2479 establish minimum standards ~~thresholds~~ for each program  
 2480 component. If a provider fails to meet the established minimum  
 2481 standards ~~thresholds~~, such failure shall cause the department to  
 2482 cancel the provider's contract unless the provider achieves  
 2483 compliance with minimum standards ~~thresholds~~ within 6 months or  
 2484 unless there are documented extenuating circumstances. In  
 2485 addition, the department may not contract with the same provider  
 2486 for the canceled service for a period of 12 months. If a  
 2487 department-operated program fails to meet the established  
 2488 minimum standards ~~thresholds~~, the department must take necessary  
 2489 and sufficient steps to ensure and document program changes to  
 2490 achieve compliance with the established minimum standards  
 2491 ~~thresholds~~. If the department-operated program fails to achieve  
 2492 compliance with the established minimum standards ~~thresholds~~  
 2493 within 6 months and if there are no documented extenuating  
 2494 circumstances, the department must notify the Executive Office  
 2495 of the Governor and the Legislature of the corrective action  
 2496 taken. Appropriate corrective action may include, but is not

2497 limited to:

2498 1. Contracting out for the services provided in the  
2499 program;

2500 2. Initiating appropriate disciplinary action against all  
2501 employees whose conduct or performance is deemed to have  
2502 materially contributed to the program's failure to meet  
2503 established minimum thresholds;

2504 3. Redesigning the program; or

2505 4. Realigning the program.  
2506

2507 (6) The department shall submit the Comprehensive  
2508 Accountability Report ~~an annual report~~ to the President of the  
2509 Senate, the Speaker of the House of Representatives, the  
2510 Minority Leader of each house of the Legislature, the  
2511 appropriate substantive and fiscal committees of each house of  
2512 the Legislature, and the Governor, no later than February 1 of  
2513 each year. The Comprehensive Accountability Report ~~annual report~~  
2514 must contain, at a minimum, for each specific program component:  
2515 a comprehensive description of the population served by the  
2516 program; a specific description of the services provided by the  
2517 program; cost; a comparison of expenditures to federal and state  
2518 funding; immediate and long-range concerns; and recommendations  
2519 to maintain, expand, improve, modify, or eliminate each program  
2520 component so that changes in services lead to enhancement in  
2521 program quality. The department shall ensure the reliability and  
2522 validity of the information contained in the report.

2523            ~~(7)(6)~~ The department shall collect and analyze available  
 2524 statistical data for the purpose of ongoing evaluation of all  
 2525 programs. The department shall provide the Legislature with  
 2526 necessary information and reports to enable the Legislature to  
 2527 make informed decisions regarding the effectiveness of, and any  
 2528 needed changes in, services, programs, policies, and laws.

2529            Section 33. Paragraph (a) of subsection (1) and paragraph  
 2530 (b) of subsection (3) of section 985.644, Florida Statutes, is  
 2531 amended to read:

2532            985.644 Departmental contracting powers; personnel  
 2533 standards and investigation screening.—

2534            (1) The department may contract with the Federal  
 2535 Government, other state departments and agencies, county and  
 2536 municipal governments and agencies, public and private agencies,  
 2537 and private individuals and corporations in carrying out the  
 2538 purposes of, and the responsibilities established in, this  
 2539 chapter.

2540            (a) Each contract entered into by the department for  
 2541 services delivered on an appointment or intermittent basis by a  
 2542 provider that does not have regular custodial responsibility for  
 2543 children and each contract with a school for ~~before or aftercare~~  
 2544 services must ensure that all owners, operators, and personnel  
 2545 who have direct contact with children are subject to level 2  
 2546 background screening pursuant to chapter 435.

2547            (3)

2548            (b) ~~Except for~~ law enforcement, correctional, and

2549 correctional probation officers, certified pursuant to s.  
 2550 943.13, are not required to submit to Level 2 screenings so long  
 2551 as they are currently employed by a law enforcement agency or  
 2552 correctional facility. ~~to whom s. 943.13(5) applies,~~ The  
 2553 department shall electronically submit to the Department of Law  
 2554 Enforcement:

2555 1. Fingerprint information obtained during the employment  
 2556 screening required by subparagraph (a)1.

2557 2. Fingerprint information for all persons employed by the  
 2558 department, or by a provider under contract with the department,  
 2559 in delinquency facilities, services, or programs if such  
 2560 fingerprint information has not previously been electronically  
 2561 submitted pursuant to this section ~~to the Department of Law~~  
 2562 ~~Enforcement under this paragraph.~~

2563 Section 34. Section 985.6441, Florida Statutes, is created  
 2564 to read:

2565 985.6441 Health Care Services.—

2566 (1) As used in this section, the term:

2567 (a) "Hospital" means a hospital licensed under ch. 395;

2568 and

2569 (b) "Health care provider" has the same meaning as  
 2570 provided in s. 766.105.

2571 (2) When compensating health care providers, the  
 2572 department must comply with the following reimbursement  
 2573 limitations:

2574 (a) Payments to a hospital or a health care provider may

2575 not exceed 110 percent of the Medicare allowable rate for any  
 2576 health care services provided if there is no contract between  
 2577 the department and the hospital or the health care provider  
 2578 providing services at a hospital;

2579 (b)1. The department may continue to make payments for  
 2580 health care services at the currently contracted rates through  
 2581 the current term of the contract if a contract has been executed  
 2582 between the department and a hospital or a health care provider  
 2583 providing services at a hospital;

2584 2. Payments may not exceed 110 percent of the Medicare  
 2585 allowable rate after the current term of the contract expires or  
 2586 after the contract is renewed during the 2013-2014 fiscal year;

2587 (c) Payments may not exceed 110 percent of the Medicare  
 2588 allowable rate under a contract executed on or after July 1,  
 2589 2014, between the department and a hospital or a health care  
 2590 provider providing services at a hospital; and

2591 (d) Notwithstanding paragraphs (a)-(c), the department may  
 2592 pay up to 125 percent of the Medicare allowable rate for health  
 2593 care services at a hospital that reports, or has reported,  
 2594 negative operating margin for the previous fiscal year to the  
 2595 Agency for Health Care Administration through hospital-audited  
 2596 financial data.

2597 Section 35. Subsections (1), (2), and (3) of section  
 2598 985.66, Florida Statutes, are amended to read:

2599 985.66 Juvenile justice training academies; staff  
 2600 development and training; Juvenile Justice Training Trust Fund.-

2601 (1) LEGISLATIVE PURPOSE.—In order to enable the state to  
 2602 provide a systematic approach to staff development and training  
 2603 for judges, state attorneys, public defenders, law enforcement  
 2604 officers, school district personnel, and juvenile justice  
 2605 program staff that will meet the needs of such persons in their  
 2606 discharge of duties while at the same time meeting the  
 2607 requirements for the American Correction Association  
 2608 accreditation by the Commission on Accreditation for  
 2609 Corrections, it is the purpose of the Legislature to require the  
 2610 department to establish, maintain, and oversee the operation of  
 2611 juvenile justice training, programs, and courses ~~academies~~ in  
 2612 the state. The purpose of the Legislature in establishing staff  
 2613 development and training programs is to provide employees of the  
 2614 department, any private or public entity, or contract providers  
 2615 who provide services or care for youth under the responsibility  
 2616 of the department with the knowledge and skills to appropriately  
 2617 interact with youth and provide such care ~~foster better staff~~  
 2618 ~~morale and reduce mistreatment and aggressive and abusive~~  
 2619 ~~behavior in delinquency programs~~; to positively impact the  
 2620 recidivism of children in the juvenile justice system; and to  
 2621 afford greater protection of the public through an improved  
 2622 level of services delivered by a professionally trained juvenile  
 2623 justice ~~program~~ staff to children who are alleged to be or who  
 2624 have been found to be delinquent.

2625 (2) STAFF DEVELOPMENT AND TRAINING.—  
 2626 The department shall:

2627 (a) Designate the number and location of the training  
 2628 programs and courses; assess, design, academies; develop,  
 2629 implement, evaluate, maintain, and update the curriculum to be  
 2630 used in the training of juvenile justice ~~program~~ staff;  
 2631 establish timeframes for participation in and completion of  
 2632 training by juvenile justice ~~program~~ staff; develop, implement,  
 2633 score, analyze, maintain, and update job-related examinations;  
 2634 develop, implement, analyze, and update the types and  
 2635 frequencies ~~of~~ for evaluations of the training programs,  
 2636 courses, and instructors academies; and manage approve, modify,  
 2637 ~~or disapprove~~ the budget and contracts for all the training  
 2638 deliverables academies, and the ~~contractor to be selected to~~  
 2639 ~~organize and operate the training academies and to provide the~~  
 2640 ~~training curriculum.~~

2641 (b) Establish uniform minimum job-related pre-service and  
 2642 in-service training courses and examinations for juvenile  
 2643 justice program staff.

