



Criminal Justice Subcommittee

Monday, March 24, 2014

12:30 PM

404 HOB

Will Weatherford
Speaker

Matt Gaetz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Monday, March 24, 2014 12:30 pm
End Date and Time: Monday, March 24, 2014 02:00 pm
Location: Sumner Hall (404 HOB)
Duration: 1.50 hrs

Consideration of the following bill(s):

CS/HB 837 Mental Health Treatment by Healthy Families Subcommittee, Schwartz
HB 1215 False Personation by Watson, B.
HB 1263 Child-on-Child Sexual Abuse by Waldman

Workshop on the following:

HB 461 Prosecution of Juveniles by Powell

NOTICE FINALIZED on 03/20/2014 16:03 by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 837 Mental Health Treatment
SPONSOR(S): Healthy Families Subcommittee; Schwartz
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	8 Y, 0 N, As CS	Entress	Brazzell
2) Criminal Justice Subcommittee		Cox <i>Kaa</i>	Cunningham <i>su</i>
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill addresses issues related to administration of psychotherapeutic medications, evaluations of individuals' competency, and dismissal of charges. The bill makes changes to ch. 916, F.S., and s. 985.19, F.S., as follows:

- Permits an admitting physician in a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail when a forensic client lacks the capacity to make an informed decision and the abrupt cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication;
- Establishes a 30-day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment;
- Establishes standards for the evaluation of competency and the mental condition of juveniles; and
- Permits a court, under s. 916.145, F.S., to dismiss charges of specified nonviolent offenses of an individual who has been deemed incompetent to proceed after three years, instead of five.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Adult Competency Hearings

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) serve individuals who have been committed to DCF, pursuant to ch. 916, F.S., due to having been adjudicated incompetent to proceed at trial due to mental illness, intellectual disability, or autism, or because they have been found not guilty by reason of insanity.¹

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.²

The statutes are silent as to a time frame in which the court must hold a hearing to determine continued competency or the continued need for involuntary commitment. However, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.³

Effect of the Bill

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure, and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

Dismissal of Charges Based on Continued Incompetency

Currently, s. 916.145, F.S., requires all charges against any defendant adjudicated incompetent to proceed due to mental illness be dropped if the defendant remains incompetent to proceed five years after the initial determination. However, the charges will not be dropped if the court specifies in its order the reasons for believing that the defendant will become competent to proceed in the foreseeable future, and specifies a timeframe in which the defendant is expected to become competent to proceed.⁴ According to DCF, forensic data from the last fifteen fiscal years shows that 99.6% of individuals restored to competency were restored in three years or less.⁵

Effect of the Bill

The bill keeps the current requirement that charges be dismissed if the defendant remains incompetent to proceed 5 years after the initial determination. However, the bill amends s. 916.145, F.S., to authorize the court to dismiss charges for an individual who is incompetent to proceed after 3 years, unless the charge is:

- Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder;

¹ S. 916.105(1), F.S.

² S. 916.13(2), F.S.; S. 916.15(3), F.S.

³ Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

⁴ S. 916.145, F.S.

⁵ DCF Analysis of HB 837 dated February 13, 2014, on file with Healthy Families Subcommittee staff.

manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, projecting, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; a forcible felony as defined in s. 776.08, F.S., that is not otherwise listed; an offense involving the possession, use, or discharge of a firearm; or an attempt to commit any of these offenses;

- Any offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest for the nonviolent felony sought to be dismissed;
- Any offense allegedly committed by a defendant who, after having been found incompetent and under court supervision in a community-based program, is formally charged by a State Attorney with a new felony offense; or
- One for which there is an identifiable victim and the victim has not consented to the dismissal.

Psychotherapeutic Medication Treatment

Currently, forensic clients⁶ must give express and informed consent to treatment.⁷ If they refuse and the situation is deemed an emergency that puts the client's safety at risk, treatment may be given for 48 hours.⁸ If the person still refuses to give consent, a court order must be sought for continuation of the treatment.⁹ In non-emergency situations, treatment may not be given without the client's consent and a court order must be sought for continued treatment.¹⁰ Court ordered medication of an individual has been the subject of judicial review.¹¹

Effect of the Bill

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the abrupt cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations¹² and is limited to the time period required to obtain a court order for the medication. This provision applies to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or APD.

The bill requires the administrator or designee of the civil or forensic facility to petition the committing court or the circuit court serving the county where the facility is located within 5 days of the inmate's admission, excluding weekends and legal holidays, for an order authorizing continued treatment.¹³

Juvenile Competency and Competency Evaluations

Chapter 985, F.S., relating to juvenile justice, provides DCF, APD, and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency

⁶ Forensic clients are individuals who have been committed to DCF, pursuant to ch. 916, F.S., because they are adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed

⁷ S. 916.107(3)(a), F.S.

⁸ S. 916.107(3)(a)1., F.S.

⁹ Id.

¹⁰ S. 916.107(3)2., F.S.

¹¹ See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006)(Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S.

¹² Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

¹³ The administrator or designee has the authority to choose which court is petition or the order authorizing continued treatment.

issues for juveniles. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.¹⁴ The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.¹⁵ DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.¹⁶ In FY 2012-13, DCF reported that it served 407 children who were adjudicated incompetent to proceed.¹⁷

In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.¹⁸ For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.¹⁹ A child is deemed competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.²⁰

Effect of the Bill

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill keeps the standard that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings, but changes the finding which must be included in the report. The expert's competency evaluation report must specifically state the basis for the determination of the child's mental condition and include written findings which:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Address the child's capacity to:
 - Appreciate the charges or allegations against the child.
 - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
 - Understand the adversarial nature of the legal process.
 - Disclose to counsel facts pertinent to the proceedings at issue.
 - Display appropriate courtroom behavior.
 - Testify relevantly; and
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition.²¹

The bill also requires the expert to include in his or her competency evaluation report a "summary of findings" section that includes:

- The date and length of time of the face-to-face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a secure residential treatment facility;

¹⁴ S. 985.19(1), F.S.

¹⁵ S. 985.19(1)(b), F.S.

¹⁶ S. 985.19(2), F.S.

¹⁷ DCF Analysis of HB 837, dated February 13, 2014. On file with Healthy Families Subcommittee staff.

¹⁸ S. 985.19(1)(b), F.S.

¹⁹ S. 985.19(1)(d), F.S.

²⁰ S. 985.19(1)(f), F.S.

²¹ The expert's factual basis of his or her clinical findings and opinions must be supported by the diagnostic criteria found in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.

- An assessment of probable treatment length, and whether the juvenile will attain competence in the future; and
- A description of recommended mental health treatment and education.

If the evaluator determines the child to be incompetent to proceed to trial, he or she must report on the mental disorder that forms the basis of the incompetency.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.
- Section 2:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.
- Section 3:** Amends s. 916.145, F.S., relating to dismissal of charges.
- Section 4:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.
- Section 5:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.
- Section 6:** Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
DCF reports that this bill will not have a fiscal impact on DCF.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²² DCF Analysis of HB 837 dated February 13, 2014, on file with Healthy Families Subcommittee staff.
STORAGE NAME: h0837b.CRJS.DOCX
DATE: 3/21/2014

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Healthy Families Subcommittee adopted a strike-all amendment to address issues in the Governor's veto message for HB 317 (2013), which contained identical language. The strike-all amendment prohibits a court from dismissing charges against a defendant for:

- An attempted violent offense as listed in the bill;
- An offense committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest of the non-violent felony sought to be dismissed;
- An offense committed by a defendant who, after having been found incompetent and under court supervision in a community based program, is formally charged by a State Attorney with a new felony offense; or
- An offense committed where there is an identifiable victim and such victim has not consented.

The analysis is drafted to the committee substitute as passed by the Healthy Families Subcommittee.

27 | treatment as is deemed necessary and essential by the client's
 28 | multidisciplinary treatment team for the appropriate care of the
 29 | client, such treatment may be provided under the following
 30 | circumstances:

31 | 1. In an emergency situation in which there is immediate
 32 | danger to the safety of the client or others, such treatment may
 33 | be provided upon the written order of a physician for a period
 34 | not to exceed 48 hours, excluding weekends and legal holidays.
 35 | If, after the 48-hour period, the client has not given express
 36 | and informed consent to the treatment initially refused, the
 37 | administrator or designee of the civil or forensic facility
 38 | shall, within 48 hours, excluding weekends and legal holidays,
 39 | petition the committing court or the circuit court serving the
 40 | county in which the facility is located, at the option of the
 41 | facility administrator or designee, for an order authorizing the
 42 | continued treatment of the client. In the interim, the need for
 43 | treatment shall be reviewed every 48 hours and may be continued
 44 | without the consent of the client upon the continued written
 45 | order of a physician who has determined that the emergency
 46 | situation continues to present a danger to the safety of the
 47 | client or others.

48 | 2. In a situation other than an emergency situation, the
 49 | administrator or designee of the facility shall petition the
 50 | court for an order authorizing necessary and essential treatment
 51 | for the client.

52 | a. If the client has been receiving psychotherapeutic

53 medications at the jail at the time of transfer to the forensic
 54 or civil facility and lacks the capacity to make an informed
 55 decision regarding mental health treatment at the time of
 56 admission, the admitting physician may order continued
 57 administration of psychotherapeutic medications if, in the
 58 clinical judgment of the physician, abrupt cessation of
 59 psychotherapeutic medications could pose a risk to the health or
 60 safety of the client during the time a court order to medicate
 61 is pursued. The administrator or designee of the civil or
 62 forensic facility shall, within 5 days after admission,
 63 excluding weekends and legal holidays, petition the committing
 64 court or the circuit court serving the county in which the
 65 facility is located, at the option of the facility administrator
 66 or designee, for an order authorizing the continued treatment of
 67 a client. The jail physician shall provide a current
 68 psychotherapeutic medication order at the time of transfer to
 69 the forensic or civil facility or upon request of the admitting
 70 physician after the client is evaluated.

