Justice Council

Thursday, April 20, 2006
2:45 PM – 4:45 PM
404 House Office Building

Meeting Packet

2nd REVISED

Allan G. Bense
Speaker

Bruce Kyle
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense **(AMENDED 4/18/2006 4:38:09PM)**

Amended(1)

Justice Council

Start Date and Time:	Thursday, April 20, 2006 02:45 pm
End Date and Time:	Thursday, April 20, 2006 04:45 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 297 CS Driving and Boating Under the Influence by Harrell
HB 325 CS Commission on Capital Cases by Gelber
HB 335 CS Juvenile Justice by Culp
HB 367 CS Accessories to a Crime by Carroll
HB 391 CS Community Associations by Domino
HB 469 CS Human Trafficking by Gannon
HB 595 CS Community Behavioral Health Agencies by Cannon
HB 651 Secondhand Dealers by Kottkamp
HB 763 Luring or Enticing a Child by Ambler
HB 841 CS Supersedeas Bond by Attkisson
HB 957 CS (IF RECEIVED) -- Community Associations by Anderson
HB 1169 Vehicular Accidents Involving Death or Personal Injuries by Galvano
HB 1271 CS (IF RECEIVED) -- Division of Alcoholic Beverages and Tobacco by Cannon
HB 7029 Juvenile Justice by Juvenile Justice Committee
HB 7099 CS Land Trusts by Judiciary Committee
HB 7117 CS Sexual Predators and Offenders by Criminal Justice Committee, Kravitz
HB 7187 Criminal Justice by Criminal Justice Committee

By request of the Chair, all members are asked to have amendments to bills on the agenda filed by 5 p.m., Wednesday, April 19, 2006.

NOTICE FINALIZED on 04/18/2006 16:38 by COCHRAN.MARGARET

HB 297

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 297 CS Driving and Boating Under the Influence
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2296

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Transportation Committee	13 Y, 3 N	Thompson	Miller
3) Criminal Justice Appropriations Committee	5 Y, 0 N	Sneed	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

HB 297 with C/S requires the imposition of a 2-year minimum mandatory sentence for a fourth or subsequent Driving under the Influence (DUI) or Boating under the Influence (BUI) conviction, regardless of when the prior conviction occurred. This bill further provides that there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court may, with the consent of the state, order the defendant to serve a 1-year minimum mandatory sentence of incarceration followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program, a residential drug abuse treatment program or be placed on community control.

This bill requires that for a fourth or subsequent DUI, the judge must order the impoundment or immobilization of all vehicles owned by the defendant for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. For a fourth or subsequent BUI, the court must order impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for a period of 120 days. This bill allows the court to dismiss the order in certain circumstances. Current law requires a 90-day impoundment period if the offense occurs within 10 years of a prior conviction. In conformity with current law, the bill provides that the impoundment or immobilization must not occur at the same time as the incarceration.

HB 297 C/S also requires that every judgment of guilty for a DUI or BUI offense must: (1) be in writing, signed by the judge and recorded by the clerk of the circuit court; (2) include the defendant's fingerprints; and (3) include the defendant's social security number. The bill requires the judge to certify that the fingerprints were placed on the judgment by the defendant in open court.

The Criminal Justice Impact Conference (CJIC) met on February 28, 2006 and concluded that the bill would increase the inmate population by 275 inmates by the third year of implementation. See fiscal section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will require the imposition of a minimum mandatory sentence for a fourth or subsequent DUI or BUI conviction and the impoundment of the offender's vehicle for a fourth or subsequent DUI.

Promote personal responsibility: The bill increases the sanctions for DUI and BUI.

B. EFFECT OF PROPOSED CHANGES:

DUI

The offense of driving under the influence[1] (DUI) is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The offense is punishable as follows[2]:

- For a first conviction, by a fine of not less than $250 or more than $500 and by imprisonment for not more than 6 months
- For a second conviction, by a fine of not less than $500 or more than $1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.[3]
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than $1000 or more than $2500 and by imprisonment for not more than 12 months.[4]

A third conviction for an offense that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail[5] and up to five years in prison and a fine of up to $1000.[6] A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than $1000 or more than $5000.[7] If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.[8]

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[1] s. 316.193(1), F.S.
[2] s. 316.193(2), F.S.
[3] s. 316.193(6)(b), F.S.
[4] s. 316.193(2)(b)2, F.S.
[5] s. 316.193(6)(c), F.S.
[6] s. 316.193(2)(b)1, F.S.
[7] s. 316.193(2)(b)3, F.S. Additionally, a person who has been convicted of DUI may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.
[8] s. 316.193(6)(c), F.S.

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.[9]

Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles as follows:

- For a first DUI conviction, the court must order the impoundment or immobilization of the vehicle that was used in the DUI offense or any one vehicle registered in the defendant's name at the time of impoundment or immobilization for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant.
- For a second DUI conviction within 5 years of the date of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days.
- For a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.[10]

The court can dismiss the order of impoundment or immobilization in specified circumstances.[11] The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a), F.S.. This section requires the revocation of a person's driver's license for not less than 180 days and no more than 1 year for a first DUI conviction[12]; for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction[13] and for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.[14] A fourth DUI conviction results in permanent revocation of a person's driving privilege.[15]

BUI

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute. For a third or subsequent BUI within 10 years of a prior conviction, the court must, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for a period of 90 days or for unexpired term of any lease or rental agreement that expires within 90 days.

Effect of Bill

Sentencing: Currently there is no mandatory minimum term of imprisonment for a fourth or subsequent DUI or BUI unless it occurs within 10 years of a prior DUI or BUI in which case, a 30 day minimum mandatory sentence must be imposed. The bill amends the DUI and BUI statutes to provide that for a fourth or subsequent conviction, the court must order imprisonment for not less than 2 years, regardless of when a prior conviction occurred. The bill further provides that there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court

[9] s. 316.193(6)(k), F.S.
[10] See s. 316.193(6)(a), (b) and (c), F.S.
[11] See s. 316.193(6)(e),(f),(g) and (h), F.S.
[12] s. 322.28(2)(a)1, F.S.
[13] s. 322.28(2)(a)2, F.S.
[14] s. 322.28(2)(a)3, F.S.
[15] s. 322.28(2)(e), F.S.

may, with the consent of the state, order the defendant to serve a minimum mandatory sentence of 1 year of incarceration followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program, a residential drug abuse treatment program or be placed on community control.

Impoundment of vehicle or vessel: Currently, for a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days The bill provides that as a condition of probation for a fourth or subsequent DUI conviction, regardless of when a prior conviction occurred, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. In conformity with current law, the bill provides that the impoundment or immobilization must not occur concurrently with any incarceration and must occur concurrently with the revocation of the offender's driver's license. The judge will be permitted to dismiss the impoundment or immobilization in accordance with current law.

For a fourth or subsequent BUI, the court must order impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for the same period of time as for a DUI offense. The bill provides that a person who owns but was not operating the vessel when an offense occurred may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that the owner was unaware of the defendant's prior conviction and sentence or if the court finds that there are other mitigating circumstances that should allow the owner of the vessel to secure the release of the vessel to the owner's possession, the court may do so by dismissing the order of impoundment or immobilization with or without cost to the vessel owner.

Judgment: The bill also provides that every judgment of guilty for DUI or BUI offense must be in writing, signed by the judge and recorded by the clerk of the circuit court. The judge must cause to be affixed to the judgment the fingerprints of the defendant against whom the judgment is rendered. The bill sets the wording of a certificate to be signed by the judge certifying that the fingerprints were placed on the judgment by the defendant in open court. The bill also requires the defendant's social security number to be placed on the judgment. The written judgment of guilty made in compliance with this section, or a certified copy, will be admissible in court as prima facie evidence that the fingerprints are the fingerprints of the defendant against whom the judgment of guilty was rendered. [16]

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S. to provide for minimum mandatory term of imprisonment for fourth or subsequent DUI conviction; provides for impoundment of vehicle.

Section 2. Amends s. 327.35, F.S. to provide for minimum mandatory term of imprisonment for fourth or subsequent BUI conviction; provides for impoundment of vehicle or vessel.

Section 3. Provides effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[16] This provision is substantially similar to s. 921.241, F.S. relating to judgments of guilty for felony offenses.

2. Expenditures:

The Criminal Justice Impact Conference met on February 28, 2006 to consider the prison bed impact of HB 297 w/CS on the Department of Corrections. The conference estimated that the impact would be as follows:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2006-2007	45	45	$429,165	$8,175,419	**$8,604,584**	**$8,604,584**
2007-2008	203	158	$2,402,996	$2,946,096	**$5,349,092**	**$13,953,676**
2008-2009	275	72	$4,724,313	$0	**$4,724,313**	**$18,677,989**
2009-2010	275	0	$5,550,050	$0	**$5,550,050**	**$24,228,039**
2010-2011	275	0	$5,677,650	$0	**$5,677,650**	**$29,905,689**
Total	**275**	**275**	**$ 18,784,174**	**$ 11,121,515**	**$29,905,689**	**$29,905,689**

Notes: Analysis assumes that there will be a 50% increase in the incarceration rate for felony DUI (4th or subsequent conviction), increasing from 41.4% to 62.1%. Additional offenders sentenced to prison were assumed to serve 24 months.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference only forecasts the prison bed impact of proposed legislation. The cost figures reflected in the table above are not formally adopted by the Criminal Justice Impact Conference. Rather, they are provided by staff of the conference to give the reader a general sense of magnitude.

These figures reflect overall average operating costs and average construction costs per bed. As such, the operational costs do not take into account certain fixed costs such as administrative overhead, perimeter security, library staff, on-site medical staff, etc. that are already funded in the department's base budget. Thus, they tend to overstate the actual increase in the budget needed to accommodate the additional inmates. The fixed capital outlay costs are presented as if the state could simply build one prison bed at a time when the reality is that the state builds an entire facility when it constructs beds. They do not take into account existing or planned capacity that would enable the state to absorb the impact within current appropriations.

Funding is provided in the House General Appropriations Act to complete construction of two new prison facilities that will increase the capacity of the system by 2,265 beds. Assuming that unforeseen factors do not further increase the demand for prison beds, the House General Appropriations Act will provide for sufficient capacity to accommodate the increase in the inmate population expected to result from passage of this bill for the next three years, the time typically allotted for new prison construction. The bill will, however, result in the need for building new capacity sooner than the state would otherwise experience without the proposed change in law. This impact will be folded into the normal forecasting process for future planning and budgeting purposes.

In addition, the Secretary of the Department of Corrections has suggested that these inmates would be appropriate for work release centers that provide substance abuse treatment overlay services. These beds can typically be brought on-line much more quickly than a major institution and they generally have lower construction and operating costs than major institutions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

As originally filed, the bill required the imposition of a 2-year minimum mandatory sentence for a fourth DUI or BUI and specified that the judge could not order treatment options in lieu of this term of imprisonment. The Criminal Justice Committee adopted a strike-all amendment which authorizes the judge, with the consent of the state, to order one year of incarceration followed by a period of probation during which the defendant must attend and complete a residential alcohol or drug abuse treatment program or be placed on community control. The amendment added language requiring the defendant's fingerprints to be affixed to judgments of guilty for DUI and BUI as discussed in the analysis above. The bill also amended the provision relating to impoundment of vehicles or vessels for a BUI conviction.

CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to driving and boating under the
7 influence; amending s. 316.193, F.S.; providing for
8 applicability of sanctions; requiring a specified period
9 of imprisonment for a fourth or subsequent conviction of
10 driving under the influence; prohibiting substitution of
11 treatment alternatives in certain circumstances; requiring
12 impoundment or immobilization of all vehicles owned by the
13 defendant for a specified period; providing for dismissal
14 of an impoundment order; requiring records of judgments of
15 guilty to include fingerprints and social security
16 numbers; amending s. 327.35, F.S.; requiring a specified
17 period of imprisonment for a fourth or subsequent
18 conviction of boating under the influence; prohibiting
19 substitution of treatment alternatives in certain
20 circumstances; requiring impoundment or immobilization of
21 the vessel operated by or in the actual control of the
22 defendant or any one vehicle registered in the defendant's
23 name at the time of impoundment or immobilization for a

24 specified period; providing for dismissal of an order of
25 impoundment or immobilization under certain circumstances
26 upon request of an owner who was not operating the vessel;
27 providing for dismissal of an impoundment order; requiring
28 records of judgments of guilty to include fingerprints and
29 social security numbers; providing applicability;
30 providing an effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Subsection (6) of section 316.193, Florida
35 Statutes, is amended, and subsection (13) is added to that
36 section, to read:
37 316.193 Driving under the influence; penalties.--
38 (6) With respect to any person convicted of a violation of
39 this section ~~subsection (1), regardless of any penalty imposed~~
40 ~~pursuant to subsection (2), subsection (3), or subsection (4)~~:
41 (a) For the first conviction, the court shall place the
42 defendant on probation ~~for a period not to exceed 1 year~~ and, as
43 a condition of such probation, shall order the defendant to
44 participate in public service or a community work project for a
45 minimum of 50 hours; or the court may order instead, that any
46 defendant pay an additional fine of $10 for each hour of public
47 service or community work otherwise required, if, after
48 consideration of the residence or location of the defendant at
49 the time public service or community work is required, payment
50 of the fine is in the best interests of the state. ~~However, the~~
51 ~~total period of probation and incarceration may not exceed 1~~

52 ~~year.~~ The court must also, as a condition of probation, order
53 the impoundment or immobilization of the vehicle that was
54 operated by or in the actual control of the defendant or any one
55 vehicle registered in the defendant's name at the time of
56 impoundment or immobilization, for a period of 10 days or for
57 the unexpired term of any lease or rental agreement that expires
58 within 10 days. The impoundment or immobilization must not occur
59 concurrently with the incarceration of the defendant. The
60 impoundment or immobilization order may be dismissed in
61 accordance with paragraph (e), paragraph (f), paragraph (g), or
62 paragraph (h).
63 (b) For the second conviction for an offense that occurs
64 within a period of 5 years after the date of a prior conviction
65 for violation of this section, the court shall order
66 imprisonment for not less than 10 days. The court must also, as
67 a condition of probation, order the impoundment or
68 immobilization of all vehicles owned by the defendant at the
69 time of impoundment or immobilization, for a period of 30 days
70 or for the unexpired term of any lease or rental agreement that
71 expires within 30 days. The impoundment or immobilization must
72 not occur concurrently with the incarceration of the defendant
73 and must occur concurrently with the driver's license revocation
74 imposed under s. 322.28(2)(a)2. The impoundment or
75 immobilization order may be dismissed in accordance with
76 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).
77 At least 48 hours of confinement must be consecutive.
78 (c) For the third ~~or subsequent~~ conviction for an offense
79 that occurs within a period of 10 years after the date of a

80 prior conviction for violation of this section, the court shall
81 order imprisonment for not less than 30 days. The court must
82 also, as a condition of probation, order the impoundment or
83 immobilization of all vehicles owned by the defendant at the
84 time of impoundment or immobilization~~,~~ for a period of 90 days
85 or for the unexpired term of any lease or rental agreement that
86 expires within 90 days. The impoundment or immobilization shall
87 ~~must~~ not occur concurrently with the incarceration of the
88 defendant and shall ~~must~~ occur concurrently with the driver's
89 license revocation imposed under s. 322.28(2)(a)3. The
90 impoundment or immobilization order may be dismissed in
91 accordance with paragraph (e), paragraph (f), paragraph (g), or
92 paragraph (h). At least 48 hours of confinement must be
93 consecutive.
94 (d) The court must at the time of sentencing the defendant
95 issue an order for the impoundment or immobilization of a
96 vehicle. Within 7 business days after the date that the court
97 issues the order of impoundment or immobilization, the clerk of
98 the court must send notice by certified mail, return receipt
99 requested, to the registered owner of each vehicle, if the
100 registered owner is a person other than the defendant, and to
101 each person of record claiming a lien against the vehicle.
102 (e) A person who owns but was not operating the vehicle
103 when the offense occurred may submit to the court a police
104 report indicating that the vehicle was stolen at the time of the
105 offense or documentation of having purchased the vehicle after
106 the offense was committed from an entity other than the
107 defendant or the defendant's agent. If the court finds that the

108 vehicle was stolen or that the sale was not made to circumvent
109 the order and allow the defendant continued access to the
110 vehicle, the order must be dismissed and the owner of the
111 vehicle will incur no costs. If the court denies the request to
112 dismiss the order of impoundment or immobilization, the
113 petitioner may request an evidentiary hearing.
114 (f) A person who owns but was not operating the vehicle
115 when the offense occurred, and whose vehicle was stolen or who
116 purchased the vehicle after the offense was committed directly
117 from the defendant or the defendant's agent, may request an
118 evidentiary hearing to determine whether the impoundment or
119 immobilization should occur. If the court finds that either the
120 vehicle was stolen or the purchase was made without knowledge of
121 the offense, that the purchaser had no relationship to the
122 defendant other than through the transaction, and that such
123 purchase would not circumvent the order and allow the defendant
124 continued access to the vehicle, the order must be dismissed and
125 the owner of the vehicle will incur no costs.
126 (g) The court shall also dismiss the order of impoundment
127 or immobilization of the vehicle if the court finds that the
128 family of the owner of the vehicle has no other private or
129 public means of transportation.
130 (h) The court may also dismiss the order of impoundment or
131 immobilization of any vehicles that are owned by the defendant
132 but that are operated solely by the employees of the defendant
133 or any business owned by the defendant.
134 (i) All costs and fees for the impoundment or
135 immobilization, including the cost of notification, must be paid

136 by the owner of the vehicle or, if the vehicle is leased or
137 rented, by the person leasing or renting the vehicle, unless the
138 impoundment or immobilization order is dismissed. All provisions
139 of s. 713.78 shall apply.
140 (j) The person who owns a vehicle that is impounded or
141 immobilized under this paragraph, or a person who has a lien of
142 record against such a vehicle and who has not requested a review
143 of the impoundment pursuant to paragraph (e), paragraph (f), or
144 paragraph (g), may, within 10 days after the date that person
145 has knowledge of the location of the vehicle, file a complaint
146 in the county in which the owner resides to determine whether
147 the vehicle was wrongfully taken or withheld from the owner or
148 lienholder. Upon the filing of a complaint, the owner or
149 lienholder may have the vehicle released by posting with the
150 court a bond or other adequate security equal to the amount of
151 the costs and fees for impoundment or immobilization, including
152 towing or storage, to ensure the payment of such costs and fees
153 if the owner or lienholder does not prevail. When the bond is
154 posted and the fee is paid as set forth in s. 28.24, the clerk
155 of the court shall issue a certificate releasing the vehicle. At
156 the time of release, after reasonable inspection, the owner or
157 lienholder must give a receipt to the towing or storage company
158 indicating any loss or damage to the vehicle or to the contents
159 of the vehicle.
160 (k) A defendant, in the court's discretion, may be
161 required to serve all or any portion of a term of imprisonment
162 to which the defendant has been sentenced pursuant to this
163 section in a residential alcoholism treatment program or a

164 residential drug abuse treatment program. Any time spent in such
165 a program must be credited by the court toward the term of
166 imprisonment.
167 (l) For the fourth or subsequent conviction under
168 subparagraph (2)(b)3., the court shall order imprisonment for
169 not less than 2 years. There shall be no substitution of this
170 minimum mandatory term of imprisonment with treatment
171 alternatives. However, the court may, with the consent of the
172 state, order the defendant to serve a minimum mandatory sentence
173 of 1 year of incarceration followed by a period of probation
174 during which the defendant must attend and successfully complete
175 a residential alcohol treatment program, a residential drug
176 abuse treatment program, or be placed on community control. The
177 court must also, as a condition of probation, order the
178 impoundment or immobilization of all vehicles owned by the
179 defendant at the time of impoundment or immobilization for a
180 period of 120 days or for the unexpired term of any lease or
181 rental agreement that expires within 120 days. The impoundment
182 or immobilization shall not occur concurrently with the
183 incarceration of the defendant and shall occur concurrently with
184 the driver's license revocation imposed under s. 322.28. The
185 impoundment or immobilization order may be dismissed in
186 accordance with paragraph (e), paragraph (f), paragraph (g), or
187 paragraph (h). At least 48 hours of confinement must be
188 consecutive.
189
190 For the purposes of this section, any conviction for a violation
191 of s. 327.35; a previous conviction for the violation of former

192 s. 316.1931, former s. 860.01, or former s. 316.028; or a
193 previous conviction outside this state for driving under the
194 influence, driving while intoxicated, driving with an unlawful
195 blood-alcohol level, driving with an unlawful breath-alcohol
196 level, or any other similar alcohol-related or drug-related
197 traffic offense, is also considered a previous conviction for
198 violation of this section. However, in satisfaction of the fine
199 imposed pursuant to this section, the court may, upon a finding
200 that the defendant is financially unable to pay either all or
201 part of the fine, order that the defendant participate for a
202 specified additional period of time in public service or a
203 community work project in lieu of payment of that portion of the
204 fine which the court determines the defendant is unable to pay.
205 In determining such additional sentence, the court shall
206 consider the amount of the unpaid portion of the fine and the
207 reasonable value of the services to be ordered; however, the
208 court may not compute the reasonable value of services at a rate
209 less than the federal minimum wage at the time of sentencing.
210 (13)(a) Notwithstanding s. 921.241, every judgment of
211 guilty with respect to any offense governed by this section
212 shall comply with this subsection. Each judgment shall be in
213 writing, signed by the judge, and recorded by the clerk of the
214 circuit court. The judge shall cause to be affixed to every such
215 written judgment of guilty, in open court and in the presence of
216 such judge, the fingerprints of the defendant against whom such
217 judgment is rendered. Such fingerprints shall be affixed beneath
218 the judge's signature to any such judgment. Beneath such

219 fingerprints shall be appended a certificate in substantially
220 the following form:
221
222 "I hereby certify that the above and foregoing fingerprints are
223 of the defendant, (name) , and that they were placed thereon by
224 said defendant in my presence, in open court, this the ___ day
225 of (month)_____ (year) ."
226
227 Such certificate shall be signed by the judge, whose signature
228 thereto shall be followed by the word "Judge."
229 (b) Any such written judgment of guilty, or a certified
230 copy thereof, shall be admissible in evidence in the courts of
231 this state as prima facie evidence that the fingerprints
232 appearing thereon and certified by the judge are the
233 fingerprints of the defendant against whom such judgment of
234 guilty was rendered.
235 (c) At the time the defendant's fingerprints are taken,
236 the judge shall also cause the defendant's social security
237 number to be taken. The defendant's social security number shall
238 be affixed to every written judgment of guilty, in open court,
239 in the presence of such judge, and at the time the judgment is
240 rendered. If the defendant is unable or unwilling to provide his
241 or her social security number, the reason for its absence shall
242 be indicated on the written judgment.
243 Section 2. Paragraphs (a) and (c) of subsection (6) of
244 section 327.35, Florida Statutes, are amended, paragraphs (j)
245 and (k) are added to that subsection, and subsection (11) is
246 added to that section, to read:

247 327.35 Boating under the influence; penalties; "designated
248 drivers".--
249 (6) With respect to any person convicted of a violation of
250 subsection (1), regardless of any other penalty imposed:
251 (a) For the first conviction, the court shall place the
252 defendant on probation ~~for a period not to exceed 1 year~~ and, as
253 a condition of such probation, shall order the defendant to
254 participate in public service or a community work project for a
255 minimum of 50 hours. The court must also, as a condition of
256 probation, order the impoundment or immobilization of the vessel
257 that was operated by or in the actual control of the defendant
258 or any one vehicle registered in the defendant's name at the
259 time of impoundment or immobilization, for a period of 10 days
260 or for the unexpired term of any lease or rental agreement that
261 expires within 10 days. The impoundment or immobilization must
262 not occur concurrently with the incarceration of the defendant.
263 The impoundment or immobilization order may be dismissed in
264 accordance with paragraph (e) or paragraph (f). ~~The total period~~
265 ~~of probation and incarceration may not exceed 1 year.~~
266 (c) For the third ~~or subsequent~~ conviction for an offense
267 that occurs within a period of 10 years after the date of a
268 prior conviction for violation of this section, the court shall
269 order imprisonment for not less than 30 days. The court must
270 also, as a condition of probation, order the impoundment or
271 immobilization of the vessel that was operated by or in the
272 actual control of the defendant or any one vehicle registered in
273 the defendant's name at the time of impoundment or
274 immobilization~~,~~ for a period of 90 days or for the unexpired

275 term of any lease or rental agreement that expires within 90
276 days. The impoundment or immobilization shall ~~must~~ not occur
277 concurrently with the incarceration of the defendant. The
278 impoundment or immobilization order may be dismissed in
279 accordance with paragraph (e) or paragraph (f). At least 48
280 hours of confinement must be consecutive.
281 (j) For the fourth or subsequent conviction under
282 subparagraph (2)(b)3., the court shall order imprisonment for
283 not less than 2 years. There shall be no substitution of this
284 minimum mandatory term of imprisonment with treatment
285 alternatives. However, the court may, with the consent of the
286 state, order the defendant to serve a minimum mandatory sentence
287 of 1 year of incarceration followed by a period of probation
288 during which the defendant must attend and successfully complete
289 a residential alcohol treatment program, a residential drug
290 abuse treatment program, or be placed on community control. The
291 court must also, as a condition of probation, order the
292 impoundment or immobilization of the vessel that was operated by
293 or in the actual control of the defendant or any one vehicle
294 registered in the defendant's name at the time of impoundment or
295 immobilization for a period of 120 days or for the unexpired
296 term of any lease or rental agreement that expires within 120
297 days. The impoundment or immobilization shall not occur
298 concurrently with the incarceration of the defendant. The
299 impoundment or immobilization order may be dismissed in
300 accordance with paragraph (e) or paragraph (f). At least 48
301 hours of confinement must be consecutive.