2644 (c) Consult and cooperate with the state or any political  
 2645 subdivision; any private entity or contractor; and with private  
 2646 and public universities, colleges, community colleges, and other  
 2647 educational institutions concerning the development of juvenile  
 2648 justice training and programs or courses of instruction,  
 2649 including, but not limited to, education and training in the  
 2650 areas of juvenile justice.

2651 (d) Enter into contracts and agreements with other  
 2652 agencies, organizations, associations, corporations,



2653 individuals, or federal agencies as necessary in the execution  
 2654 of the powers of the department or the performance of its  
 2655 duties.

2656 (3) JUVENILE JUSTICE TRAINING PROGRAM.—The department  
 2657 shall establish a certifiable program for juvenile justice  
 2658 training pursuant to this section, and all department program  
 2659 staff and providers who deliver direct care services pursuant to  
 2660 contract with the department shall be required to participate in  
 2661 and successfully complete the department-approved program of  
 2662 training pertinent to their areas of responsibility. Judges,  
 2663 state attorneys, and public defenders, law enforcement officers,  
 2664 ~~and school district personnel,~~ and employees of contract  
 2665 providers who provide services or care for youth under the  
 2666 responsibility of the department may participate in such  
 2667 training program. For the juvenile justice program staff, the  
 2668 department shall, based on a job-task analysis:

2669 (a) Design, implement, maintain, evaluate, and revise a  
 2670 basic training program, including a competency-based  
 2671 examination, for the purpose of providing minimum employment  
 2672 training qualifications for all juvenile justice personnel. All  
 2673 program staff of the department and providers who deliver  
 2674 direct-care services who are hired after October 1, 1999, must  
 2675 meet the following minimum requirements:

- 2676 1. Be at least 19 years of age.
- 2677 2. Be a high school graduate or its equivalent as
- 2678 determined by the department.

2679 3. Not have been convicted of any felony or a misdemeanor  
 2680 involving perjury or a false statement, or have received a  
 2681 dishonorable discharge from any of the Armed Forces of the  
 2682 United States. Any person who, after September 30, 1999, pleads  
 2683 guilty or nolo contendere to or is found guilty of any felony or  
 2684 a misdemeanor involving perjury or false statement is not  
 2685 eligible for employment, notwithstanding suspension of sentence  
 2686 or withholding of adjudication. Notwithstanding this  
 2687 subparagraph, any person who pled nolo contendere to a  
 2688 misdemeanor involving a false statement before October 1, 1999,  
 2689 and who has had such record of that plea sealed or expunged is  
 2690 not ineligible for employment for that reason.

2691 4. Abide by all the provisions of s. 985.644(1) regarding  
 2692 fingerprinting and background investigations and other screening  
 2693 requirements for personnel.

2694 5. Execute and submit to the department an affidavit-of-  
 2695 application form, adopted by the department, attesting to his or  
 2696 her compliance with subparagraphs 1.-4. The affidavit must be  
 2697 executed under oath and constitutes an official statement under  
 2698 s. 837.06. The affidavit must include conspicuous language that  
 2699 the intentional false execution of the affidavit constitutes a  
 2700 misdemeanor of the second degree. The employing agency shall  
 2701 retain the affidavit.

2702 (b) Design, implement, maintain, evaluate, and revise an  
 2703 advanced training program, including a competency-based  
 2704 examination for each training course, which is intended to

2705 enhance knowledge, skills, and abilities related to job  
 2706 performance.

2707 (c) Design, implement, maintain, evaluate, and revise a  
 2708 career development training program, including a competency-  
 2709 based examination for each training course. Career development  
 2710 courses are intended to prepare personnel for promotion.

2711 (d) The department is encouraged to design, implement,  
 2712 maintain, evaluate, and revise juvenile justice training  
 2713 courses, or to enter into contracts for such training courses,  
 2714 that are intended to provide for the safety and well-being of  
 2715 both citizens and juvenile offenders.

2716 Section 36. Subsection (5) of section 985.664, Florida  
 2717 Statutes, is amended to read:

2718 985.664 Juvenile justice circuit advisory boards.-

2719 ~~(5)(a) To form the initial juvenile justice circuit~~  
 2720 ~~advisory board, the Secretary of Juvenile Justice, in~~  
 2721 ~~consultation with the juvenile justice county councils in~~  
 2722 ~~existence on October 1, 2013, shall appoint the chair of the~~  
 2723 ~~board, who must meet the board membership requirements in~~  
 2724 ~~subsection (4). Within 45 days after being appointed, the chair~~  
 2725 ~~shall appoint the remaining members to the juvenile justice~~  
 2726 ~~circuit advisory board and submit the appointments to the~~  
 2727 ~~department for approval.~~

2728 ~~(b) Thereafter,~~ When a vacancy in the office of the chair  
 2729 occurs, ~~the Secretary of Juvenile Justice, in consultation with~~  
 2730 the juvenile justice circuit advisory board, shall appoint a new

2731 chair, who must meet the board membership requirements in  
 2732 subsection (4). The chair shall appoint members to vacant seats  
 2733 within 45 days after the vacancy and submit the appointments to  
 2734 the department for approval. The chair shall serve at the  
 2735 pleasure of the Secretary of the department.

2736 Section 37. Paragraph (c) of subsection (1) and subsection  
 2737 (4) of section 985.672, Florida Statutes, are amended to read:

2738 985.672 Direct-support organization; definition; use of  
 2739 property; board of directors; audit.—

2740 (1) DEFINITION.—As used in this section, the term "direct-  
 2741 support organization" means an organization whose sole purpose  
 2742 is to support the juvenile justice system and which is:

2743 (c) Determined by the Department of Juvenile Justice to be  
 2744 consistent with the goals of the juvenile justice system, in the  
 2745 best interest of the state, and in accordance with the adopted  
 2746 goals and mission of the Department of Juvenile Justice.

2747  
 2748 Expenditures of the organization shall be ~~expressly~~ used for the  
 2749 ~~to prevention prevent~~ and amelioration of ameliorate juvenile  
 2750 delinquency. The expenditures of the direct-support organization  
 2751 may not be used for the purpose of lobbying as defined in s.  
 2752 11.045.

2753 (4) USE OF PROPERTY.—The department may permit, without  
 2754 charge, appropriate use of fixed property, and facilities, and  
 2755 personnel services of the juvenile justice system by the direct-  
 2756 support organization, subject to the provisions of this section.

2757 For the purposes of this subsection, personnel services includes  
 2758 full-time or part-time personnel, as well as payroll processing  
 2759 services.

2760 (a) The department may prescribe any condition with which  
 2761 the direct-support organization must comply in order to use  
 2762 fixed property or facilities of the juvenile justice system.

2763 (b) The department may not permit the use of any fixed  
 2764 property or facilities of the juvenile justice system by the  
 2765 direct-support organization if it does not provide equal  
 2766 membership and employment opportunities to all persons  
 2767 regardless of race, color, religion, sex, age, or national  
 2768 origin.

2769 (c) The department shall adopt rules prescribing the  
 2770 procedures by which the direct-support organization is governed  
 2771 and any conditions with which a direct-support organization must  
 2772 comply to use property or facilities of the department.

2773 Section 38. Subsections (5) through (19) of section  
 2774 985.682, Florida Statutes, are renumbered as subsections (1)  
 2775 through (15), respectively, and present subsections (1) through  
 2776 (4) and paragraph (c) of present subsection (9) are amended to  
 2777 read:

2778 985.682 Siting of facilities; study; criteria.—

2779 ~~(1) The department is directed to conduct or contract for~~  
 2780 ~~a statewide comprehensive study to determine current and future~~  
 2781 ~~needs for all types of facilities for children committed to the~~  
 2782 ~~custody, care, or supervision of the department under this~~

2783 ~~chapter.~~

2784 ~~(2) The study shall assess, rank, and designate~~  
 2785 ~~appropriate sites, and shall be reflective of the different~~  
 2786 ~~purposes and uses for all facilities, based upon the following~~  
 2787 ~~criteria:~~

2788 ~~(a) Current and future estimates of children originating~~  
 2789 ~~from each county;~~

2790 ~~(b) Current and future estimates of types of delinquent~~  
 2791 ~~acts committed in each county;~~

2792 ~~(c) Geographic location of existing facilities;~~

2793 ~~(d) Availability of personnel within the local labor~~  
 2794 ~~market;~~

2795 ~~(e) Current capacity of facilities in the area;~~

2796 ~~(f) Total usable and developable acreage of various sites~~  
 2797 ~~based upon the use and purpose of the facility;~~

2798 ~~(g) Accessibility of each site to existing utility,~~  
 2799 ~~transportation, law enforcement, health care, fire protection,~~  
 2800 ~~refuse collection, water, and sewage disposal services;~~

2801 ~~(h) Susceptibility of each site to flooding hazards or~~  
 2802 ~~other adverse natural environmental consequences;~~

2803 ~~(i) Site location in relation to desirable and undesirable~~  
 2804 ~~proximity to other public facilities, including schools;~~