71 b. The court order shall allow such treatment for up to a
 72 ~~period not to exceed~~ 90 days after following the date of the
 73 entry of the order. Unless the court is notified in writing that
 74 the client has provided express and informed consent in writing
 75 or that the client has been discharged by the committing court,
 76 the administrator or designee shall, before ~~the~~ expiration of
 77 the initial 90-day order, petition the court for an order
 78 authorizing the continuation of treatment for another 90 days

79 | ~~90-day period~~. This procedure shall be repeated until the client
 80 | provides consent or is discharged by the committing court.

81 | 3. At the hearing on the issue of whether the court should
 82 | enter an order authorizing treatment for which a client was
 83 | unable to or refused to give express and informed consent, the
 84 | court shall determine by clear and convincing evidence that the
 85 | client has mental illness, intellectual disability, or autism,
 86 | that the treatment not consented to is essential to the care of
 87 | the client, and that the treatment not consented to is not
 88 | experimental and does not present an unreasonable risk of
 89 | serious, hazardous, or irreversible side effects. In arriving at
 90 | the substitute judgment decision, the court must consider at
 91 | least the following factors:

- 92 | a. The client's expressed preference regarding treatment;
- 93 | b. The probability of adverse side effects;
- 94 | c. The prognosis without treatment; and
- 95 | d. The prognosis with treatment.

96 |
 97 | The hearing shall be as convenient to the client as may be
 98 | consistent with orderly procedure and shall be conducted in
 99 | physical settings not likely to be injurious to the client's
 100 | condition. The court may appoint a general or special magistrate
 101 | to preside at the hearing. The client or the client's guardian,
 102 | and the representative, shall be provided with a copy of the
 103 | petition and the date, time, and location of the hearing. The
 104 | client has the right to have an attorney represent him or her at

105 | the hearing, and, if the client is indigent, the court shall
 106 | appoint the office of the public defender to represent the
 107 | client at the hearing. The client may testify or not, as he or
 108 | she chooses, and has the right to cross-examine witnesses and
 109 | may present his or her own witnesses.

110 | Section 2. Subsection (2) of section 916.13, Florida
 111 | Statutes, is amended to read:

112 | 916.13 Involuntary commitment of defendant adjudicated
 113 | incompetent.—

114 | (2) A defendant who has been charged with a felony and who
 115 | has been adjudicated incompetent to proceed due to mental
 116 | illness, and who meets the criteria for involuntary commitment
 117 | ~~to the department under the provisions of~~ this chapter, may be
 118 | committed to the department, and the department shall retain and
 119 | treat the defendant.

120 | (a) Within ~~No later than~~ 6 months after the date of
 121 | admission and at the end of any period of extended commitment,
 122 | or at any time the administrator or designee has ~~shall have~~
 123 | determined that the defendant has regained competency to proceed
 124 | or no longer meets the criteria for continued commitment, the
 125 | administrator or designee shall file a report with the court
 126 | pursuant to the applicable Florida Rules of Criminal Procedure.

127 | (b) A competency hearing must be held within 30 days after
 128 | the court receives notification that the defendant is competent
 129 | to proceed or no longer meets the criteria for continued
 130 | commitment.

131 Section 3. Section 916.145, Florida Statutes, is amended
 132 to read:

133 (Substantial rewording of section. See
 134 s. 916.145, F.S., for present text.)

135 916.145 Dismissal of charges.—

136 (1) The charges against a defendant adjudicated
 137 incompetent to proceed due to mental illness shall be dismissed
 138 without prejudice to the state if the defendant remains
 139 incompetent to proceed 5 years after such determination, unless
 140 the court in its order specifies its reasons for believing that
 141 the defendant will become competent to proceed within the
 142 foreseeable future and specifies the time within which the
 143 defendant is expected to become competent to proceed. The court
 144 may dismiss such charges at least 3 and no more than 5 years
 145 after such determination, unless the charge is:

146 (a) Arson;

147 (b) Sexual battery;

148 (c) Robbery;

149 (d) Kidnapping;

150 (e) Aggravated child abuse;

151 (f) Aggravated abuse of an elderly person or disabled
 152 adult;

153 (g) Aggravated assault with a deadly weapon;

154 (h) Murder;

155 (i) Manslaughter;

156 (j) Aggravated manslaughter of an elderly person or

157 | disabled adult;
 158 | (k) Aggravated manslaughter of a child;
 159 | (l) Unlawful throwing, projecting, placing, or discharging
 160 | of a destructive device or bomb;
 161 | (m) Armed burglary;
 162 | (n) Aggravated battery;
 163 | (o) Aggravated stalking;
 164 | (p) A forcible felony as defined in s. 776.08 and not
 165 | listed elsewhere in this subsection;
 166 | (q) An offense involving the possession, use, or discharge
 167 | of a firearm;
 168 | (r) An attempt to commit an offense listed in this
 169 | subsection;
 170 | (s) An offense allegedly committed by a defendant who has
 171 | had a forcible or violent felony conviction within the 5 years
 172 | preceding the date of arrest for the nonviolent felony sought to
 173 | be dismissed;
 174 | (t) An offense allegedly committed by a defendant who,
 175 | after having been found incompetent and under court supervision
 176 | in a community-based program, is formally charged by a State
 177 | Attorney with a new felony offense; or
 178 | (u) One for which there is an identifiable victim and such
 179 | victim has not consented to the dismissal.
 180 | (2) This section does not prohibit the state from refileing
 181 | dismissed charges if the defendant is declared to be competent
 182 | to proceed in the future.

183 Section 4. Subsection (5) is added to section 916.15,
 184 Florida Statutes, to read:

185 916.15 Involuntary commitment of defendant adjudicated not
 186 guilty by reason of insanity.—

187 (5) The commitment hearing must be held within 30 days
 188 after the court receives notification that the defendant no
 189 longer meets the criteria for continued commitment.

190 Section 5. Subsection (1) of section 985.19, Florida
 191 Statutes, is amended to read:

192 985.19 Incompetency in juvenile delinquency cases.—

193 (1) If, at any time prior to or during a delinquency case,
 194 the court has reason to believe that the child named in the
 195 petition may be incompetent to proceed with the hearing, the
 196 court on its own motion may, or on the motion of the child's
 197 attorney or state attorney must, stay all proceedings and order
 198 an evaluation of the child's mental condition.

199 (a) Any motion questioning the child's competency to
 200 proceed must be served upon the child's attorney, the state
 201 attorney, the attorneys representing the Department of Juvenile
 202 Justice, and the attorneys representing the Department of
 203 Children and Families ~~Family Services~~. Thereafter, any motion,
 204 notice of hearing, order, or other legal pleading relating to
 205 the child's competency to proceed with the hearing must be
 206 served upon the child's attorney, the state attorney, the
 207 attorneys representing the Department of Juvenile Justice, and
 208 the attorneys representing the Department of Children and

209 Families ~~Family Services~~.

210 (b) All determinations of competency must ~~shall~~ be made at
 211 a hearing, with findings of fact based on an evaluation of the
 212 child's mental condition made by at least ~~not less than~~ two but
 213 not ~~nor~~ more than three experts appointed by the court. ~~The~~
 214 ~~basis for the determination of incompetency must be specifically~~
 215 ~~stated in the evaluation. In addition, a recommendation as to~~
 216 ~~whether residential or nonresidential treatment or training is~~
 217 ~~required must be included in the evaluation.~~ Experts appointed
 218 by the court to determine the mental condition of a child shall
 219 be allowed reasonable fees for services rendered. State
 220 employees may be paid expenses pursuant to s. 112.061. The fees
 221 shall be taxed as costs in the case.

222 (c) A child is competent to proceed if the child has
 223 sufficient present ability to consult with counsel with a
 224 reasonable degree of rational understanding and the child has a
 225 rational and factual understanding of the present proceedings.
 226 The expert's competency evaluation report must specifically
 227 state the basis for the determination of the child's mental
 228 condition and must include written findings that:

- 229 1. Identify the specific matters referred for evaluation.
- 230 2. Identify the sources of information used by the expert.
- 231 3. Describe the procedures, techniques, and diagnostic
 232 tests used in the examination to determine the basis of the
 233 child's mental condition.
- 234 4. Address the child's capacity to:

- 235 a. Appreciate the charges or allegations against the
 236 child.
- 237 b. Appreciate the range and nature of possible penalties
 238 that may be imposed in the proceedings against the child, if
 239 applicable.
- 240 c. Understand the adversarial nature of the legal process.
- 241 d. Disclose to counsel facts pertinent to the proceedings
 242 at issue.
- 243 e. Display appropriate courtroom behavior.
- 244 f. Testify relevantly.
- 245 5. Present the factual basis for the expert's clinical
 246 findings and opinions of the child's mental condition. The
 247 expert's factual basis of his or her clinical findings and
 248 opinions must be supported by the diagnostic criteria found in
 249 the most recent edition of the Diagnostic and Statistical Manual
 250 of Mental Disorders (DSM) published by the American Psychiatric
 251 Association and must be presented in a separate section of the
 252 report entitled "summary of findings." This section must
 253 include:
- 254 a. The day, month, year, and length of time of the face-
 255 to-face diagnostic clinical interview to determine the child's
 256 mental condition.
- 257 b. A statement that identifies the DSM clinical name and
 258 associated diagnostic code for the specific mental disorder that
 259 forms the basis of the child's incompetency.
- 260 c. A statement of how the child would benefit from

261 competency restoration services in the community or in a secure
 262 residential treatment facility.

263 d. An assessment of the probable duration of the treatment
 264 to restore competence and the probability that the child will
 265 attain competence to proceed in the foreseeable future.

266 e. A description of recommended treatment or education
 267 appropriate for the mental disorder.

268 6. If the evaluator determines the child to be incompetent
 269 to proceed to trial, the evaluator must report on the mental
 270 disorder that forms the basis of the incompetency.

271 (d)-(e) All court orders determining incompetency must
 272 include specific written findings by the court as to the nature
 273 of the incompetency and whether the child requires secure or
 274 nonsecure treatment or training environment ~~environments~~.

275 (e)-(d) For competency ~~incompetency~~ evaluations related to
 276 mental illness, the Department of Children and Families ~~Family~~
 277 ~~Services~~ shall maintain and annually provide the courts with a
 278 list of available mental health professionals who have completed
 279 a training program approved by the Department of Children and
 280 Families ~~Family Services~~ to perform the evaluations.