302 (k) A person who owns but was not operating the vessel
303 when an offense under this section occurred may request an
304 evidentiary hearing to determine whether the impoundment or
305 immobilization should occur. If the court finds that the owner
306 was unaware of the defendant's prior conviction and sentence
307 under paragraph (a), paragraph (b), paragraph (c), or paragraph
308 (j) or if the court finds that there are other mitigating
309 circumstances that should allow the owner of the vessel to
310 secure the release of the vessel to the owner's possession, the
311 court may do so by dismissing the order of impoundment or
312 immobilization with or without cost to the vessel owner.
313
314 For the purposes of this section, any conviction for a violation
315 of s. 316.193, a previous conviction for the violation of former
316 s. 316.1931, former s. 860.01, or former s. 316.028, or a
317 previous conviction outside this state for driving under the
318 influence, driving while intoxicated, driving with an unlawful
319 blood-alcohol level, driving with an unlawful breath-alcohol
320 level, or any other similar alcohol-related or drug-related
321 traffic offense, is also considered a previous conviction for
322 violation of this section.
323 (11)(a) Notwithstanding s. 921.241, every judgment of
324 guilty with respect to any offense governed by this section
325 shall comply with this subsection. Each judgment shall be in
326 writing, signed by the judge, and recorded by the clerk of the
327 circuit court. The judge shall cause to be affixed to every such
328 written judgment of guilty, in open court and in the presence of
329 such judge, the fingerprints of the defendant against whom such

330 judgment is rendered. Such fingerprints shall be affixed beneath
331 the judge's signature to any such judgment. Beneath such
332 fingerprints shall be appended a certificate in substantially
333 the following form:
334
335 "I hereby certify that the above and foregoing fingerprints are
336 of the defendant, (name) , and that they were placed thereon by
337 said defendant in my presence, in open court, this the ___ day
338 of _(month)_____ (year) ."
339
340 Such certificate shall be signed by the judge, whose signature
341 thereto shall be followed by the word "Judge."
342 (b) Any such written judgment of guilty, or a certified
343 copy thereof, shall be admissible in evidence in the courts of
344 this state as prima facie evidence that the fingerprints
345 appearing thereon and certified by the judge are the
346 fingerprints of the defendant against whom such judgment of
347 guilty was rendered.
348 (c) At the time the defendant's fingerprints are taken,
349 the judge shall also cause the defendant's social security
350 number to be taken. The defendant's social security number shall
351 be affixed to every written judgment of guilty, in open court,
352 in the presence of such judge, and at the time the judgment is
353 rendered. If the defendant is unable or unwilling to provide his
354 or her social security number, the reason for its absence shall
355 be indicated on the written judgment.
356 Section 3. This act shall take effect October 1, 2006, and
357 shall apply to offenses committed on or after that date.

HB 325

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325 CS Commission on Capital Cases
SPONSOR(S): Gelber
TIED BILLS: **IDEN./SIM. BILLS:** SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Governmental Operations Committee	5 Y, 0 N, w/CS	Mitchell	Williamson
3) Criminal Justice Appropriations Committee	5 Y, 0 N	DeBeaugrine	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

The Commission on Capital Cases, a legislative commission within the Office of Legislative Services, maintains a registry of attorneys qualified to represent defendants in capital collateral (postconviction) proceedings. Currently, a registry attorney is authorized to represent only five capital collateral defendants at one time. This bill authorizes a registry attorney to represent up to seven capital collateral defendants at one time.

The bill significantly modifies the minimum qualifications for registry attorneys. The bill requires registry attorneys to submit reports to the commission on a quarterly basis. The bill authorizes court action and removal from the registry of attorneys for failing to execute the required contract within specified timeframes.

The bill allows an attorney appointed by a court to represent a capital defendant on a pro bono basis to receive certain expenses.

Currently, a registry attorney is entitled to payment at each stage of the postconviction process according to a statutory schedule. The bill modifies the payment schedule by authorizing payment of an attorney after the final evidentiary hearing has been held on the defendant's postconviction motion rather than requiring the attorney to wait until the judge has ruled on the postconviction motion.

The bill provides a legislative finding that not all capital collateral cases are extraordinary or unusual, and requires written findings of fact where a judge deviates upward from the statutorily authorized fee schedule.

This bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to create, modify, amend, or eliminate revenues of state government or of local governments. The expenditure impact on state government is indeterminate, but expected to be minimal. The bill does not appear to create, modify, amend, or eliminate expenditures of local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House principles.

B. EFFECT OF PROPOSED CHANGES:

Commission on Capital Cases

Section 27.709, F.S. creates the Commission on Capital Cases, a legislative commission within the Office of Legislative Services which is tasked with reviewing the "administration of justice in capital collateral cases". The commission is comprised of two members appointed by the Governor,[1] two Senators appointed by the President of the Senate[2] and two members of the House of Representatives appointed by the Speaker of the House of Representatives.[3]

Overview of Postconviction Proceedings in Capital Cases: A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court. At this stage, a capital defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. Matters which are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. If the Florida Supreme Court affirms the capital defendant's conviction and sentence, a defendant can appeal that decision to the United States Supreme Court by filing a petition for writ of certiorari. If the Supreme Court refuses to hear or rejects the defendant's appeal, a defendant is entitled to begin state postconviction proceedings.

State postconviction proceedings are controlled by rules 3.850, 3.851 and 3.852 of the Florida Rules of Criminal Procedure. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, a collateral postconviction proceeding is designed to raise claims which are "collateral" to what transpired in the trial court. Postconviction proceedings usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence or claims that the prosecution failed to disclose exculpatory evidence. Since the consideration of these claims often require new fact finding, collateral postconviction motions are filed in the trial court which sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.

After completion of state postconviction proceedings, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. The federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. The most common issue raised is whether the defendant's trial counsel was ineffective.

Finally, once the Governor signs a death warrant, a defendant will typically file a second Rule 3.850 motion and a second federal habeas petition along with motions to stay the execution.

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[1] Judge Paul M. Hawkes, First District Court of Appeal, and Judge Leslie B. Rothenberg, Fourth District Court of Appeal, are the current appointees of the Governor. *See* Comm'n on Capital Cases, Members, available at http://www.floridacapitalcases.state.fl.us/c-members.cfm (last visited Mar. 1, 2006).

[2] Senators Walter G. "Skip" Campbell, Jr. and Victor D. Crist are the current appointees of the Senate President. *See* Comm'n on Capital Cases, Members, available at http://www.floridacapitalcases.state.fl.us/c-members.cfm (last visited Mar. 1, 2006).

[3] Representatives Dan Gelber and Juan-Carlos "J.C." Planas are the current appointees of the Speaker of the House. *See* Comm'n on Capital Cases, Members, available at http://www.floridacapitalcases.state.fl.us/c-members.cfm (last visited Mar. 1, 2006).

In the middle and southern regions of Florida, the Capital Collateral Regional Counsel and private attorneys appointed by the court from a registry maintained by the Commission on Capital Cases provide postconviction representation to indigent capital defendants.[4] In the northern region of the state, representation is exclusively provided by private attorneys appointed by the court from the registry maintained by the Commission on Capital Cases.

Registry Attorneys

In 1998, the legislature created a registry of private attorneys to represent a death row inmate when a Capital Collateral Regional Counsel has an excessive caseload or has a conflict of interest. Since 2003 postconviction representation of all indigent capital defendants in the northern region of Florida has been provided by registry attorneys. The registry of attorneys is maintained by the Commission on Capital Cases and is comprised of lawyers who have met certain statutory criteria.[5] A registry attorney must be a member in good standing in the Florida Bar, with not less than three years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of these proceedings.[6] There are currently 138 registry attorneys who, along with 29 Public Defenders, are handling 412 postconviction collateral proceedings.[7]

A registry attorney is required to attend at least seven hours of continuing legal education each year that is specifically devoted to the defense of capital cases. A registry attorney is not permitted to represent more than five defendants in capital postconviction litigation at any one time.[8]

A registry attorney who is appointed by the court to represent a capital defendant is required to enter into a contract with the Chief Financial Officer. Section 27.711(4), F.S., provides a fee and payment schedule. Upon approval by the trial court, and after certain stages in litigation are complete, a registry attorney is entitled to payment of $100 per hour by the Chief Financial Officer, up to a maximum of:

- $2,500 upon accepting the appointment and filing the notice of appearance;
- $20,000 after timely filing in the trial court the capital defendant's complete original motion for postconviction relief;[9]
- $20,000 after the trial court issues a final order granting or denying the defendant's motion for postconviction relief;
- $20,000 after timely filing in the Florida Supreme Court the defendant's briefs that address the trial court's final order granting or denying the defendant's motion for postconviction relief and the state petition for writ of habeas corpus;
- $10,000 after the trial court issues an order, pursuant to a remand from the Florida Supreme Court, which directs the trial court to hold further proceedings on the motion for postconviction relief;
- $4,000 after the appeal of the trial court's denial of the motion for postconviction relief and the state petition for writ of habeas corpus become final in the Florida Supreme Court;

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[4] s. 27.701, F.S.
[5] s. 27.710(2), F.S
[6] s. 27.704(2), F.S
[7] *See* Comm'n on Capital Cases, Registry Attorneys, available at http://www.floridacapitalcases.state.fl.us/c-registry-attorney.cfm (last visited Feb. 24, 2006) and Comm'n on Capital Cases, Inmate Legal Status, available at http://www.floridacapitalcases.state.fl.us/c-inmate-status.cfm (last visited Feb. 24, 2006).
[8] There are, however, approximately seven registry attorneys who have caseloads above even seven cases, four more than eleven cases. *See* Comm'n on Capital Cases, Registry Attorneys, available at http://www.floridacapitalcases.state.fl.us/c-registry-attorney.cfm (last visited Feb. 24, 2006). http://www.floridacapitalcases.state.fl.us/c-members.cfm
[9] This paragraph also entitles an attorney to fees if the court schedules a hearing on a matter that makes the filing of the original motion for postconviction relief unnecessary or if the court otherwise disposes of the case; s. 27.704(4)(b), F.S.

- $2,500 at the conclusion of the defendant's postconviction capital collateral proceeding in state court and after filing a petition for writ of certiorari in the U.S. Supreme Court;

- $5,000 if at any time a death warrant is issued to compensate for attorneys fees and costs for representing the defendant throughout the proceedings before the state courts.

In addition, the attorney is authorized to hire an investigator at $40 per hour, up to a maximum of $15,000, to assist in the defendant's representation.[10] The attorney also is entitled to a maximum of $15,000 for miscellaneous expenses, such as the cost of preparing transcripts, compensating expert witnesses and copying documents, although the trial court may approve additional expenses if extraordinary circumstances exist.

The court is required to monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation and must receive and evaluate allegations regarding the performance of assigned counsel.[11]

Fees in excess of statutory schedule

Although fees do not normally exceed the statutory schedule,[12] there have been 15 cases since the inception of the registry program where excess attorneys' fees totaling $356,755 were awarded.[13] There have been four cases where excess investigative fees totaling $21,806 were awarded.[14] There have been 20 cases where trial courts authorized additional miscellaneous expenses totaling $327,813.[15] These excess fee cases have occurred with increasing frequency over the last several years.[16]

Fees can exceed the statutory schedule based on court decisions such as the recent case of *Florida Department of Financial Services v. Freeman*[17], the Florida Supreme Court reaffirmed the holding of several prior cases that it is "within the trial judge's discretion to grant fees beyond the statutory maximum to registry counsel in capital collateral cases when 'extraordinary or unusual circumstances exist.'" In *Freeman*, the Department of Financial Services appealed an order from a circuit court granting a registry attorney, who had signed the required contract for services, fees in excess of the statutory maximum. The trial court had granted $27,940.74 in fees for services that were statutorily capped at $2,500. The *Freeman* opinion reviewed the court's prior holdings on the issue of fees in excess of statutory caps. In *Olive v. Maas*,[18] the court held that "fees in excess of the statutory cap are not always awarded to registry counsel in capital collateral cases; however, registry counsel is not foreclosed from requesting excess compensation 'should he or she establish that, given the facts and circumstances of a particular case, compensation within the statutory cap would be confiscatory of his or her time, energy and talent". The *Olive* court relied on the opinion of *Makemson v. Martin County*,[19] which related to compensation to attorneys representing capital defendants at the trial and during direct appeal.

According to the *Freeman* court, the attorney requesting fees in excess of the statutory limits has the burden of establishing facts in support of the award. The Florida Supreme Court found that the record from the trial court provided "no evidence upon which the judge could rely to determine if extraordinary

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[10] s. 27.711(5), F.S.
[11] s. 27.711(12), F.S.
[12] Conversation, Executive Dir., Comm'n on Capital Cases (Feb. 24, 2006).
[13] Comm'n on Capital Cases, Payments in Excess of Statutory Caps Since Inception of the Registry Program (spreadsheet) (last updated Jan 31. 2006) (on file the comm'n).
[14] *Id.*
[15] *Id.*
[16] Conversation, Executive Dir., Comm'n on Capital Cases (Feb. 24, 2006).
[17] Florida Department of Financial Services v. Freeman, 2006 WL 176748 (Fla. January 26, 2006).
[18] *Olive v. Maas*, 811 So.2d 644 (Fla. 2002).
[19] 491 So.2d 1109 (Fla. 1986)

or unusual circumstances existed to support an award of excessive fees" and remanded the case back to the trial court for an evidentiary hearing.

Effect of HB 325

Continuing legal education: HB 325 amends s. 27.709, F.S., to authorize the Commission on Capital Cases to sponsor continuing legal education training devoted specifically to capital cases and to undertake any project recommended or approved by the commission members.

The bill also amends s. 27.710, F.S., to modify the continuing legal education (CLE) requirements for registry attorneys. Currently, the registry attorneys must attend 10 hours of CLE annually. The bill requires registry attorneys who are handling a capital case to attend at least 12 hours of CLE every two years.

Currently, an attorney who is actively representing a capital defendant is entitled to a maximum of $500 per fiscal year for tuition and expenses for continuing legal education that pertains to the representation of capital defendants. The bill amends s. 27.711, F.S., to clarify that a registry attorney is entitled to $500 for CLE expenses, regardless of how many capital defendants the attorney represents.

Qualifications: Currently, to be eligible for court appointment as counsel in postconviction proceedings, an attorney must certify that he or she satisfies the minimum experience and training requirements. As explained above, a registry attorney must have not less than three years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of these proceedings. These requirements are the same as those for the Capital Collateral Regional Counsel. The bill substantially modifies the minimum requirements for registry counsel in s. 27.710, F.S., by requiring a registry attorney to certify that he or she:

1. Is an active practitioner who has at least five years' experience in the practice of criminal law;
2. Is familiar with the production of evidence and the use of expert witnesses, including psychiatric and forensic evidence;
3. Has demonstrated proficiency necessary for representation in capital cases including the investigation and presentation of mitigation evidence;
4. Has satisfied the above CLE requirements;
5. Has tried at least nine state or federal criminal jury trials to completion, two of which must have been capital cases and
    a. Three of which must have been murder trials;
    b. One of which must have been a murder trial and five of which must have been other felony trials; or
    c. One of which must have included a postconviction evidentiary hearing and five of which must have been other felony trials
6. Alternatively, the attorney can certify that he or she has appealed one capital conviction and appealed at least:
    a. Three felony convictions, one of which must have been murder;
    b. Three felony convictions and participated in one capital postconviction evidentiary hearing; or
    c. Felony convictions, two of which must have been murders.

If the trial court finds that exceptional circumstances exist requiring appointment of an attorney who does not meet the criteria set forth above, the trial court must enter a written order specifying the exceptional circumstances requiring appointment of the attorney and explicit findings that the attorney chosen will provide competent representation in accordance with the intent of the section.

Failure to comply with criterion set forth in the section may be cause to remove the attorney from the registry until the criterion is satisfied. The bill provides that satisfaction of the minimum requirements

must be proven by written notification to the commission. The certification requirement can be satisfied by submission of the application by electronic mail without a signature.

These changes are consistent with rule 3.112 of the Rules of Criminal Procedure, which were promulgated by the Florida Supreme Court to set minimum standards for attorneys in capital cases. These changes also are not expected to adversely impact the number of registry attorneys.[20]

Contracting: Currently, a private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Chief Financial Officer. If an attorney fails to execute the contract within 30 days after the date the contract is mailed to the attorney, the executive director of the commission must notify the trial court.

The bill allows the trial court to impose fines or removal from the case for failing to execute the required contract within 30 days after the contract is mailed to the attorney. The bill requires the executive director of the commission to remove an attorney from the registry for failing to execute the required contract within 45 days after the date the contract is mailed to the attorney. The bill prohibits an attorney from receiving any funds from the state treasury without executing the required contract.

Quarterly reporting: The bill also requires a registry attorney to agree to submit quarterly reports to the commission. If the attorney does not submit the required report within 30 days after the end of the quarter, the executive director must notify the court, which may impose a fine or remove the attorney from the case. If the attorney fails to submit the required report within 45 days after the end of the quarter, the executive director is required to remove the attorney from the registry list.

Effect of Removal from the Registry List: The bill gives the court the discretion to allow an attorney who has been removed from the registry to continue to represent any appointed clients as of the date of removal. The court, however, must take all necessary actions to ensure compliance with the contracting and reporting requirements. The bill also prohibits an attorney who has been removed from the registry from accepting appointment to represent any new capital defendants.

Return to the Registry List: The bill allows an attorney who has been removed from the registry list to certify that the attorney will comply with the contracting and reporting requirements and follow the original application procedures to be returned to the registry. An attorney is only eligible to reapply to the registry after removal two times.

Federal representation: The bill provides that if a registry attorney does not wish to continue representation in the federal courts, the attorney must make reasonable efforts to assist the defendant in finding replacement counsel who meets the federal requirements to represent a capital defendant in federal proceedings.

Payment: The bill also amends s. 27.711, F.S., to modify the payment schedule for registry attorneys. The bill authorizes payment of $100 per hour, up to a maximum of $20,000 after the final hearing on the capital defendant's motion for postconviction relief rather than when the trial court issues a final order granting or denying the defendant's motion. In some cases, judges take an extended amount of time in ruling on a postconviction motion after the evidentiary hearing – this provision will authorize payment to the attorney sooner. The bill authorizes payment of $100 per hour, up to a maximum of $2,500 for the preparation of an initial federal pleading rather than after filing a petition for writ of certiorari in the United States Supreme Court.

The bill provides that an attorney who is appointed by a court to represent a capital defendant on a pro bono basis is not entitled to attorney's fees, but is entitled to payment, from the appropriation for the registry, for specified investigative services and specified miscellaneous expenses actually incurred on behalf of the defendant. The bill prohibits any payment to any lawyer who volunteers to represent a defendant on a pro bono basis, if a registry lawyer has been appointed to represent the defendant.

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[20] Conversation, Executive Dir., Comm'n on Capital Cases (Feb. 24, 2006).

The bill provides that if a trial court judge intends to award attorney fees in excess of those outlined in statute, the judge must include written findings of fact that specifically state the extraordinary nature of the expenditures of the time, energy, and talents of the attorney in the case which are not ordinarily expended in other capital collateral cases. The bill also amends s. 27.7001, F.S., to provide that the Legislature finds that not all capital collateral cases are extraordinary or unusual.

Limitation on number of inmates represented: The bill authorizes a registry attorney to represent up to seven inmates in capital postconviction litigation at any one time rather than only five inmates. The seven-inmate-representation limit includes capital postconviction cases proceeding under contract with the capital collateral regional counsel[21], inmates represented pro bono and inmates privately retaining the attorney. An attorney may not be appointed to additional capital postconviction cases until the attorney's representation total falls below the seven-case limit.

C. SECTION DIRECTORY:

Section 1. Amends s. 27.7001, F.S., to provide legislative findings.

Section 2. Amends s. 27.709, F.S., to authorize the Commission on Capital Cases to sponsor continuing legal education programs.

Section 3. Amends s. 27.710, F.S., to change the criteria for registry attorneys; to require quarterly reporting to commission; and to authorize executive director to remove attorney from registry in certain circumstances.

Section 4. Amends s. 27.711, F.S., to modify payment schedule for registry attorneys.

Section 5. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate revenues of state government.

2. Expenditures:

   Allowing pro bono attorney expenses to be paid from funds appropriated for registry attorneys will increase expenditure requirements. The impact is indeterminate since it is impossible to predict how many defendants will be represented by pro bono attorneys once the bill takes effect. The House proposed General Appropriations Act contains an additional $900,000 of recurring General Revenue in the category designated for registry attorneys.

   Also see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate revenues of local governments.

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate expenditures of local government.

[21] Section 27.704(2), F.S. authorizes the CCRC to contact with private counsel or with public defenders to provide representation to death sentenced inmates.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Court-appointed capital collateral counsel should receive certain fees more quickly than under current law, in that the bill provides for payment after the final hearing on the original motion for postconviction relief, rather than upon the issuance of the court's order on the motion. Further, costs incurred by an attorney who has taken a capital collateral case on a pro bono basis may be paid by the Chief Financial Officer, upon approval of the court.

Increasing the required qualifications to be listed on the registry maintained by the Commission on Capital Cases will likely preclude attorneys who are now eligible to be listed on the registry from appointment through the registry.

Increasing the number of cases that a private registry attorney can handle from five to seven cases will allow these attorneys to increase their billings to the state.

D. FISCAL COMMENTS:

There could be a short-term, cash-flow impact on the state from the requirement that attorneys be paid for certain events more quickly than under current practice. This would not, however, increase overall costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   There do not appear to be any constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Criminal Justice Committee

The Criminal Justice Committee adopted a strike-all amendment which:

- Changed the statutory limit on the number of inmates that a registry attorney is authorized to represent from ten to seven. [The current statutory limit is five.]
- Modified the minimum qualifications for registry attorneys.
- Authorized a judge to impose a fine or remove an attorney from the registry if the attorney does not submit a required quarterly report.

Governmental Operations Committee

At its meeting on March 8, 2006, the Governmental Operations Committee adopted two amendments and reported the bill favorably with committee substitute:

Amendment 1 revised the provisions related to the failure by an appointed attorney to execute the required contract or to submit the required reports, added provisions addressing the effect of removing an attorney from the registry list, and provided a process by which an attorney could return to the registry list.

Failure to Execute the Required Contract

The amendment allows a court to impose fines or removal for failing to execute the required contract within 30 days after the contract is mailed to the attorney. Rather than immediate removal from the registry after 30 days as provided in the committee substitute, the amendment provides for removal by the executive director after 45 days. The amendment also prohibits an attorney who has failed to execute a contract from receiving any funds from the state treasury.

Failure to Submit the Required Reports

The amendment continues to allow a court to impose fines or removal for failing to submit the required report within 30 days after the end of the quarter. Rather than immediate removal from the registry after 30 days, the amendment provides for removal by the executive director after 45 days.

Effect of Removal

The amendment gives a court the discretion to allow an attorney who has been removed from the registry to continue to represent any appointed clients as of the date of removal, but requires the court to take all necessary actions to ensure compliance with the contracting and reporting requirements. The amendment prohibits an attorney who has been removed from the registry from accepting appointment to represent any new capital defendants.

Return to the Registry

The amendment allows an attorney who has been removed from the registry to certify that the attorney will comply with the contracting and reporting requirements and to follow the original application procedures to be returned to the registry; an attorney is only eligible to reapply to the registry after removal two times.

Amendment 2 revised the provisions related to the payment of costs incurred during pro bono representation of capital defendants.