2805 ~~(j) Patterns of residential growth and projected~~  
 2806 ~~population growth; and~~

2807 ~~(k) Such other criteria as the department, in conjunction~~  
 2808 ~~with local governments, deems appropriate.~~

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2809           ~~(3) The department shall recommend certification of the~~  
 2810 ~~study by the Governor and Cabinet within 2 months after its~~  
 2811 ~~receipt.~~

2812           ~~(4) Upon certification of the study by the Governor and~~  
 2813 ~~Cabinet, the department shall notify those counties designated~~  
 2814 ~~as being in need of a facility.~~

2815           (5)~~(9) The Governor and Cabinet shall consider the~~  
 2816 ~~following when determining whether to grant the appeal from the~~  
 2817 ~~decision of the local government on the requested modification:~~

2818           (c) Existing ~~The statewide study, as established in~~  
 2819 ~~subsection (1); other existing studies; reports and information~~  
 2820 ~~maintained by the department as the Governor and Cabinet may~~  
 2821 ~~request addressing the feasibility and availability of~~  
 2822 ~~alternative sites in the general area; and the need for a~~  
 2823 ~~facility in the area based on the average number of petitions,~~  
 2824 ~~commitments, and transfers into the criminal court from the~~  
 2825 ~~county to state facilities for the most recent 3 calendar years.~~

2826           Section 39. Section 985.69, Florida Statutes, is amended  
 2827 to read:

2828           985.69 Repair and maintenance ~~One-time startup~~ funding for  
 2829 juvenile justice purposes.—Funds from juvenile justice  
 2830 appropriations may be utilized as ~~one-time startup~~ funding for  
 2831 juvenile justice purposes that include, but are not limited to,  
 2832 remodeling or renovation of existing facilities, ~~construction~~  
 2833 ~~costs, leasing costs,~~ purchase of equipment and furniture, site  
 2834 development, and other necessary and reasonable costs associated

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2835 with the repair and maintenance ~~startup~~ of facilities or  
 2836 programs.

2837 Section 40. Section 985.694, Florida Statutes, is  
 2838 repealed.

2839 Section 41. Paragraph (a) of subsection (1) of section  
 2840 985.701, Florida Statutes, is amended to read:

2841 985.701 Sexual misconduct prohibited; reporting required;  
 2842 penalties.-

2843 (1)(a)1. As used in this section ~~subsection~~, the term:

2844 a. "Sexual misconduct" means fondling the genital area,  
 2845 groin, inner thighs, buttocks, or breasts of a person; the oral,  
 2846 anal, or vaginal penetration by or union with the sexual organ  
 2847 of another; or the anal or vaginal penetration of another by any  
 2848 other object. The term does not include an act done for a bona  
 2849 fide medical purpose or an internal search conducted in the  
 2850 lawful performance of duty by an employee of the department or  
 2851 an employee of a provider under contract with the department.

2852 b. "Employee" includes paid staff members, volunteers, and  
 2853 interns who work in a department program or a program operated  
 2854 by a provider under a contract.

2855 c. "Juvenile offender" means any person of any age who is  
 2856 detained or supervised by, or committed to the custody of, the  
 2857 department.

2858 2. An employee who engages in sexual misconduct with a  
 2859 juvenile offender ~~detained or supervised by, or committed to the~~  
 2860 ~~custody of, the department~~ commits a felony of the second



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2861 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 2862 775.084. An employee may be found guilty of violating this  
 2863 subsection without having committed the crime of sexual battery.

2864 3. The consent of the juvenile offender to any act of  
 2865 sexual misconduct is not a defense to prosecution under this  
 2866 subsection.

2867 4. This subsection does not apply to an employee of the  
 2868 department, or an employee of a provider under contract with the  
 2869 department, who:

2870 a. Is legally married to a juvenile offender who is  
 2871 detained or supervised by, or committed to the custody of, the  
 2872 department.

2873 b. Has no reason to believe that the person with whom the  
 2874 employee engaged in sexual misconduct is a juvenile offender  
 2875 ~~detained or supervised by, or committed to the custody of, the~~  
 2876 ~~department.~~

2877 Section 42. Section 985.702, Florida Statutes, is created  
 2878 to read:

2879 985.702 Willful and malicious neglect of a juvenile  
 2880 offender prohibited; reporting required; penalties.-

2881 (1) As used in this section, the term:

2882 (a) "Employee" means paid staff members, volunteers, and  
 2883 interns who work in a department program or a program operated  
 2884 by a provider under a contract with the department.

2885 (b) "Juvenile offender" means any person of any age who is  
 2886 detained, or committed to the custody of, the department.

2887 (c) "Neglect" means:

2888 1. An employee's failure or omission to provide a juvenile  
 2889 offender with the proper level of care, supervision, and  
 2890 services necessary to maintain the juvenile offender's physical  
 2891 and mental health, including, but not limited to, adequate food,  
 2892 nutrition, clothing, shelter, supervision, medicine, and medical  
 2893 services; or

2894 2. An employee's failure to make a reasonable effort to  
 2895 protect a juvenile offender from abuse, neglect, or exploitation  
 2896 by another person.

2897 (2)(a) Any employee who willfully and maliciously neglects  
 2898 a juvenile offender without causing great bodily harm, permanent  
 2899 disability, or permanent disfigurement commits a felony of the  
 2900 third degree, punishable as provided in ss. 775.082 or 775.083.

2901 (b) Any employee who willfully and maliciously neglects a  
 2902 juvenile offender and in so doing causes great bodily harm,  
 2903 permanent disability, or permanent disfigurement commits a  
 2904 felony of the second degree, punishable as provided in ss.  
 2905 775.082, 775.083, or 775.084.

2906 (c) Notwithstanding prosecution, any violation of  
 2907 paragraphs (a) or (b), as determined by the Public Employees  
 2908 Relations Commission, constitutes sufficient cause under s.  
 2909 110.227 for dismissal from employment with the department, and  
 2910 such person may not again be employed in any capacity in the  
 2911 juvenile justice system.

2912 (3) An employee who witnesses the infliction of neglect

2913 upon a juvenile offender shall immediately report the incident  
 2914 to the department's incident hotline, and prepare, date, and  
 2915 sign an independent report that specifically describes the  
 2916 nature of the incident, the location and time of the incident,  
 2917 and the persons involved. The employee shall deliver the report  
 2918 to the employee's supervisor or program director, who must  
 2919 provide copies to the department's inspector general and the  
 2920 circuit juvenile justice manager. The inspector general shall  
 2921 immediately conduct an appropriate administrative investigation,  
 2922 and, if there is probable cause to believe that a violation of  
 2923 subsection (2) has occurred, the inspector general shall notify  
 2924 the state attorney in the circuit in which the incident  
 2925 occurred.

2926 (4) (a) Any person who is required to prepare a report  
 2927 under this section who knowingly or willfully fails to do so, or  
 2928 who knowingly or willfully prevents another person from doing  
 2929 so, commits a misdemeanor of the first degree, punishable as  
 2930 provided in ss. 775.082 or 775.083.

2931 (b) Any person who knowingly or willfully submits  
 2932 inaccurate, incomplete, or untruthful information with respect  
 2933 to a report required under this section commits a misdemeanor of  
 2934 the first degree, punishable as provided in ss. 775.082 or  
 2935 775.083.

2936 (c) Any person who knowingly or willfully coerces or  
 2937 threatens any other person with the intent to alter testimony or  
 2938 a written report regarding an incident of neglect upon a

2939 juvenile offender commits a felony of the third degree,  
 2940 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2941 Section 43. Subsection (2) of section 985.721, Florida  
 2942 Statutes, is amended to read:

2943 985.721 Escapes from secure detention or residential  
 2944 commitment facility.—An escape from:

2945 (2) Any residential commitment facility described in s.  
 2946 985.03(43) ~~985.03(46)~~, maintained for the custody, treatment,  
 2947 punishment, or rehabilitation of children found to have  
 2948 committed delinquent acts or violations of law; or

2949  
 2950 constitutes escape within the intent and meaning of s. 944.40  
 2951 and is a felony of the third degree, punishable as provided in  
 2952 s. 775.082, s. 775.083, or s. 775.084.

2953 Section 44. Paragraphs (c) and (f) of subsection (3) of  
 2954 section 943.0582, Florida Statutes, are amended to read:

2955 943.0582 Prearrest, postarrest, or teen court diversion  
 2956 program expunction.—

2957 (3) The department shall expunge the nonjudicial arrest  
 2958 record of a minor who has successfully completed a prearrest or  
 2959 postarrest diversion program if that minor:

2960 (c) Submits to the department, with the application, an  
 2961 official written statement from the state attorney for the  
 2962 county in which the arrest occurred certifying that he or she  
 2963 has successfully completed that county's prearrest or postarrest  
 2964 diversion program, that his or her participation in the program

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2965 was based on an arrest for a nonviolent misdemeanor, and that he  
 2966 or she has not otherwise been charged by the state attorney with  
 2967 or found to have committed any criminal offense or comparable  
 2968 ordinance violation.