281 (f)-(e) For competency ~~incompetency~~ evaluations related to
 282 intellectual disability or autism, the court shall order the
 283 Agency for Persons with Disabilities to examine the child to
 284 determine if the child meets the definition of "intellectual
 285 disability" or "autism" in s. 393.063 and, provide a clinical
 286 opinion as to if so, whether the child is competent to proceed

287 | with delinquency proceedings.

288 | ~~(f) A child is competent to proceed if the child has~~
 289 | ~~sufficient present ability to consult with counsel with a~~
 290 | ~~reasonable degree of rational understanding and the child has a~~
 291 | ~~rational and factual understanding of the present proceedings.~~
 292 | ~~The report must address the child's capacity to:~~

- 293 | ~~1. Appreciate the charges or allegations against the~~
- 294 | ~~child.~~
- 295 | ~~2. Appreciate the range and nature of possible penalties~~
- 296 | ~~that may be imposed in the proceedings against the child, if~~
- 297 | ~~applicable.~~
- 298 | ~~3. Understand the adversarial nature of the legal process.~~
- 299 | ~~4. Disclose to counsel facts pertinent to the proceedings~~
- 300 | ~~at issue.~~
- 301 | ~~5. Display appropriate courtroom behavior.~~
- 302 | ~~6. Testify relevantly.~~

303 | (g) Immediately upon the filing of the court order finding
 304 | a child incompetent to proceed, the clerk of the court shall
 305 | notify the Department of Children and Families ~~Family Services~~
 306 | and the Agency for Persons with Disabilities and fax or hand
 307 | deliver to the department and to the agency a referral packet
 308 | that includes, at a minimum, the court order, the charging
 309 | documents, the petition, and the court-appointed evaluator's
 310 | reports.

311 | (h) After placement of the child in the appropriate
 312 | setting, the Department of Children and Families ~~Family Services~~

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313 | in consultation with the Agency for Persons with Disabilities,
 314 | as appropriate, must, within 30 days after placement of the
 315 | child, prepare and submit to the court a treatment or training
 316 | plan for the child's restoration of competency. A copy of the
 317 | plan must be served upon the child's attorney, the state
 318 | attorney, and the attorneys representing the Department of
 319 | Juvenile Justice.

320 | Section 6. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Schwartz offered the following:

Amendment (with title amendment)

Remove line 127 and insert:

(b) A status hearing must be held within 30 days after

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

Remove line 8 and insert:

status hearings must be held; amending s. 916.145,



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 Schwartz offered the following:

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

6 Remove lines 187-320 and insert:

7 (5) A status hearing must be held within 30 days after the
 8 court receives notification that the defendant no longer meets
 9 the criteria for continued commitment.

10 Section 5. This act shall take effect July 1, 2014.

11
 12
 13 -----

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

15 Remove lines 13-17 and insert:

16 status hearings must be held; providing an effective date.

17

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1215 False Personation
SPONSOR(S): Watson
TIED BILLS: IDEN./SIM. BILLS: SB 190

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

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer. The offense is reclassified to a second degree felony or a first degree felony in specified instances.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle. The prohibited words and insignia include words such as "police," "patrolman," "sheriff," and "deputy."

The bill amends s. 843.08, F.S., to add "firefighter" to the list of officers that may not be falsely personated. The bill also amends s. 843.085, F.S., to:

- Expand its application to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Address a 2005 Florida Supreme Court decision by requiring proof that the offender had the "intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency" (rather than requiring proof that a reasonable person could be deceived into believing that the vehicle is authorized by a law enforcement agency).

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of this bill. However, in 2013, CJIC determined that HB 271, which is similar to this bill, would have a negative insignificant prison bed impact. The bill may also have a negative jail bed impact on local governments, because it expands the application of s. 843.085, F.S.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term "watchman" is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add "firefighter" to the list of officers described above, and defines the term "watchman" as a security officer licensed under ch. 493, F.S.⁵

The bill amends the title of this offense to "false personation" and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ 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.

² Section 843.08, F.S.

³ 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.

⁴ 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.

⁵ Section 493.6101(19), F.S., defines a "security officer" as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Indicia of Authority

Section 843.085, F.S., makes it a first degree misdemeanor⁶ for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff;" or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085, F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- "Police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."¹⁰

In *Sult v. State*,¹¹ the Florida Supreme Court held that this statute was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The "could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus... [the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct."¹²

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof. Additionally, the bill allows fraternal associations to use the term "fire department" in the official name of their association.

⁶ 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.

⁷ Section 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term "criminal justice agency" as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ Section 843.085(4), F.S.

¹¹ 906 So.2d 1013 (Fla. 2005).

¹² *Sult*, 906 So.2d at 1021.

The bill addresses the *Sult v. State* decision by requiring proof that the offender had the "intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency" (rather than requiring proof that a reasonable person could be deceived).

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. 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:

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of this bill. However, in 2013, CJIC determined that HB 271, which is similar to this bill, would have a negative insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to false personation; amending s.
 843.08, F.S.; prohibiting a person from falsely
 personating a firefighter; revising terminology;
 amending s. 843.085, F.S.; prohibiting operation or
 ownership of a motor vehicle falsely marked with the
 intent to mislead or cause another person to believe
 that such vehicle is authorized by a fire department
 for use by the person operating it; providing an
 exception; amending s. 921.0022, F.S.; conforming
 provisions to changes made by the act; providing an
 effective date.

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

Section 1. Section 843.08, Florida Statutes, is amended to
 read:

843.08 False personation ~~Falsely personating officer,~~
~~ete.~~—A person who falsely assumes or pretends to be a
firefighter, sheriff, officer of the Florida Highway Patrol,
 officer of the Fish and Wildlife Conservation Commission,
 officer of the Department of Transportation, officer of the
 Department of Financial Services, officer of the Department of
 Corrections, correctional probation officer, deputy sheriff,
 state attorney or assistant state attorney, statewide prosecutor
 or assistant statewide prosecutor, state attorney investigator,
 coroner, police officer, lottery special agent or lottery
 investigator, beverage enforcement agent, or watchman, or any

29 member of the Parole Commission and any administrative aide or
 30 supervisor employed by the commission, or any personnel or
 31 representative of the Department of Law Enforcement, or a
 32 federal law enforcement officer as defined in s. 901.1505, and
 33 takes upon himself or herself to act as such, or to require any
 34 other person to aid or assist him or her in a matter pertaining
 35 to the duty of any such officer, commits a felony of the third
 36 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 37 775.084. However, a person who falsely personates any such
 38 officer during the course of the commission of a felony commits
 39 a felony of the second degree, punishable as provided in s.
 40 775.082, s. 775.083, or s. 775.084. If the commission of the
 41 felony results in the death or personal injury of another human
 42 being, the person commits a felony of the first degree,
 43 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 44 The term "watchman" means a security officer licensed under
 45 chapter 493.

46 Section 2. Subsections (2) and (4) of section 843.085,
 47 Florida Statutes, are amended to read:

48 843.085 Unlawful use of police badges or other indicia of
 49 authority.—It is unlawful for any person:

50 (2) To own or operate a motor vehicle marked or identified
 51 in any manner or combination by the word or words "police,"
 52 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 53 "commission officer," "Wildlife Officer," "Marine Patrol
 54 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 55 department," or by any lettering, marking, or insignia, or
 56 colorable imitation thereof, including, but not limited to,

57 | stars, badges, or shields, officially used to identify the
 58 | vehicle as a federal, state, county, or municipal law
 59 | enforcement vehicle or a vehicle used by a criminal justice
 60 | agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 61 | used by a fire department with the intent to mislead or cause
 62 | another person to believe that such vehicle is an official
 63 | vehicle of that agency and is authorized to be used by that
 64 | agency ~~which could deceive a reasonable person into believing~~
 65 | ~~that such vehicle is authorized by any of the agencies described~~
 66 | ~~above for use by the person operating the motor vehicle, unless~~
 67 | such vehicle is owned or operated by the appropriate agency and
 68 | its use is authorized by such agency, ~~or~~ the local law
 69 | enforcement agency or fire department authorizes the use of such
 70 | vehicle, ~~or unless~~ the person is appointed by the Governor
 71 | pursuant to chapter 354.

72 | (4) ~~Nothing in~~ This section does not shall prohibit a
 73 | fraternal, benevolent, or labor organization or association, or
 74 | their chapters or subsidiaries, from using the following words,
 75 | in any manner or in any combination, if those words appear in
 76 | the official name of the organization or association: "police,"
 77 | "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 78 | "commission officer," "Wildlife Officer," "Marine Patrol
 79 | Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 80 | department."

81 | Section 3. Paragraph (b) of subsection (3) of section
 82 | 921.0022, Florida Statutes, is amended to read:

83 | 921.0022 Criminal Punishment Code; offense severity
 84 | ranking chart.-

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85 (3) OFFENSE SEVERITY RANKING CHART

86 (b) LEVEL 2

87

Florida	Felony	
Statute	Degree	Description

88

379.2431	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
(1) (e) 3.		

89

379.2431	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
(1) (e) 4.		

90

403.413 (6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
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91

517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
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92

590.28 (1)	3rd	Intentional burning of lands.
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93

784.05 (3)	3rd	Storing or leaving a loaded
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			firearm within reach of minor who uses it to inflict injury or death.
94	787.04 (1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
95	806.13 (1) (b) 3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
96	810.061 (2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
97	810.09 (2) (e)	3rd	Trespassing on posted commercial horticulture property.
98	812.014 (2) (c) 1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
99	812.014 (2) (d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage

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			of dwelling.
100	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
101	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
102	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
103	817.52(3)	3rd	Failure to redeliver hired vehicle.
104	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
105	817.60(5)	3rd	Dealing in credit cards of another.
106	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
107			

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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108	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
109	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
110	831.01	3rd	Forgery.
111	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
112	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
113	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
114	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.

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115

832.05 (3) (a) 3rd Cashing or depositing item with intent to defraud.