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Commission on Capital Cases;
7 amending s. 27.7001, F.S.; providing legislative findings;
8 amending s. 27.709, F.S.; authorizing the Commission on
9 Capital Cases to sponsor continuing legal education
10 programs devoted specifically to capital cases; amending
11 s. 27.710, F.S.; specifying criteria that a private
12 attorney must satisfy in order to be eligible to be
13 appointed as counsel in a postconviction capital
14 collateral proceeding; providing that a judge may appoint
15 an attorney who does not meet the appointment criteria if
16 exceptional circumstances exist; providing that an
17 attorney may be removed from the capital collateral
18 registry if the attorney does not meet the criteria;
19 directing the executive director of the commission to
20 remove an attorney from the registry if the attorney fails
21 to timely file an executed contract; requiring a private
22 attorney appointed by a court to represent a capital
23 defendant to submit a report each quarter to the

24 commission; requiring the executive director to notify the
25 trial court and remove an attorney from the registry if
26 the attorney does not submit the report within a specified
27 time; authorizing the commission to return a removed
28 attorney to the registry; requiring that an attorney make
29 reasonable efforts to assist the person under a sentence
30 of death in finding an attorney under certain
31 circumstances; amending s. 27.711, F.S.; requiring that
32 certain costs incurred during pro bono representation of a
33 capital defendant be paid to the attorney; providing that
34 an attorney who is listed on the registry and representing
35 at least one capital defendant is entitled to tuition and
36 expenses for continuing legal education courses; providing
37 that an attorney may represent no more than seven inmates
38 in capital postconviction cases at any one time; requiring
39 that, if a trial court judge intends to award attorney's
40 fees in excess of those set by law, the judge must include
41 written findings of fact specifically stating the
42 extraordinary nature of the expenditures of the time,
43 energy, and talents of the attorney in the case that are
44 not ordinarily expended in other capital collateral cases;
45 providing an effective date.
46
47 Be It Enacted by the Legislature of the State of Florida:
48
49 Section 1. Section 27.7001, Florida Statutes, is amended
50 to read:

51 27.7001 Legislative intent and findings.--It is the intent
52 of the Legislature to create part IV of this chapter, consisting
53 of ss. 27.7001-27.711, inclusive, to provide for the collateral
54 representation of any person convicted and sentenced to death in
55 this state, so that collateral legal proceedings to challenge
56 any Florida capital conviction and sentence may be commenced in
57 a timely manner and so as to assure the people of this state
58 that the judgments of its courts may be regarded with the
59 finality to which they are entitled in the interests of justice.
60 It is the further intent of the Legislature that collateral
61 representation shall not include representation during retrials,
62 resentencings, proceedings commenced under chapter 940, or civil
63 litigation. The Legislature further finds that not all capital
64 collateral cases are extraordinary or unusual.
65 Section 2. Paragraph (d) is added to subsection (2) of
66 section 27.709, Florida Statutes, to read:
67 27.709 Commission on Capital Cases.--
68 (2)
69 (d) The commission may sponsor programs of continuing
70 legal education which are devoted specifically to capital cases
71 and shall undertake any project recommended or approved by the
72 commission members.
73 Section 3. Section 27.710, Florida Statutes, is amended to
74 read:
75 27.710 Registry of attorneys applying to represent persons
76 in postconviction capital collateral proceedings; certification
77 of minimum requirements; appointment by trial court.--

78 (1) The executive director of the Commission on Capital
79 Cases shall compile and maintain a statewide registry of
80 attorneys in private practice who have certified that they meet
81 the ~~minimum~~ requirements of this section and ~~s. 27.704(2),~~ who
82 are available for appointment by the court under this section to
83 represent persons convicted and sentenced to death in this state
84 in postconviction collateral proceedings~~, and who have attended~~
85 ~~within the last year a continuing legal education program of at~~
86 ~~least 10 hours' duration devoted specifically to the defense of~~
87 ~~capital cases, if available. Continuing legal education programs~~
88 ~~meeting the requirements of this rule offered by The Florida Bar~~
89 ~~or another recognized provider and approved for continuing legal~~
90 ~~education credit by The Florida Bar shall satisfy this~~
91 ~~requirement. The failure to comply with this requirement may be~~
92 ~~cause for removal from the list until the requirement is~~
93 ~~fulfilled~~. To ensure that sufficient attorneys are available for
94 appointment by the court, when the number of attorneys on the
95 registry falls below 50, the executive director shall notify the
96 chief judge of each circuit by letter and request the chief
97 judge to promptly submit the names of at least three private
98 attorneys who regularly practice criminal law in that circuit
99 and who appear to meet the minimum requirements to represent
100 persons in postconviction capital collateral proceedings. The
101 executive director shall send an application to each attorney
102 identified by the chief judge so that the attorney may register
103 for appointment as counsel in postconviction capital collateral
104 proceedings. As necessary, the executive director may also
105 advertise in legal publications and other appropriate media for

106 qualified attorneys interested in registering for appointment as
107 counsel in postconviction capital collateral proceedings. Not
108 later than September 1 of each year, and as necessary
109 thereafter, the executive director shall provide to the Chief
110 Justice of the Supreme Court, the chief judge and state attorney
111 in each judicial circuit, and the Attorney General a current
112 copy of its registry of attorneys who are available for
113 appointment as counsel in postconviction capital collateral
114 proceedings. The registry must be indexed by judicial circuit
115 and must contain the requisite information submitted by the
116 applicants in accordance with this section.
117 (2)(a) To be eligible for court appointment as counsel in
118 postconviction capital collateral proceedings, an attorney must
119 certify on an application provided by the executive director
120 that he or she is a member in good standing of The Florida Bar
121 and:
122 1. Is an active practitioner who has at least 5 years'
123 experience in the practice of criminal law, is familiar with the
124 production of evidence and the use of expert witnesses,
125 including psychiatric and forensic evidence, and has
126 demonstrated the proficiency necessary for representation in
127 capital cases, including the investigation and presentation of
128 mitigation evidence;
129 2. Has attended a minimum of 12 hours of continuing legal
130 education programs within the previous 2 years which were
131 devoted to the defense of capital cases and offered by The
132 Florida Bar or another recognized provider of continuing legal
133 education courses; and

134 3.a. Has tried at least nine state or federal jury trials
135 to completion, two of which must have been capital cases and:
136 (I) Three of which must have been murder trials;
137 (II) One of which must have been a murder trial and five
138 of which must have been other felony trials; or
139 (III) One of which must have included a postconviction
140 evidentiary hearing and five of which must have been other
141 felony trials; or
142 b. Has appealed one capital conviction and appealed:
143 (I) At least three felony convictions, one of which must
144 have been a murder;
145 (II) At least three felony convictions and participated in
146 one capital postconviction evidentiary hearing; or
147 (III) At least six felony convictions, two of which must
148 have been murders.
149 (b) If the trial court finds that exceptional
150 circumstances exist requiring appointment of an attorney who
151 does not meet the criteria set forth in paragraph (a), the trial
152 court shall enter a written order specifying the exceptional
153 circumstances requiring appointment of the attorney and explicit
154 findings that the attorney chosen will provide competent
155 representation in accordance with the intent of this section.
156 (c) A failure to comply with any criterion set forth in
157 paragraph (a) may be cause to remove the attorney from the
158 registry until the criterion is satisfied.
159 (d) Satisfaction of the criterion may be proven by
160 submitting a written certification to the commission. The
161 certification is complete upon submission of the application by

162 electronic mail without a signature ~~satisfies the minimum~~
163 ~~requirements for private counsel set forth in s. 27.704(2)~~.
164 (3) An attorney ~~who applies for registration and court~~
165 ~~appointment as counsel in postconviction capital collateral~~
166 ~~proceedings must certify that he or she is counsel of record in~~
167 ~~not more than four such proceedings and, if~~ appointed to
168 represent a person in postconviction capital collateral
169 proceedings~~,~~ shall continue the ~~such~~ representation under the
170 terms and conditions set forth in s. 27.711 until the sentence
171 is reversed, reduced, or carried out or unless permitted to
172 withdraw from representation by the trial court. The court may
173 not permit an attorney to withdraw from representation without a
174 finding of sufficient good cause. The court may impose
175 appropriate sanctions if it finds that an attorney has shown bad
176 faith with respect to continuing to represent a defendant in a
177 postconviction capital collateral proceeding. This section does
178 not preclude the court from reassigning a case to a capital
179 collateral regional counsel following discontinuation of
180 representation if a conflict of interest no longer exists with
181 respect to the case.
182 (4)(a) Each private attorney who is appointed by the court
183 to represent a capital defendant must enter into a contract with
184 the Chief Financial Officer. If the appointed attorney fails to
185 execute the contract within 30 days after the date the contract
186 is mailed to the attorney, the executive director of the
187 Commission on Capital Cases shall notify the trial court, which
188 may impose a fine or remove the attorney from the case. If the
189 appointed attorney fails to execute the contract within 45 days

190 after the date the contract is mailed to the attorney, the
191 executive director shall remove the attorney from the registry
192 list. The Chief Financial Officer shall develop the form of the
193 contract, function as contract manager, and enforce performance
194 of the terms and conditions of the contract. By signing such
195 contract, the attorney certifies that he or she intends to
196 continue the representation under the terms and conditions set
197 forth in the contract until the sentence is reversed, reduced,
198 or carried out or until released by order of the trial court. In
199 no event shall an attorney receive any funds from the State
200 Treasury without executing the contract required by this
201 paragraph.
202 (b) Each private attorney appointed by a court to
203 represent a capital defendant shall submit a report each quarter
204 to the commission in the format designated by the commission. If
205 the attorney does not submit the report within 30 days after the
206 end of the quarter, the executive director shall notify the
207 court, which may impose a fine or remove the attorney from the
208 case. If the attorney fails to submit the report within 45 days
209 after the end of the quarter, the executive director shall
210 remove the attorney from the registry list.
211 (c) Any appointed attorney removed from the registry may,
212 at the discretion of the court, continue to represent any
213 clients that the attorney has been appointed to represent as of
214 the date of removal. If the court allows an attorney who has
215 been removed from the registry to continue to represent
216 previously appointed capital defendants, the court shall take
217 all necessary actions to ensure compliance with the requirements

218 of this subsection. An attorney who has been removed from the
219 registry is prohibited from accepting appointment to represent
220 any new capital defendants unless the attorney is placed back on
221 the registry as provided in paragraph (d).
222 (d) After certifying to the executive director that he or
223 she will act in accordance with the provisions of this
224 subsection, an attorney removed from the registry may, after 60
225 days, reapply for the registry as provided in subsection (2). An
226 attorney may reapply for the registry no more than two times
227 under the provisions of this paragraph for failure to adhere to
228 the requirements of this subsection.
229 (5)(a) Upon the motion of the capital collateral regional
230 counsel to withdraw under ~~pursuant to~~ s. 924.056(1)(a); or
231 (b) Upon notification by the state attorney or the
232 Attorney General that:
233 1. Thirty days have elapsed since appointment of the
234 capital collateral regional counsel and no entry of appearance
235 has been filed under ~~pursuant to~~ s. 924.056; or
236 2. A person under sentence of death who was previously
237 represented by private counsel is currently unrepresented in a
238 postconviction capital collateral proceeding,
239
240 the executive director shall immediately notify the trial court
241 that imposed the sentence of death that the court must
242 immediately appoint an attorney, selected from the current
243 registry, to represent the ~~such~~ person in collateral actions
244 challenging the legality of the judgment and sentence in the
245 appropriate state and federal courts. If the attorney appointed

246 to represent a person under a sentence of death does not wish to
247 continue representing the person in federal proceedings, the
248 attorney must make reasonable efforts to assist the person in
249 finding an attorney who meets the federal criteria to represent
250 the person in any federal proceedings. The court shall have the
251 authority to strike a notice of appearance filed by a Capital
252 Collateral Regional Counsel, if the court finds the notice was
253 not filed in good faith and may so notify the executive director
254 that the client is no longer represented by the Office of
255 Capital Collateral Regional Counsel. In making an assignment,
256 the court shall give priority to attorneys whose experience and
257 abilities in criminal law, especially in capital proceedings,
258 are known by the court to be commensurate with the
259 responsibility of representing a person sentenced to death. The
260 trial court must issue an order of appointment which contains
261 specific findings that the appointed counsel meets the statutory
262 requirements and has the high ethical standards necessary to
263 represent a person sentenced to death.
264 (6) More than one attorney may not be appointed and
265 compensated at any one time under s. 27.711 to represent a
266 person in postconviction capital collateral proceedings.
267 However, an attorney appointed under this section may designate
268 another attorney to assist him or her if the designated attorney
269 meets the qualifications of this section.
270 Section 4. Subsections (3), (4), (7), and (9) of section
271 27.711, Florida Statutes, are amended, and subsection (15) is
272 added to that section, to read:

273 27.711 Terms and conditions of appointment of attorneys as
274 counsel in postconviction capital collateral proceedings.--
275 (3) An attorney appointed to represent a capital defendant
276 is entitled to payment of the fees set forth in this section
277 only upon full performance by the attorney of the duties
278 specified in this section and approval of payment by the trial
279 court, and the submission of a payment request by the attorney,
280 subject to the availability of sufficient funding specifically
281 appropriated for this purpose. An attorney may not be
282 compensated under this section for work performed by the
283 attorney before July 1, 2003, while employed by the northern
284 regional office of the capital collateral counsel. The Chief
285 Financial Officer shall notify the executive director and the
286 court if it appears that sufficient funding has not been
287 specifically appropriated for this purpose to pay any fees which
288 may be incurred. The attorney shall maintain appropriate
289 documentation, including a current and detailed hourly
290 accounting of time spent representing the capital defendant. The
291 fee and payment schedule in this section is the exclusive means
292 of compensating a court-appointed attorney who represents a
293 capital defendant. When appropriate, a court-appointed attorney
294 must seek further compensation from the Federal Government, as
295 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
296 corpus litigation in the federal courts. <u>An attorney who is</u>
297 <u>appointed by a court to represent a capital defendant on a pro</u>
298 <u>bono basis shall not be entitled to attorney's fees as provided</u>
299 <u>in subsection (4), but shall be entitled to payment by the Chief</u>
300 <u>Financial Officer from the registry appropriation for</u>

301 investigative services as specified in subsection (5) and for
302 miscellaneous expenses actually incurred on behalf of the
303 defendant as specified in subsection (6). If a registry attorney
304 has been appointed to represent a defendant, no payment shall be
305 made to any other attorney who volunteers to represent the same
306 defendant on a pro bono basis.
307 (4) Upon approval by the trial court, an attorney
308 appointed to represent a capital defendant under s. 27.710 is
309 entitled to payment of the following fees by the Chief Financial
310 Officer:
311 (a) Regardless of the stage of postconviction capital
312 collateral proceedings, the attorney is entitled to $100 per
313 hour, up to a maximum of $2,500, after accepting appointment and
314 filing a notice of appearance.
315 (b) The attorney is entitled to $100 per hour, up to a
316 maximum of $20,000, after timely filing in the trial court the
317 capital defendant's complete original motion for postconviction
318 relief under the Florida Rules of Criminal Procedure. The motion
319 must raise all issues to be addressed by the trial court.
320 However, an attorney is entitled to fees under this paragraph if
321 the court schedules a hearing on a matter that makes the filing
322 of the original motion for postconviction relief unnecessary or
323 if the court otherwise disposes of the case.
324 (c) The attorney is entitled to $100 per hour, up to a
325 maximum of $20,000, after the final hearing on ~~trial court~~
326 ~~issues a final order granting or denying~~ the capital defendant's
327 motion for postconviction relief.

328 (d) The attorney is entitled to $100 per hour, up to a
329 maximum of $20,000, after timely filing in the Supreme Court the
330 capital defendant's brief or briefs that address the trial
331 court's final order granting or denying the capital defendant's
332 motion for postconviction relief and the state petition for writ
333 of habeas corpus.
334 (e) The attorney is entitled to $100 per hour, up to a
335 maximum of $10,000, after the trial court issues an order,
336 following ~~pursuant to~~ a remand from the Supreme Court, which
337 directs the trial court to hold further proceedings on the
338 capital defendant's motion for postconviction relief.
339 (f) The attorney is entitled to $100 per hour, up to a
340 maximum of $4,000, after the appeal of the trial court's denial
341 of the capital defendant's motion for postconviction relief and
342 the capital defendant's state petition for writ of habeas corpus
343 become final in the Supreme Court.
344 (g) At the conclusion of the capital defendant's
345 postconviction capital collateral proceedings in state court,
346 the attorney is entitled to $100 per hour, up to a maximum of
347 $2,500, for the preparation of the initial federal pleading
348 ~~after filing a petition for writ of certiorari in the Supreme~~
349 ~~Court of the United States~~.
350 (h) If, at any time, a death warrant is issued, the
351 attorney is entitled to $100 per hour, up to a maximum of
352 $5,000. This payment shall be full compensation for attorney's
353 fees and costs for representing the capital defendant throughout
354 the proceedings before the state courts of Florida.
355

356 The hours billed by a contracting attorney under this subsection
357 may include time devoted to representation of the defendant by
358 another attorney who is qualified under s. 27.710 and who has
359 been designated by the contracting attorney to assist him or
360 her.
361 (7) Each registry ~~An~~ attorney who is representing at least
362 one capital defendant ~~actively representing a capital defendant~~
363 is entitled to a maximum of $500 per fiscal year for tuition and
364 expenses for continuing legal education that pertains to the
365 representation of capital defendants, regardless of the total
366 number of capital defendants the attorney is representing. Upon
367 approval by the trial court, the attorney is entitled to payment
368 by the Chief Financial Officer for expenses for such tuition and
369 continuing legal education.
370 (9) An attorney may not represent more than seven inmates
371 ~~five defendants~~ in capital postconviction litigation at any one
372 time. The seven-inmate-representation limit includes capital
373 postconviction cases proceeding under contract with the capital
374 collateral regional counsel, inmates represented pro bono, and
375 inmates privately retaining the attorney. An attorney may not be
376 appointed to additional capital postconviction cases until the
377 attorney's representation total falls below the seven-case
378 limit.
379 (15) If a trial court judge intends to award attorney fees
380 in excess of those outlined in this section, the judge must
381 include written findings of fact that specifically state the
382 extraordinary nature of the expenditures of the time, energy,

383 and talents of the attorney in the case that are not ordinarily
384 expended in other capital collateral cases.
385 Section 5. This act shall take effect July 1, 2006.

HB 335

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 335 CS Juvenile Justice
SPONSOR(S): Culp
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee	6 Y, 0 N, w/CS	White	White
2) Criminal Justice Appropriations Committee	5 Y, 0 N, w/CS	DeBeaugrine	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill amends provisions of law relating to juvenile justice. Specifically, the bill:

- Authorizes detention for an adjudicated youth until disposition if the youth has a history of failing to appear at past delinquency court proceedings or has violated adjudication order terms.
- Revises the definition of a "fiscally constrained county" for purposes of defining eligibility for state financial assistance to counties to cover secure detention costs. This has the effect of adding Wakulla, Sumter and Highlands Counties to those currently eligible for state financial assistance.
- Provides that a youth's failure to return from a temporary commitment release is a non-criminal violation for a first offense and a second degree misdemeanor for a second or subsequent offense.
- Eliminates authority for juvenile boot camps and authorizes Sheriff's Training and Respect (STAR) programs.
- Creates the Juvenile Justice Accountability Commission, transfers the Department of Juvenile Justice's (DJJ's) responsibilities for research and data and quality assurance review to the commission, and requires the commission to contract for the development of a new, comprehensive evaluation, accountability, and reporting system for juvenile justice programs.
- Requires the DJJ to adopt uniform rules on use of force and physical restraint.
- Requires direct care staff to have received Protective Action Response certification within 90 days.
- Revises DJJ reporting requirements by: (a) repealing duplicative reporting requirements and obsolete provisions; (b) reinstating the requirement for an annual Outcome Evaluation Report; and (c) amending Program Accountability Measures Report provision to describe the cost-effectiveness model currently implemented and to change the report's due date.
- Creates a pilot project in the 9th Judicial Circuit to waive cost of care fees for parents who voluntarily enter parent training programs at their own expense.
- Creates a pilot project in the 1st, 11th, 13th, and 20th Judicial Circuits to permit courts to select commitment programs for youth.

The House version of the General Appropriations Act (GAA) includes a reduction of $10.5 million to juvenile boot camp programs and additional appropriations of $10.6 million for STAR programs. The expanded authority provided to the court to place youth in secure detention could increase utilization of secure detention beds and result in increased costs to the counties. The impact is indeterminate. The House version of the GAA includes $822,421 in addition to that recommended by the Governor to continue state financial assistance to Wakulla, Highlands and Sumter counties as fiscally constrained counties. There could also be an indeterminate impact on contract providers who will face more stringent requirements regarding staff certification requirements. The House version of the GAA includes a price level increase of $16 million for contract service providers. Please see the fiscal section of this analysis for additional fiscal impact data.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government— The bill creates an additional commission; however, the commission will assume data and research and quality assurance responsibilities that the Department of Juvenile Justice (DJJ or department) will no longer be required to provide. The bill also eliminates statutory requirements for separate reports on specified juvenile justice subjects where this information is reported in other publications that comprehensively address all juvenile justice programs.

Promote personal responsibility— The bill provides additional tools to the judiciary to hold youth accountable for their behavior during the period of time between adjudication and final disposition. The bill also provides consequences for a youth's willful failure to return to a residential commitment facility within the time authorized for a temporary release.

Empower families—The bill benefits families by encouraging parents of delinquents in the 9th Judicial Circuit to participate in parenting classes and by providing for cost of supervision and care fee waivers to parents who successfully complete such classes.

B. EFFECT OF PROPOSED CHANGES:

Expanded Authority for Post-Adjudication/Predisposition Detention

Background:

Under s. 985.215, F.S., a court, in determining whether to order secure, nonsecure, or home detention for a youth, must use the results of the risk assessment instrument (RAI) completed by a juvenile probation officer. The RAI incorporates the criteria for detention set forth in s. 985.215(2), F.S., which provides that a youth may be detained if he or she:

- Is alleged to have escaped or absconded;
- Is wanted in another jurisdiction for a felony;
- Has requested detention for his or her personal safety;
- Is charged with:
  - A capital, life, or first degree felony.
  - A second degree felony other than a drug offense under ch. 893, F.S.
  - A violent third degree felony.
  - A second or third degree felony drug offense under ch. 893, F.S., or a third degree non-violent felony and the youth has a record of failure to appear; a record of law violations prior to court hearings; has already been detained or has been released and is awaiting disposition; has a record of violent conduct resulting in physical injury; or is found to have been in possession of a firearm.
- Is alleged to have violated probation or conditional release.

If the RAI results do not warrant detention based on the aforementioned criteria, the court may not order detention for the youth unless: (a) the youth is charged with specified domestic violence offenses or with possession or discharge of a firearm on school property;[1] (b) the youth is detained on a judicial order for failure to appear and has previously failed to appear for an adjudicatory hearing or at two or

[1] Section 985.215(2)(d) and (e), F.S.

more hearings in the same case;[2] or (c) the court enters written reasons for a deviation from the RAI results.[3]

If the youth is detained by the court, the maximum amounts of time in secure, nonsecure, or home detention that may be imposed are 21-days pre-adjudication and 15-days post-adjudication/predisposition. In either case detention may be extended for an additional 9 days if the court finds that the prosecution or defense require additional time and the charge is a capital, life, or first degree felony or a second degree felony involving violence. If such additional time is granted by the court, a maximum of 30-days pre-adjudication or 24-days post-adjudication/predisposition may be imposed.[4]

There have been questions raised by members of the judiciary as to their authority under this law to hold youths in secure detention past the statutory time limits, even if there is clear evidence that the youths may be a danger to themselves or others.

Impact of bill:

The bill enables a court to place an adjudicated youth in secure detention, notwithstanding the time limitations established elsewhere in statute, or on home detention with electronic monitoring until disposition in the following two circumstances:

- A youth has been found at the adjudicatory hearing to have committed a delinquent act or violation of law and has previously willfully failed to appear for other delinquency proceedings regardless of the youth's score on the RAI.
- A youth is found to be in contempt of court by violating a condition contained in the order of adjudication of delinquency.

The bill requires a standard set of conditions to be imposed in the order of adjudication. They include compliance with a curfew, school attendance, and not engaging in ungovernable behavior. Ungovernable behavior is defined to include the failure to obey reasonable and lawful demands of parents, teachers and others who are responsible for supervising the child and behavior that evidences a risk that the child will cause harm to others or the property of others.

Fiscally Constrained Counties

Background:

Current law authorizes state funding to offset the costs of providing secure detention to "fiscally constrained" counties. These counties must be within a rural area of critical state concern under s. 288.0656, F.S. for which the value of a mill is no more than $3 million. A rural area of critical state concern is a designation conferred by the Governor and is limited to counties with a population of less than 75,000 or a county of less than 100,000 that is contiguous to a county with a population of less than 75,000 and that has been adversely affected by an extraordinary economic event or represents a unique economic development opportunity on a regional level.

Under this definition, 26 counties fall within a rural area of critical state concern. Chapter 2005-263, Laws of Florida, adds three counties that are not within a rural area of critical state concern to the list of counties eligible for funding to offset the costs of providing secure detention. The three counties are Wakulla, Highlands and Sumter. This authorization, however, expires June 30, 2006.

Impact of bill:

[2] Section 985.215(2)(i) and (j), F.S. (authorizing a youth with such failure to appear record to be held in secure detention for up to 72 hours prior to the next scheduled court hearing).
[3] Section 985.215(2), F.S.
[4] Section.985.215(5)(g), F.S.

The bill changes the definition of a fiscally constrained county to be any county for which the value of a mill is $5 million or less. The effect is to make Wakulla, Highlands and Sumter eligible for state assistance to cover their costs associated with secure detention. If the value of a mill exceeds $5 million in the future for these three counties or any of the existing 26 counties, the county would no longer be eligible for assistance. The House version of the General Appropriations Act contains sufficient funding to cover financial assistance for the three counties that would be added under this bill.

Failure to Return from a Temporary Release

Background:

Section 985.3141, F.S., provides that it is a third degree felony for a juvenile to escape from:

- Any secure detention facility;
- Any residential commitment facility; or
- Lawful transportation to or from any such secure detention facility or residential commitment facility.

In 2002, the Third District Court of Appeals held that the failure of a juvenile to return to a residential commitment facility within the time prescribed for a temporary release[5] does not constitute escape because s. 985.3141, F.S., only addresses flight from the confinement of a residential facility, not failure to return to the facility.[6] The court noted that distinguishably an adult prisoner's failure to return to confinement within a prescribed time constitutes second degree felony escape under ss. 944.40 and 945.091, F.S.[7]

As a result of the above-described case, a juvenile's failure to return from a temporary release from a residential commitment facility has been treated as absconding. Prior to the July 1, 2005 effective date of House Bill 1917,[8] a juvenile, who absconded during a temporary release, could be taken into custody and detained under s. 985.215(2)(a), F.S.[9] House Bill 1917, however, removed a reference in this subsection to absconding from a residential commitment facility, and in doing so, the authority of a law enforcement officer to take a youth into custody for failing to return from a temporary release appears to be limited.