2969 (f) Has never, prior to filing the application for  
 2970 expunction, been charged by the state attorney with or been  
 2971 found to have committed any criminal offense or comparable  
 2972 ordinance violation.

2973 Section 45. Section 945.75, Florida Statutes, is repealed.

2974 Section 46. Paragraphs (h) through (k) of subsection (3)  
 2975 of section 121.0515, Florida Statutes, are redesignated as  
 2976 paragraphs (g) through (j) of that subsection, respectively, and  
 2977 paragraphs (e) through (i) of subsection (2), present paragraphs  
 2978 (g) and (k) of subsection (3), paragraph (b) of subsection (5),  
 2979 paragraph (d) of subsection (8), and paragraph (c) of subsection  
 2980 (10) of section are amended to read:

2981 121.0515 Special Risk Class.—

2982 (2) MEMBERSHIP.—

2983 ~~(e) Effective July 1, 2001, "special risk member" includes~~  
 2984 ~~any member who is employed as a youth custody officer by the~~  
 2985 ~~Department of Juvenile Justice and meets the special criteria~~  
 2986 ~~set forth in paragraph (3)(g).~~

2987 (e) ~~(f)~~ Effective October 1, 2005, through June 30, 2008,  
 2988 the member must be employed by a law enforcement agency or  
 2989 medical examiner's office in a forensic discipline and meet the  
 2990 special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

2991 (f)~~(g)~~ Effective July 1, 2008, the member must be employed  
 2992 by the Department of Law Enforcement in the crime laboratory or  
 2993 by the Division of State Fire Marshal in the forensic laboratory  
 2994 and meet the special criteria set forth in paragraph (3) (h)  
 2995 ~~(3) (i)~~.

2996 (g)~~(h)~~ Effective July 1, 2008, the member must be employed  
 2997 by a local government law enforcement agency or medical  
 2998 examiner's office and meet the special criteria set forth in  
 2999 paragraph (3) (i) ~~(3) (j)~~.

3000 (h)~~(i)~~ Effective August 1, 2008, "special risk member"  
 3001 includes any member who meets the special criteria for continued  
 3002 membership set forth in paragraph (3) (j) ~~(3) (k)~~.

3003 (3) CRITERIA.—A member, to be designated as a special risk  
 3004 member, must meet the following criteria:

3005 ~~(g) Effective July 1, 2001, the member must be employed as~~  
 3006 ~~a youth custody officer and be certified, or required to be~~  
 3007 ~~certified, in compliance with s. 943.1395. In addition, the~~  
 3008 ~~member's primary duties and responsibilities must be the~~  
 3009 ~~supervised custody, surveillance, control, investigation,~~  
 3010 ~~apprehension, arrest, and counseling of assigned juveniles~~  
 3011 ~~within the community;~~

3012 (j)~~(k)~~ The member must have already qualified for and be  
 3013 actively participating in special risk membership under  
 3014 paragraph (a), paragraph (b), or paragraph (c), must have  
 3015 suffered a qualifying injury as defined in this paragraph, must  
 3016 not be receiving disability retirement benefits as provided in

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3017 s. 121.091(4), and must satisfy the requirements of this  
 3018 paragraph.

3019 1. The ability to qualify for the class of membership  
 3020 defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed  
 3021 medical physicians, one of whom is a primary treating physician  
 3022 of the member, certify the existence of the physical injury and  
 3023 medical condition that constitute a qualifying injury as defined  
 3024 in this paragraph and that the member has reached maximum  
 3025 medical improvement after August 1, 2008. The certifications  
 3026 from the licensed medical physicians must include, at a minimum,  
 3027 that the injury to the special risk member has resulted in a  
 3028 physical loss, or loss of use, of at least two of the following:  
 3029 left arm, right arm, left leg, or right leg; and:

3030 a. That this physical loss or loss of use is total and  
 3031 permanent, except if the loss of use is due to a physical injury  
 3032 to the member's brain, in which event the loss of use is  
 3033 permanent with at least 75 percent loss of motor function with  
 3034 respect to each arm or leg affected.

3035 b. That this physical loss or loss of use renders the  
 3036 member physically unable to perform the essential job functions  
 3037 of his or her special risk position.

3038 c. That, notwithstanding this physical loss or loss of  
 3039 use, the individual can perform the essential job functions  
 3040 required by the member's new position, as provided in  
 3041 subparagraph 3.

3042 d. That use of artificial limbs is not possible or does

3043 not alter the member's ability to perform the essential job  
 3044 functions of the member's position.

3045 e. That the physical loss or loss of use is a direct  
 3046 result of a physical injury and not a result of any mental,  
 3047 psychological, or emotional injury.

3048 2. For the purposes of this paragraph, "qualifying injury"  
 3049 means an injury sustained in the line of duty, as certified by  
 3050 the member's employing agency, by a special risk member that  
 3051 does not result in total and permanent disability as defined in  
 3052 s. 121.091(4)(b). An injury is a qualifying injury if the injury  
 3053 is a physical injury to the member's physical body resulting in  
 3054 a physical loss, or loss of use, of at least two of the  
 3055 following: left arm, right arm, left leg, or right leg.

3056 Notwithstanding any other provision of this section, an injury  
 3057 that would otherwise qualify as a qualifying injury is not  
 3058 considered a qualifying injury if and when the member ceases  
 3059 employment with the employer for whom he or she was providing  
 3060 special risk services on the date the injury occurred.

3061 3. The new position, as described in sub-subparagraph  
 3062 1.c., that is required for qualification as a special risk  
 3063 member under this paragraph is not required to be a position  
 3064 with essential job functions that entitle an individual to  
 3065 special risk membership. Whether a new position as described in  
 3066 sub-subparagraph 1.c. exists and is available to the special  
 3067 risk member is a decision to be made solely by the employer in  
 3068 accordance with its hiring practices and applicable law.



3069           4. This paragraph does not grant or create additional  
 3070 rights for any individual to continued employment or to be hired  
 3071 or rehired by his or her employer that are not already provided  
 3072 within the Florida Statutes, the State Constitution, the  
 3073 Americans with Disabilities Act, if applicable, or any other  
 3074 applicable state or federal law.

3075           (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

3076           (b) Any member who is a special risk member on July 1,  
 3077 2008, and who became eligible to participate under paragraph  
 3078 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk  
 3079 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or  
 3080 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk  
 3081 designation removed and thereafter shall be a Regular Class  
 3082 member and earn only Regular Class membership credit. The  
 3083 department may review the special risk designation of members to  
 3084 determine whether or not those members continue to meet the  
 3085 criteria for Special Risk Class membership.

3086           (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

3087           (d) Notwithstanding any other provision of this  
 3088 subsection, this subsection does not apply to any special risk  
 3089 member who qualifies for continued membership pursuant to  
 3090 paragraph (3) (j) ~~(3) (k)~~.

3091           (10) CREDIT FOR UPGRADED SERVICE.—

3092           (c) Any member of the Special Risk Class who has earned  
 3093 creditable service through June 30, 2008, in another membership  
 3094 class of the Florida Retirement System in a position with the

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3095 Department of Law Enforcement or the Division of State Fire  
 3096 Marshal and became covered by the Special Risk Class as  
 3097 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government  
 3098 law enforcement agency or medical examiner's office and became  
 3099 covered by the Special Risk Class as described in paragraph  
 3100 (3) (i) ~~(3) (j)~~, which service is within the purview of the  
 3101 Special Risk Class, and is employed in such position on or after  
 3102 July 1, 2008, may purchase additional retirement credit to  
 3103 upgrade such service to Special Risk Class service, to the  
 3104 extent of the percentages of the member's average final  
 3105 compensation provided in s. 121.091(1)(a)2. The cost for such  
 3106 credit must be an amount representing the actuarial accrued  
 3107 liability for the difference in accrual value during the  
 3108 affected period of service. The cost shall be calculated using  
 3109 the discount rate and other relevant actuarial assumptions that  
 3110 were used to value the Florida Retirement System Pension Plan  
 3111 liabilities in the most recent actuarial valuation. The division  
 3112 shall ensure that the transfer sum is prepared using a formula  
 3113 and methodology certified by an enrolled actuary. The cost must  
 3114 be paid immediately upon notification by the division. The local  
 3115 government employer may purchase the upgraded service credit on  
 3116 behalf of the member if the member has been employed by that  
 3117 employer for at least 3 years.