116

843.08 3rd False personation ~~Falsely impersonating an officer.~~

117

893.13 (2) (a) 2. 3rd Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs other than cannabis.

118

893.147 (2) 3rd Manufacture or delivery of drug paraphernalia.

119

120

Section 4. 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 Watson, B. offered the following:

Amendment (with title amendment)

Remove lines 46-71 and insert:

Section 2. Subsections (1), (2), (3), and (4) of section 843.085, Florida Statutes, are amended to read:

843.085 Unlawful use of police badges or other indicia of authority. ~~It is unlawful for any person:~~

(1) It is unlawful for any person, Unless appointed by the Governor pursuant to chapter 354, authorized by the appropriate agency, or displayed in a closed or mounted case as a collection or exhibit, to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or



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18 other criminal justice agency as now or hereafter defined in s.
19 943.045, with the intent to mislead or cause another person to
20 believe that he or she is a member of that agency or is
21 authorized to display or wear such item, or to wear or display
22 any item that ~~which could deceive a reasonable person into~~
23 ~~believing that such item is authorized by any of the agencies~~
24 ~~described above for use by the person displaying or wearing it,~~
25 ~~or which~~ displays in any manner or combination the word or words
26 "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
27 "highway patrol," "commission officer," "Wildlife Officer,"
28 "Marine Patrol Officer," "state attorney," "public defender,"
29 "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
30 the intent to mislead or cause another person to believe that he
31 or she is a member of that agency or is authorized to wear or
32 display such item ~~which could deceive a reasonable person into~~
33 ~~believing that such item is authorized by any of the agencies~~
34 ~~described above for use by the person displaying or wearing it.~~

35 (2) It is unlawful for a person To own or operate a motor
36 vehicle marked or identified in any manner or combination by the
37 word or words "police," "patrolman," "sheriff," "deputy,"
38 "trooper," "highway patrol," "commission officer," "Wildlife
39 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
40 "bailiff," or "fire department," or by any lettering, marking,
41 or insignia, or colorable imitation thereof, including, but not
42 limited to, stars, badges, or shields, officially used to
43 identify the vehicle as a federal, state, county, or municipal

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44 law enforcement vehicle or a vehicle used by a criminal justice
45 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
46 used by a fire department with the intent to mislead or cause
47 another person to believe that such vehicle is an official
48 vehicle of that agency and is authorized to be used by that
49 agency ~~which could deceive a reasonable person into believing~~
50 ~~that such vehicle is authorized by any of the agencies described~~
51 ~~above for use by the person operating the motor vehicle, unless~~
52 such vehicle is owned or operated by the appropriate agency and
53 its use is authorized by such agency, or the local law
54 enforcement agency or fire department authorizes the use of such
55 vehicle, ~~or unless~~ the person is appointed by the Governor
56 pursuant to chapter 354.

57 (3) It is unlawful for a person To sell, transfer, or give
58 away the authorized badge, or colorable imitation thereof,
59 including miniatures, of any criminal justice agency as ~~now or~~
60 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
61 combination the word or words "police," "patrolman," "sheriff,"
62 "deputy," "trooper," "highway patrol," "commission officer,"
63 "Wildlife Officer," "Marine Patrol Officer," "marshal,"
64 "constable," "agent," "state attorney," "public defender," ~~or~~
65 "bailiff," or "fire department," with the intent to mislead or
66 cause another person to believe that he or she is a member of
67 that agency or is authorized to wear or display such item ~~which~~
68 ~~could deceive a reasonable person into believing that such item~~
69 ~~is authorized by any of the agencies described above, except for~~



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70 agency purchases or upon the presentation and recordation of
71 both a driver's license and other identification showing any
72 transferee to actually be a member of such criminal justice
73 agency or unless the person is appointed by the Governor
74 pursuant to chapter 354. A transferor of an item covered by this
75 subsection is required to maintain for 2 years a written record
76 of such transaction, including records showing compliance with
77 this subsection, and if such transferor is a business, it shall
78 make such records available during normal business hours for
79 inspection by any law enforcement agency having jurisdiction in
80 the area where the business is located.

81
82
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85 -----
86 **T I T L E A M E N D M E N T**

87 Remove lines 5-9 and insert:

88 amending s. 843.085, F.S.; prohibiting the sale or transfer of
89 specified badges bearing in any manner or combination the word
90 "fire department;" requiring a person to have the intent to
91 mislead or cause another person to believe that he or she is a
92 member of specified agencies or is authorized to wear or display
93 a specified item; prohibiting the ownership or operation of
94 vehicles marked or identified by the word "fire department;"
95 requiring a person have the intent to mislead or cause another



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96 person to believe that the vehicle is an official vehicle
97 authorized by specified agencies for use by the person operating
98 it; prohibiting the sale or transfer of specified badges bearing
99 in any manner or combination the word "fire department;"
100 requiring a person to have the intent to mislead or cause
101 another person to believe that he or she is a member of
102 specified agencies or is authorized to wear or display a
103 specified item; providing an
104

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1263 Child-on-Child Sexual Abuse
SPONSOR(S): Waldman
TIED BILLS: IDEN./SIM. BILLS: SB 1404

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

SUMMARY ANALYSIS

Section 39.201, F.S., requires a person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse to report such knowledge or suspicion to the Department of Children and Families' (DCF) central abuse hotline (hotline). If the report involves a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior, the hotline must determine the age of the alleged offender, if known, and:

- If the alleged offender is 12 or younger, transfer the report to the county sheriff's office, conduct an assessment, assist the family in receiving services pursuant to s. 39.307, F.S., and send a written report of the allegation to the county sheriff's office within 48 hours after the initial report is made; and
- If the alleged offender is 13 or older, transfer the report or call to the county sheriff's office and send a written report to the county sheriff's office within 48 hours after the initial report to the hotline.

Upon receiving a report, s. 39.307, F.S., requires DCF, to assist the family in receiving services to address the allegations of the report. In doing so, DCF must comply with a variety of requirements set forth in the statute.

For purposes of the above-described provisions, the terms "alleged juvenile sexual offender" and "child who has exhibited inappropriate sexual behavior" are defined in a manner that limits their application to children 12 years of age or younger.

The bill removes the definition of the term "alleged juvenile sexual offender" and replaces it with the definition of the term "juvenile sexual abuse," which means "any sexual behavior which occurs without consent, without equality, or as a result of coercion." The definition of "child who has exhibited inappropriate sexual behavior" is also amended so that it applies to all children (not just those 12 years of age or younger). As a result, the provisions of s. 39.201, F.S. (relating to reporting child abuse), and s. 39.307, F.S. (relating to child protective investigations), will apply to all children under the age of 18, not just those 12 years of age or younger.

In addition to the above-described protective investigation requirements, the bill requires:

- DCF to create a unified system in its Florida Safe Families Network for identifying and tracking the provision of services to children who have been the victims of sexual abuse or juvenile sexual abuse or who have exhibited inappropriate sexual behavior;
- Persons making placement decisions about a child to consult the information in the unified system and, when necessary, seek expert assistance in determining what type of placement is safe and appropriate for the child; and
- DCF to measure the number of children in out-of-home care or under supervision of the court who are victims of juvenile sexual abuse.

The bill may have a negative fiscal impact on DCF. See fiscal section.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Definitions Relating to Child Abuse and Protective Investigations

Parts II and III of ch. 39, F.S., contain a variety of provisions establishing the processes and procedures for reporting child abuse and for conducting child protective investigations.

For purposes of these provisions, s. 39.01, F.S., defines the following terms:

- “Alleged juvenile sexual offender” means:
 - A child 12 years of age or younger who is alleged to have committed a violation of ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd or lascivious offenses), s. 827.071, F.S. (sexual performance by a child), or s. 847.0133, F.S. (obscene materials); or
 - A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse.¹
- “Juvenile sexual abuse” means any sexual behavior² which occurs without consent,³ without equality,⁴ or as a result of coercion.⁵
- “Child who has exhibited inappropriate sexual behavior” means a child who is 12 years of age or younger and who has been found by the Department of Children and Families (DCF) or the court to have committed an inappropriate sexual act.

Effect of the Bill

The bill removes the definition of the term “alleged juvenile sexual offender” and replaces it with the existing definition of the term “juvenile sexual abuse.” The definition of the term “child who has exhibited inappropriate sexual behavior” is also amended so that it applies to all children (not just those 12 years of age or younger). As a result, the below-described provisions of s. 39.201, F.S. (relating to reporting child abuse), and s. 39.307, F.S. (relating to child protective investigations), will apply to all children under the age of 18, not just those 12 or younger.

The bill makes conforming changes in ss. 39.0132, 39.302, and 985.04, F.S., to remove references to the term “juvenile sexual offender.”

Mandatory Reports of Child Abuse

Section 39.201, F.S., requires a person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender to report such knowledge or suspicion to DCF’s central abuse hotline (hotline).⁶ If the report involves a

¹ Section 39.01(7), F.S.

² Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts. Section 39.01(7), F.S.

³ Consent” means an agreement, including all of the following:

- Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.
- Knowledge of societal standards for what is being proposed.
- Awareness of potential consequences and alternatives.
- Assumption that agreement or disagreement will be accepted equally.
- Voluntary decision.
- Mental competence

⁴ “Equality” means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

⁵ “Coercion” means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

⁶ Section 39.207(1)(c) and (2)(a) and (b), F.S.

known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior, the hotline must determine the age of the alleged offender, if known, and:

- If the alleged offender is 12 years of age or younger, immediately electronically transfer the report or call to the county sheriff's office. In such instances, DCF must also conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, F.S. (described below), and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the hotline; and
- If the alleged offender is 13 years of age or older, immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the hotline.⁷

Effect of the Bill

The bill amends s. 39.201, F.S., to require *all* incidents of juvenile sexual abuse, regardless of the age of the child involved, to be reported to DCF and to be investigated by DCF. Specifically, the bill requires reports involving "juvenile sexual abuse" or a child who has exhibited inappropriate sexual behavior to be made to DCF. Alleged incidents of juvenile sexual abuse involving a child who is in the custody or protective supervision of DCF must also be reported to the hotline. Once reported, the hotline must determine whether a child included in the report is known to DCF and:

- If the child is known to DCF, inform the Children's Legal Services office of the allegation so that the office may advise the court and parties to any proceeding under ch. 39, F.S., involving the child. The hotline must also immediately electronically transfer the report or call to the county sheriff's office, conduct an assessment, assist the child in receiving appropriate services pursuant to s. 39.307, F.S., and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the hotline; and
- If the child is not known to DCF, immediately electronically transfer the report or call to the county sheriff's office. In such instances, DCF must also conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, F.S. (described below), and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the hotline.