Impact of bill:

The bill creates s. 985.3142, F.S., to provide that a youth's willful failure to return to a residential commitment facility within the time authorized for a temporary release is a: (a) non-criminal violation for a first offense, which shall be treated in the same manner as absconding from a nonresidential commitment facility; and (b) a second degree misdemeanor for a second or subsequent offense. With these amendments, the bill also authorizes law enforcement officers to take youth into custody under their current authority in ch. 985, F.S., to take youth into custody for absconding and misdemeanors.[10]

---

[5] Under s. 985.03(57), a juvenile may be temporarily released from a residential commitment facility. If the temporary release is from a moderate-, high-, or maximum-risk facility, the release must be approved by the court.
[6] *J.A.G. v. State,* 825 So.2d 497, 498 (Fla. 3rd DCA 2002).
[7] *J.A.G.*, 825 So.2d at 498.
[8] Ch. 2005-263, L.O.F.
[9] Section 985.215(2)(a), F.S., stated, prior to the enactment of House Bill 1917, that a child, who had escaped or absconded from a commitment program could be taken into custody and detained. House Bill 1917 amended this paragraph to provide that a child, who had escaped from a residential commitment facility or who had absconded from a nonresidential commitment program, may be taken into custody and detained.
[10] *See* Sections 985.207 and 985.215, F.S.

Juvenile Boot Camps and STAR Programs

Background:

Section 985.309, F.S., authorizes boot camp programs for juvenile offenders. There are now four boot camps operating in the State of Florida. Each is a moderate risk residential commitment program. Eligibility for admission into a boot camp is limited to juveniles between the ages of 14 and 18 who are adjudicated for a felony with the exception of capital, life or violent first degree felonies. Youth are also required to be screened to ensure that only youth who have psychological and medical profiles conducive to success in the program are admitted.

Youth are to be placed in a program in or nearest to the judicial circuit in which the child was adjudicated unless such placement would not be in the best interest of the child or the boot camp was unable to accept the child. According to one sheriff that runs a boot camp, youth from other parts of the state are frequently referred to his program. The sheriff is unable to provide aftercare services to these youth and he feels that this negatively impacts the success of his program[11].

According to s. 985.309, F.S., boot camps are to provide intensive educational, physical training and rehabilitation. The programs are, to varying degrees, modeled after military boot camps and feature intense physical activity and highly structured and disciplined daily routines. Each existing boot camp has its own unique approach within this basic framework and operates under the direct authority of the sheriff. Three of the four programs currently in operation in the state provide some form of aftercare when youth leave the residential phase of the program.

The boot camps are staffed by both sworn officers and non-sworn personnel. Sworn officers and non-sworn staff at boot camps that have completed the defensive tactics portion of the law enforcement training curriculum developed by the Criminal Justice Training and Standards Commission are authorized to use physical force and restraint techniques taught as part of this curriculum. Others are required to follow the department's Protective Action Response (PAR) protocol[12]. Current DJJ policy allows a staff person to work with youth prior to successfully completing training as long as certain "essential skills" are obtained. One such essential skill is "PAR trained," which is defined as 40 hours of training and at least one attempt at the test whether pass or fail[13]. Staff are allowed five attempts to pass the PAR written examination and performance evaluation[14].

According to testimony provided to the Criminal Justice Appropriations Committee, research on boot camps is inconclusive as to their effectiveness compared to other types of residential programs. In fact, many studies show the programs to be less effective than other residential models. As a result of these and other concerns, nine states have closed some or all or their boot camps for juveniles. Georgia converted its boot camps to "work camps" which place more emphasis on education and treatment than a military model[15].

The operating budget for the DJJ includes $10.5 million for 320 boot camp residential beds and aftercare programs. Two programs, Collier and Bay, have closed since the department's initial operating budget was developed. Currently, four counties have boot camps (Manatee, Martin, Polk and Pinellas) that provide 260 residential beds[16].

On January 6, 2006, Martin Lee Anderson died after an incident involving staff at the Bay County Boot Camp. This led to a series of workshops held by the House Criminal Justice Appropriations and House Juvenile Justice committees. Much of the testimony and discussion involved the lack of uniform rules

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[11] Personal conversation with Sheriff Grady Judd from Polk County on March 16, 2005.
[12] Florida Department of Juvenile Justice Protective Action Response Policy (FDJJ-1508-03) Effective Date 6/1/01, Revised 8/15/03.
[13] Memorandum from Secretary Anthony Schembri to the Executive Management Team dated March 4, 2005.
[14] Memorandum from Secretary Anthony Schembri to the Executive Management Team dated July 23, 2004.
[15] Presentation by Dr. Tom Blomberg to the House Criminal Justice Appropriations Committee on February 16, 2006.
[16] Department of Juvenile Justice 2005-2006 Approved Operating Budget and e-mail from Lucy Mohs, Department of Juvenile Justice Legislative Affairs Director sent October 3, 2005. The sheriff of Martin county advised the Department of Juvenile Justice in a letter dated December 16, 2006 that he would be closing his boot camp on June 30, 2006.

regarding use of force and physical restraints, need for improved training for direct care staff, the need for an improved accountability system for juvenile justice programs based on best practices, and the need for a strong aftercare program when youth leave the residential phase of boot camp programs.

Impact of bill:

The bill repeals s. 985.309, F.S. which authorizes boot camps for children and creates a new section 985.3091 to authorize Sheriff's Training and Respect (STAR) programs.

Prior to admission to a STAR program, youth will be required to receive substance abuse screenings in addition to medical and psychological screenings. Youth may only be admitted to a STAR program in the judicial circuit in which they were adjudicated unless this would not be in the child's best interest or the STAR program is unable to accommodate the child ***and*** the parents agree to placement outside the circuit. STAR programs will be required to provide both a residential component and conditional release assessment and services.

The DJJ is required to adopt rules governing the operation of boot camps which prohibit the use of psychological intimidation techniques, physical force and restraint techniques except as necessary to protect the safety of youth or others or to maintain security. Physical force and restraint techniques are more specifically forbidden as disciplinary sanctions or to encourage compliance with program requirements. STAR programs will also be required to prominently display the telephone number of the abuse registry and allow youth access to a telephone to notify the abuse registry of complaints.[17]

The bill requires the department to develop rules establishing training requirements for STAR programs requiring 120 hours for administrative staff and 200 hours for training for direct-care staff. Training requirements include state and federal laws related to child abuse, authorized disciplinary sanctions, limitations on use of physical force and restraints and psychological intimidation techniques, and CPR and other emergency medical procedures. The bill would require a person providing direct care to children in STAR programs to obtain his or her certification in Protective Action Response (PAR) within 90-days of employment and to be supervised by a PAR-certified person when exercising direct care until he or she is PAR-certified.

The bill does not allow children to be admitted into a STAR program until the DJJ has adopted rules and verified that STAR programs are in compliance with the rules. Provision is made for the DJJ to adopt emergency rules if necessary to allow for operation of programs starting July 1, 2006. According to s. 120.54(4), F.S., an emergency rule is valid for 90 days.

The bill also creates a new s. 985.4055, F.S., which requires the DJJ to develop uniform rules regarding the PAR policy that will apply to all programs under the jurisdiction of the department. The bill requires all direct care staff to be PAR-certified within 90-days of employment and to be supervised by a PAR-certified person when exercising direct care until he or she is PAR-certified.

Accountability Systems for Juvenile Justice Programs

Background:

The DJJ currently operates an in-house quality assurance program that uses staff working at DJJ programs as peer reviewers[18]. In addition, the department contracts with the Justice Research Center, Inc. to produce the Outcome Evaluation Report and Program Accountability Measures report[19]. Dr. Tom Blomberg with the Florida State University Center for Criminology and Public Policy delivered a presentation to the House Criminal Justice Appropriations Committee on accountability systems in juvenile justice programs across the nation on March 17, 2006. His presentation suggested a number

[17] Section 39.01(47), F.S., is amended to clarify that the Department of Children and Families may investigate complaints made to the registry regarding abuse by law enforcement officers employed in DJJ-operated or contracted programs.
[18] See http://www.djj.state.fl.us/djjservices/qa/introqa.pdf
[19] Both reports available at http://www.djj.state.fl.us/Research/index.html

of limitations associated with the current quality assurance and program evaluation methodologies utilized by the DJJ. Among the limitations were the lack of autonomy associated with an in-house evaluation system, the fact that results were not used to replicate best practices or eliminate ineffective programs, and questions regarding the validity of evaluation scores since 44% of residential providers challenged their quality assurance scores in 2003 with 63% getting their scores increased.

Impact of bill:

The bill would transfer the DJJ's duties and personnel associated with its current responsibilities for research and data and quality assurance review to the newly created, independent Juvenile Justice Accountability Commission. The commission will be administratively housed within the department but is authorized to hire its own staff and is independent of control and direction from the Secretary of the department.

The commission will be composed of seven individuals appointed by the Governor who must represent all geographic areas of the state and include minorities and women. Members are not eligible for appointment to the commission if they have worked for a provider under contract to the department in the two years preceding their employment or bid for a department contract. The bill also precludes members of the commission from working for a provider under contract to the department or bidding for a department contract for two years after they leave the commission.

The commission is required to invite ex officio, non-voting associates to participate in its meetings and to provide advice. These associates must include: a member of the House of Representatives and a member of the Senate; an Executive Office of the Governor employee; a department employee; a delinquency court judge; a sheriff; a provider; a member of a juvenile justice advocacy organization; a Department of Law Enforcement employee responsible for data and research; and a state university employee responsible for juvenile justice research.

The commission will be required to meet at least four times per year in Tallahassee unless the chair determines that special circumstances require a meeting in another location.

The primary responsibilities of the commission will be research and data analysis, supervision of the quality assurance review process, and the execution of a contract to develop a comprehensive evaluation, accountability, and reporting system for each juvenile justice program and for each category of the juvenile justice continuum. The evaluation protocol will be based on best practices identified and updated through a continuous review of research literature related to juvenile justice programs. Additionally, the data reporting process will afford continuous evaluation of the juvenile justice system and provide policy makers with information necessary to make changes to juvenile justice programming, policies, and law, as warranted. The commission is required to submit a report to the Legislature by February 15, 2007, which summarizes, and provides an implementation schedule for, the provider-designed evaluation, accountability, and reporting system.

The commission is also directed to serve as an information clearinghouse to local juvenile boards and to provide policy recommendations to the Governor, Legislature, and department.

Juvenile Justice Program Review and Termination

Background:

As discussed above, the DJJ is currently required to conduct annual quality assurance reviews for each juvenile justice program operated or contracted by the department. If a program fails the review, s. 985.412(5), F.S., requires the DJJ to: (a) cancel a provider's contract, unless the provider achieves compliance within six months or there are documented extenuating circumstances; and (b) take corrective action for a department-operated program and if compliance is not achieved within six months and there are no documented extenuating circumstances, the DJJ must notify the Governor and the Legislature.

Boot camps are specifically addressed in s. 985.309(8), F.S., which requires the department to conduct quarterly inspections of each boot camp program to determine if it is in compliance with department rules for continued operation of the program. If a boot camp fails an inspection, the department must terminate the program unless it complies with department rules within three months or there are documented extenuating circumstances. The quarterly inspection requirement appears to be in addition to the annual quality assurance review requirement for all juvenile justice programs in s. 985.412(5), F.S.

Impact of bill:

Under the bill, quality assurance reviews would continue to be annually required for all juvenile justice programs. With regard to the newly created STAR programs, quarterly quality assurance reviews would be required by the bill for the first year of operation. Thereafter, a STAR program may be reviewed annually if it has passed its previous review.

Additionally, the bill provides that a department-operated or contracted program must be:

- Immediately terminated if a quality assurance review indicates that the program has a deficiency in a critical life safety aspect, as defined in DJJ rule, or has failed to train its employees in compliance with s. 985.4055, F.S.
- Terminated in three months for STAR programs or in six months for all other programs if the program has failed to achieve compliance, unless there are documented extenuating circumstances as defined in DJJ rule.

Department Reporting Requirements

Background:

Currently, ss. 985.31(1)(a)4. and 985.311(1)(a)4., F.S., require the department to annually provide reports on the performance of: (a) serious or habitual juvenile offender (SHO) programs; and (b) intensive residential treatment (IRT) programs. Performance data for SHO and IRT programs, which are high-risk commitment programs, is also annually reported in the following reports published by the DJJ pursuant to s. 985.412, F.S.:[20]

- Outcome Evaluation (OE) Report -- This report is submitted annually by February 15th,[21] and it includes referral, offense type, demographic profile, length of stay, program completion, and recidivism data for all programs offered in the DJJ's four branches, i.e., Prevention and Victim Services, Detention, Probation and Community Corrections, and Residential Corrections. Prior to 2002, the Juvenile Justice Advisory Board (JJAB) was responsible for completion of the OE Report. The JJAB sunset on June 30, 2001,[22] and thereafter, the DJJ assumed responsibility for the report.

[20] *See* 2005 Outcome Evaluation Report, February 15, 2005, pp. 83-112; 2005 Program Accountability Measures Report, December 2004, pp. 15, 19-20, 28, 35, 40, 44, 47, 55-56, 58; and 2005 Quality Assurance Report, January 2006, at pp. 286-291, 303, and 314.
[21] Data reported in the 2005 OE Report was based upon programs that released youth between July 1, 2002 and June 30, 2003.
[22] *See* s. 985.401, F.S., (2001).

Currently, there is no statutory description of the report, as this was repealed with the sunset; however, references to outcome evaluations continue to be made in ch. 985, F.S.[23]

- Program Accountability Measures (PAM) Report – This report is required by s. 985.412(4)(a), F.S., to be annually submitted by December 31st,[24] and it contains PAM scores for each DJJ commitment program. A PAM score consists of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of $34,083.[25]

- Quality Assurance Report – This report is required by s. 985.412(5), F.S., to be submitted to the Legislature each year by February 1st,[26] and it contains the following for each DJJ program: (a) a description of the population served; (b) a description of the services offered; (c) the program's quality assurance rating;[27] and (d) cost data.

Additionally, s. 985.317(5), F.S., requires the DJJ to annually report to Legislature by January 1st on the implementation and progress of literacy programs offered in residential facilities. Information about educational programs in juvenile justice facilities is also required by s. 1003.52(19), F.S., to be annually reported to the Legislature by February 1st of each year by the DJJ and the Department of Education (DOE). The subsection specifies that this report must: (a) describe progress made toward developing effective educational programs for juvenile delinquents; (b) include funding data and quality assurance review scores for each educational program; and (c) recommendations for system improvement.

Impact of bill:

The bill repeals:

- Sections 985.31(1)(a)4., and 985.311(1)(a)4., F.S., to eliminate the requirements for separate annual reports on the performance of SHO and IRT programs, as this information is duplicative of data reported in the DJJ's annual OE, PAM, and quality assurance reports.
- Section 985.317(5), F.S., to eliminate the requirement of a separate annual report on the implementation and progress of the literacy programs, as information on juvenile justice education programs is also reported in the DJJ's and DOE's annual education report required by s. 1003.52(19), F.S..

Further, the bill amends s. 985.412, F.S., which currently requires annual PAM, cost data, and quality assurance reports, to:

- Reorganize the section's contents more logically, rename the section to more accurately reflect its contents, and add subsection titles to readily identify each subsection's contents.

- Revise the definition section by:
  - Substituting the term "youth" for the obsolete term "client" to more accurately reflect the population served by the DJJ.
  - Adding the term "program" to mean a department-operated or contracted facility, service, or program for youth.
  - Repealing the term "program effectiveness" as it is no longer used in the section.

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[23] Section 985.412(4)(a), F.S., continues to reference, ". . . the standard methodology developed under s. 985.401(4) for interpreting program outcome evaluations . . . ." *See also* s. 985.404(10)(d), F.S.

[24] Data reported in the 2005 PAM Report was based upon 151 programs that had released at least 15 youth between July 1, 2001 and June 30, 2003.

[25] *See* 2005 Program Accountability Measures Report, December 2004 at p. 5.

[26] Data reported in the 2005 QA Report was based upon QA reviews conducted during calendar year 2005.

[27] QA ratings are based upon evaluation of the following three elements: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. *See* An Introduction to Florida's Juvenile Justice Quality Assurance System, Department of Juvenile Justice, May 2004, p. 4.

- Adding the term "program group."

- Reinstate the statutory requirement for an annual OE Report. The bill:
  - Requires the DJJ, in consultation with specified others, to develop and utilize a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.
  - Specifies that the standard methodology should incorporate performance-based budgeting measures; must include common terminology and operational definitions; and must specify program outputs and desired youth outcomes for each program and program group.
  - Requires the report to be annually submitted by February 15th and specifies that the report must identify and describe the standard methodology implemented; programs within each program group; the demographic profile and offense history of youth served in each program group; and actual program outputs and youth outcomes achieved in each program group.

- Eliminate the requirement in s. 985.412(3), F.S., for a separate annual cost data report. A similar requirement for annual cost data reporting is added to the description of quality assurance report contents at subparagraph (5)(g)4, and like current law, this reporting requirement calls for use of a uniform format to allow cost comparisons among programs and inclusion of the cost of educational programs in the cost of residential programs. Unlike current law and at the request of the DJJ, the bill removes requirements for: (a) the inclusion of market equivalent rent in the cost of state operated services, as according to the DJJ, such inclusion is not current practice and would require the hiring of consultants for compliance; and (b) a cost benefit analysis of juvenile justice educational programs, as cost data and performance information for all juvenile justice educational programs are required to be annually reported under s. 1003.52(19), F.S.

- Revise the statutory description of the cost-effectiveness model utilized for the PAM Report to reflect the model currently being implemented and to change the report's due date.

- Eliminate outdated provisions relating to incentive and disincentive proposals and liquidated damages.

Cost of Supervision/Care

Background:

Section 985.2311, F.S., requires the court to order the parents of a delinquent to pay: (a) $1 per day that the child is on home detention, probation, or other supervision status or in a minimum-risk nonresidential commitment program; and (b) $5 per day that the child is in secure detention or in residential commitment. The court must consider the parents' ability to pay and may reduce or waive the fee if the court makes a finding of indigency and significant financial hardship.[28] Further, the court may reduce or waive the fee if the court finds that the child's parent was the victim in the case and is cooperating, or has cooperated, with the investigation of the case.[29]

Impact of bill:

The bill creates a pilot program in the Ninth Judicial Circuit between October 1, 2006 and June 30, 2009, which requires delinquency courts to waive the fees required by s. 985.2311, F.S., when a parent successfully completes a parenting class approved by the Juvenile Justice Accountability Commission. Participation in a parenting class is voluntary and the parent must pay for the cost of the class. A parent may only have fees waived once.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to evaluate the pilot program and to submit a report to the Legislature, Governor, and department on

[28] Section 985.2311(3), F.S.
[29] Section 985.2311(4), F.S.

September 30, 2007, and annually thereafter during the pilot period. Data required to be reported by the OPPAGA includes the total amount of fees waived under the pilot, the number of successful parenting class completions, and recidivism statistics.

Placement of Committed Youth

When a court commits a delinquent, it must specify a restrictiveness level,[30] but it may not select a program within the level.[31] Instead, the DJJ is responsible for placing the youth in a program within the court-ordered restrictiveness level. In order to select a program, the department enters the following information into the Juvenile Justice Information System (JJIS):

- The restrictiveness level ordered by the court.
- Whether the youth needs any of the following services: pregnancy services; restitution services; a staff, fence, or hardware secure facility; sex offender treatment; behavior overlay services; residential substance abuse overlay services; intensive mental health services; special needs mental health services; mental health overlay services; developmentally disabled services; social and life skills; vocational training; educational services; residential substance abuse treatment; or specialized mental health services.
- Whether any of the following disqualifying factors apply to the youth: documented arson history; extremely aggressive behavior; DSM IV diagnosis; psychotropic medications; IQ below 70; serious habitual offender; intensive residential treatment; asthma; diabetes; heart condition; seizures; sickle cell anemia; cancer; sexually transmitted disease; tuberculosis; or pregnancy.

Based on this information, the JJIS produces a list of programs that meet the youth's needs and for which the youth has no disqualifying factors. The JJIS also indicates the expected wait list for the listed programs. The commitment manager selects a program from the JJIS list after considering which program best meets the youth's needs and which is closest to the youth's home.

During the 2006 Interim, the House Juvenile Justice Committee conducted a project that reviewed the issue of statutorily affording judges the discretion to select particular commitment programs for youth. This issue had been considered by the Legislature in three bills filed during the 2003 and 2005 Regular Sessions.[32]

The interim project report[33] indicates that a survey of Florida's 81 juvenile delinquency judges was conducted to obtain feedback regarding whether they desire judicial discretion to select commitment program. Out of 41 judges responding, more than half (23 judges or 56 percent) believed that statute should be amended to afford judicial discretion because it would assist in insuring that placements are based on youth needs and the most effective programming available, rather than on program availability and budgetary concerns.[34]

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[30] *See* Section 985.03(46), F.S. (defining the minimum-, low-, moderate-, high-, or maximum-risk restrictiveness levels).
[31] *See Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla 1st DCA 1998) and *Department of Juvenile Justice v. E.R., J.R., M.C., and C.A.*, 724 So.2d 129 (Fla 3rd DCA 1998) (holding that the court has no statutory authority to require placement of a committed youth in a particular facility).
[32] *See* HB 1741 and SB 1900 (2003) and HB 1917 (2005).
[33] *Judicial Discretion to Select Juvenile Commitment Programs,* House of Representatives Juvenile Justice Committee, January 2006, pp. 4-6.
[34] *Judicial Discretion to Select Juvenile Commitment Programs* at pp. 6, 9, 11.

Impact of bill:

The bill creates a pilot program for the period of September 1, 2006 through July 1, 2010, in the First, Eleventh, Thirteenth, and Twentieth Judicial Circuits, which authorizes judges to select particular commitment programs within a restrictiveness level. Under the pilot, a judge may only select a program: (a) for which the DJJ or the judge has found that the youth satisfies program eligibility requirements; and (b) which has an expected wait period of 20 days or less if in the maximum-risk level or 30 days or less if in one of the four other levels, unless the judge provides reasons establishing that a program with a longer wait period is in the youth's best interest.

The OPPAGA is required to evaluate the pilot program and to submit a report on January 1, 2008, and annually thereafter, which identifies, according to judicial circuit and restrictiveness level, the following data, as it becomes available, for the pilot program period:

- The number of youth committed to the department by the delinquency court.
- The number of youth placed by the delinquency court in a program: on the JJIS list with a wait period of 20 or 30 calendar days or less, as applicable; on the JJIS list with a wait period in excess of 20 or 30 calendar days, as applicable; and that was not on the JJIS list.
- The number of youth placed in DJJ-specified commitment programs.
- The average wait period for, and the average number of days spent by youth in secure detention while awaiting placement in, delinquency court-specified commitment programs and DJJ-specified commitment programs.
- The number of youth who complete, and who are otherwise released from, delinquency court-specified commitment programs and DJJ-specified commitment programs.
- Educational achievements made by youth while participating in delinquency court-specified commitment programs and department-specified commitment programs.
- The number of youth who recidivate within six-months following completion of delinquency court-specified commitment programs and DJJ-specified commitment programs.

Further, OPPAGA's reports due in 2009 and 2010 must also contain: (a) findings by the OPPAGA, DJJ, and delinquency courts regarding the benefits and disadvantages of authorizing courts to select commitment programs; and (b) recommendations by the OPPAGA, DJJ, and delinquency courts, if found to be warranted, for amendments to current statute addressing commitment.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., related to the definition of "other person responsible for a child's welfare."

Section 2. Amends s. 985.207, F.S., relating to taking youths into custody.

Section 3. Amends s. 985.215, F.S., relating to use of detention.

Section 4. Amends s. 985.2155, F.S., relating to fiscally constrained counties.

Section 5. Amends s. 985.228, F.S., relating to orders of adjudication of delinquency.

Section 6. Amends s. 985.231. F.S., to correct cross references.

Section 7. Repeals s. 985.309, F.S., authorizing boot camps for children.

Section 8. Creates s. 985.3091, F.S., authorizing Sheriff's Training and Respect (STAR) programs.

Section 9. Amends s. 985.31, F.S., relating to serious or habitual juvenile offender programs.

Section 10. Amends s. 985.311, F.S., relating to intensive residential treatment programs.

Section 11. Amends s. 985.317, F.S., relating to literacy programs.

Section 12. Creates s. 985.3142, F.S., to proscribe failure to return from a temporary release.

Section 13. Creates s. 985.4055, F.S., to require statewide Protective Action Response rules.

Section 14. Creates s. 985.4056, F.S., to create the Juvenile Justice Accountability Commission.

Section 15. Amends s. 985.412, F.S., relating to data collection, reporting and quality assurance.

Section 16. Amends s. 958.046, F.S. to correct cross references.

Section 17. Amends s. 985.314, F.S., to correct cross references.

Section 18. Creates a pilot program for waiver of costs of supervision and care.

Section 19. Transfers research, data, and quality assurance functions to the commission.