3118 Section 47. This act shall take effect July 1, 2014.

3119



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 PCB: Criminal Justice  
 2 Subcommittee

3 Representative Pilon offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 165 and 166, insert:

7 Section 1. Paragraph (b) of subsection (6) of section  
 8 893.13, Florida Statutes, is amended to read:

9 893.13 Prohibited acts; penalties.—

10 (6)

11 (b)1. Except as provided in subparagraph 2., If the offense  
 12 is the possession of not more than 20 grams of cannabis, ~~as~~  
 13 ~~defined in this chapter,~~ or 3 grams or less of a controlled  
 14 substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-  
 15 159., or 166.-169., the person commits a misdemeanor of the  
 16 first degree, punishable as provided in s. 775.082 or s.  
 17 775.083.

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Amendment No. 1

18        2. If the offense is the possession of not more than 20  
 19 grams of cannabis, and the person possessing the cannabis is  
 20 less than 18 years of age, the person commits a misdemeanor of  
 21 the second degree, punishable as provided in s. 775.082 or s.  
 22 775.083. A person who violates this subparagraph a second or  
 23 subsequent time commits a misdemeanor of the first degree.

24        3. For the purposes of this subsection, "cannabis" does not  
 25 include the resin extracted from the plants of the genus  
 26 Cannabis, or any compound manufacture, salt, derivative,  
 27 mixture, or preparation of such resin, and a controlled  
 28 substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-  
 29 159., or 166.-169., does not include the substance in a powdered  
 30 form.

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**T I T L E   A M E N D M E N T**

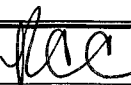

Remove line 2 and insert:

An act relating to juvenile justice; amending s. 893.13, F.S.,  
 providing that possession of specified controlled substances by  
 a minor is a second degree misdemeanor; providing enhanced  
 penalties for second or subsequent violations; amending ss.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 14-08 Juvenile Sentencing  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cox 	Cunningham 

### SUMMARY ANALYSIS

In 2010, the United States Supreme Court held in *Graham v. Florida* that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release. In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders convicted of a homicide offense. The Court held that children are constitutionally different from adults and as a result, the sentencer must take into consideration these differences before sentencing these offenders to one of the most severe punishments available in the criminal justice system.

The bill specifies that a juvenile offender convicted of:

- A *capital felony* homicide offense *must* be sentenced to life imprisonment if the judge, after considering specified factors at a sentencing hearing, determines that life imprisonment is an appropriate sentence. If life imprisonment is not appropriate, the offender must be sentenced to a term of imprisonment of at least 30 years.
- A *life felony homicide or first degree felony* homicide offense *may* be sentenced to life imprisonment or a term of years equal to life imprisonment if the judge, after considering specified factors at a sentencing hearing, determines that such sentence is appropriate.
- A capital felony, life felony, or first degree felony *nonhomicide* offense *may* be sentenced to life imprisonment or a term of years equal to life imprisonment if the judge, after considering specified factors at a sentencing hearing, determines that such sentence is appropriate.

Juvenile offenders convicted of:

- A *life felony homicide or first degree felony homicide* offense are entitled to have the court of original jurisdiction review the sentence after 25 years if the juvenile is sentenced to life imprisonment or a term of years equal to life (and every 10 years thereafter if necessary).
- A capital felony, life felony, or first degree felony *nonhomicide* offense are entitled to have the court of original jurisdiction review the sentence after 20 years if the juvenile is sentenced to life imprisonment, a term of years equal to life imprisonment, or imprisonment for a term of more than 25 years (and every 5 years thereafter if necessary).

On January 30, 2014, the Criminal Justice Impact Conference (CJIC) considered SB 360, which is similar to this bill, and determined it would have no prison bed impact. It is likely that CJIC will determine this bill to have no prison bed impact as well since this bill is less restrictive than SB 360 in several ways (This bill provides a shorter minimum sentence length for capital felony homicide offenses and entitles juvenile offenders convicted of life felony and first degree felony homicide offenses to have their sentences reviewed).

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

In recent years, the U.S. Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense.<sup>2</sup> More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*<sup>3</sup> and *Miller v. Alabama*.<sup>4</sup>

#### ***Graham v. Florida***

In 2010, the United States Supreme Court decided *Graham v. Florida* and held that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to a life sentence without providing a meaningful opportunity to obtain release. The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.<sup>5</sup>

*Graham* was held to apply retroactively, even to criminal cases which were considered final at the time *Graham* was rendered.<sup>6</sup>

Because Florida has abolished parole<sup>7</sup> and the Court deems the possibility of executive clemency to be remote,<sup>8</sup> a juvenile offender in Florida cannot currently be sentenced to life imprisonment for a nonhomicide offense.

#### **Post-Graham Decisions**

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment before *Graham* was decided began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.<sup>9</sup>

---

<sup>1</sup> The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced.

<sup>2</sup> 125 S.Ct. 1183 (2005).

<sup>3</sup> 130 S.Ct. 2011 (2010).

<sup>4</sup> 132 S.Ct. 2455 (2012).

<sup>5</sup> *Graham*, at 2016.

<sup>6</sup> See *Witt v. State*, 387 So.2d 922, 925 (Fla. 1980)(Court held that the "doctrine of finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications....a sweeping change of law can so drastically alter the substantive or procedural underpinnings of a final conviction and sentence that .... post-conviction relief is necessary to avoid individual instances of obvious injustice."). In addition, Florida courts have held that *Graham* applies retroactively even without applying the *Witt* standard. *Kleppinger v. State*, 81 So.3d 547, 549 (Fla. 2nd DCA 2012).

<sup>7</sup> Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

<sup>8</sup> *Graham*, at 2027.

<sup>9</sup> "Rapist who was serving life sentence will get second chance," August 30, 2011, <http://tbo.com/news/rapist-who-was-serving-life-sentence-will-get-second-chance-254096> (last visited on January 27, 2014).

- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.<sup>10</sup>
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.<sup>11</sup>

Juvenile offenders convicted and sentenced after the issuance of *Graham* have received lengthy prison sentences. For example:

- An inmate was sentenced to concurrent 50 years in prison with a 25-year mandatory minimum for armed robbery and aggravated battery;<sup>12</sup>
- An inmate was sentenced to 70 years in prison for attempted first degree murder, including a 25 year mandatory minimum for the use of a firearm;<sup>13</sup>
- An inmate was sentenced to 60 years in prison with an aggregate minimum mandatory term of 50 years for attempted first degree murder, armed burglary and armed robbery.<sup>14</sup>

Juveniles who have been sentenced or resentenced subsequent to *Graham* have challenged their sentences on grounds that they effectively constitute a life sentence. To date, Florida's District Courts of Appeal have provided a wide range of rulings. Some courts have applied a strict reading of *Graham*, holding that *Graham* only applies when a defendant is sentenced to a term of life imprisonment, not a lengthy term of years.<sup>15</sup> Other courts have held that a term of years sentence is not in violation of *Graham* if the sentence is for multiple nonhomicide offenses, thus limiting the application of *Graham* to a singular nonhomicide offense where a juvenile is sentenced to life.<sup>16</sup> Yet, still other courts have held that *any* sentence which will result in the juvenile being incarcerated past that juvenile's life expectancy violates the holding in *Graham*.<sup>17</sup>

Courts also disagree on the number of years that is the functional equivalent of a life sentence for the purposes of *Graham*.<sup>18</sup> However, this issue may soon be resolved. On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State* and *Henry v. State*.<sup>19</sup> In *Gridine*, the First District Court of Appeal held that a 70-year sentence was not the equivalent of life. In *Henry*, the Fifth District Court of Appeal upheld a sentence of 90 years holding that *Graham* does not prohibit a lengthy term of years. The Court has not issued an opinion in either case at this time.

<sup>10</sup> "Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on January 24, 2014).

<sup>11</sup> "Teenage rapist Jose Walle resentenced to 65 years in prison," November 17, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-resentenced-to-65-years-in-prison/1134862> (last visited on January 24, 2014).

<sup>12</sup> *Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011). The Court held that the defendant's sentence of a term-of-years totaling 50 years is not the functional equivalent of a life sentence for purposes of the Eighth Amendment prohibition on life.

<sup>13</sup> *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011). The Court held that a term-of-years sentence of 70 years including a 25 year mandatory minimum was not constitutionally excessive.

<sup>14</sup> *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The Court held that a term-of-years sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional for purposes of the 8<sup>th</sup> Amendment. The Court held that, at the earliest, the juvenile would not be released until he was 76 years of age, which was past the life expectancy, thus the sentence was a de facto life sentence. The Court certified conflict with the case *Henry v. State*, 82 So.3d 1084 (Fla. 5th D.C.A. 2012).

<sup>15</sup> See *Walle v. State*, 99 So.3d 967, 971 (Fla. 1st DCA 2012)(Court held that the express holdings of *Graham* and *Miller* were not violated and held that extending the rulings would be left for the Supreme Court.); *Henry v. State*, 82 So.3d 1084, 1089 (Fla. 5th DCA 2012)(Court held that a defendant's aggregate term-of-years sentence totaling 90 years in prison was not unconstitutionally excessive.)

<sup>16</sup> *Walle*, at 972.

<sup>17</sup> See *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012); *Adams*, at 2.