Protective Investigations

Section 39.307, F.S., requires DCF, upon receiving a report alleging juvenile sexual abuse, to assist the family in receiving appropriate services to address the allegations of the report. In doing so, DCF, the contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services must adhere to certain procedures.

First, the possible consequences of DCF's response, and the name and office telephone number of the person responding must be provided to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver (caregiver).⁸ The caregiver must be involved to the fullest extent possible in determining the nature of the sexual behavior concerns and the nature of any problem or risk to other children.⁹

DCF district staff, the child protection team of the Department of Health (DOH), and other providers under contract with DCF must conduct an assessment¹⁰ of risk and the perceived treatment needs of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers.¹¹ If necessary, DOH's child protection team must conduct a physical examination of the victim.¹²

⁷ Section 39.207(2)(c), F.S.

⁸ Section 39.307(2)(a), F.S.

⁹ Section 39.307(2)(b), F.S.

¹⁰ The assessment must be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

Section 39.307(2)(d), F.S.

¹¹ Section 39.307(2)(c), F.S.

¹² Section 39.307(2)(e), F.S.

Based on the information obtained from the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs must be completed and, if needed, a case plan developed within 30 days.¹³

DCF must classify the outcome of the report as follows:

- Report closed. Services were not offered because DCF determined that there was no basis for intervention.
- Services accepted by the alleged juvenile sexual offender. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and accepted by the caregiver.
- Report closed. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.
- Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.
- Services accepted by victim. Services were offered to the victim and accepted by the caregiver.
- Report closed. Services were offered to the victim but were rejected by the caregiver.¹⁴

If services are accepted by the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers, DCF must designate a case manager and develop a specific case plan.¹⁵ The case manager must periodically review the progress toward achieving the objectives of the plan in order to:

- Make adjustments to the plan or take additional action as provided in this part; or
- Terminate the case if indicated by successful or substantial achievement of the objectives of the plan.¹⁶

If the family or caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior fails to adequately participate or allow for the adequate participation of the child in the services or treatment delineated in the case plan, the case manager may recommend that DCF:

- Close the case;
- Refer the case to mediation or arbitration, if available; or
- Notify the appropriate law enforcement agency of failure to comply.¹⁷

Effect of the Bill

The bill broadens the pool of children that DCF must conduct protective investigations upon. Specifically, the bill applies all of the above-described requirements relating to protective investigations involving juvenile sexual abuse to investigations involving children that have exhibited inappropriate sexual behavior (redefined as described above to include all children - not just those 12 years of age or younger).

In addition to the above-described protective investigation requirements, the bill requires:

- The Children's Legal Services office to notify all parties to a dependency proceeding that a report was received if the report involves a child that is known to DCF;

¹³ Section 39.307(2)(f), F.S.

¹⁴ Section 39.307(2)(g), F.S.

¹⁵ Section 39.307(3), F.S. Services provided to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers or family must be voluntary and of necessary duration. Section 39.307(4), F.S.

¹⁶ Section 39.307(3)(b), F.S.

¹⁷ Section 39.307(5), F.S.

- DCF to create a unified system in its Florida Safe Families Network for identifying and tracking the provision of services to children who have been the victims of sexual abuse or juvenile sexual abuse or who have exhibited inappropriate sexual behavior;
- Persons making placement decisions about a child to consult the information in the unified system and, when necessary, seek expert assistance in determining what type of placement is safe and appropriate for the child; and
- DCF to measure the number of children in out-of-home care or under supervision of the court who are victims of juvenile sexual abuse.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Section 3. Amends s. 39.307, F.S., relating to reports of child-on-child sexual abuse.

Section 4. Amends s. 39.0132, F.S., relating to oaths, records, and confidential information.

Section 5. Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 6. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 7. 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 government revenues.

2. Expenditures:

The bill requires all incidents of juvenile sexual abuse (regardless of the age of the child involved) to be reported to DCF, and broadens the pool of children that DCF must conduct protective investigations upon. The bill also requires DCF to create a unified system in its Florida Safe Families Network for identifying and tracking the provision of services to children who have been the victims of sexual abuse or juvenile sexual abuse or who have exhibited inappropriate sexual behavior. These requirements may have a negative fiscal impact on DCF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require DCF to amend or create rules. However s. 39.012, F.S., requires DCF to adopt rules for the efficient and effective management of all programs, services, facilities, and functions necessary for implementing ch. 30, F.S. This rulemaking authority appears adequate.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill removes the definition of the term "alleged juvenile sexual offender" and replaces it with the existing definition of the term "juvenile sexual abuse" for purposes of ch. 39, F.S. However, the bill does not remove references to "juvenile sexual offender" in s. 39.201(1)(c) and (2)(c), F.S.

Various portions of the bill refer to children who are "known to the department." It is unclear what this phrase means.

The bill makes a conforming change in s. 985.04, F.S., to refer to a "child alleged to have engaged in juvenile sexual abuse" rather than an "alleged juvenile sexual offender." A similar change should likely be made to s. 39.0132, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

27 | renumbered as subsection (34) and amended, and present
 28 | subsection (14) of that section is amended, to read:

29 | 39.01 Definitions.—When used in this chapter, unless the
 30 | context otherwise requires:

31 | (34) ~~(7)~~ "Alleged juvenile sexual offender" means:

32 | ~~(a) A child 12 years of age or younger who is alleged to~~
 33 | ~~have committed a violation of chapter 794, chapter 796, chapter~~
 34 | ~~800, s. 827.071, or s. 847.0133; or~~

35 | ~~(b) A child who is alleged to have committed any violation~~
 36 | ~~of law or delinquent act involving juvenile sexual abuse.~~

37 | "Juvenile sexual abuse" means any sexual behavior that ~~which~~
 38 | occurs without consent, without equality, or as a result of
 39 | coercion. For purposes of this subsection ~~paragraph~~, the
 40 | following definitions apply:

41 | (a)1. "Coercion" means the exploitation of authority or
 42 | the use of bribes, threats of force, or intimidation to gain
 43 | cooperation or compliance.

44 | (b)2. "Equality" means two participants operating with the
 45 | same level of power in a relationship, neither being controlled
 46 | nor coerced by the other.

47 | (c)3. "Consent" means an agreement, including all of the
 48 | following:

49 | 1.a. Understanding what is proposed based on age,
 50 | maturity, developmental level, functioning, and experience.

51 | 2.b. Knowledge of societal standards for what is being
 52 | proposed.

53 3.e. Awareness of potential consequences and alternatives.

54 4.d. Assumption that agreement or disagreement will be
55 accepted equally.

56 5.e. Voluntary decision.

57 6.f. Mental competence.

58

59 Juvenile sexual abuse ~~offender behavior~~ ranges from noncontact
60 sexual behavior such as making obscene phone calls,
61 exhibitionism, voyeurism, and the showing or taking of lewd
62 photographs to varying degrees of direct sexual contact, such as
63 frottage, fondling, digital penetration, rape, fellatio, sodomy,
64 and various other sexually aggressive acts.

65 (13) ~~(14)~~ "Child who has exhibited inappropriate sexual
66 behavior" means a child ~~who is 12 years of age or younger and~~
67 who has been found by the department or the court to have
68 committed an inappropriate sexual act.

69 Section 2. Paragraph (c) of subsection (2) of section
70 39.201, Florida Statutes, is amended to read:

71 39.201 Mandatory reports of child abuse, abandonment, or
72 neglect; mandatory reports of death; central abuse hotline.—

73 (2)

74 (c) Reports involving juvenile sexual abuse ~~a known or~~
75 ~~suspected juvenile sexual offender~~ or a child who has exhibited
76 inappropriate sexual behavior shall be made and received by the
77 department. Any alleged incident of juvenile sexual abuse
78 involving a child who is in the custody or protective

79 supervision of the department must be reported to the central
 80 abuse hotline.

81 1. The department shall determine whether a child included
 82 in the report is known to the department ~~the age of the alleged~~
 83 ~~offender, if known.~~

84 2. If a child included in the report is known to the
 85 department, the central abuse hotline shall inform the
 86 Children's Legal Services office of the allegation so that the
 87 office may promptly advise the court and parties to any
 88 proceeding under this chapter involving the child. The central
 89 abuse hotline shall immediately electronically transfer the
 90 report or call to the county sheriff's office. The department
 91 shall conduct an assessment and assist the child in receiving
 92 appropriate services pursuant to s. 39.307 and send a written
 93 report of the allegation to the appropriate county sheriff's
 94 office within 48 hours after the initial report is made to the
 95 central abuse hotline.

96 ~~3.2.~~ If a child included in the report is not known to the
 97 department ~~the alleged offender is 12 years of age or younger,~~
 98 the central abuse hotline shall immediately electronically
 99 transfer the report or call to the county sheriff's office. The
 100 department shall conduct an assessment and assist the family in
 101 receiving appropriate services pursuant to s. 39.307~~7~~ and send a
 102 written report of the allegation to the appropriate county
 103 sheriff's office within 48 hours after the initial report is
 104 made to the central abuse hotline.

105 ~~3. If the alleged offender is 13 years of age or older,~~
 106 ~~the central abuse hotline shall immediately electronically~~
 107 ~~transfer the report or call to the appropriate county sheriff's~~
 108 ~~office and send a written report to the appropriate county~~
 109 ~~sheriff's office within 48 hours after the initial report to the~~
 110 ~~central abuse hotline.~~

111 Section 3. Section 39.307, Florida Statutes, is amended to
 112 read:

113 39.307 Reports of child-on-child sexual abuse.-

114 (1) Upon receiving a report alleging juvenile sexual abuse
 115 or that a child has exhibited inappropriate sexual behavior as
 116 defined in s. 39.01(7), the department shall assist the family
 117 in receiving appropriate services to address the allegations of
 118 the report. If a child involved in the report is known to the
 119 department, the Children's Legal Services office shall promptly
 120 notify all parties to the dependency proceeding that a report
 121 was received.