Section 20. Creates a pilot program for judicial discretion to select commitment programs.

Section 21. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Cost of care pilot program: The bill's creation of the cost of care pilot program will result in a reduction in the amount of fees collected by the DJJ under s. 985.2311, F.S., in the 9th Judicial Circuit for the nearly three-year pilot program period. The amount of the reduction is indeterminate as the number of parents who will participate in the pilot is unknown. Current collection rates statewide appear to be just over 10% of total potential collections based on average daily population in various DJJ programs[35].

2. Expenditures:

   Fiscally constrained counties: The House version of the GAA contains $822,422 to continue to provide assistance for the cost of providing secure detention to Wakulla, Sumter and Highlands counties for FY 2006-07.

   Boot camps/STAR programs: The House version of the General Appropriations Act (GAA) contains a reduction of $10.5 million associated with the elimination of boot camps. Approximately $10.6 million is provided to STAR programs for residential services and aftercare.

   Judicial discretion pilot program: The DJJ has stated that the bill's creation of the judicial discretion pilot program could result in increased post-disposition secure detention costs if average wait lists for high- and maximum-risk programs increase due to judicially-specified placements; however, the department indicates that the fiscal impact for such potential increase is indeterminate because it is impossible to know how often judges will exercise placement discretion and whether judicial placements will, in fact, result in wait list increases. The DJJ states that data collection requirements for the pilot program will necessitate modifications of the JJIS at a cost of $13,000. There is no

[35] According to data provided by the department to the Legislative Appropriations System/Planning and Budgeting Subsystem (LAS/PBS), the department estimates collections from cost of care payments to be just over $3 million for FY 2006-07. Total potential collections based on average daily population information contained in Performance Based Budgeting documents is over $25 million.

increased appropriation to the DJJ to accommodate this workload. Therefore, the agency will have to absorb the impact from within existing resources.

Cost of care pilot program. The DJJ has not indicated any increased expenditure requirements associated with the cost of care pilot program. It is likely, however, that the department will experience workload associated with the pilot.

Consolidated reporting requirements: The DJJ has not indicated any cost savings that will result from reducing current reporting requirements. It is likely, however, that the department will experience decreased workload associated with these provisions. According to the department, the OE, quality assurance, and PAM reports discussed in this bill analysis are produced by department employees in the Bureau of Quality Assurance and Office of Research and Planning and through a contract with the Justice Research Center (JRC).

Transfer of quality assurance and data and research functions: The House GAA provides $2,288,267 for the Juvenile Accountability Commission. The House GAA includes an associated reduction of $2,072,427 for quality assurance and data and research in the Department of Juvenile Justice.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The provisions of the bill that allow judges to detain adjudicated youth for history of failure to appear at court proceedings or for violating adjudication order conditions could increase utilization of pre-disposition detention. This could increase the cost of secure detention to counties if a significant increase in utilization actually materializes. The DJJ has not submitted an estimate of this impact to the House Fiscal Council, but an analysis of a similar proposal last session indicated an indeterminate impact[36]. Further, DJJ representatives have recently indicated that adjudicatory and disposition hearings are held simultaneously in the majority of delinquency cases.[37] The bill's provisions would have no effect on these cases. Therefore, the impact is anticipated to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private contract providers could incur additional costs associated with staff turnover due to the bill's requirement that staff receive PAR certification within the first 90-days of employment, rather than 180-days as currently specified in DJJ policy. The House version of the GAA provides a price level increase of $16 million for contract providers which could be used to offer better pay and benefits to attract more qualified workers.

Some private providers may lose contracts with the department if they are unable to meet acceptable quality assurance standards within the time frames specified by the bill.

D. FISCAL COMMENTS:

The department has not submitted a fiscal analysis of the provisions of this bill relating to PAR requirements, STAR programs, the transfer of department research, data, and quality assurance responsibilities to the commission, and the cost of care pilot program

[36] Department of Juvenile Justice bill analysis on strike all amendment to HB 1863 prepared April 19, 2005.
[37] Telephone conversation with Department of Juvenile Justice staff on 3/28/2006.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   There is the potential for increased utilization of predisposition secure detention which would result in increased costs to counties. The expected impact is indeterminate but most likely insignificant. Also, the bill is a criminal law in that it deals with options available to the judiciary to respond to individuals who have been adjudicated delinquent for violating the criminal laws of this state. Therefore, the bill would appear to be exempt from the provisions of Article VII, Section 18(a).

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The department is required to adopt rules to implement STAR programs, to establish statewide PAR regulations, and to establish criteria applicable to terminations of department-operated and contracted programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Juvenile Justice Committee adopted three amendments to this bill on February 8, 2006, which accomplished the following: (a) amended s. 985.412, F.S., to revise DJJ annual reporting requirements; (b) amended ss. 985.207, 985.215, and 985.228, F.S., to enable a law enforcement office to take a youth into custody for violating adjudication order conditions and to enable a court to securely detain an adjudicated youth until disposition if he or she has a history of willfully failing to appear in prior delinquency court proceedings or has violated adjudication order conditions; and (c) removed the bill's section that amended s. 985.3141, F.S., to make a youth's willful failure to return from temporary release a third degree felony.

The Criminal Justice Appropriations Committee adopted a strike everything amendment to this bill on April 11, 2006, which added provisions that:

- Revise the definition of a "fiscally constrained county."
- Proscribe a youth's failure to return from a temporary commitment release.
- Eliminate the statutory authority for juvenile boot camps and authorize STAR programs.
- Create the Juvenile Justice Accountability Commission and assign it duties.
- Transfer DJJ responsibilities for research and data and quality assurance review to the commission.
- Require the DJJ to adopt rules on use of force and physical restraint.
- Require direct care staff to have received PAR certification within 90 days of employment.
- Create a pilot project in the 9th Judicial Circuit to waive cost of care fees for parents who voluntarily enter parent training programs at their own expense.
- Create a pilot project in the 1st, 11th, 13th, and 20th Judicial Circuits to permit courts to select commitment programs for youth.

The strike everything amendment also removed provisions of the bill that made statutory home detention with electronic monitoring subject to appropriation.

CHAMBER ACTION

1 The Criminal Justice Appropriations Committee recommends the
2 following:
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to juvenile justice; amending s.
7 39.01, F.S.; including specified law enforcement
8 officers in the definition of "other person
9 responsible for a child's welfare" for purposes of
10 abuse investigations; amending s. 985.207, F.S.;
11 permitting a law enforcement officer to take a child
12 into custody for a violation of adjudication order
13 conditions; amending s. 985.215, F.S.; permitting
14 specified types of postadjudication detention for a
15 child who has previously failed to appear at
16 delinquency court proceedings regardless of risk
17 assessment instrument results; providing exceptions
18 that permit postadjudication detention until the
19 child's disposition order is entered in his or her
20 case; conforming cross-references; amending s.
21 985.2155, F.S.; revising the definition of the term
22 "fiscally constrained county" for purposes of
23 determining state payment of costs of juvenile

24 detention care; amending s. 985.228, F.S.; requiring a
25 court to include specified conditions in a child's
26 order of adjudication of delinquency that apply during
27 the postadjudication and predisposition period;
28 providing a definition; permitting a court to find a
29 child in contempt of court for a violation of
30 adjudication order conditions; providing sanctions;
31 amending s. 985.231, F.S.; conforming cross-references
32 and terminology; repealing s. 985.309, F.S., relating
33 to boot camps for children; creating s. 985.3091,
34 F.S.; authorizing the department to contract for
35 sheriff's training and respect programs; providing
36 eligibility requirements for children placed in the
37 programs; specifying required program offerings;
38 specifying program participation timeframes; requiring
39 the department to adopt rules and maintain specified
40 records; providing for quarterly evaluations of and
41 contract cancellation under specified circumstances;
42 specifying staff training requirements; requiring the
43 department to adopt training rules; prohibiting the
44 provision of direct care to children by staff who have
45 not complied with training requirements; prohibiting
46 the operation of a program until department rules are
47 adopted and the department has verified program
48 compliance with applicable law and rules; authorizing
49 emergency rules to expedite implementation; amending
50 s. 985.31, F.S.; deleting a requirement for a report
51 on serious or habitual juvenile offenders; conforming

52 cross-references and terminology; amending s. 985.311,
53 F.S.; deleting a requirement for a report on intensive
54 residential treatment; conforming cross-references and
55 terminology; amending s. 985.317, F.S.; deleting a
56 requirement for a report on literacy programs for
57 juvenile offenders; creating s. 985.3142, F.S.;
58 providing that the willful failure of a child to
59 return to a residential commitment facility within the
60 time authorized for a temporary release is absconding
61 for a first offense and is a second degree misdemeanor
62 for a second or subsequent offense; providing
63 penalties; creating s. 985.4055, F.S.; providing
64 definitions; requiring the department to adopt rules
65 establishing a protective action response policy;
66 specifying when verbal and physical intervention
67 techniques may be used; specifying prohibited uses of
68 mechanical restraints; prohibiting use of aerosol and
69 chemical agents; requiring the department to adopt
70 rules establishing protection action response training
71 curriculums and certification procedures; requiring
72 department and provider employees to be certified in
73 protective action response within a specified number
74 of days; creating s. 985.4056, F.S.; creating the
75 Juvenile Justice Accountability Commission; providing
76 for membership; providing definitions; providing for
77 meetings and voting requirements; providing for an
78 executive director and staff; providing for the
79 commission's budget; providing for reimbursement of

80 per diem and travel expenses; requiring the commission
81 to contract for a comprehensive evaluation,
82 accountability, and reporting system for juvenile
83 justice programs; providing requirements for the
84 system; requiring a report by the system provider;
85 specifying commission duties; requiring a report by
86 the commission; providing for automated access to the
87 juvenile justice information system; requiring the
88 commission to adopt rules; amending s. 985.412, F.S.;
89 directing the Department of Juvenile Justice to
90 collect and analyze specified data; creating and
91 revising definitions; requiring the development of a
92 standard methodology for annually measuring,
93 evaluating, and reporting program outputs and youth
94 outcomes; requiring an annual report; specifying
95 report contents; deleting a requirement for an annual
96 cost data report; deleting a requirement for a cost-
97 benefit analysis of educational programs; revising a
98 cost-effectiveness model for commitment programs;
99 revising a cost-effectiveness report due date;
100 revising requirements for annual quality assurance
101 reporting; providing for termination of juvenile
102 justice contracts and programs in specified
103 circumstances; conforming provisions; deleting
104 obsolete provisions relating to incentive and
105 disincentive proposals and liquidated damages;
106 amending ss. 958.046 and 985.314, F.S.; conforming
107 cross-references and terminology; creating the cost of

108 supervision and care waiver pilot program in the Ninth
109 Judicial Circuit; requiring waiver of fees imposed
110 under s. 985.2311, F.S., for successful completion of
111 specified parenting classes; providing conditions
112 applicable to such waiver; providing for review of the
113 pilot program and reports by the Office of Program
114 Policy Analysis and Government Accountability;
115 requiring the Juvenile Justice Accountability
116 Commission to contract for the provision of parenting
117 classes; providing for future repeal; providing for a
118 type two transfer of powers, duties, resources, and
119 personnel relating to specified department
120 responsibilities to the Juvenile Justice
121 Accountability Commission; creating a pilot program
122 that authorizes specified courts to select commitment
123 programs for juvenile delinquents; providing
124 definitions; providing the program's purpose;
125 requiring the Department of Juvenile Justice to
126 develop implementation procedures and to publish
127 specified information about commitment programs on its
128 website; providing procedures for the selection of
129 commitment programs by courts; requiring evaluation
130 and reports by the Office of Program Policy Analysis
131 and Government Accountability; specifying department
132 and court responsibilities relating to the reports;
133 providing for future repeal of the pilot program;
134 providing effective dates.
135

136 Be It Enacted by the Legislature of the State of Florida:
137
138 Section 1. Subsection (47) of section 39.01, Florida
139 Statutes, is amended to read:
140 39.01 Definitions.--When used in this chapter, unless the
141 context otherwise requires:
142 (47) "Other person responsible for a child's welfare"
143 includes the child's legal guardian, legal custodian, or foster
144 parent; an employee of a private school, public or private child
145 day care center, residential home, institution, facility, or
146 agency; a law enforcement officer employed in any facility,
147 service, or program for children that is operated or contracted
148 by the Department of Juvenile Justice; or any other person
149 legally responsible for the child's welfare in a residential
150 setting; and also includes an adult sitter or relative entrusted
151 with a child's care. For the purpose of departmental
152 investigative jurisdiction, this definition does not include the
153 following persons when they are acting in an official capacity:
154 (a) Law enforcement officers, except as otherwise provided
155 in this subsection; ~~or~~
156 (b) Employees of municipal or county detention facilities;
157 or
158 (c) Employees of the Department of Corrections~~, while~~
159 ~~acting in an official capacity~~.
160 Section 2. Paragraph (e) is added to subsection (1) of
161 section 985.207, Florida Statutes, to read:
162 985.207 Taking a child into custody.--

163 (1) A child may be taken into custody under the following
164 circumstances:
165 (e) When a law enforcement officer has probable cause to
166 believe that a child who is awaiting disposition has violated
167 conditions imposed by the court under s. 985.228(5) in his or
168 her order of adjudication of delinquency.
169
170 Nothing in this subsection shall be construed to allow the
171 detention of a child who does not meet the detention criteria in
172 s. 985.215.
173 Section 3. Subsection (2) and paragraphs (d) and (g) of
174 subsection (5) of section 985.215, Florida Statutes, are amended
175 to read:
176 985.215 Detention.--
177 (2) Subject to the provisions of subsection (1), a child
178 taken into custody and placed into nonsecure or home detention
179 care or detained in secure detention care prior to a detention
180 hearing may continue to be detained by the court if:
181 (a) The child is alleged to be an escapee from a
182 residential commitment program, or an absconder from a
183 nonresidential commitment program, a probation program, or
184 conditional release supervision, or is alleged to have escaped
185 while being lawfully transported to or from a residential
186 commitment program.
187 (b) The child is wanted in another jurisdiction for an
188 offense which, if committed by an adult, would be a felony.
189 (c) The child is charged with a delinquent act or
190 violation of law and requests in writing through legal counsel

191 to be detained for protection from an imminent physical threat
192 to his or her personal safety.
193 (d) The child is charged with committing an offense of
194 domestic violence as defined in s. 741.28 and is detained as
195 provided in s. 985.213(2)(b)3.
196 (e) The child is charged with possession or discharging a
197 firearm on school property in violation of s. 790.115.
198 (f) The child is charged with a capital felony, a life
199 felony, a felony of the first degree, a felony of the second
200 degree that does not involve a violation of chapter 893, or a
201 felony of the third degree that is also a crime of violence,
202 including any such offense involving the use or possession of a
203 firearm.
204 (g) The child is charged with any second degree or third
205 degree felony involving a violation of chapter 893 or any third
206 degree felony that is not also a crime of violence, and the
207 child:
208 1. Has a record of failure to appear at court hearings
209 after being properly notified in accordance with the Rules of
210 Juvenile Procedure;
211 2. Has a record of law violations prior to court hearings;
212 3. Has already been detained or has been released and is
213 awaiting final disposition of the case;
214 4. Has a record of violent conduct resulting in physical
215 injury to others; or
216 5. Is found to have been in possession of a firearm.
217 (h) The child is alleged to have violated the conditions
218 of the child's probation or conditional release supervision.

219 However, a child detained under this paragraph may be held only
220 in a consequence unit as provided in s. 985.231(1)(a)1.c. If a
221 consequence unit is not available, the child shall be placed on
222 home detention with electronic monitoring.
223 (i) The child is detained on a judicial order for failure
224 to appear and has previously willfully failed to appear, after
225 proper notice, for an adjudicatory hearing on the same case
226 regardless of the results of the risk assessment instrument. A
227 child may be held in secure detention for up to 72 hours in
228 advance of the next scheduled court hearing pursuant to this
229 paragraph. The child's failure to keep the clerk of court and
230 defense counsel informed of a current and valid mailing address
231 where the child will receive notice to appear at court
232 proceedings does not provide an adequate ground for excusal of
233 the child's nonappearance at the hearings.
234 (j) The child is detained on a judicial order for failure
235 to appear and has previously willfully failed to appear, after
236 proper notice, at two or more court hearings of any nature on
237 the same case regardless of the results of the risk assessment
238 instrument. A child may be held in secure detention for up to 72
239 hours in advance of the next scheduled court hearing pursuant to
240 this paragraph. The child's failure to keep the clerk of court
241 and defense counsel informed of a current and valid mailing
242 address where the child will receive notice to appear at court
243 proceedings does not provide an adequate ground for excusal of
244 the child's nonappearance at the hearings.
245 (k) At his or her adjudicatory hearing, the child has been
246 found to have committed a delinquent act or violation of law and

247 has previously willfully failed to appear, after proper notice,
248 for other delinquency court proceedings of any nature regardless
249 of the results of the risk assessment instrument. A child may be
250 held in secure detention or, at the discretion of the court and
251 if available, placed on home detention with electronic
252 monitoring until the child's disposition order is entered in his
253 or her case. The child's failure to keep the clerk of court and
254 defense counsel informed of a current and valid mailing address
255 where the child will receive notice to appear at court
256 proceedings does not provide an adequate ground for excusal of
257 the child's nonappearance at the hearings.
258
259 A child who meets any of these criteria and who is ordered to be
260 detained pursuant to this subsection shall be given a hearing
261 within 24 hours after being taken into custody. The purpose of
262 the detention hearing is to determine the existence of probable
263 cause that the child has committed the delinquent act or
264 violation of law with which he or she is charged and the need
265 for continued detention, except where the child is alleged to
266 have absconded from a nonresidential commitment program in which
267 case the court, at the detention hearing, shall order that the
268 child be released from detention and returned to his or her
269 nonresidential commitment program. Unless a child is detained
270 under paragraph (d), ~~or~~ paragraph (e), or paragraph (k), the
271 court shall use the results of the risk assessment performed by
272 the juvenile probation officer and, based on the criteria in
273 this subsection, shall determine the need for continued
274 detention. A child placed into secure, nonsecure, or home

275 detention care may continue to be so detained by the court
276 pursuant to this subsection. If the court orders a placement
277 more restrictive than indicated by the results of the risk
278 assessment instrument, the court shall state, in writing, clear
279 and convincing reasons for such placement. Except as provided in
280 s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b),
281 paragraph (10)(c), or paragraph (10)(d), when a child is placed
282 into secure or nonsecure detention care, or into a respite home
283 or other placement pursuant to a court order following a
284 hearing, the court order must include specific instructions that
285 direct the release of the child from such placement no later
286 than 5 p.m. on the last day of the detention period specified in
287 paragraph (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1.,
288 whichever is applicable, unless the requirements of such
289 applicable provision have been met or an order of continuance
290 has been granted pursuant to paragraph (5)(f).
291 (5)
292 (d) Except as provided in paragraph (2)(k), paragraph (g),
293 or s. 985.228(5), a child may not be held in secure, nonsecure,
294 or home detention care for more than 15 days following the entry
295 of an order of adjudication.
296 (g) Upon good cause being shown that the nature of the
297 charge requires additional time for the prosecution or defense
298 of the case, the court may extend the time limits for detention
299 specified in paragraph (c) or paragraph (d) an additional 9 days
300 if the child is charged with an offense that would be, if
301 committed by an adult, a capital felony, a life felony, a felony

302 of the first degree, or a felony of the second degree involving
303 violence against any individual.
304 Section 4. Paragraph (b) of subsection (2) of section
305 985.2155, Florida Statutes, is amended to read:
306 985.2155 Shared county and state responsibility for
307 juvenile detention.--
308 (2) As used in this section, the term:
309 (b) "Fiscally constrained county" means a county
310 ~~designated as a rural area of critical economic concern under s.~~
311 ~~288.0656~~ for which the value of a mill in the county is no more
312 than $4 ~~$3~~ million, based on the property valuations and tax
313 data annually published by the Department of Revenue under s.
314 195.052.
315 Section 5. Subsection (5) of section 985.228, Florida
316 Statutes, is amended to read:
317 985.228 Adjudicatory hearings; withheld adjudications;
318 orders of adjudication.--
319 (5)(a) If the court finds that the child named in a
320 petition has committed a delinquent act or violation of law, but
321 elects not to proceed under subsection (4), it shall incorporate
322 that finding in an order of adjudication of delinquency entered
323 in the case, briefly stating the facts upon which the finding is
324 made, and the court shall thereafter have full authority under
325 this chapter to deal with the child as adjudicated.
326 (b) The order of adjudication of delinquency under
327 paragraph (a) shall also include conditions that must be
328 followed by the child until a disposition order is entered in
329 his or her case. These conditions must include, but are not

330 limited to, specifying that the child, during any period of time
331 that he or she:
332 1. Is not in secure detention, must comply with a curfew;
333 must attend school or another educational program, if eligible;
334 and is prohibited from engaging in ungovernable behavior.
335 2. Is in secure detention, is prohibited from engaging in
336 ungovernable behavior.
337 (c) For purposes of this subsection, the term
338 "ungovernable behavior" means:
339 1. The child's failing to obey the reasonable and lawful
340 demands of the child's parent or legal guardian and, where
341 applicable, the reasonable and lawful demands of a person
342 responsible for supervising the child while he or she is in
343 school, another educational program, or secure detention.
344 2. The child engaging in behavior that evidences a risk
345 that the child may fail to appear for future court proceedings
346 or may inflict harm upon others or the property of others.
347 3. Other behavior of the child as specified in writing by
348 the court in the order of adjudication of delinquency.
349 (d) If a child willfully violates a condition contained in
350 his or her order of adjudication of delinquency, the court may
351 find the child in direct or indirect contempt of court under s.
352 985.216; however, notwithstanding s. 985.216 and the results of
353 the risk assessment instrument, the child's sanctions for such
354 contempt of court shall be placement in secure detention or, at
355 the discretion of the court and if available, on home detention
356 with electronic monitoring until the child's disposition order
357 is entered in his or her case.

358 Section 6. Paragraph (j) of subsection (1) of section
359 985.231, Florida Statutes, is amended to read:
360 985.231 Powers of disposition in delinquency cases.--
361 (1)
362 (j) If the offense committed by the child was grand theft
363 of a motor vehicle, the court:
364 1. Upon a first adjudication for a grand theft of a motor
365 vehicle, may place the child ~~youth~~ in a sheriff's training and
366 respect program ~~boot camp~~, unless the child is ineligible under
367 s. 985.3091 ~~pursuant to s. 985.309~~, and shall order the child
368 ~~youth~~ to complete a minimum of 50 hours of community service.
369 2. Upon a second adjudication for grand theft of a motor
370 vehicle which is separate and unrelated to the previous
371 adjudication, may place the child ~~youth~~ in a sheriff's training
372 and respect program ~~boot camp~~, unless the child is ineligible
373 under s. 985.3091 ~~pursuant to s. 985.309~~, and shall order the
374 child ~~youth~~ to complete a minimum of 100 hours of community
375 service.
376 3. Upon a third adjudication for grand theft of a motor
377 vehicle which is separate and unrelated to the previous
378 adjudications, shall place the child ~~youth~~ in a sheriff's
379 training and respect program ~~boot camp~~ or other treatment
380 program, unless the child is ineligible under s. 985.3091
381 ~~pursuant to s. 985.309~~, and shall order the child ~~youth~~ to
382 complete a minimum of 250 hours of community service.
383 Section 7. Section 985.309, Florida Statutes, is repealed.
384 Section 8. Section 985.3091, Florida Statutes, is created
385 to read:

386 985.3091 Sheriff's training and respect programs.--
387 (1) Contingent upon specific appropriation, local funding,
388 or specific appropriation and local funding, a county sheriff
389 may, under contract with the department, implement and operate a
390 sheriff's training and respect program to provide intensive
391 education, physical training, and rehabilitation for children
392 who are eligible under subsection (2). A sheriff's training and
393 respect program shall be under the sheriff's supervisory
394 authority as determined by the contract between the department
395 and the sheriff.
396 (2) A child is eligible for placement in a sheriff's
397 training and respect program if he or she:
398 (a) Is at least 14 years of age but less than 18 years of
399 age at the time of adjudication.
400 (b) Has been committed to the department for any offense
401 that, if committed by an adult, would be a felony other than a
402 capital felony, a life felony, or a violent felony of the first
403 degree.
404 (c) Has a medical, psychological, and substance abuse
405 profile that is conducive to successful completion of the
406 program, as determined by the sheriff's and department's review
407 of preadmission medical, psychological, and substance abuse
408 screenings conducted by the department.
409 (d) Will be placed in the judicial circuit in which the
410 child was adjudicated, except that the child may be placed
411 outside of that judicial circuit if:
412 1. The department, or the court if otherwise authorized by
413 law to select a commitment program within a restrictiveness

414 level for a child, determines that placement within the judicial
415 circuit would not be in the child's best interest or the
416 sheriff's training and respect program is unable to accept the
417 child; and
418 2. The child's parent or guardian agrees in writing to the
419 placement.
420 (3) A sheriff's training and respect program shall require
421 children to:
422 (a) Participate in physical training exercises.
423 (b) Complete educational, vocational, community service,
424 and substance abuse programs.
425 (c) Receive training in life and job skills and in
426 techniques for appropriate decisionmaking.
427 (d) Receive counseling that is directed at replacing
428 criminal thinking, beliefs, and values with moral thinking,
429 beliefs, and values.
430 (4) A sheriff's training and respect program shall be a
431 moderate-risk residential program and must provide conditional
432 release assessment and services in accordance with s. 985.316.
433 The minimum period of participation in the residential component
434 of a sheriff's training and respect program is 4 months;
435 however, this subsection does not prohibit operation of a
436 program that requires the participants to spend more than 4
437 months in the residential component of the program or that
438 requires the participants to complete two sequential programs of
439 4 months each in the residential component of the program.