<sup>18</sup> See *Walle*, at 967 (Court held a sentence of 65 years consecutive to a 27 year sentence was not violative of the 8<sup>th</sup> Amendment); *Henry v. State*, 82 So.3d 1084 (Court held that 90 years, of which he would be required to serve at least 76.5 years, was not violative of the 8<sup>th</sup> Amendment); *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012)(Court held that consecutive sentences of 40 years, totaling 80 years, was unconstitutional under the 8<sup>th</sup> Amendment.); *Adams v. State*, 2012 WL 3193932 (Court held that a 60 year sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional under the 8<sup>th</sup> Amendment.).

<sup>19</sup> Florida Supreme Court case numbers SC12-1223 and SC12-578, respectively.



## **Miller v. Alabama**

In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution<sup>20</sup> prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders.<sup>21</sup> *Miller* does not prohibit a court from sentencing a juvenile offender convicted of a homicide offense to life without parole, but requires the sentencer to take into consideration “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” before doing so.<sup>22</sup> The Court’s opinion stated:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him.<sup>23,24</sup>

Florida’s District Courts of Appeal disagree on whether *Miller* applies retroactively to juveniles whose cases were considered to be final at the time *Miller* was rendered. The First and Third District Courts have held that *Miller* does not apply retroactively<sup>25</sup> as the ruling is not a “development of fundamental significance.”<sup>26</sup> However, on January 22, 2014, the Second District Court held in *Toye v. State*,<sup>27</sup> that by creating a “constitutionally meaningful sentencing hearing” that did not previously exist, *Miller* cannot be “characterized as mere evolutionarily refinement in criminal procedure,” and should be applied retroactively. This issue was certified to the Florida Supreme Court as a question of public importance in *Falcon v. State*.<sup>28</sup> Oral argument has been scheduled for March 6, 2014.

## **Effect of the Bill**

### Penalties

The bill amends s. 775.082, F.S., to:

- *Require* a court to sentence a juvenile offender convicted of a homicide offense<sup>29</sup> that is a capital felony or an offense that was reclassified as a capital felony (capital felony homicide) to:
  - Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.140, F.S., the court concludes that life imprisonment is an appropriate sentence; or
  - A term of imprisonment of not less than 30 years, if the judge concludes at the sentencing hearing that life imprisonment is not an appropriate sentence.

<sup>20</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 2469.

<sup>23</sup> *Id.* at 2468.

<sup>24</sup> The Court further held that “*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *See also Roper v. Simmons*, 543 S.Ct. 551(2005)(Court barred capital punishment for children and first held that children are constitutionally different from adults for purposes of sentencing.); *Woodson v. North Carolina*, 96 S.Ct. 2978 (1976)(Court held that imposition of mandatory death sentence without consideration of the character and record of the individual offender or the circumstances of the particular offense was inconsistent with the fundamental respect for humanity which underlies the 8th Amendment.)

<sup>25</sup> *See Geter v. State*, 3D12-1736, 2012 WL 4448860 (Fla. 3rd DCA 2012)(Court held that the ruling in *Miller* was not a development of “fundamental significance;” because “*Miller* mandates only that a sentencer follow a certain process before imposing life sentence. . . . this was a procedural change providing for new process in juvenile homicide sentencing and was merely an evolutionary refinement in criminal law that did not compel abridgement of the finality of judgments.”); *Gonzalez v. State*, 101 So.3d 886, 887 (Fla. 1st DCA 2012).

<sup>26</sup> *See Witt v. State*, 387 So.2d 922 (Fla. 1980).

<sup>27</sup> 2014 WL 228639 (Fla. 2nd DCA 2014).

<sup>28</sup> *Falcon v. State*, 111 So.3d 973 (Fla. 1st DCA, 2013); SC13-865.

<sup>29</sup> Section 782.04, F.S., establishes homicide offenses.

- *Permit* a court to sentence a juvenile offender convicted of a homicide offense that was reclassified as a life felony (life felony homicide), or is a first degree felony punishable by a term of years not exceeding life or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life (first degree felony homicide), to:
  - Life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.140, F.S., the court finds such sentence appropriate.

Unlike capital felony homicide, the bill does not require the court to impose a minimum sentence in instances where the court determines that life imprisonment is not appropriate.

- Permit a court to sentence a juvenile offender convicted of a *nonhomicide* offense that is a life felony, punishable by a term of imprisonment for life, or punishable by a term of years not exceeding life imprisonment, or an offense reclassified as such, to:
  - Life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.140, F.S., the court finds such sentence appropriate.

Again, the bill does not require the court to impose a minimum sentence in instances where the court determines that life imprisonment is not appropriate.

The bill also provides that specified juvenile offenders are entitled to a review of their sentence hearings. However, a juvenile offender convicted of a capital felony homicide offense is never entitled to a review.

#### Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

The bill creates s. 921.140, F.S., which authorizes the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014. When determining whether such sentence is appropriate, the court must consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

- Nature and circumstances of offense committed by the juvenile offender;
- Effect of crime on the victim's family and on the community;
- Juvenile offender's age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender's background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender's participation in the offense;
- Extent of the juvenile offender's participation in the offense;
- Effect, if any, of familial pressure or peer pressure on the juvenile offender's actions;
- Nature and extent of the juvenile offender's prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender's youth on the juvenile offender's judgment; and
- Possibility of rehabilitating the juvenile offender.

This sentencing hearing is mandatory in all capital felony homicide cases. The hearing is not required in all life felony homicide, first degree felony homicide, or nonhomicide cases, but must be conducted before the court can impose a sentence of life imprisonment or a term of years equal to life imprisonment.

#### Sentence Review Proceedings

The bill creates s. 921.1401, F.S., which entitles certain juvenile offenders to a review of his or her sentence by the court of original jurisdiction after specified periods of time. The sentence review

hearing is to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society. "Juvenile offender" is defined to mean a person sentenced to imprisonment in the custody of the Department of Corrections (DOC) for an offense committed on or after July 1, 2014, and committed before he or she was 18 years of age.

A juvenile offender convicted of a *life felony homicide* or *first degree felony homicide* offense is entitled to a sentence review hearing after 25 years, but only if he or she is sentenced to:

- Life imprisonment; or
- A term of years equal to life imprisonment.

A juvenile offender convicted of a *nonhomicide* offense is entitled to a sentence review hearing after 20 years, if he or she is sentenced to:

- Life imprisonment;
- A term of years equal to life imprisonment; or
- A term of imprisonment for more than 25 years.

This bill does not authorize sentence review hearings for juvenile offenders convicted of a *capital felony homicide* offense.

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.

The bill requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:

- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin,<sup>30</sup>
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;
- Whether the offender has shown sincere and sustained remorse for the criminal offense;
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.

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<sup>30</sup> The bill further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.

A juvenile offender convicted of a life felony homicide or first degree felony homicide offense whose sentence is not modified after the initial sentence review hearing is eligible for additional sentence review hearings every 10 years. Juvenile offenders convicted of a nonhomicide offense whose sentence is not modified after the initial sentence review hearing are eligible for an additional sentence review hearings every 5 years.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Creates s. 921.140, F.S., relating to sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings.

Section 3. Creates s. 921.1041, F.S., relating to review of sentences for persons convicted of specified offenses committed while under the age of 18 years.

Section 4. Amends s. 316.3026, F.S., relating to unlawful operation of motor carriers.

Section 5. Amends s. 373.430, F.S., relating to prohibitions, violation, penalty, intent.

Section 6. Amends s. 403.161, F.S., relating to prohibitions, violation, penalty, intent.

Section 7. Amends s. 648.571, F.S., relating to failure to return collateral; penalty.

Section 8. 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 (CJIC) considered SB 360, which is similar to this bill, and determined it would have no prison bed impact. It is likely that CJIC will determine this bill to have no prison bed impact as well since this bill is less restrictive than SB 360 in several ways (This bill provides a shorter minimum sentence length for capital felony homicide offenses and entitles juvenile offenders convicted of life felony and first degree felony homicide offenses to have their sentences reviewed).

**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:**

Victims and the victims' kin will have the option to attend a juvenile offender's sentence review hearing many years after the case has been closed.