122 (a) The department shall create a unified system in its
 123 Florida Safe Families Network for identifying and tracking the
 124 provision of services to children who have been the victims of
 125 sexual abuse or juvenile sexual abuse or who have exhibited
 126 inappropriate sexual behavior. This system must not stigmatize
 127 such children.

128 (b) It is of the utmost importance that accurate
 129 information concerning a child's history of abuse and behavior
 130 be included in the system. Persons making placement decisions

131 about a child must consult this information and, when necessary,
 132 seek expert assistance in determining what type of placement is
 133 safe and appropriate for the child.

134 (c) The department shall measure the number of children in
 135 out-of-home care or under supervision of the court who are
 136 victims of juvenile sexual abuse.

137 (2) The department, contracted sheriff's office providing
 138 protective investigation services, or contracted case management
 139 personnel responsible for providing services, at a minimum,
 140 shall adhere to the following procedures:

141 (a) The purpose of the response to a report alleging
 142 juvenile sexual abuse or inappropriate sexual behavior shall be
 143 explained to the caregiver.

144 1. The purpose of the response shall be explained in a
 145 manner consistent with legislative purpose and intent provided
 146 in this chapter.

147 2. The name and office telephone number of the person
 148 responding shall be provided to the caregiver of the alleged
 149 abuser ~~juvenile sexual offender~~ or child who has exhibited
 150 inappropriate sexual behavior and the victim's caregiver.

151 3. The possible consequences of the department's response,
 152 including outcomes and services, shall be explained to the
 153 caregiver of the alleged abuser ~~juvenile sexual offender~~ or
 154 child who has exhibited inappropriate sexual behavior and the
 155 victim's caregiver.

156 (b) The caregiver of the alleged abuser ~~juvenile sexual~~

157 | ~~offender~~ or child who has exhibited inappropriate sexual
 158 | behavior and the victim's caregiver shall be involved to the
 159 | fullest extent possible in determining the nature of the sexual
 160 | behavior concerns and the nature of any problem or risk to other
 161 | children.

162 | (c) The assessment of risk and the perceived treatment
 163 | needs of the alleged abuser ~~juvenile sexual offender~~ or child
 164 | who has exhibited inappropriate sexual behavior, the victim, and
 165 | respective caregivers shall be conducted by the district staff,
 166 | the child protection team of the Department of Health, and other
 167 | providers under contract with the department to provide services
 168 | to the caregiver of the alleged abuser or child who has
 169 | exhibited inappropriate sexual behavior ~~offender~~, the victim,
 170 | and the victim's caregiver.

171 | (d) The assessment shall be conducted in a manner that is
 172 | sensitive to the social, economic, and cultural environment of
 173 | the family.

174 | (e) If necessary, the child protection team of the
 175 | Department of Health shall conduct a physical examination of the
 176 | victim, ~~which is~~ sufficient to meet forensic requirements.

177 | (f) Based on the information obtained from the alleged
 178 | abuser ~~juvenile sexual offender~~ or child who has exhibited
 179 | inappropriate sexual behavior, his or her caregiver, the victim,
 180 | and the victim's caregiver, an assessment of service and
 181 | treatment needs must be completed and, if needed, a case plan
 182 | developed within 30 days.

183 (g) The department shall classify the outcome of the
 184 report as follows:

185 1. Report closed. Services were not offered because the
 186 department determined that there was no basis for intervention.

187 2. Services accepted by alleged abuser or child who has
 188 exhibited inappropriate sexual behavior ~~juvenile sexual~~
 189 ~~offender~~. Services were offered to the alleged abuser ~~juvenile~~
 190 ~~sexual offender~~ or child who has exhibited inappropriate sexual
 191 behavior and accepted by the caregiver.

192 3. Report closed. Services were offered to the alleged
 193 abuser ~~juvenile sexual offender~~ or child who has exhibited
 194 inappropriate sexual behavior, but ~~were~~ rejected by the
 195 caregiver.

196 4. Notification to law enforcement. The risk to the
 197 victim's safety and well-being cannot be reduced by the
 198 provision of services or the caregiver rejected services, and
 199 notification of the alleged delinquent act or violation of law
 200 to the appropriate law enforcement agency was initiated.

201 5. Services accepted by victim. Services were offered to
 202 the victim and accepted by the caregiver.

203 6. Report closed. Services were offered to the victim but
 204 ~~were~~ rejected by the caregiver.

205 (3) If services have been accepted by the alleged abuser
 206 ~~juvenile sexual offender~~ or child who has exhibited
 207 inappropriate sexual behavior, the victim, and respective
 208 caregivers, the department shall designate a case manager and

209 | develop a specific case plan.

210 | (a) Upon receipt of the plan, the caregiver shall indicate
211 | its acceptance of the plan in writing.

212 | (b) The case manager shall periodically review the
213 | progress toward achieving the objectives of the plan in order
214 | to:

215 | 1. Make adjustments to the plan or take additional action
216 | as provided in this part; or

217 | 2. Terminate the case if indicated by successful or
218 | substantial achievement of the objectives of the plan.

219 | (4) Services provided to the alleged abuser ~~juvenile~~
220 | ~~sexual-offender~~ or child who has exhibited inappropriate sexual
221 | behavior, the victim, and respective caregivers or family must
222 | be voluntary and of necessary duration.

223 | (5) If the family or caregiver of the alleged abuser
224 | ~~juvenile sexual-offender~~ or child who has exhibited
225 | inappropriate sexual behavior fails to adequately participate or
226 | allow for the adequate participation of the child in the
227 | services or treatment delineated in the case plan, the case
228 | manager may recommend that the department:

229 | (a) Close the case;

230 | (b) Refer the case to mediation or arbitration, if
231 | available; or

232 | (c) Notify the appropriate law enforcement agency of
233 | failure to comply.

234 | (6) At any time, as a result of additional information,

235 findings of facts, or changing conditions, the department may
 236 pursue a child protective investigation as provided in this
 237 chapter.

238 (7) The department may ~~is authorized to~~ develop rules and
 239 other policy directives necessary to implement ~~the provisions of~~
 240 this section.

241 Section 4. Paragraph (b) of subsection (4) of section
 242 39.0132, Florida Statutes, is amended to read:

243 39.0132 Oaths, records, and confidential information.—

244 (4)

245 (b) The department shall disclose to the school
 246 superintendent the presence of any child in the care and custody
 247 or under the jurisdiction or supervision of the department who
 248 has a known history of criminal sexual behavior with other
 249 juveniles; ~~is an alleged juvenile sex offender, as defined in s.~~
 250 ~~39.01,~~ or has pled guilty or nolo contendere to, or has been
 251 found to have committed, a violation of chapter 794, chapter
 252 796, chapter 800, s. 827.071, or s. 847.0133, regardless of
 253 adjudication. Any employee of a district school board who
 254 knowingly and willfully discloses such information to an
 255 unauthorized person commits a misdemeanor of the second degree,
 256 punishable as provided in s. 775.082 or s. 775.083.

257 Section 5. Subsection (1) of section 39.302, Florida
 258 Statutes, is amended to read:

259 39.302 Protective investigations of institutional child
 260 abuse, abandonment, or neglect.—

261 (1) The department shall conduct a child protective
 262 investigation of each report of institutional child abuse,
 263 abandonment, or neglect. Upon receipt of a report that alleges
 264 that an employee or agent of the department, or any other entity
 265 or person covered by s. 39.01(32) ~~39.01(33)~~ or (47), acting in
 266 an official capacity, has committed an act of child abuse,
 267 abandonment, or neglect, the department shall initiate a child
 268 protective investigation within the timeframe established under
 269 s. 39.201(5) and notify the appropriate state attorney, law
 270 enforcement agency, and licensing agency, which shall
 271 immediately conduct a joint investigation, unless independent
 272 investigations are more feasible. When conducting investigations
 273 or having face-to-face interviews with the child, investigation
 274 visits shall be unannounced unless it is determined by the
 275 department or its agent that unannounced visits threaten the
 276 safety of the child. If a facility is exempt from licensing, the
 277 department shall inform the owner or operator of the facility of
 278 the report. Each agency conducting a joint investigation is
 279 entitled to full access to the information gathered by the
 280 department in the course of the investigation. A protective
 281 investigation must include an interview with the child's parent
 282 or legal guardian. The department shall make a full written
 283 report to the state attorney within 3 working days after making
 284 the oral report. A criminal investigation shall be coordinated,
 285 whenever possible, with the child protective investigation of
 286 the department. Any interested person who has information

287 regarding the offenses described in this subsection may forward
 288 a statement to the state attorney as to whether prosecution is
 289 warranted and appropriate. Within 15 days after the completion
 290 of the investigation, the state attorney shall report the
 291 findings to the department and shall include in the report a
 292 determination of whether ~~or not~~ prosecution is justified and
 293 appropriate in view of the circumstances of the specific case.

294 Section 6. Paragraph (d) of subsection (4) of section
 295 985.04, Florida Statutes, is amended to read:

296 985.04 Oaths; records; confidential information.—

297 (4)

298 (d) The department shall disclose to the school
 299 superintendent the presence of any child in the care and custody
 300 or under the jurisdiction or supervision of the department who
 301 has a known history of criminal sexual behavior with other
 302 juveniles; is a child alleged to have engaged in juvenile sexual
 303 abuse ~~an alleged juvenile sexual offender,~~ as defined in s.
 304 39.01; or has pled guilty or nolo contendere to, or has been
 305 found to have committed, a violation of chapter 794, chapter
 306 796, chapter 800, s. 827.071, or s. 847.0133, regardless of
 307 adjudication. Any employee of a district school board who
 308 knowingly and willfully discloses such information to an
 309 unauthorized person commits a misdemeanor of the second degree,
 310 punishable as provided in s. 775.082 or s. 775.083.