440 (5) The department shall adopt rules under ss. 120.536(1)
441 and 120.54 for the sheriff's training and respect program that
442 specify:
443 (a) Requirements for the preadmission medical,
444 psychological, and substance abuse screenings required by
445 subsection (2).
446 (b) Authorized disciplinary sanctions and restrictions on
447 the privileges of the general population of children in the
448 program. The rules must prohibit the use of physical force or
449 restraint except as authorized in rules adopted pursuant to s.
450 985.4055 and must specifically preclude the use of physical
451 force or restraint as a disciplinary sanction or to encourage
452 compliance with program requirements.
453 (c) Prohibitions on the use of psychological intimidation
454 techniques, unless necessary for the safety of youth or other
455 persons or to maintain security.
456 (d) Requirements for provision of notice by the program to
457 the department and for the removal of a child from the program
458 if the child becomes unmanageable or ineligible for the program
459 due to changes in his or her medical, psychological, or
460 substance abuse profile.
461 (e) Requirements for the prominent display of the
462 telephone number of the statewide abuse registry and for
463 immediate access by children in the program, upon request, to a
464 telephone for the purpose of contacting the abuse registry.
465 (6)(a) Evaluations under s. 985.412(5) of each sheriff's
466 training and respect program shall be conducted quarterly during
467 the first year of the program's operation. Thereafter, if the

468 program has met the minimum thresholds for the evaluation, the
469 program shall be evaluated annually. If a sheriff's training and
470 respect program fails to meet the minimum thresholds, the
471 department shall cancel the contract for the program:
472 1. Immediately if the program has a deficiency in a
473 critical life safety aspect of its operations, as defined in
474 department rule, or has failed to train and certify its
475 employees as required in s. 985.4055.
476 2. If the program fails to achieve compliance with the
477 minimum thresholds for program continuation within 3 months,
478 unless there are documented extenuating circumstances as defined
479 in department rule.
480 (b) Upon cancellation of a contract under paragraph (a),
481 the program's operations shall immediately cease and the
482 department shall immediately discontinue any state payments to
483 the program.
484 (7) The department shall keep records and monitor criminal
485 activity, educational progress, and employment placement of all
486 sheriff's training and respect program participants after their
487 release from the program. The department must annually publish
488 an outcome evaluation study of each sheriff's training and
489 respect program.
490 (8)(a) The department shall adopt rules under ss.
491 120.536(1) and 120.54 that establish training requirements for
492 staff in a sheriff's training and respect program. These
493 requirements shall, at a minimum, require administrative staff
494 to successfully complete 120 contact hours of department-
495 approved training and staff who provide direct care, as defined

496 in s. 985.4055, to successfully complete 200 contact hours of
497 department-approved training.
498 (b) Department-approved training must include, but is not
499 limited to, training on:
500 1. State and federal laws relating to child abuse.
501 2. Authorized disciplinary sanctions, privilege
502 restrictions, and limitations on use of physical force and
503 restraint techniques under paragraph (5)(b) and prohibited
504 psychological intimidation techniques under paragraph (5)(c).
505 3. Appropriate counseling techniques and aggression
506 control methods.
507 4. Appropriate methods for dealing with children who have
508 been placed in programs that emphasize physical fitness and
509 personal discipline, including training on the identification
510 of, and appropriate responses to, children who are experiencing
511 physical or mental distress.
512 5. Cardiopulmonary resuscitation, choke-relief, and other
513 emergency medical procedures.
514 (c) All department-approved training courses under this
515 subsection must be taught by persons who are certified as
516 instructors by the Division of Criminal Justice Standards and
517 Training of the Department of Law Enforcement and who have prior
518 experience in a juvenile program. A training course in
519 counseling techniques need not be taught by a certified
520 instructor but must be taught by a person who has at least a
521 bachelor's degree in social work, counseling, psychology, or a
522 related field.

523 (d) A person may not provide direct care, as defined in s.
524 985.4055, to a child in a sheriff's training and respect program
525 unless he or she has successfully completed the training
526 requirements under this subsection and has complied with the
527 requirements for employees under s. 985.4055(2)(b)-(d).
528 (9) Children shall not be admitted to a sheriff's training
529 and respect program until the department has adopted the rules
530 required by this section and has verified that each program is
531 in compliance with all laws and rules applicable to the program.
532 The department may adopt emergency rules pursuant to s.
533 120.54(4) if necessary to allow operation of sheriff's training
534 and respect programs beginning July 1, 2006.
535 Section 9. Paragraph (a) of subsection (1) and paragraph
536 (i) of subsection (3) of section 985.31, Florida Statutes, are
537 amended to read:
538 985.31 Serious or habitual juvenile offender.--
539 (1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to the
540 provisions of this chapter and the establishment of appropriate
541 program guidelines and standards, contractual instruments, which
542 shall include safeguards of all constitutional rights, shall be
543 developed as follows:
544 (a) The department shall provide for:
545 1. The oversight of implementation of assessment and
546 treatment approaches.
547 2. The identification and prequalification of appropriate
548 individuals or not-for-profit organizations, including minority
549 individuals or organizations when possible, to provide

550 assessment and treatment services to serious or habitual
551 delinquent children.
552 3. The monitoring and evaluation of assessment and
553 treatment services for compliance with the provisions of this
554 chapter and all applicable rules and guidelines pursuant
555 thereto.
556 ~~4. The development of an annual report on the performance~~
557 ~~of assessment and treatment to be presented to the Governor, the~~
558 ~~Attorney General, the President of the Senate, the Speaker of~~
559 ~~the House of Representatives, and the Auditor General no later~~
560 ~~than January 1 of each year.~~
561 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
562 TREATMENT.--
563 (i) The treatment and placement recommendations shall be
564 submitted to the court for further action pursuant to this
565 paragraph:
566 1. If it is recommended that placement in a serious or
567 habitual juvenile offender program or facility is inappropriate,
568 the court shall make an alternative disposition pursuant to s.
569 985.3091 ~~985.309~~ or other alternative sentencing as applicable,
570 using ~~utilizing~~ the recommendation as a guide.
571 2. If it is recommended that placement in a serious or
572 habitual juvenile offender program or facility is appropriate,
573 the court may commit the child to the department for placement
574 in the restrictiveness level designated for serious or habitual
575 delinquent children programs.

576 Section 10. Paragraph (a) of subsection (1) and paragraph
577 (i) of subsection (3) of section 985.311, Florida Statutes, are
578 amended to read:
579 985.311 Intensive residential treatment program for
580 offenders less than 13 years of age.--
581 (1) ASSESSMENT AND TREATMENT SERVICES.--Pursuant to the
582 provisions of this chapter and the establishment of appropriate
583 program guidelines and standards, contractual instruments, which
584 shall include safeguards of all constitutional rights, shall be
585 developed for intensive residential treatment programs for
586 offenders less than 13 years of age as follows:
587 (a) The department shall provide for:
588 1. The oversight of implementation of assessment and
589 treatment approaches.
590 2. The identification and prequalification of appropriate
591 individuals or not-for-profit organizations, including minority
592 individuals or organizations when possible, to provide
593 assessment and treatment services to intensive offenders less
594 than 13 years of age.
595 3. The monitoring and evaluation of assessment and
596 treatment services for compliance with the provisions of this
597 chapter and all applicable rules and guidelines pursuant
598 thereto.
599 ~~4. The development of an annual report on the performance~~
600 ~~of assessment and treatment to be presented to the Governor, the~~
601 ~~Attorney General, the President of the Senate, the Speaker of~~
602 ~~the House of Representatives, the Auditor General, and the~~

603 ~~Office of Program Policy Analysis and Government Accountability~~
604 ~~no later than January 1 of each year.~~
605 (3) PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
606 TREATMENT.--
607 (i) The treatment and placement recommendations shall be
608 submitted to the court for further action pursuant to this
609 paragraph:
610 1. If it is recommended that placement in an intensive
611 residential treatment program for offenders less than 13 years
612 of age is inappropriate, the court shall make an alternative
613 disposition pursuant to s. 985.3091 ~~985.309~~ or other alternative
614 sentencing as applicable, using ~~utilizing~~ the recommendation as
615 a guide.
616 2. If it is recommended that placement in an intensive
617 residential treatment program for offenders less than 13 years
618 of age is appropriate, the court may commit the child to the
619 department for placement in the restrictiveness level designated
620 for intensive residential treatment program for offenders less
621 than 13 years of age.
622 Section 11. Subsection (5) of section 985.317, Florida
623 Statutes, is amended to read:
624 985.317 Literacy programs for juvenile offenders.--
625 ~~(5) EVALUATION AND REPORT.--The department, in~~
626 ~~consultation with the Department of Education, shall develop and~~
627 ~~implement an evaluation of the literacy program in order to~~
628 ~~determine the impact of the programs on recidivism. The~~
629 ~~department shall submit an annual report on the implementation~~
630 ~~and progress of the programs to the President of the Senate and~~

631 ~~the Speaker of the House of Representatives by January 1 of each~~
632 ~~year.~~
633 Section 12. Section 985.3142, Florida Statutes, is created
634 to read:
635 985.3142 Failure to return from a temporary release.--The
636 willful failure of a child to return to a residential commitment
637 facility described in s. 985.03(46) within the time authorized
638 for a temporary release shall:
639 (1) For a first offense, constitute absconding and such
640 offense shall be treated in the same manner as absconding from a
641 nonresidential commitment facility under this chapter, except
642 that under s. 985.215(2) the court shall order that the child be
643 returned to his or her residential commitment facility at the
644 child's detention hearing.
645 (2) For a second or subsequent offense, constitute a
646 misdemeanor of the second degree, punishable as provided in s.
647 775.082 or s. 775.083.
648 Section 13. Section 985.4055, Florida Statutes, is created
649 to read:
650 985.4055 Protective action response.--
651 (1) For purposes of this section, the term:
652 (a) "Direct care" means the care, supervision, custody, or
653 control of youth in any facility, service, or program that is
654 operated by the department or by a provider under contract with
655 the department.
656 (b) "Employee" means any person who exercises direct care.
657 (c) "Protective action response policy" means the policy
658 governing the use of verbal and physical intervention

659 techniques, mechanical restraints, and aerosol and chemical
660 agents by employees.
661 (2) The department shall adopt rules under ss. 120.536(1)
662 and 120.54 that:
663 (a) Establish a protective action response policy that:
664 1. Defines the authorized level of response by an employee
665 to each level of verbal or physical resistance by a youth.
666 2. Requires the use of verbal intervention techniques as
667 the initial response by an employee to verbal or physical
668 resistance by a youth, except where physical intervention
669 techniques are necessary to prevent:
670 a. Physical harm to the youth, employee, or another
671 person;
672 b. Property damage; or
673 c. The youth from escaping or absconding from lawful
674 supervision.
675 3. Defines authorized physical intervention techniques and
676 the situations under which employees may use these techniques
677 for youth. Pain compliance techniques and use of less than
678 lethal force shall be prohibited, except where necessary to
679 prevent:
680 a. Physical harm to the youth, an employee, or another
681 person;
682 b. Property damage; or
683 c. The youth from escaping or absconding from lawful
684 supervision.
685

686 Lethal force shall be prohibited, except where necessary to
687 protect the employee or another person from an imminent threat
688 of great bodily harm or death. Prior authorization by an
689 employee's supervisor for the use of physical intervention
690 techniques shall be obtained when practical.
691 4. Defines authorized use of mechanical restraints and the
692 situations under which employees may use such restraints on
693 youth. Prohibited uses of mechanical restraints shall include
694 the use of neck restraints and the securing of a youth to a
695 fixed object. Supervision requirements for youth who are secured
696 in mechanical restraints shall include constant and direct
697 visual monitoring by an employee for purposes of insuring youth
698 safety and ascertaining indications by the youth that restraints
699 are no longer necessary. Prior authorization by an employee's
700 supervisor for the use of mechanical restraints shall be
701 obtained when practical.
702 5. Prohibits employee use of aerosol or chemical agents,
703 including, but not limited to, oleoresin capsicum spray and
704 ammonia capsules, on a youth unless required for medical
705 treatment of the youth by a licensed medical professional.
706 (b) Establish training curriculums for protective action
707 response certification of employees and instructors. The
708 training curriculum for employee certification shall, at a
709 minimum, require the employee to:
710 1. Complete 40 hours of instruction on the protective
711 action response policy.
712 2. Obtain a passing score:

713 a. On a written examination that tests the employee's
714 knowledge and understanding of the protective action response
715 policy.
716 b. During an evaluation by an instructor of the employee's
717 physically demonstrated ability to implement the protective
718 action response policy.
719 (c) Require training curriculums for protective action
720 response certification of employees to be taught by instructors
721 who have been certified under the training curriculum for
722 protective action response certification of instructors.
723 (d) Require each employee to have:
724 1. Completed the instruction required under subparagraph
725 (b)1. within 90 days.
726 2. Received his or her protective action response
727 certification within 90 days.
728 3. Direct supervision during the 90-day period prior to
729 completing the instruction and certification requirements under
730 subparagraphs 1. and 2. by an employee with the training and
731 certification required by subparagraphs 1. and 2.
732 Section 14. Section 985.4056, Florida Statutes, is created
733 to read:
734 985.4056 Juvenile Justice Accountability Commission.--
735 (1) CREATION; MEMBERSHIP.--
736 (a) The Juvenile Justice Accountability Commission is
737 created and administratively housed within the department. The
738 commission shall be composed of seven members appointed by the
739 Governor. Each member of the commission must have direct
740 experience in juvenile justice issues and must be a citizen of

741 and registered voter in this state. The composition of the
742 commission must equitably represent all geographic areas of the
743 state and include minorities and women.
744 (b) Within the 2-year period preceding his or her
745 appointment, a member of the commission may not have been, and
746 during the 2-year period following termination of his or her
747 appointment, a member of the commission may not be:
748 1. An employee of, a consultant to, or a provider under
749 contract with the department.
750 2. A contractor, or an employee or a consultant thereof,
751 who submits a bid, proposal, or reply in response to a
752 competitive solicitation issued by the commission.
753 (c) Each member of the commission shall serve a term of 4
754 years; however, for the purpose of providing staggered terms, of
755 the initial appointments, three members shall serve 2-year terms
756 and four members shall serve 4-year terms. Any vacancy on the
757 commission shall be filled in the same manner as the original
758 appointment within 60 days after the date upon which the vacancy
759 occurred, and any member appointed to fill a vacancy shall serve
760 only for the unexpired term of the member's predecessor. The
761 chair of the commission shall be selected by the members for a
762 term of 1 year.
763 (d) In addition to the membership specified under this
764 subsection, the commission shall invite ex officio, nonvoting
765 associates to attend and participate in commission meetings and
766 to provide advice to the commission. The ex officio associates
767 shall include, but are not limited to:

768 1. A member of the House of Representatives designated by
769 the Speaker of the House.
770 2. A member of the Senate designated by the President of
771 the Senate.
772 3. An employee of the Executive Office of the Governor
773 designated by the Governor.
774 4. An employee of the department.
775 5. A circuit court judge with at least 1 year's experience
776 in the juvenile delinquency division.
777 6. A sheriff.
778 7. A provider under contract with the department for the
779 provision of one or more juvenile justice programs.
780 8. A member of a juvenile justice advocacy organization.
781 9. An employee of the Department of Law Enforcement who is
782 responsible for data compilation and research.
783 10. A state university employee responsible for juvenile
784 justice research.
785 (2) DEFINITIONS.--For purposes of this section, the term:
786 (a) "Juvenile justice program" means any facility,
787 service, or program that is operated by the department or by a
788 provider under contract with the department.
789 (b) "Minorities" means a member of a socially or
790 economically disadvantaged group and includes African Americans,
791 Hispanics, and American Indians.
792 (3) MEETINGS.--
793 (a) The commission shall hold a minimum of four regular
794 meetings annually, and other meetings may be called by the chair
795 upon giving at least 7 days' notice to all members and the

796 public pursuant to chapter 120. Meetings may also be held upon
797 the written request of at least four members, upon at least 7
798 days' notice of such meeting being given to all members and the
799 public by the chair pursuant to chapter 120. Emergency meetings
800 may be held without notice upon the request of all members. The
801 meetings of the commission shall be held in the central office
802 of the department in Tallahassee unless the chair determines
803 that special circumstances warrant meeting at another location.
804 (b) A majority of the membership of the commission
805 constitutes a quorum, and a quorum is required for any meeting
806 of the commission during which action will be voted upon. An
807 action of the commission is not binding unless the action is
808 taken pursuant to an affirmative vote of a majority of the
809 members present, and the vote must be recorded in the minutes of
810 the meeting.
811 (c) A member of the commission may not authorize a
812 designee to attend a meeting of the commission in his or her
813 place. A member who fails to attend two consecutive regularly
814 scheduled meetings of the commission, unless the member is
815 excused by the chair, shall be deemed to have abandoned the
816 position and the position shall be declared vacant by the
817 commission.
818 (d) The chair shall cause to be made a complete record of
819 the proceedings of the commission, which record shall be open
820 for public inspection.
821 (4) ORGANIZATION.--

822 (a) The commission, subject to appropriation, may employ
823 an executive director and other staff, and may retain
824 consultants, as necessary.
825 (b) The commission shall be a separate budget entity, and
826 the executive director shall be the chief administrative
827 officer. The department shall provide administrative support and
828 service to the commission to the extent requested by the
829 executive director. The commission and its staff are not subject
830 to the control, supervision, or direction of the department.
831 (c) The commission shall develop a budget pursuant to
832 chapter 216. The budget is not subject to change by the
833 department and shall be submitted to the Governor and
834 Legislature as provided in s. 216.023.
835 (d) Members of the commission and ex officio associates
836 shall serve without compensation, but are entitled to
837 reimbursement for per diem and travel expenses under s. 112.061.
838 (5) DUTIES.--The commission shall:
839 (a) On or before October 1, 2006 and, subject to
840 appropriation, enter into a contract under chapter 287 for the
841 development of a comprehensive evaluation, accountability, and
842 reporting system for each juvenile justice program individually
843 and for each category of the juvenile justice continuum for the
844 purpose of informing service providers and policy makers of the
845 effectiveness of individual providers and of the various
846 approaches to providing services. The contract must require the
847 provider to deliver the following on or before January 15, 2007:
848 1. A standardized evaluation protocol based upon best
849 practices for each juvenile justice program that:

850 a. Includes minimum thresholds for program continuation
851 and that identifies program effectiveness and areas in need of
852 expansion, improvement, modification, or elimination.
853 b. Provides criteria for program termination based upon
854 evaluation results.
855 c. Requires continual review of best practices literature
856 and updates to the standardized evaluation protocol based upon
857 that review.
858 d. Requires an annual report to the executive and
859 legislative branches, which sets forth for each juvenile justice
860 program:
861 (I) A comprehensive description of the population served
862 by the program.
863 (II) A specific description of the services provided by
864 the program.
865 (III) Program cost.
866 (IV) A comparison of expenditures to federal and state
867 funding.
868 (V) Immediate and long-range program concerns.
869 (VI) Recommendations to maintain, expand, improve, modify,
870 or eliminate the program.
871 2. A process for the collection, analysis, and reporting
872 of statistical data that will enable continuous evaluation of
873 the juvenile justice system as a whole and will provide the
874 Legislature, Governor, and the department with necessary and
875 useful information and reports to make informed decisions
876 regarding the effectiveness of, and any needed changes in,
877 juvenile justice programming, policies, and laws.

878 (b) On or before February 15, 2007, submit a report to the
879 appropriate substantive and fiscal committees of the
880 Legislature, the Governor, and the secretary of the department
881 that:
882 1. Provides a detailed summary of, and an implementation
883 schedule for, the comprehensive evaluation, accountability, and
884 reporting system developed by the provider under paragraph (a).
885 2. Sets forth recommendations by the commission for:
886 a. Modifications to the provider-developed system if found
887 warranted by the commission.
888 b. Statutory amendments and department rule and policy
889 changes that will be required to implement the provider-
890 developed system.
891 c. Funding requirements for implementation of the
892 provider-developed system.
893 d. Whether the provider-developed system should be
894 implemented by employees of the commission or by a provider
895 under contract with the commission.
896 (c) Monitor the development and implementation of long-
897 range juvenile justice program policies, including prevention,
898 early intervention, diversion, adjudication, and commitment.
899 (d) Review and recommend programmatic and fiscal policies
900 governing the operation of juvenile justice programs.
901 (e) Serve as a clearinghouse, in coordination with the
902 department, to provide information and assistance to the
903 juvenile justice circuit boards and juvenile justice county
904 councils.

905 (f) Advise the President of the Senate, the Speaker of the
906 House of Representatives, the Governor, and the department on
907 matters relating to this chapter.
908 (g) Conduct such other activities as the commission may
909 determine are necessary and appropriate to monitor the
910 effectiveness of the delivery of juvenile justice under this
911 chapter.
912 (h) Submit an annual report to the Governor, the
913 appropriate substantive and fiscal committees of the
914 Legislature, and the secretary of the department no later than
915 January 1st of each year that summarizes the meetings and
916 activities of the commission during the preceding year and
917 includes any recommendations of the commission for the following
918 year.
919 (6) INFORMATION SYSTEM ACCESS.--The department shall
920 provide the commission with automated access to the juvenile
921 justice information system under s. 20.316(4).
922 (7) RULEMAKING.--The commission shall adopt rules pursuant
923 to ss. 120.536(1) and 120.54 to implement the provisions of this
924 section.
925 Section 15. Section 985.412, Florida Statutes, is amended
926 to read:
927 985.412 Program review and reporting requirements ~~Quality~~
928 ~~assurance and cost-effectiveness~~.--
929 (1) LEGISLATIVE PURPOSE.--It is the intent of the
930 Legislature that the department:

931 (a) Ensure that information be provided to decisionmakers
932 in a timely manner so that resources are allocated to programs
933 that ~~of the department which~~ achieve desired performance levels.
934 (b) Collect and analyze available statistical data for the
935 purpose of ongoing evaluation of all programs.
936 (c) ~~(b)~~ Provide information about the cost of ~~such~~ programs
937 and their differential effectiveness so that program ~~the~~ quality
938 may ~~of such programs can~~ be compared and improvements made
939 continually.
940 (d) ~~(c)~~ Provide information to aid in developing related
941 policy issues and concerns.
942 (e) ~~(d)~~ Provide information to the public about the
943 effectiveness of ~~such~~ programs in meeting established goals and
944 objectives.
945 (f) ~~(e)~~ Provide a basis for a system of accountability so
946 that each youth ~~client~~ is afforded the best programs to meet his
947 or her needs.
948 (g) ~~(f)~~ Improve service delivery to youth ~~clients~~.
949 (h) ~~(g)~~ Modify or eliminate activities that are not
950 effective.
951 (2) DEFINITIONS.--As used in this section, the term:
952 (a) "Youth" ~~"Client"~~ means any person who is being
953 provided treatment or services by the department or by a
954 provider under contract with the department.
955 (b) "Program" means any facility, service, or program for
956 youth that is operated by the department or by a provider under
957 contract with the department.

958 (c) ~~(b)~~ "Program component" means an aggregation of
959 generally related objectives which, because of their special
960 character, related workload, and interrelated output, can
961 logically be considered an entity for purposes of organization,
962 management, accounting, reporting, and budgeting.
963 ~~(c) "Program effectiveness" means the ability of the~~
964 ~~program to achieve desired client outcomes, goals, and~~
965 ~~objectives.~~
966 (d) "Program group" means a collection of programs with
967 sufficient similarity of function, services, and youth to permit
968 appropriate comparisons among programs within the group.
969 (3) OUTCOME EVALUATION.--The department, in consultation
970 with the Office of Economic and Demographic Research, the Office
971 of Program Policy Analysis and Government Accountability, and
972 contract service providers, shall develop and use a standard
973 methodology for annually measuring, evaluating, and reporting
974 program outputs and youth outcomes for each program and program
975 group.
976 (a) The standard methodology must:
977 1. Incorporate, whenever possible, performance-based
978 budgeting measures.
979 2. Include common terminology and operational definitions
980 for measuring the performance of system and program
981 administration, program outputs, and youth outcomes.
982 3. Specify program outputs for each program and for each
983 program group within the juvenile justice continuum.
984 4. Specify desired youth outcomes and methods by which to
985 measure youth outcomes for each program and program group.