**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**

1                                   A bill to be entitled  
 2           An act relating to juvenile sentencing; amending s.  
 3           775.082, F.S.; providing criminal penalties applicable  
 4           to a juvenile offender for certain offenses; requiring  
 5           a judge to consider specified factors before  
 6           determining if life imprisonment is an appropriate  
 7           sentence for a juvenile offender convicted of certain  
 8           offenses; providing review of sentences for specified  
 9           juvenile offenders; creating s. 921.140, F.S.;  
 10          providing sentencing proceedings for determining if  
 11          life imprisonment is an appropriate sentence for a  
 12          juvenile offender convicted of certain offenses;  
 13          providing certain factors that must be considered by a  
 14          judge when determining if life imprisonment is  
 15          appropriate for a juvenile offender; creating s.  
 16          921.1401, F.S.; defining "juvenile offender;"  
 17          providing sentence review proceedings to be conducted  
 18          after a specified period of time by the original  
 19          sentencing court for juvenile offenders convicted of  
 20          certain offenses; providing for subsequent reviews;  
 21          requiring the Department of Corrections to notify a  
 22          juvenile offender of his or her eligibility to  
 23          participate in sentence review hearings; entitling a  
 24          juvenile offender to be represented by counsel;  
 25          providing factors that must be considered by the court  
 26          in the sentence review hearing; requiring the court to

27 modify a juvenile offender's sentence if certain  
 28 findings are met; requiring the court to impose a term  
 29 of probation for any sentence modified; requiring the  
 30 court to make written findings if the court declines  
 31 to modify a juvenile offender's sentence; amending ss.  
 32 316.3026, 373.430, 403.161, and 648.571, F.S.;

33 conforming cross-references; providing an effective  
 34 date.

35  
 36 Be It Enacted by the Legislature of the State of Florida:

37  
 38 Section 1. Subsections (1) and (3) of section 775.082,  
 39 Florida Statutes, are amended to read:

40 775.082 Penalties; applicability of sentencing structures;  
 41 mandatory minimum sentences for certain reoffenders previously  
 42 released from prison.—

43 (1) (a) Except as provided in paragraph (b), a person who  
 44 has been convicted of a capital felony shall be punished by  
 45 death if the proceeding held to determine sentence according to  
 46 the procedure set forth in s. 921.141 results in findings by the  
 47 court that such person shall be punished by death, otherwise  
 48 such person shall be punished by life imprisonment and shall be  
 49 ineligible for parole.

50 (b) A person who is convicted under s. 782.04, of a  
 51 capital felony or an offense that was reclassified as a capital  
 52 felony, which was committed before the person attained 18 years

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53 of age, shall be punished by a term of imprisonment for life if,  
54 after a sentencing hearing conducted by the court in accordance  
55 with s. 921.140, the court finds that life imprisonment is an  
56 appropriate sentence. If the court finds that life imprisonment  
57 is not an appropriate sentence, such person shall be punished by  
58 a term of imprisonment of not less than 30 years.

59 (3) A person who has been convicted of any other  
60 designated felony may be punished as follows:

61 (a)1. For a life felony committed before ~~prior to~~ October  
62 1, 1983, by a term of imprisonment for life or for a term of  
63 years not less than 30.

64 2. For a life felony committed on or after October 1,  
65 1983, by a term of imprisonment for life or by a term of  
66 imprisonment not exceeding 40 years.

67 3. Except as provided in subparagraph 4., for a life  
68 felony committed on or after July 1, 1995, by a term of  
69 imprisonment for life or by imprisonment for a term of years not  
70 exceeding life imprisonment.

71 4.a. Except as provided in sub-subparagraph b., for a life  
72 felony committed on or after September 1, 2005, which is a  
73 violation of s. 800.04(5)(b), by:

74 (I) A term of imprisonment for life; or

75 (II) A split sentence that is a term of not less than 25  
76 years' imprisonment and not exceeding life imprisonment,  
77 followed by probation or community control for the remainder of  
78 the person's natural life, as provided in s. 948.012(4).

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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79           b. For a life felony committed on or after July 1, 2008,  
80 which is a person's second or subsequent violation of s.  
81 800.04(5)(b), by a term of imprisonment for life.

82           5. Notwithstanding subparagraphs (a)1.-4., a person who is  
83 convicted under s. 782.04 of an offense that was reclassified as  
84 a life felony, which was committed before the person attained 18  
85 years of age, may be punished by a term of imprisonment for life  
86 or by a term of years equal to life imprisonment if the judge  
87 conducts a sentencing hearing in accordance with s. 921.140 and  
88 finds that life imprisonment or a term of years equal to life  
89 imprisonment is an appropriate sentence. A person sentenced to  
90 a term of imprisonment for life or by a term of years equal to  
91 life imprisonment is entitled to a review of his or her sentence  
92 in accordance with s. 921.1401.

93           (b)1. For a felony of the first degree, by a term of  
94 imprisonment not exceeding 30 years or, when specifically  
95 provided by statute, by imprisonment for a term of years not  
96 exceeding life imprisonment.

97           2. Notwithstanding subparagraph (b)1., a person convicted  
98 under s. 782.04 of a first degree felony punishable by a term of  
99 years not exceeding life imprisonment, or an offense that was  
100 reclassified as a first degree felony punishable by a term of  
101 years not exceeding life, which was committed before the person  
102 was 18 years of age, may be punished by a term years equal to  
103 life imprisonment if the judge conducts a sentencing hearing in  
104 accordance with s. 921.140 and finds that a term of years equal

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105 to life imprisonment is an appropriate sentence. A person  
 106 sentenced to a term of years equal to life imprisonment is  
 107 entitled to a review of his or her sentence in accordance with  
 108 s. 921.1401.

109 (c) Notwithstanding paragraphs (3)(a) and (b), a person  
 110 convicted of an offense not under s. 782.04, but which is a life  
 111 felony or an offense punishable by term of imprisonment for life  
 112 or by a term of years not exceeding life imprisonment, or an  
 113 offense that was reclassified as a life felony or an offense  
 114 punishable by a term of imprisonment for life or by a term of  
 115 years not exceeding life imprisonment, which was committed  
 116 before the person attained 18 years of age, may be punished by a  
 117 term of imprisonment for life or a term of years equal to life  
 118 imprisonment if the judge conducts a sentencing hearing in  
 119 accordance with s. 921.140 and finds that life imprisonment or a  
 120 term of years equal to life imprisonment is an appropriate  
 121 sentence. A person sentenced to a term of imprisonment for  
 122 life, a term of years equal to life imprisonment, or a term of  
 123 more than 25 years is entitled to a review of his or her  
 124 sentence in accordance with s. 921.1401.

125 (d) For a felony of the second degree, by a term of  
 126 imprisonment not exceeding 15 years.

127 (e) ~~(d)~~ For a felony of the third degree, by a term of  
 128 imprisonment not exceeding 5 years.

129 Section 2. Section 921.140, Florida Statutes, is created  
 130 to read:

131 921.140 Sentence of life imprisonment for persons who are  
 132 under the age of 18 years at the time of the offense; sentencing  
 133 proceedings.-

134 (1) Upon conviction or adjudication of guilt of an offense  
 135 described in ss. 775.082(1)(b), (3)(a)5., (3)(b)2., or (3)(c)  
 136 that was committed on or after July 1, 2014, the court may  
 137 conduct a separate sentencing hearing to determine if a term of  
 138 imprisonment for life or a term of years equal to life  
 139 imprisonment is an appropriate sentence.

140 (2) In determining whether life imprisonment, or a term of  
 141 years equal to life imprisonment is an appropriate sentence, the  
 142 court shall consider factors relevant to the offense and the  
 143 defendant's youth and attendant circumstances, including, but  
 144 not limited to:

145 (a) The nature and circumstances of the offense committed  
 146 by the defendant.

147 (b) The effect of the crime on the victim's family and on  
 148 the community.

149 (c) The defendant's age, maturity, intellectual capacity,  
 150 and mental and emotional health at the time of the offense.

151 (d) The defendant's background, including his or her  
 152 family, home, and community environment.

153 (e) The effect, if any, of immaturity, impetuosity, or  
 154 failure to appreciate risks and consequences on the defendant's  
 155 participation in the offense.

156 (f) The extent of the defendant's participation in the

157 offense.

158 (g) The effect, if any, of familial pressure or peer  
 159 pressure on the defendant's actions.

160 (h) The nature and extent of the defendant's prior  
 161 criminal history.

162 (i) The effect, if any, of characteristics attributable to  
 163 the defendant's youth on the defendant's judgment.

164 (j) The possibility of rehabilitating the defendant.

165 Section 3. Section 921.1401, Florida Statutes, is created  
 166 to read:

167 921.1401 Review of sentences for persons convicted of  
 168 specified offenses committed while under the age of 18 years.-

169 (1) For purposes of this section, the term "juvenile  
 170 offender" means a person sentenced to imprisonment in the  
 171 custody of the Department of Corrections for an offense  
 172 committed on or after July 1, 2014, and committed before he or  
 173 she was 18 years of age.

174 (2)(a) A juvenile offender sentenced to a term of  
 175 imprisonment for life or a term of years equal to life  
 176 imprisonment under s. 775.082(3)(a)5. or 775.082(3)(b)2., is  
 177 entitled to a review of his or her sentence after 25 years. The  
 178 juvenile offender must submit an application to the court of  
 179 original jurisdiction requesting that a sentence review hearing  
 180 be held. The sentencing court shall retain original jurisdiction  
 181 for the duration of the sentence for this purpose.