311 Section 7. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Waldman offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (8) through (34) of section 39.01,
 8 Florida Statutes, are renumbered as subsections (7) through
 9 (33), respectively, present subsection (7) is reordered and
 10 renumbered as subsection (34) and amended, and present
 11 subsection (14) of that section is amended, to read:

12 39.01 Definitions.—When used in this chapter, unless the
 13 context otherwise requires:

14 ~~(34)(7) "Alleged juvenile sexual offender" means:~~

15 ~~(a) A child 12 years of age or younger who is alleged to~~
 16 ~~have committed a violation of chapter 794, chapter 796, chapter~~
 17 ~~800, s. 827.071, or s. 847.0133; or~~



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18 ~~(b) A child who is alleged to have committed any violation~~
19 ~~of law or delinquent act involving juvenile sexual abuse.~~

20 "Juvenile sexual abuse" means any sexual behavior by a child
21 that ~~which~~ occurs without consent, without equality, or as a
22 result of coercion. For purposes of this subsection ~~paragraph~~,
23 the term ~~following definitions~~ apply:

24 (a)1. "Coercion" means the exploitation of authority or
25 the use of bribes, threats of force, or intimidation to gain
26 cooperation or compliance.

27 (b)2. "Equality" means two participants operating with the
28 same level of power in a relationship, neither being controlled
29 nor coerced by the other.

30 (c)3. "Consent" means an agreement, including all of the
31 following:

32 1.a. Understanding what is proposed based on age,
33 maturity, developmental level, functioning, and experience.

34 2.b. Knowledge of societal standards for what is being
35 proposed.

36 3.e. Awareness of potential consequences and alternatives.

37 4.d. Assumption that agreement or disagreement will be
38 accepted equally.

39 5.e. Voluntary decision.

40 6.f. Mental competence.

41
42 Juvenile sexual abuse ~~offender~~ behavior ranges from noncontact
43 sexual behavior such as making obscene phone calls,



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44 exhibitionism, voyeurism, and the showing or taking of lewd
45 photographs to varying degrees of direct sexual contact, such as
46 frottage, fondling, digital penetration, rape, fellatio, sodomy,
47 and various other sexually aggressive acts.

48 (14) "Child who has exhibited inappropriate sexual
49 behavior" means a child ~~who is 12 years of age or younger and~~
50 who has been found by the department or the court to have
51 committed an inappropriate sexual act.

52 Section 2. Paragraph (c) of subsections (1) and (2) of
53 section 39.201, Florida Statutes, are amended to read:

54 39.201 Mandatory reports of child abuse, abandonment, or
55 neglect; mandatory reports of death; central abuse hotline.—

56 (1)

57 (c) Any person who knows, or has reasonable cause to
58 suspect, that a child is the victim of childhood sexual abuse or
59 the victim of juvenile sexual abuse ~~a known or suspected~~
60 ~~juvenile sexual offender, as defined in this chapter,~~ shall
61 report such knowledge or suspicion to the department in the
62 manner prescribed in subsection (2).

63 (2)

64 (c) Reports involving juvenile sexual abuse ~~a known or~~
65 ~~suspected juvenile sexual offender~~ or a child who has exhibited
66 inappropriate sexual behavior shall be reported to the
67 department's central abuse hotline ~~be made and received by the~~
68 ~~department.~~

69 1. The department shall determine the age of the alleged



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70 offender, if known.

71 ~~2. If the alleged offender is 12 years of age or younger,~~
72 the central abuse hotline shall immediately electronically
73 transfer the report or call to the county sheriff's office. The
74 department shall conduct an assessment and assist the family in
75 receiving appropriate services pursuant to s. 39.307~~7~~, and send a
76 written report of the allegation to the appropriate county
77 sheriff's office within 48 hours after the initial report is
78 made to the central abuse hotline.

79 3. The department must ensure that the fact and results of
80 any investigation of juvenile sexual abuse involving a child in
81 the custody of or under the protective supervision of the
82 department are made known to the court at the next hearing or
83 included in the next report to the court concerning the child.

84 ~~If the alleged offender is 13 years of age or older, the central~~
85 ~~abuse hotline shall immediately electronically transfer the~~
86 ~~report or call to the appropriate county sheriff's office and~~
87 ~~send a written report to the appropriate county sheriff's office~~
88 ~~within 48 hours after the initial report to the central abuse~~
89 ~~hotline.~~

90 Section 3. Section 39.307, Florida Statutes, is amended to
91 read:

92 39.307 Reports of child-on-child sexual abuse.--

93 (1) Upon receiving a report alleging juvenile sexual abuse
94 or inappropriate sexual behavior as defined in s. 39.01(7), the
95 department shall assist the family in receiving appropriate



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96 services to address the allegations of the report.

97 (a) The department shall ensure that information
98 describing a child's history of juvenile sexual abuse is
99 included in the child's electronic record. This record must also
100 include information describing the services the child has
101 received as a result of his or her involvement with juvenile
102 sexual abuse.

103 (b) Placement decisions for a child who has been involved
104 with juvenile sexual abuse must include consideration of he
105 needs of the child and any other children in the home being
106 considered for placement.

107 (2) The department, contracted sheriff's office providing
108 protective investigation services, or contracted case management
109 personnel responsible for providing services, at a minimum,
110 shall adhere to the following procedures:

111 (a) The purpose of the response to a report alleging
112 juvenile sexual abuse or inappropriate sexual behavior shall be
113 explained to the caregiver.

114 1. The purpose of the response shall be explained in a
115 manner consistent with legislative purpose and intent provided
116 in this chapter.

117 2. The name and office telephone number of the person
118 responding shall be provided to the caregiver of the alleged
119 abuser ~~juvenile sexual offender~~ or child who has exhibited
120 inappropriate sexual behavior and the victim's caregiver.

121 3. The possible consequences of the department's response,



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122 including outcomes and services, shall be explained to the
123 caregiver of the alleged abuser ~~juvenile sexual offender~~ or
124 child who has exhibited inappropriate sexual behavior and the
125 victim's caregiver.

126 (b) The caregiver of the alleged abuser ~~juvenile sexual~~
127 ~~offender~~ or child who has exhibited inappropriate sexual
128 behavior and the victim's caregiver shall be involved to the
129 fullest extent possible in determining the nature of the sexual
130 behavior concerns and the nature of any problem or risk to other
131 children.

132 (c) The assessment of risk and the perceived treatment
133 needs of the alleged abuser ~~juvenile sexual offender~~ or child
134 who has exhibited inappropriate sexual behavior, the victim, and
135 respective caregivers shall be conducted by the district staff,
136 the child protection team of the Department of Health, and other
137 providers under contract with the department to provide services
138 to the caregiver of the alleged offender, the victim, and the
139 victim's caregiver.

140 (d) The assessment shall be conducted in a manner that is
141 sensitive to the social, economic, and cultural environment of
142 the family.

143 (e) If necessary, the child protection team of the
144 Department of Health shall conduct a physical examination of the
145 victim, which is sufficient to meet forensic requirements.

146 (f) Based on the information obtained from the alleged
147 abuser ~~juvenile sexual offender~~ or child who has exhibited



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148 inappropriate sexual behavior, his or her caregiver, the victim,
149 and the victim's caregiver, an assessment of service and
150 treatment needs must be completed and, if needed, a case plan
151 developed within 30 days.

152 (g) The department shall classify the outcome of the
153 report as follows:

154 1. Report closed. Services were not offered because the
155 department determined that there was no basis for intervention.

156 2. Services accepted by alleged abuser ~~juvenile sexual~~
157 ~~offender~~. Services were offered to the alleged abuser ~~juvenile~~
158 ~~sexual offender~~ or child who has exhibited inappropriate sexual
159 behavior and accepted by the caregiver.

160 3. Report closed. Services were offered to the alleged
161 abuser ~~juvenile sexual offender~~ or child who has exhibited
162 inappropriate sexual behavior, but ~~were~~ rejected by the
163 caregiver.

164 4. Notification to law enforcement. The risk to the
165 victim's safety and well-being cannot be reduced by the
166 provision of services or the caregiver rejected services, and
167 notification of the alleged delinquent act or violation of law
168 to the appropriate law enforcement agency was initiated.

169 5. Services accepted by victim. Services were offered to
170 the victim and accepted by the caregiver.

171 6. Report closed. Services were offered to the victim but
172 were rejected by the caregiver.

173 (3) If services have been accepted by the alleged abuser



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174 ~~juvenile sexual offender~~ or child who has exhibited
175 inappropriate sexual behavior, the victim, and respective
176 caregivers, the department shall designate a case manager and
177 develop a specific case plan.

178 (a) Upon receipt of the plan, the caregiver shall indicate
179 its acceptance of the plan in writing.

180 (b) The case manager shall periodically review the
181 progress toward achieving the objectives of the plan in order
182 to:

183 1. Make adjustments to the plan or take additional action
184 as provided in this part; or

185 2. Terminate the case if indicated by successful or
186 substantial achievement of the objectives of the plan.

187 (4) Services provided to the alleged abuser ~~juvenile~~
188 ~~sexual offender~~ or child who has exhibited inappropriate sexual
189 behavior, the victim, and respective caregivers or family must
190 be voluntary and of necessary duration.

191 (5) If the family or caregiver of the alleged abuser
192 ~~juvenile sexual offender~~ or child who has exhibited
193 inappropriate sexual behavior fails to adequately participate or
194 allow for the adequate participation of the child in the
195 services or treatment delineated in the case plan, the case
196 manager may recommend that the department:

197 (a) Close the case;

198 (b) Refer the case to mediation or arbitration, if
199 available; or



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200 (c) Notify the appropriate law enforcement agency of
201 failure to comply.

202 (6) At any time, as a result of additional information,
203 findings of facts, or changing conditions, the department may
204 pursue a child protective investigation as provided in this
205 chapter.

206 (7) The department may ~~is authorized to~~ develop rules and
207 other policy directives ~~necessary to administer~~ implement ~~the~~
208 ~~provisions of~~ this section.