986 (b) By February 15 of each year, the department shall
987 submit to the appropriate substantive and fiscal committees of
988 each house of the Legislature and the Governor a report that
989 identifies and describes:
990 1. The standard methodology implemented under paragraph
991 (a).
992 2. The programs offered within each program group.
993 3. The demographic profile and offense history of youth
994 served in each program group.
995 4. The actual program outputs and youth outcomes achieved
996 in each program group. ~~The department shall annually collect and~~
997 ~~report cost data for every program operated or contracted by the~~
998 ~~department. The cost data shall conform to a format approved by~~
999 ~~the department and the Legislature. Uniform cost data shall be~~
1000 ~~reported and collected for state-operated and contracted~~
1001 ~~programs so that comparisons can be made among programs. The~~
1002 ~~department shall ensure that there is accurate cost accounting~~
1003 ~~for state-operated services including market-equivalent rent and~~
1004 ~~other shared cost. The cost of the educational program provided~~
1005 ~~to a residential facility shall be reported and included in the~~
1006 ~~cost of a program. The department shall submit an annual cost~~
1007 ~~report to the President of the Senate, the Speaker of the House~~
1008 ~~of Representatives, the Minority Leader of each house of the~~
1009 ~~Legislature, the appropriate substantive and fiscal committees~~
1010 ~~of each house of the Legislature, and the Governor, no later~~
1011 ~~than December 1 of each year. Cost-benefit analysis for~~
1012 ~~educational programs will be developed and implemented in~~
1013 ~~collaboration with and in cooperation with the Department of~~

1014 ~~Education, local providers, and local school districts. Cost~~
1015 ~~data for the report shall include data collected by the~~
1016 ~~Department of Education for the purposes of preparing the annual~~
1017 ~~report required by s. 1003.52(19).~~
1018 (4)~~(a)~~ PROGRAM ACCOUNTABILITY MEASURES.--The department ~~of~~
1019 ~~Juvenile Justice~~, in consultation with the Office of Economic
1020 and Demographic Research~~,~~ and contract service providers, shall
1021 develop a cost-effectiveness model and apply the model to each
1022 commitment program. ~~Program recidivism rates shall be a~~
1023 ~~component of the model.~~
1024 (a) The cost-effectiveness model shall compare program
1025 costs to expected and actual youth recidivism rates ~~client~~
1026 ~~outcomes and program outputs~~. It is the intent of the
1027 Legislature that continual development efforts take place to
1028 improve the validity and reliability of the cost-effectiveness
1029 model ~~and to integrate the standard methodology developed under~~
1030 ~~s. 985.401(4) for interpreting program outcome evaluations~~.
1031 (b) The department shall rank commitment programs based on
1032 the cost-effectiveness model and shall submit a report to the
1033 appropriate substantive and fiscal committees of each house of
1034 the Legislature by January 15 ~~December 31~~ of each year.
1035 (c) Based on ~~reports of the department on client outcomes~~
1036 ~~and program outputs and on~~ the department's most recent cost-
1037 effectiveness rankings, the department may terminate a
1038 commitment program ~~operated by the department or a provider~~ if
1039 the program has failed to achieve a minimum threshold of cost-
1040 effectiveness ~~program effectiveness~~. This paragraph does not
1041 preclude the department from terminating a contract as provided

1042 under this section or as otherwise provided by law or contract,
1043 and does not limit the department's authority to enter into or
1044 terminate a contract.
1045 (d) In collaboration with the Office of Economic and
1046 Demographic Research, and contract service providers, the
1047 department shall develop a work plan to refine the cost-
1048 effectiveness model so that the model is consistent with the
1049 performance-based program budgeting measures approved by the
1050 Legislature to the extent the department deems appropriate. The
1051 department shall notify the Office of Program Policy Analysis
1052 and Government Accountability of any meetings to refine the
1053 model.
1054 (e) Contingent upon specific appropriation, the
1055 department, in consultation with the Office of Economic and
1056 Demographic Research~~,~~ and contract service providers, shall:
1057 1. Construct a profile of each commitment program that
1058 uses the results of the quality assurance report required by
1059 this section, the cost-effectiveness report required in this
1060 subsection, and other reports available to the department.
1061 2. Target, for a more comprehensive evaluation, any
1062 commitment program that has achieved consistently high, low, or
1063 disparate ratings in the reports required under subparagraph 1.
1064 3. Identify the essential factors that contribute to the
1065 high, low, or disparate program ratings.
1066 4. Use the results of these evaluations in developing or
1067 refining juvenile justice programs or program models, youth
1068 ~~client~~ outcomes and program outputs, provider contracts, quality
1069 assurance standards, and the cost-effectiveness model.

1070 (5) QUALITY ASSURANCE.--The department shall:
1071 (a) Establish a comprehensive quality assurance system for
1072 each program ~~operated by the department or operated by a~~
1073 ~~provider under contract with the department~~. Each contract
1074 entered into by the department must provide for quality
1075 assurance.
1076 (b) Provide operational definitions of and criteria for
1077 quality assurance for each specific program component.
1078 (c) Establish quality assurance goals and objectives for
1079 each specific program component.
1080 (d) Establish the information and specific data elements
1081 required for the quality assurance program.
1082 (e) Develop a quality assurance manual of specific,
1083 standardized terminology and procedures to be followed by each
1084 program.
1085 (f) Evaluate each program ~~operated by the department or a~~
1086 ~~provider under a contract with the department~~ and establish
1087 minimum thresholds for each program component.
1088 1. If a provider fails to meet the established minimum
1089 thresholds, such failure shall cause the department to cancel
1090 the provider's contract:
1091 a. Immediately if the provider has a deficiency in a
1092 critical life safety aspect of its operations, as defined in
1093 department rule, or has failed to train and certify its
1094 employees as required in s. 985.4055.
1095 b. If ~~unless~~ the provider fails to achieve ~~achieves~~
1096 compliance with minimum thresholds within 6 months, except as

1097 provided in s. 985.3091(6)(a), ~~or~~ unless there are documented
1098 extenuating circumstances as defined in department rule.
1099
1100 If a provider's contract is canceled under subparagraph 1., the
1101 provider's operations shall immediately cease, the department
1102 shall immediately discontinue any state payments to the
1103 provider, and the provider shall be ineligible to contract with
1104 the department ~~In addition, the department may not contract with~~
1105 ~~the same provider~~ for the canceled service for a period of 12
1106 months.
1107 2. If a department-operated program fails to meet the
1108 established minimum thresholds, the program's operations shall
1109 be:
1110 a. Immediately terminated if the program has a deficiency
1111 in a critical life safety aspect of its operations, as defined
1112 in department rule, or if the department has failed to train and
1113 certify program employees as required in s. 985.4055.
1114 b. Terminated if the department fails to achieve
1115 compliance with the minimum thresholds for program continuation
1116 within 6 months, unless there are documented extenuating
1117 circumstances as defined in department rule. ~~the department must~~
1118 ~~take necessary and sufficient steps to ensure and document~~
1119 ~~program changes to achieve compliance with the established~~
1120 ~~minimum thresholds. If the department-operated program fails to~~
1121 ~~achieve compliance with the established minimum thresholds~~
1122 ~~within 6 months and if there are no documented extenuating~~
1123 ~~circumstances, the department must notify the Executive Office~~
1124 ~~of the Governor and the Legislature of the corrective action~~

1125 ~~taken. Appropriate corrective action may include, but is not~~
1126 ~~limited to:~~
1127 ~~1. Contracting out for the services provided in the~~
1128 ~~program;~~
1129 ~~2. Initiating appropriate disciplinary action against all~~
1130 ~~employees whose conduct or performance is deemed to have~~
1131 ~~materially contributed to the program's failure to meet~~
1132 ~~established minimum thresholds;~~
1133 ~~3. Redesigning the program; or~~
1134 ~~4. Realigning the program.~~
1135 (g) ~~The department shall~~ Submit an annual report to the
1136 President of the Senate, the Speaker of the House of
1137 Representatives, the minority leader of each house of the
1138 Legislature, the appropriate substantive and fiscal committees
1139 of each house of the Legislature, and the Governor by~~, no later~~
1140 ~~than~~ February 1 of each year. The annual report must contain, at
1141 a minimum, for each ~~specific~~ program ~~component~~:
1142 1. A comprehensive description of the population served.
1143 ~~by the program;~~
1144 2. A specific description of its ~~the~~ services.
1145 3. A summary of the performance of each program component
1146 evaluated. ~~provided by the program;~~
1147 4. Cost data that is reported in a uniform format so that
1148 cost comparisons may be made among programs. For a residential
1149 program, the cost data must include the cost of its educational
1150 program.~~;~~
1151 5. A comparison of expenditures to federal and state
1152 funding.~~;~~

1153 6. Immediate and long-range concerns.~~; and~~
1154 7. Recommendations to maintain, expand, improve, modify,
1155 or eliminate each program component so that changes in services
1156 lead to enhancement in program quality. ~~The department shall~~
1157 ~~ensure the reliability and validity of the information contained~~
1158 ~~in the report.~~
1159 ~~(6) The department shall collect and analyze available~~
1160 ~~statistical data for the purpose of ongoing evaluation of all~~
1161 ~~programs. The department shall provide the Legislature with~~
1162 ~~necessary information and reports to enable the Legislature to~~
1163 ~~make informed decisions regarding the effectiveness of, and any~~
1164 ~~needed changes in, services, programs, policies, and laws.~~
1165 ~~(7) No later than November 1, 2001, the department shall~~
1166 ~~submit a proposal to the Legislature concerning funding~~
1167 ~~incentives and disincentives for the department and for~~
1168 ~~providers under contract with the department. The~~
1169 ~~recommendations for funding incentives and disincentives shall~~
1170 ~~be based upon both quality assurance performance and cost-~~
1171 ~~effectiveness performance. The proposal should strive to achieve~~
1172 ~~consistency in incentives and disincentives for both department-~~
1173 ~~operated and contractor-provided programs. The department may~~
1174 ~~include recommendations for the use of liquidated damages in the~~
1175 ~~proposal; however, the department is not presently authorized to~~
1176 ~~contract for liquidated damages in non-hardware-secure~~
1177 ~~facilities until January 1, 2002.~~
1178 Section 16. Section 958.046, Florida Statutes, is amended
1179 to read:

1180 958.046 Placement in county-operated boot camp programs
1181 for youthful offenders.--In counties where there are county-
1182 operated youthful offender boot camp programs, other than boot
1183 camps described in s. 958.04 or sheriff's training and respect
1184 programs in s. 985.3091 ~~985.309~~, the court may sentence a
1185 youthful offender to such a boot camp. In county-operated
1186 youthful offender boot camp programs, juvenile offenders shall
1187 not be commingled with youthful offenders.
1188 Section 17. Subsection (1) of section 985.314, Florida
1189 Statutes, is amended to read:
1190 985.314 Commitment programs for juvenile felony
1191 offenders.--
1192 (1) Notwithstanding any other law and regardless of the
1193 child's age, a child who is adjudicated delinquent, or for whom
1194 adjudication is withheld, for an act that would be a felony if
1195 committed by an adult, shall be committed to:
1196 (a) A sheriff's training and respect ~~boot camp~~ program
1197 under s. 985.3091 ~~s. 985.309~~ if the child has participated in an
1198 early delinquency intervention program as provided in s.
1199 985.305.
1200 (b) A program for serious or habitual juvenile offenders
1201 under s. 985.31 or an intensive residential treatment program
1202 for offenders less than 13 years of age under s. 985.311, if the
1203 child has participated in an early delinquency intervention
1204 program and has completed a sheriff's training and respect ~~boot~~
1205 ~~camp~~ program.
1206 (c) A maximum-risk residential program, if the child has
1207 participated in an early delinquency intervention program, has

1208 completed a sheriff's training and respect ~~boot camp~~ program,
1209 and has completed a program for serious or habitual juvenile
1210 offenders or an intensive residential treatment program for
1211 offenders less than 13 years of age. The commitment of a child
1212 to a maximum-risk residential program must be for an
1213 indeterminate period, but may not exceed the maximum term of
1214 imprisonment that an adult may serve for the same offense.
1215 Section 18. Cost of supervision and care waiver; pilot
1216 program.--
1217 (1) For purposes of this section, the term:
1218 (a) "Approved parenting class" means a class approved by
1219 the Juvenile Justice Accountability Commission under subsection
1220 (4).
1221 (b) "Court" means a circuit court in the Ninth Judicial
1222 Circuit.
1223 (c) "Department" means the Department of Juvenile Justice.
1224 (d) "Parent" means the parent of child whose delinquency
1225 case comes before a circuit court in the Ninth Judicial Circuit.
1226 (2)(a) Notwithstanding any contrary provision of s.
1227 985.2311, Florida Statutes, for the period of October 1, 2006,
1228 through June 30, 2009, the court shall enter an order waiving
1229 the fees required to be paid under s. 985.2311, Florida
1230 Statutes, by a parent if the parent successfully completes an
1231 approved parenting class and presents the court with notarized
1232 documentation of such completion.
1233 (b) Participation in an approved parenting class under
1234 this subsection is voluntary and the parent is responsible for

1235 the payment of all costs associated with participation in the
1236 class.
1237 (c) A parent who fails to successfully complete an
1238 approved parenting class shall pay the full amount of fees
1239 required by s. 985.2311, Florida Statutes.
1240 (d) A parent may only have fees waived under this
1241 subsection once.
1242 (3) The Office of Program Policy Analysis and Government
1243 Accountability shall evaluate the pilot program created by this
1244 section and shall submit a written report to the appropriate
1245 substantive and fiscal committees of the Legislature, the
1246 Governor, and the Department of Juvenile Justice on September
1247 30, 2007, and annually thereafter, which identifies for the
1248 Ninth Judicial Circuit during the fiscal year preceding the
1249 report:
1250 (a) The number of delinquency cases in which fees were
1251 required to be ordered under s. 985.2311, Florida Statutes, and
1252 the total amount of those fees.
1253 (b) The number of delinquency cases in which parents
1254 agreed to complete an approved parenting class and the number of
1255 delinquency cases in which the parent submitted notarized
1256 documentation of successful completion to the court.
1257 (c) The number of delinquency cases in which the court
1258 entered an order waiving fees under subsection (2) and the total
1259 amount of fees waived.
1260 (d) The number of youth, as such data becomes available,
1261 who are taken into custody for a felony or misdemeanor within 6
1262 months following their release from department custody or

1263 supervision, whichever occurs later, and whose parents' fees
1264 under s. 985.2311, Florida Statutes, are:
1265 1. Waived by court order under subsection (2).
1266 2. Not waived by court order under subsection (2).
1267 (4) The Juvenile Justice Accountability Commission,
1268 subject to appropriation, shall execute a contract under chapter
1269 287, Florida Statutes, for the provision of parenting courses in
1270 the Ninth Judicial Circuit between October 1, 2006 through June
1271 30, 2009.
1272 (5) This section is repealed effective October 1, 2009.
1273 Section 19. Effective October 1, 2006, all powers, duties,
1274 resources, and personnel associated with the Department of
1275 Juvenile Justice's responsibilities under ss. 985.308(9),
1276 985.311(2)(e), 985.411(7) and (9)(b), and 985.412, Florida
1277 Statutes, are transferred by a type two transfer as defined in
1278 s. 20.06(2), Florida Statutes, to the Juvenile Justice
1279 Accountability Commission created by this act.
1280 Section 20. Judicial discretion to select commitment
1281 programs; pilot program.--
1282 (1) The definitions contained in s. 985.03, Florida
1283 Statutes, apply to this section. Additionally, for purposes of
1284 this section, the term:
1285 (a) "Available placement" means a commitment program for
1286 which the department has determined the youth is eligible.
1287 (b) "Commitment program" means a facility, service, or
1288 program operated by the department or by a provider under
1289 contract with the department within a restrictiveness level.

1290 (c) "Delinquency court" means a circuit court in the
1291 First, Eleventh, Thirteenth, or Twentieth Judicial Circuit.
1292 (d) "Eligible" means a determination that the youth
1293 satisfies admission criteria for the commitment program.
1294 (e) "Wait period" means the shortest period of time
1295 expected to elapse prior to placement of a youth in a commitment
1296 program, as determined by the department based upon anticipated
1297 release dates for youth currently in the commitment program.
1298 (2) Between September 1, 2006, and July 1, 2010, a pilot
1299 program shall be conducted in the First, Eleventh, Thirteenth,
1300 and Twentieth Judicial Circuits which authorizes delinquency
1301 courts to select commitment programs for youth. The purpose of
1302 the pilot program is to identify and evaluate the benefits and
1303 disadvantages of affording such judicial discretion prior to
1304 legislative consideration of statewide implementation.
1305 (3) Before August 31, 2006, the department shall:
1306 (a) Develop, in consultation with delinquency court
1307 judges, procedures to implement this section.
1308 (b) Publish on its Internet website information that
1309 identifies the name and address of each commitment program and
1310 that describes for each identified commitment program the
1311 population of youth served; the maximum capacity; the services
1312 offered; the admission criteria; the most recent recidivism
1313 rates; and the most recent cost-effectiveness rankings and
1314 quality assurance results under s. 985.412, Florida Statutes.
1315 The department shall continually update information published
1316 under this paragraph as modifications occur.

1317 (4) Between September 1, 2006, and July 1, 2010, a
1318 delinquency court may:
1319 (a) Order the department to include in a youth's
1320 predisposition report a list of all available placements within
1321 each restrictiveness level identified by the court or
1322 recommended by the department. The list shall also indicate the
1323 wait period for each available placement identified by the
1324 department.
1325 (b)1. Specify for a youth committed by the court an
1326 available placement identified in the listing under paragraph
1327 (a), which has a wait period of 30 calendar days or less for a
1328 minimum-risk nonresidential, low-risk residential, moderate-risk
1329 residential, or high-risk residential commitment program or a
1330 wait period of 20 calendar days or less for a maximum-risk
1331 residential commitment program; or
1332 2. Alternatively, a delinquency court may specify:
1333 a. An available placement with a wait period in excess of
1334 those identified in subparagraph 1., if the court states reasons
1335 on the record establishing by a preponderance of the evidence
1336 that the available placement is in the youth's best interest; or
1337 b. A commitment program that is not listed as an available
1338 placement, if the court states reasons on the record
1339 establishing by a preponderance of the evidence that the youth
1340 is eligible for the commitment program and that the commitment
1341 program is in the youth's best interest.
1342 (5) When a delinquency court specifies an available
1343 placement or commitment program for a youth under paragraph
1344 (4)(b), the youth shall be placed, as specified by the court,

1345 when the next regularly scheduled opening occurs after the
1346 placement of other youth who were previously committed and
1347 waiting for that program.
1348 (6)(a) The Office of Program Policy Analysis and
1349 Government Accountability shall conduct a longitudinal
1350 evaluation of the pilot program created by this section and
1351 shall submit a written report to the appropriate substantive and
1352 fiscal committees of the Legislature and to the Governor on
1353 January 1, 2008, and annually thereafter, which identifies,
1354 according to judicial circuit and restrictiveness level, the
1355 following data, as it becomes available, for the pilot program
1356 period:
1357 1. The number of youth committed to the department by a
1358 delinquency court.
1359 2. The number of youth placed by a delinquency court in an
1360 available placement under subparagraph (4)(b)1. and sub-
1361 subparagraph (4)(b)2.a. and in a commitment program under sub-
1362 subparagraph (4)(b)2.b.
1363 3. The number of youth placed in a department-specified
1364 commitment program.
1365 4. The average wait period for, and the average number of
1366 days spent by youth in secure detention while awaiting placement
1367 in, delinquency court-specified commitment programs and
1368 department-specified commitment programs.
1369 5. The number of youth who complete, and who are otherwise
1370 released from, delinquency court-specified commitment programs
1371 and department-specified commitment programs.

1372 6. Educational achievements made by youth while
1373 participating in delinquency court-specified commitment programs
1374 and department-specified commitment programs.
1375 7. The number of youth who are taken into custody for a
1376 felony or misdemeanor within 6 months following completion of
1377 delinquency court-specified commitment programs and department-
1378 specified commitment programs.
1379 (b) Before August 31, 2006:
1380 1. The department, in consultation with the Office of
1381 Program Policy Analysis and Government Accountability, shall
1382 develop reporting protocols to collect and maintain data
1383 necessary for the report required by this subsection.
1384 2. The Office of Program Policy Analysis and Government
1385 Accountability, in consultation with staff of the appropriate
1386 substantive and fiscal committees of the Legislature, shall
1387 develop common terminology and operational definitions for the
1388 measurement of data necessary for the report required by this
1389 subsection.
1390 (c) The reports required under paragraph (a) to be
1391 submitted on January 1, 2009, and January 1, 2010, must also
1392 include:
1393 1. Findings by the Office of Program Policy Analysis and
1394 Government Accountability, the department, and delinquency
1395 courts regarding the benefits and disadvantages of authorizing
1396 courts to select commitment programs.
1397 2. Recommendations by the Office of Program Policy
1398 Analysis and Government Accountability, the department, and

1399 delinquency courts, if found to be warranted, for amendments to
1400 current statutes addressing commitment.
1401 (7) This section is repealed effective July 1, 2010.
1402 Section 21. Except as otherwise expressly provided in this
1403 act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 367 CS Accessories to a Crime
SPONSOR(S): Carroll
TIED BILLS: **IDEN./SIM. BILLS:** SB 730

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N	Ferguson	Kramer
2) Criminal Justice Appropriations Committee	5 Y, 0 N, w/CS	Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

HB 367 CS, referred to as the "Jason A. Gucwa Act," removes the prohibition that prevents family members from being charged as an accessory after the fact if they give aid to a known felony offender with the intent that the offender avoids detection, arrest, trial, or punishment, if they know that the family member has committed a capital, life, first or second degree felony or had been an accessory before the fact. The bill maintains the exemption for family members if the offender's underlying crime is a third degree felony.

The Criminal Justice Impact Conference met on January 9, 2006 and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

This bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility- HB 367 CS imposes criminal penalties for a family member who acts as an accessory after the fact.

B. EFFECT OF PROPOSED CHANGES:

Current law:
Section 777.03 (1)(a), F.S., prohibits family members from being charged as an accessory after the fact if they assist a family member that they know has committed a felony[1] in avoiding detection, arrest, trial or punishment. Family member includes any person standing in the relationship of husband or wife, parent or grandparent, child or grandchild, brother or sister, by *consanguinity* or *affinity* to the offender. Consanguinity and affinity are synonymous with blood and marriage.[2] The underlying legislative purpose is to safeguard the family unit.[3] "In other words, the phrase 'by consanguinity or affinity' is merely a substitute for a cumbersome list of 'in-laws' and 'step-relatives' who are entitled to . . . protection."[4] Thus, 777.03 (1)(a) provides an exhaustive list of protected family members.[5]

Background:
Jason Anthony Gucwa, 29, was found murdered in March of 2003 in Flagler County. Investigators from the Flagler Sheriff's Office, Daytona Beach Police Department, Florida Department of Law Enforcement, and the State Attorney's Office are continuing to look for Stephen and Wursula Workman as persons of interest in the case. Stephen Workman's mother's home was searched twice for possible evidence linking he and his wife to the crime. Workman was last seen getting off a Greyhound bus in Minnesota. His wife is known to be back in her native Brazil. Stephen Workman's mother is believed to have materially assisted both her son and his wife flee from prosecution.

Proposed changes:
HB 367 CS would remove the prohibition that prevents family members from being charged as an accessory after the fact if they assist a family member that they know has committed a felony or had been an accessory to the crime. This would allow law enforcement to prosecute family members that participate as an accessory after the fact if they know that the family members underlying crime is a capital, life, first or second degree felony. The exemption for family members would remain intact if the offender's underlying crime is a third degree felony.

C. SECTION DIRECTORY:

Section 1. Names HB 367 CS the "Jason A. Gucwa Act."

Section 2. Amends s. 777.03, F.S., relating to accessories after the fact.

Section 3. Provides an effective date upon becoming law.

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[1] This prohibition does not currently apply in cases involving child abuse. *See* 777.03 (1)(b) F.S.
[2] *See* State v. C.H., 421 So.2nd 62, 64 (Fla. 4th DCA 1982).
[3] Id.
[4] Id.
[5] *See* Brown v. State, 672 So.2nd 861, 863-64 (Fla. 3rd DCA 1996) (holding immunity does not extend to persons whose sole familial relationship to the offender is that of cousin).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on January 9, 2006 and determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill is exempt from the mandates provision because it is a criminal law.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Criminal Justice Appropriations Committee passed HB 367 with one amendment. The amendment extends the prohibition for family members to include capital and life felonies committed by the offender. HB 367 with CS was reported favorably.

CHAMBER ACTION

The Criminal Justice Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to accessories to a crime; providing a short title; amending s. 777.03, F.S.; limiting the provision that exempts certain members of an offender's family from being charged with the offense of acting as an accessory after the fact to circumstances involving third degree felony offenses; specifying additional actions that constitute being an accessory after the fact, for which penalties are provided; providing an effective date.

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

Section 1. <u>This act may be cited as the "Jason A. Gucwa Act."</u>

Section 2. Subsection (1) of section 777.03, Florida Statutes, is amended to read:

777.03 Accessory after the fact.--

23 (1)(a) Any person not standing in the relation of husband
24 or wife, parent or grandparent, child or grandchild, brother or
25 sister, by consanguinity or affinity to the offender, who
26 maintains or assists the principal or an accessory before the
27 fact, or gives the offender any other aid, knowing that the
28 offender had committed a crime and such crime was a third degree
29 felony, or had been an accessory thereto before the fact, with
30 the intent that the offender avoids or escapes detection,
31 arrest, trial or punishment, is an accessory after the fact.
32 (b) Any person~~, regardless of the relation to the~~
33 ~~offender,~~ who maintains or assists the principal or accessory
34 before the fact, or gives the offender any other aid, knowing
35 that the offender had committed the offense of child abuse,
36 neglect of a child, aggravated child abuse, aggravated
37 manslaughter of a child under 18 years of age, or murder of a
38 child under 18 years of age, or had been an accessory thereto
39 before the fact, with the intent that the offender avoids or
40 escapes detection, arrest, trial, or punishment, is an accessory
41 after the fact unless the court finds that the person is a
42 victim of domestic violence.
43 (c) Any person who maintains or assists the principal or
44 an accessory before the fact, or gives the offender any other
45 aid, knowing that the offender had committed a crime and such
46 crime was a capital, life, or first or second degree felony, or
47 had been an accessory thereto before the fact, with the intent
48 that the offender avoids or escapes detection, arrest, trial, or
49 punishment, is an accessory after the fact.
50 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 391 CS Community Associations
SPONSOR(S): Domino
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) Judiciary Appropriations Committee	4 Y, 0 N, w/CS	Brazzell	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration of condominium may be amended as provided in the declaration. This bill revises provisions of law regarding certain mortgagees' ability to approve or void certain amendments to condominium declarations, articles of incorporation, or bylaws.