182 (b) A juvenile offender who is not resentenced under

183 paragraph (a) is eligible for additional sentence reviews every  
 184 10 years. The juvenile offender must submit a new application to  
 185 the court of original jurisdiction to request subsequent  
 186 sentence review hearings.

187 (3)(a) A juvenile offender sentenced to a term of  
 188 imprisonment for life, a term of years equal to life  
 189 imprisonment, or a term of more than 25 years under s.  
 190 775.082(3)(c), is entitled to a review of his or her sentence  
 191 after 20 years. The juvenile offender must submit an application  
 192 to the court of original jurisdiction requesting that a sentence  
 193 review hearing be held. The sentencing court shall retain  
 194 original jurisdiction for the duration of the sentence for this  
 195 purpose.

196 (b) A juvenile offender who is not resentenced under  
 197 paragraph (a) is eligible for additional sentence reviews every  
 198 5 years. The juvenile offender must submit a new application to  
 199 the court of original jurisdiction to request subsequent  
 200 sentence review hearings.

201 (4) The Department of Corrections shall notify a juvenile  
 202 offender of his or her eligibility to request a sentence review  
 203 hearing 18 months before the juvenile offender becomes entitled  
 204 to a sentence review hearing under this section.

205 (5) A juvenile offender who is eligible for a sentence  
 206 review hearing under this section is entitled to be represented  
 207 by counsel, and the court shall appoint a public defender to  
 208 represent the juvenile offender if the juvenile offender cannot

209 | afford an attorney.

210 |       (6) Upon receiving an application from an eligible  
 211 | juvenile offender, the court of original sentencing jurisdiction  
 212 | shall hold a sentence review hearing to determine whether the  
 213 | juvenile offender's sentence should be modified. When  
 214 | determining if it is appropriate to resentence the juvenile  
 215 | offender, the court shall consider any factor it deems  
 216 | appropriate, including all of the following:

217 |       (a) Whether the juvenile offender demonstrates maturity  
 218 | and rehabilitation.

219 |       (b) Whether the juvenile offender remains at the same  
 220 | level of risk to society as he or she did at the time of the  
 221 | initial sentencing.

222 |       (c) The opinion of the victim or the victim's next of kin.  
 223 | The absence of the victim or the victim's next of kin from the  
 224 | sentence review hearing may not be a factor in the court's  
 225 | determination under this section. If the victim or victim's next  
 226 | of kin desire to be heard, they may appear in person, in  
 227 | writing, or by electronic means. If the victim or the victim's  
 228 | next of kin chooses not to participate in the hearing, the court  
 229 | may consider previous statements made by the victim or the  
 230 | victim's next of kin during the trial, initial sentencing phase,  
 231 | or subsequent sentencing review hearings.

232 |       (d) Whether the juvenile offender was a relatively minor  
 233 | participant in the criminal offense or acted under extreme  
 234 | duress or the domination of another person.

235 (e) Whether the juvenile offender has shown sincere and  
 236 sustained remorse for the criminal offense.

237 (f) Whether the juvenile offender's age, maturity, and  
 238 psychological development at the time of the offense affected  
 239 his or her behavior.

240 (g) Whether the juvenile offender has successfully  
 241 obtained a general educational development certificate or  
 242 completed another educational, technical, work, vocational, or  
 243 self-rehabilitation program, if such a program is available.

244 (h) Whether the juvenile offender was a victim of sexual,  
 245 physical, or emotional abuse before he or she committed the  
 246 offense.

247 (i) The results of any mental health assessment, risk  
 248 assessment, or evaluation of the juvenile offender as to  
 249 rehabilitation.

250 (7) If the court determines at a sentence review hearing  
 251 that the juvenile offender has been rehabilitated and is  
 252 reasonably believed to be fit to reenter society, the court  
 253 shall modify the sentence and impose a term of probation of at  
 254 least 5 years. If the court determines that the juvenile  
 255 offender has not demonstrated rehabilitation or is not fit to  
 256 reenter society, the court shall issue an order in writing  
 257 stating the reasons why the sentence is not being modified.

258 Section 4. Subsection (2) of section 316.3026, Florida  
 259 Statutes, is amended to read:

260 316.3026 Unlawful operation of motor carriers.—

261 (2) Any motor carrier enjoined or prohibited from  
 262 operating by an out-of-service order by this state, any other  
 263 state, or the Federal Motor Carrier Safety Administration may  
 264 not operate on the roadways of this state until the motor  
 265 carrier has been authorized to resume operations by the  
 266 originating enforcement jurisdiction. Commercial motor vehicles  
 267 owned or operated by any motor carrier prohibited from operation  
 268 found on the roadways of this state shall be placed out of  
 269 service by law enforcement officers of the Department of Highway  
 270 Safety and Motor Vehicles, and the motor carrier assessed a  
 271 \$10,000 civil penalty pursuant to 49 C.F.R. s. 383.53, in  
 272 addition to any other penalties imposed on the driver or other  
 273 responsible person. Any person who knowingly drives, operates,  
 274 or causes to be operated any commercial motor vehicle in  
 275 violation of an out-of-service order issued by the department in  
 276 accordance with this section commits a felony of the third  
 277 degree, punishable as provided in s. 775.082(3)(e)  
 278 ~~775.082(3)(d)~~. Any costs associated with the impoundment or  
 279 storage of such vehicles are the responsibility of the motor  
 280 carrier. Vehicle out-of-service orders may be rescinded when the  
 281 department receives proof of authorization for the motor carrier  
 282 to resume operation.

283 Section 5. Subsection (3) of section 373.430, Florida  
 284 Statutes, is amended to read:

285 373.430 Prohibitions, violation, penalty, intent.—

286 (3) Any person who willfully commits a violation specified



287 in paragraph (1)(a) is guilty of a felony of the third degree,  
 288 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
 289 775.083(1)(g), by a fine of not more than \$50,000 or by  
 290 imprisonment for 5 years, or by both, for each offense. Each day  
 291 during any portion of which such violation occurs constitutes a  
 292 separate offense.

293 Section 6. Subsection (3) of section 403.161, Florida  
 294 Statutes, is amended to read:

295 403.161 Prohibitions, violation, penalty, intent.-

296 (3) Any person who willfully commits a violation specified  
 297 in paragraph (1)(a) is guilty of a felony of the third degree  
 298 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
 299 775.083(1)(g) by a fine of not more than \$50,000 or by  
 300 imprisonment for 5 years, or by both, for each offense. Each day  
 301 during any portion of which such violation occurs constitutes a  
 302 separate offense.

303 Section 7. Paragraph (c) of subsection (3) of section  
 304 648.571, Florida Statutes, is amended to read:

305 648.571 Failure to return collateral; penalty.-

306 (3)

307 (c) Allowable expenses incurred in apprehending a  
 308 defendant because of a bond forfeiture or judgment under s.  
 309 903.29 may be deducted if such expenses are accounted for. The  
 310 failure to return collateral under these terms is punishable as  
 311 follows:

312 1. If the collateral is of a value less than \$100, as

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313 provided in s. 775.082(4)(a).

314 2. If the collateral is of a value of \$100 or more, as  
 315 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.

316 3. If the collateral is of a value of \$1,500 or more, as  
 317 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.

318 4. If the collateral is of a value of \$10,000 or more, as  
 319 provided in s. 775.082(3)(b).

320 Section 8. 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 PCB: Criminal Justice  
 2 Subcommittee

3 Representative Grant offered the following:

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

6 Between lines 257 and 258, insert:

7 Section 4. Paragraph (b) of subsection (6) of section  
 8 893.13, Florida Statutes, is amended to read:

9 893.13 Prohibited acts; penalties.-

10 (6)

11 (b)1. If the offense is the possession of not more than 20  
 12 grams of cannabis, ~~as defined in this chapter,~~ or 3 grams or  
 13 less of a controlled substance described in s. 893.03(1)(c)46.-  
 14 50., 114.-142., 151.-159., or 166.-169., the person commits a  
 15 misdemeanor of the first degree, punishable as provided in s.  
 16 775.082 or s. 775.083. For the purposes of this subsection,  
 17 "cannabis" does not include the resin extracted from the plants



Amendment No. 1

18 of the genus Cannabis, or any compound manufacture, salt,  
 19 derivative, mixture, or preparation of such resin, and a  
 20 controlled substance described in s. 893.03(1)(c)46.-50., 114.-  
 21 142., 151.-159., or 166.-169., does not include the substance in  
 22 a powdered form.

23 2. In addition to the penalty imposed pursuant to  
 24 subparagraph 1., the court must order a person convicted of a  
 25 violation of subparagraph 1. to complete at least 25 hours of  
 26 community service if the offense was the possession of not more  
 27 than 20 grams of cannabis, and the person possessing the  
 28 cannabis was less than 18 years of age at the time of the  
 29 offense.

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

Remove line 31 and insert:

to modify a juvenile offender's sentence; amending s. 893.13,  
 F.S., requiring the court to order community service for minors  
 who possess a certain amount of cannabis; amending ss.