209 Section 4. Paragraph (b) of subsection (4) of section
210 39.0132, Florida Statutes, is amended to read:

211 39.0132 Oaths, records, and confidential information.—

212 (4)

213 (b) The department shall disclose to the school
214 superintendent the presence of any child in the care and custody
215 or under the jurisdiction or supervision of the department who
216 has a known history of criminal sexual behavior with other
217 juveniles; ~~is an~~ alleged to have committed juvenile sex abuse
218 ~~offender, as defined in s. 39.01;~~ or has pled guilty or nolo
219 contendere to, or has been found to have committed, a violation
220 of chapter 794, chapter 796, chapter 800, s. 827.071, or s.
221 847.0133, regardless of adjudication. Any employee of a district
222 school board who knowingly and willfully discloses such
223 information to an unauthorized person commits a misdemeanor of
224 the second degree, punishable as provided in s. 775.082 or s.
225 775.083.

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226 Section 5. Subsection (1) of section 39.302, Florida
227 Statutes, is amended to read:

228 39.302 Protective investigations of institutional child
229 abuse, abandonment, or neglect.-

230 (1) The department shall conduct a child protective
231 investigation of each report of institutional child abuse,
232 abandonment, or neglect. Upon receipt of a report that alleges
233 that an employee or agent of the department, or any other entity
234 or person covered by s. 39.01(32) ~~39.01(33)~~ or (47), acting in
235 an official capacity, has committed an act of child abuse,
236 abandonment, or neglect, the department shall initiate a child
237 protective investigation within the timeframe established under
238 s. 39.201(5) and notify the appropriate state attorney, law
239 enforcement agency, and licensing agency, which shall
240 immediately conduct a joint investigation, unless independent
241 investigations are more feasible. When conducting investigations
242 or having face-to-face interviews with the child, investigation
243 visits shall be unannounced unless it is determined by the
244 department or its agent that unannounced visits threaten the
245 safety of the child. If a facility is exempt from licensing, the
246 department shall inform the owner or operator of the facility of
247 the report. Each agency conducting a joint investigation is
248 entitled to full access to the information gathered by the
249 department in the course of the investigation. A protective
250 investigation must include an interview with the child's parent
251 or legal guardian. The department shall make a full written

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252 report to the state attorney within 3 working days after making
253 the oral report. A criminal investigation shall be coordinated,
254 whenever possible, with the child protective investigation of
255 the department. Any interested person who has information
256 regarding the offenses described in this subsection may forward
257 a statement to the state attorney as to whether prosecution is
258 warranted and appropriate. Within 15 days after the completion
259 of the investigation, the state attorney shall report the
260 findings to the department and shall include in the report a
261 determination of whether ~~or not~~ prosecution is justified and
262 appropriate in view of the circumstances of the specific case.

263 Section 6. Paragraph (d) of subsection (4) of section
264 985.04, Florida Statutes, is amended to read:

265 985.04 Oaths; records; confidential information.—

266 (4)

267 (d) The department shall disclose to the school
268 superintendent the presence of any child in the care and custody
269 or under the jurisdiction or supervision of the department who
270 has a known history of criminal sexual behavior with other
271 juveniles; is ~~an~~ alleged to have committed juvenile sexual abuse
272 ~~offender~~, as defined in s. 39.01; or has pled guilty or nolo
273 contendere to, or has been found to have committed, a violation
274 of chapter 794, chapter 796, chapter 800, s. 827.071, or s.
275 847.0133, regardless of adjudication. Any employee of a district
276 school board who knowingly and willfully discloses such
277 information to an unauthorized person commits a misdemeanor of



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278 the second degree, punishable as provided in s. 775.082 or s.
279 775.083.

280 Section 7. This act shall take effect July 1, 2014.

281

282

283

284

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

285

Remove everything before the enacting clause and insert:

286

An act relating to child-on-child sexual abuse; reordering and

287

amending s. 39.01, F.S.; replacing the definition of the term

288

"alleged juvenile sexual offender" with a definition of the term

289

"juvenile sexual offender"; deleting an age requirement from the

290

definition of the term "child who has exhibited inappropriate

291

sexual behavior"; amending s. 39.201, F.S.; requiring reports

292

involving juvenile sexual abuse or a child who has exhibited

293

inappropriate sexual behavior to be reported to the department's

294

central abuse hotline; providing duties concerning such reports;

295

deleting provisions concerning reports about children over a

296

certain age; amending s. 39.307, F.S.; requiring the department

297

to ensure that information describing a child's history of

298

juvenile sexual abuse is included in the child's electronic

299

record; requiring placement decisions to include certain

300

considerations; conforming provisions to changes made by the

301

act; amending ss. 39.0132, 39.302 and 985.04, F.S.; conforming

302

provisions to changes made by the act; providing an effective

303

date.

27 (a) With respect to any child who was 14 ~~or 15~~ years of
 28 age or older at the time the alleged offense was committed, the
 29 state attorney may file an information when in the state
 30 attorney's judgment and discretion the public interest requires
 31 that adult sanctions be considered or imposed and when the
 32 offense charged is for the commission of, attempt to commit, or
 33 conspiracy to commit:

- 34 1. Arson;
- 35 2. Sexual battery;
- 36 3. Robbery;
- 37 4. Kidnapping;
- 38 5. Aggravated child abuse;
- 39 6. Aggravated assault;
- 40 7. Aggravated stalking;
- 41 8. Murder;
- 42 9. Manslaughter;
- 43 10. Unlawful throwing, placing, or discharging of a
 44 destructive device or bomb;
- 45 11. Armed burglary in violation of s. 810.02(2)(b) or
 46 specified burglary of a dwelling or structure in violation of s.
 47 810.02(2)(c), or burglary with an assault or battery in
 48 violation of s. 810.02(2)(a);
- 49 12. Aggravated battery;
- 50 13. Any lewd or lascivious offense committed upon or in
 51 the presence of a person less than 16 years of age;
- 52 14. Carrying, displaying, using, threatening, or

53 attempting to use a weapon or firearm during the commission of a
 54 felony;

55 ~~15. Grand theft in violation of s. 812.014(2)(a);~~

56 15.16. Possessing or discharging any weapon or firearm on
 57 school property in violation of s. 790.115;

58 16.17. Home invasion robbery;

59 17.18. Carjacking; or

60 18.19. Grand theft of a motor vehicle in violation of s.
 61 812.014(2)(c)6. or grand theft of a motor vehicle valued at
 62 \$20,000 or more in violation of s. 812.014(2)(b) if the child
 63 has a previous adjudication for grand theft of a motor vehicle
 64 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

65 (b) The state may not file an information on a child
 66 otherwise eligible under this subsection if it is the child's
 67 first offense unless there are compelling reasons, which the
 68 state shall set out in writing ~~With respect to any child who was~~
 69 ~~16 or 17 years of age at the time the alleged offense was~~
 70 ~~committed, the state attorney may file an information when in~~
 71 ~~the state attorney's judgment and discretion the public interest~~
 72 ~~requires that adult sanctions be considered or imposed. However,~~
 73 ~~the state attorney may not file an information on a child~~
 74 ~~charged with a misdemeanor, unless the child has had at least~~
 75 ~~two previous adjudications or adjudications withheld for~~
 76 ~~delinquent acts, one of which involved an offense classified as~~
 77 ~~a felony under state law.~~

78 (4) DIRECT-FILE CRITERIA.-

79 (a) When a child is eligible to have an information filed
 80 by the state attorney under subsection (1), the state attorney
 81 shall use the following criteria to determine whether to file an
 82 information:

83 1. The seriousness of the alleged offense and whether
 84 transferring the child is necessary for protection of the
 85 community, including:

86 a. The recommendation of the department, through review
 87 and consideration of the recommendations of the department's
 88 caseworker.

89 b. The probable cause as found in the report, affidavit,
 90 or complaint, including:

91 (I) Whether the alleged offense was committed in an
 92 aggressive, violent, premeditated, or willful manner.

93 (II) Whether the alleged offense was against persons or
 94 against property, with greater weight being given to offenses
 95 against persons, especially if personal injury resulted.

96 c. The sophistication and maturity of the child.

97 2. The record and previous history of the child,
 98 including:

99 a. Previous contacts with the department, the Department
 100 of Corrections, other law enforcement agencies, and the courts.

101 b. Prior periods of probation.

102 c. Prior adjudications that the child committed a
 103 delinquent act or violation of law, with greater weight being
 104 given if the child has previously been found by a court to have

105 committed a delinquent act or violation of law involving
 106 violence to persons.

107 d. Prior commitments to institutions of the department,
 108 the Department of Corrections, or agencies under contract with
 109 either department.

110 e. Patterns of criminality or patterns of escalation.

111 3. The prospects for adequate protection of the public and
 112 the likelihood of reasonable rehabilitation of the child, if the
 113 child is found to have committed the alleged offense, by the use
 114 of procedures, services, and facilities currently available to
 115 the juvenile court.

116 4. Cost-effective alternatives available to divert the
 117 child from the criminal and juvenile justice systems and offer
 118 rehabilitative services for the child.

119 (b) If the state attorney files an information against a
 120 child under this section, the state attorney shall file with the
 121 court his or her written explanation, addressing the factors
 122 listed in paragraph (a), as to why the child should be
 123 transferred for criminal prosecution.

124 (5) REVERSE WAIVER.—Any child over whom the adult court
 125 has obtained original jurisdiction may request, in writing, a
 126 hearing to determine whether the child shall remain in adult
 127 court. The adult court shall retain jurisdiction unless the
 128 child proves by a preponderance of evidence all of the
 129 following:

130 (a) The child could obtain services available in the

131 juvenile justice system which could lessen the possibility of
 132 the child reoffending in the future.

133 (b) The child's best interests would be served by
 134 prosecuting the case in juvenile court.

135 (c) The child could receive juvenile sanctions that would
 136 provide adequate safety and protection for the community.

137 (d) The child is not charged with a felony that is
 138 punishable by death or life imprisonment.

139 (e) The child has not previously been convicted and
 140 sentenced as an adult.

141 (6) ~~(4)~~ CHARGES INCLUDED.-An information filed pursuant to
 142 this section may include all charges that are based on the same
 143 act, criminal episode, or transaction as the primary offenses.
 144 Section 2. This act shall take effect July 1, 2014.