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. This bill increases the regulation of homeowners' associations and establishes conformity in the laws regulating homeowners' associations and condominium associations by:

- Revising the requirements for the inspection and copying of records;
- Revising what must be included in the associations' annual budget;
- Clarifying rights and privileges of parcel owners regarding homeowners' association decisions about structures and parcel improvements;
- Revising the financial reporting requirements; and
- Providing for guarantees of common expenses when they are not included in the declaration.

This bill also eliminates mediation of disputes between homeowners' associations and members from the jurisdiction of the Department of Business of Professional Regulation. The mandatory mediation of such disputes will have to be conducted by private mediators.

This bill appears to have a minimal negative fiscal impact on state revenues. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill eliminates the current requirement that certain disputes between homeowners and homeowners associations be referred to the Department of Business and Professional Regulation for assignment of a mediator.

Safeguard Individual Liberty: This bill decreases restrictions on condominium associations when amending declarations of condominium, articles of incorporation, or bylaws. This bill increases regulation of homeowners' associations.

B. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements".[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is like a constitution in that it:

> strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[3]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.[5]

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

<u>Covenant Revitalization</u>

Proposed Changes

This bill creates s. 712.11, F.S., to provide that a homeowners' association that is not subject to chapter 720 may use the procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of chapter 712, F.S.

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)
[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 720.301(9), F.S.

Mortgagee Consent or Joinder of Amendments to Declaration of Condominium

Current Law

Section 718.110(11), F.S., provides that any declaration of condominium recorded after April 1, 1992, may not require the consent or joinder of mortgagees in order for an association to pass an amendment to the declaration. This is limited to amendments which do not materially affect the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Current law provides that such consent may not be unreasonably withheld. In the event mortgagee consent is provided other than by properly recorded joinder, such consent must be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded.[7]

Proposed Changes

The bill provides findings by the Legislature that consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and is a substantial burden on the condominium owners and association. This bill also provides that there is a compelling state interest in enabling condominium association members to approve amendments.

The bill limits the enforceability of certain provisions in or amendments to declarations, articles of incorporation or bylaws that require the consent or joinder of some or all mortgagees of units or any other portion of the condominium property for those mortgages recorded on or after October 1, 2006. Such provisions or amendments recorded prior to October 1, 2006, remain enforceable. The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment. The bill also limits the ability of certain mortgagees to void amendments.

Mixed-Use Condominiums

Current Law

Section 718.404, F.S, pertains to mixed-use condominiums, which are condominiums where there are both residential and commercial units. Section 718.404(1), F.S., provides that for mixed-use condominiums, the owner of a commercial unit does not have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. Section 718.404(2), F.S., is also amended to provide that when the number of residential units is equal to or greater than 50% of the total number of units operated by the association, owners of the residential units are entitled to vote for a majority of the seats on the board of administration.

Proposed Changes

This bill amends subsections (1) and (2) of s. 718.404, F.S., to provide that these subsections are intended to be applied retroactively as a remedial measure.

Homeowners' Associations

Current Law

Current law regulates homeowners' associations in ch. 720, F.S., and s. 720.302, F.S., provides that ch. 720, F.S. does not apply to condominium associations.

[7] Section 718.110(11), F.S.

Proposed Changes

This bill amends s. 720.302, F.S., to provide an exception to the current law providing that chapter 720, which regulates homeowners' associations, does not apply to condominium associations.

This bill amends s. 720.302(4), F.S. to provide that ch. 720, F.S. does not apply to any association regulated under chapters 718 (condominiums), 719 (cooperatives), 721 (timeshares), or 723 (mobile home parks), except to the extent that a provision of ch. 718, 719, or 721, F.S. is expressly incorporated into ch. 720, F.S. for the purpose of regulating homeowners' associations.

This bill amends s. 720.302(5), F.S., to remove the phrase "not for profit" to conform to the other changes in this section. This bill also amends s. 720.302(5), F.S., to provide that corporations operating residential homeowners' associations in Florida are to be governed by and subject to ch. 607, F.S. (corporations), if the association was incorporated under the provisions of that chapter, or to ch. 617, F.S. (not for profit corporations), if the association was incorporated under the provisions of that chapter.

Homeowners' Association Board Meetings

Current Law

Section 720.303(2), F.S., provides procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak on any matter on the agenda for at least 3 minutes.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to a meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, then notice of the board meeting must be mailed or delivered to each association member at least 7 days prior to the meeting, except in an emergency. For associations that have more than 100 members, the bylaws may provide for a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision of a schedule of board meetings, conspicuous posting and repeated broadcasting of a notice in a certain format on a closed-circuit cable television system serving the association, or electronic transmission if the member consents in writing to such transmission.[8]

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the meeting.[9]

Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are also not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.[10]

Proposed Changes

[8] Section 720.303(2)(c)1, F.S.
[9] Section 720.303(2)(c)2, F.S.
[10] Section 720.303(2)(c)3, F.S.

This bill amends s. 720.303(2)(a), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida,[11] to provide that provisions of this subsection which requires open meetings also apply to the meetings of any committee or other similar body when a final decision is made regarding the spending of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

This bill also repeals s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, to remove conflicting versions of this subsection.

Homeowners' Association Inspection and Copying of Records

Current Law

Section 720.303(5), F.S., requires that a homeowners' association allow its members to inspect and copy its official records within 10 days of a written request for access. A failure to comply with such a request in a timely fashion creates a rebuttable presumption that the association failed to do so, and entitles the requesting party to actual damages, or to a minimum of $50 per calendar day, commencing on the eleventh business day. A homeowners' association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's copy machine. If the association does not have a copy machine available where the records are kept, or if the records requested to be copied exceed 25 pages, then the association may have copies made by an outside vendor and may charge the actual cost of copying.

Current law expressly exempts the following from inspection by a member or parcel owner: any record protected by attorney-client or work-product privilege; information obtained in association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law; disciplinary, health, insurance and personnel records of the association's employees; or medical records of parcel owners or other community residents.[12]

Proposed Changes

This bill amends s. 720.303(5), F.S., to provide that an association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association unless required by this chapter to be made available or disclosed. This bill also provides that an association or agent may charge a reasonable fee to a prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information, except for information required by law. The fee cannot exceed $50 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

Homeowners' Association Budgets

Current Law

Section 720.303(6), F.S., provides that an association must prepare an annual budget.

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[11] In 2004 the Legislature passed SB 1184, which amended s. 720.303(2),F.S., in section 2 and section 18 of the bill. In 2004, the Legislature passed SB 2984, which also amended s. 720.303(2), F.S., in section 15 of the bill. This bill is amending s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, and is repealing s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida.

[12] Section 720.303(1), (2), (3), (4), F.S.

Proposed Changes

This bill amends s. 720.303(6), F.S., to require that:

- The annual budget provide for the annual operating expenses and the budget must be paid for by the association.
- The annual budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible to the extent that the association's governing documents do not limit increases in assessments.
- If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in special assessments if reserves are not provided, each financial report for the preceding fiscal year must contain a statement in conspicuous type as provided by the bill.
- An association is deemed to have provided for reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves. Once established, the reserve accounts must be funded, maintained or funding waived.
- The amount to be reserved must be computed by using a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item.
- Once a reserve account or reserve accounts are established, the membership of the association may provide for no reserves or less reserves.
- After the turnover, a developer may vote its voting interest to waive or reduce the funding of reserves.
- Reserve funds and any interest shall remain in the reserve account, and may be used only for authorized reserve expenditures.
- Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-developer voting interests.

Homeowners' Association Financial Reporting

Current Law

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

Proposed Changes

This bill amends s. 720.303(7), F.S., to increase from 60 to 90 days the time that an association has to prepare and complete an annual financial report after the close of the fiscal year. Within 21 days after the final financial report is completed by the association, but no later than 120 days after the end of the fiscal year, the association must provide each member with a copy of the annual financial report.

This bill amends s. 720.303(7)(a), F.S., to provide that financial statements are to be completed in accordance with the accounting principles adopted by the Florida Board of Accountancy.

Architectural Control Covenants and Parcel Owner Improvements

Proposed Changes

This bill creates s. 720.3035, F.S., to provide that:

- An association may review and approve plans and specifications for the location, size, type or appearance of any structure, or enforce such standards, only to the extent as specifically stated or reasonably inferred in the declaration of covenants.
- An association may only restrict the right of a parcel owner to select from options for the use of material, the size or design of the structure or improvement, or the location of the structure or improvement on the parcel as provided in the declaration of covenants.
- For the purpose of establishing setback lines specifically stated in the declaration of covenants, each parcel may be deemed to have only one front. When the declaration of covenants does not provide for specific setback lines, the applicable county or municipal setback lines shall apply.
- Each parcel owner is entitled to the rights and privileges provided in the declaration of covenants concerning the use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably impaired by the association.
- An association may not enforce any policy that is inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants, whether the policy is uniformly applied or not.

Attorney's Fees for Actions between an Association and a Member

Current Law

Section 720.305, F.S., provides that an action to enforce the rules and provisions established by the homeowners' association can be brought by the association or by any member against the association, a member, any director of the association, and any tenants, guests, or invitees occupying a parcel or common area. This section also provides that the prevailing party in any litigation is entitled to recover reasonable attorney's fees and costs. A member that has successfully sued his or her association must, under current law, return a portion of those fees back to the association. Thus, under current law a member cannot be fully compensated for his or her attorney's fees.

Proposed Changes

This bill amends s. 720.305, F.S., to provide that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.

Meetings of Association Members; Amendments

Current Law

Section 720.306(1)(c), F.S., provides that an amendment may not materially and adversely alter the proportionate voting interest attached to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless all owners and lienholders join in the execution of the amendment. A change in quorum requirements is not an alteration of voting interests.

Proposed Changes

The bill amends s. 720.306(1)(c), F.S., adding the provision that the merger or consolidation of associations under ch. 607, F.S. (regulating corporations) or ch. 617, F.S. (regulating non-profit corporations), is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Transition of Homeowners' Association Control

Current Law

Section 720.307, F.S., provides procedures for turning over control of an association from the developer to parcel owners. The transition of association control begins with the election of the board of directors of the homeowners' association by the members. At the time the members elect the board of directors, the developer must deliver various documents to the board.

Proposed Changes

This bill amends s. 720.307, F.S., to provide an additional document that the developer must provide to the board of directors. Along with the documents that must be provided by the developer under current law, the bill requires that the developer also provide the board of directors the financial records, including the statements of the association, and source documents from the incorporation of the association through the date of turnover. This bill also provides that an independent certified public accountant must audit the records and determine that the developer was charged with, and paid, the proper amounts of assessments.

The language in this section of the bill is taken from language found in s. 718.301(4)(c), F.S., of the Condominium Act. The current law for homeowners' associations pertaining to transition of association control is very similar to the current Condominium Act and this bill provides conformity between homeowners' associations and the condominium associations.

Guarantees of Common Expenses

Current Law

The developer of a community is responsible for paying the costs of the common expenses of the community until the sale of the parcels to a purchaser at which time the developer pays a proportionate share of the common expenses with the parcel owners. Condominium law allows a developer to be excused from payment of common expenses if the common expenses of all unit owners are guaranteed not to increase and the developer agrees to pay all common expenses incurred but not covered by unit owner payments during the period of the guarantee.[13]

Proposed Changes

This bill amends s. 720.308, F.S., to incorporate the guarantees of common expenses provision found in condominium law into homeowners' association law. Currently, s. 720.308, F.S., provides for guarantees of common expenses if it is provided for in the declaration. This bill amends s. 720.308, F.S., to provide for guarantees of common expenses if a guarantee is not included in the purchase contract or declaration. This bill provides that a guarantee is effective only upon approval of a majority of the voting interests of the members other than the developer. This bill also provides that:

- The time period of a guarantee must have a specific beginning and ending date or event;
- The dollar amount of the guarantee must be an exact dollar amount for each parcel identified in the declaration;
- The cash payments required from the developer must be when the revenue collected by the association are not sufficient to provide payment for all common expenses; and
- The expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, must not be included in the common expenses. If expenses attributable to non-assessment revenues exceed non-assessment revenues, then the developer must only fund the excess expenses.

[13] Section 718.116, F.S.

Dispute Resolution

Current Law

Section 720.311, F.S., established dispute resolution procedures for homeowners' associations and their members. Current law requires that recall disputes must be resolved by binding arbitration conducted by the Department of Business and Professional Regulation (DBPR). Any recall dispute filed with the DBPR must be conducted in accordance with the provisions of ss. 718.1255 and 718.112(2)(j), F.S., which establish requirements and procedures for the removal of condominium directors and dispute resolution procedures for condominiums. Section 718.1255, F.S., requires that arbitration proceedings relating to the recall of a condominium director must be conducted pursuant to the arbitration procedures in s. 718.1255, F.S., and provides that, if the condominium association fails to comply with the final order of arbitration, the DBPR may take action pursuant to s. 718.501, F.S. Section 718.501, F.S., establishes the powers and duties of the DBPR, which include the power to conduct investigations, issue orders, conduct consent proceedings, bring actions in civil court on behalf of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution, and to assess civil penalties.

Section 720.311(1), F.S., provides that the DBPR must conduct mandatory binding arbitration of election disputes in accordance with s. 718.1255, F.S. Election and recall disputes are not eligible for mediation. Current law requires a $200 filing fee and authorizes the DBPR to assess the parties an additional fee in an amount adequate to cover the DBPR's costs and expenses. The fee paid to the DBPR must be a recoverable cost in the arbitration proceeding, and the prevailing party must be paid its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. Section 720.311(1), F.S., provides that any petition for mediation or arbitration shall toll the applicable statute of limitations. The statute authorizes the DBPR to adopt rules to implement this section.

Section 720.311(2)(a), F.S., provides that the following disputes must be filed with the DBPR for mandatory mediation by the division before the dispute is filed in court:

- Disputes between an association and a parcel owner regarding use of, or changes to, the parcel or the common areas and other covenant enforcement disputes;
- Disputes regarding amendments to the association documents;
- Disputes regarding meetings of the board and committees appointed by the board;
- Disputes regarding membership meetings not including election meetings; and
- Disputes regarding access to the official records of the association.

The mediation is conducted under the applicable Florida Rules of Civil Procedure, and the proceeding is privileged and confidential to the same extent as court-ordered mediation. Current law provides that persons not a party to the suit may not attend the mediation conference without the consent of all the parties. Current law also requires a $200 fee to defray the costs of the mandatory mediation, authorizes the DBPR to charge additional fees to cover the costs of the mandatory mediation, and requires that the parties share the costs of mediation equally, unless the parties agree otherwise. If the mandatory mediation is not successful, the parties may file the dispute in a court or enter the dispute into binding or non-binding arbitration to be conducted by the DBPR or private arbitrator. Section 720.311(2)(d), F.S., provides that the mediation procedure may be used by non-mandatory homeowners' associations.

Section 720.311(2)(c), F.S., provides standards to DBPR certification and training of mediators and arbitrators and requires that DBPR-certified mediators must also be certified by the Florida Supreme Court.

Section 720.311(3), F.S., currently provides that the DBPR must develop an education program to assist homeowners, associations, board members, and managers in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations

or between owners. Current law also provides that the certification program for arbitrators and mediators and the education program for homeowners' associations and their members would be funded by moneys and filing fees generated by the arbitration and mediation proceedings.

Proposed Changes

This bill amends s. 720.311, F.S., to provide:

- That all references to mediation be changed to "presuit" mediation;
- That disputes subject to presuit mediation do not include the collection of any assessments, fines, or other financial obligations, including attorney's fees and costs, or any action to enforce a prior mediation settlement;
- That the presuit mediation requirements of s. 720.311, F.S., do not apply to any dispute where emergency relief is required;
- A form for the written offer to participate in presuit mediation titled "Statutory Offer to Participate in Presuit Mediation" that must be substantially followed by the aggrieved party and which is served on the responding party. The form provides that the party may waive presuit mediation so that this matter may proceed directly to court;
- That service of the statutory offer is effected by sending the statutory form, or a letter that conforms substantially to the statutory form, by certified mail, with an additional copy being sent via regular first-class mail, to the address of the responding party as it appears on the books and records of the association;
- That dispute resolution to resolve disputes between associations and a parcel owner is no longer within the jurisdiction of the Department of Business and Professional Regulation;
- That the responding party will have 20 days from the date the offer is mailed to serve a response in writing. The response is to be served by certified mail, with an additional copy being sent by regular first-class mail to the address shown on the offer;
- That the mediator may require advance payment of fees and costs. This bill removes the $200 filing fee requirement and other language providing for the fees for a DBPR mediator.
- That failure of either party to appear for mediation, respond to the offer, agree on a mediator, or pay the fees and costs will entitle the other party to seek an award of the costs and fees associated with mediation;
- That if presuit mediation cannot be conducted within 90 days after the offer to participate, then an impasse will be deemed unless both parties agree to extend the deadline;
- That any issue or dispute that is not resolved at presuit mediation, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; and
- That DBPR is no longer responsible for certification programs for mediators or education programs for homeowners' associations.

Beach Access

Proposed Changes

The bill creates s. 718.106(5), F.S., to prohibit local ordinances or regulations that limit the ability of unit owners or a condominium association to allow access by certain persons such as unit owners and their guests via their units or common areas to beaches that adjoin the condominium.

Equity Facilities Clubs

Proposed Changes

The bill amends s. 719.103, F.S., to define the term "equity facilities club". It also amends s. 719.507, F.S., to require that laws, ordinances, and regulations governing buildings and improvements on equity facilities clubs be equally applicable to all such buildings and improvements.

C. SECTION DIRECTORY:

Section 1 creates s. 712.11, F.S., to provide that homeowners' associations may use procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of Chapter 712, F.S.

Section 2 amends s. 718.106, F.S., regarding limitations on beach access permitted by condominium unit owners or associations.

Section 3 amends s. 718.110, F.S., providing for certain procedures for amending declarations of condominium, articles of incorporation, or bylaws where the declarations of condominium, articles of incorporation, or bylaws requires the association to obtain consent and joinder of mortgagees.

Section 4 amends s. 718.112, F.S., to revise the date after which local jurisdictions may require completion of retrofitting with sprinklers of common areas of certain condominiums.

Section 5 amends s. 718.114, F.S., limiting the ability of a condominium association to acquire leaseholds, memberships, or other possessory or use interests.

Section 6 amends s. 718.404, F.S., to provide that subsections (1) and (2) are intended to be applied retroactively as a remedial measure.

Section 7 amends s. 719.103, F.S., to create the definition of "equity facilities club".

Section 8 amends s. 719.507, F.S., regarding the application of certain building or zoning laws, ordinances, and regulations to equity facilities clubs.

Section 9 amends s. 720.302, F.S., to provide an exception to the current law that ch. 720, F.S., does not apply to any association under ch. 718, F.S., ch. 719, F.S., or ch. 721, F.S.

Section 10 amends s. 720.303, F.S., addressing open meetings requirements, the provision of information by the homeowners' association to prospective buyers or sellers, the provision of financial reports, and the requirements for association budgets.

Section 11 repeals s. 720.303(2), F.S.

Section 12 creates s. 720.3035, F.S., relating to architectural control covenants and parcel owner improvements.

Section 13 amends s. 720.305, F.S., to provide that a member who prevails in an action against an association may recover additional amounts for his or her member share of the assessment that he or she will have to pay for the association's legal fees and costs.

Section 14 amends s. 720.306, F.S., revising provisions pertaining to meetings of members and amendments providing that merger or consolidation of associations is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 15 amends s. 720.307, F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors, the developer must deliver the financial records of the association.

Section 16 amends s. 720.308, F.S., to establish guarantees of common expenses if a guarantee is not included in the purchase contract or declaration.

Section 17 amends s. 720.311, F.S., revising the dispute resolution provisions for disputes between an association and a parcel owner.

Section 18 provides an effective date of July 1, 2006, except as otherwise expressly provided in this bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Business and Professional Regulation (DBPR) estimates that this bill will result in a reduction of $126,018 in mediation filing fees and expenses received by the DBPR. It will also result in a reduction of $9,199 in service charges provided to General Revenue.[14]

2. Expenditures:

   The Department of Business and Professional Regulation will experience decreased workload as a result of no longer being required to perform homeowner association mediations. The department states, however, that it did not receive additional FTE's to perform homeowners' association mediations when the DBPR was originally assigned those responsibilities in FY 2004-05. The staff who have been conducting homeowners' association mediations also performs condominium mediations and the DBPR states they would return to those responsibilities full-time.

   According to the Legislative Analysis Form provided by DBPR, the bill's changes regarding mediation may result in increased court filings. During the roughly 12-month period from October 1, 2004 through November 22, 2005, the DBPR states that it received 1,007 petitions for mediation. Approximately 560 or 56% of these were settled and did not result in court filings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   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.

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[14] The fiscal impact on state government was provided by Matilde Phillips of the Department of Business and Professional Regulation on April 3, 2006.

2. Other:

Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[15] "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."[16] [17]

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.[18] The *Pomponio* Court indicated that the "well-accepted principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

> [T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.
> Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

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[15] Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . . "
[16] 10a Fla. Jur. s. 414, Constitutional Law.
[17] The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.
[18] The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

This bill amends s. 718.110, F.S., by providing certain notice requirements that the association and the unit owners must provide to mortgagees if the governing documents are amended and the mortgage was entered into before the effective date of this bill. This bill also provides that a mortgagee who does not respond to the notice is deemed to have consented to the amendment. Unit owners and mortgagees enter into a contractual relationship when they agree to the terms of a mortgage. Unit owners and a condominium association enter into a contractual relationship when the unit owner buys the condominium, thus agreeing to the rules and bylaws of the association. Both contractual relationships are entered into based on the law in place at that time. By changing the law as it relates to amending condominium documents and providing that the new laws will apply to preexisting contracts, this bill could possibly be a violation of the Contract Clause of the Florida Constitution.

There could also be some possible constitutional problems with the changes made in this bill to subsections (1) and (2) of s. 718.404, F.S. This bill amends this section to make these subsections apply retroactively. This could lead to contract clause violations if it were found to impair existing contracts.

B. RULE-MAKING AUTHORITY:

None. However, the bill may require the repeal of Ch. 61B-82, F.A.C., containing the mediation rules of procedure.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Civil Justice Committee adopted 9 amendments to this bill. The amendments made the following revisions to the bill:

- Provides for the use of accounting principles as adopted by the Florida Board of Accountancy.
- Provides that the annual budget of homeowners' associations include the annual operating expenses and reserve accounts for capital expenditures and deferred maintenance.
- Provides that complete financial records of homeowners' associations be included with the documents that the developer must deliver at the time the members of the association are entitled to elect at least a majority of the board of directors.
- Provides for guarantees of common expenses when a guarantee is not included in the purchase contract or declaration. The amendment provides for the guarantee time period, maximum level of assessments, cash funding requirements during the guarantee, calculations of guarantor's final obligation, and for funding of expenses incurred in the production of non-assessment revenues.
- Provides that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.
- Provides that in s. 718.404, F.S., regarding mixed-use condominiums, the following provisions are intended to apply retroactively as a remedial measure: (1) In mixed-use condominiums, the commercial unit owner cannot veto condominium documents; and (2) Where there are 50% residential units, the residential owners are entitled to vote for a majority of the seats on the board of administration.
- Removes section 8 of the bill regarding requirements for proposed revived declarations and other governing documents.
- Removes the phrase "not for profit" from s. 720.302(5), F.S., regarding the purpose and scope of ch. 720, F.S., so that it is in conformity with other revisions in the bill.

- Changes the phrase "100 members" to the more correct "100 parcels"[19] in s. 720.303(2)(c)1., F.S.

The bill was then reported favorably with a committee substitute.

On April 4, 2006, the Judiciary Appropriations Committee adopted a strike-all amendment. This amendment:

- Revises s. 718.110, F.S., regarding mortgagee consent to certain amendments to declarations, articles of incorporation, or bylaws of condominium associations.
- Revises the date after which local authorities having jurisdiction may require completion of retrofitting of common areas of a certain condominiums with a sprinkler system to the end of 2025.
- Defines the term "equity facilities club" and requires that laws, ordinances, and regulations governing buildings and improvements on equity facilities clubs be equally applicable to such buildings and improvements.
- Creates s. 718.106, F.S., to prohibit local ordinances or regulations that limit the access of certain persons such as unit owners or their guests via their units or common areas to beaches that adjoin condominiums.
- Creates s. 720.3035, F.S., governing architectural control decisions by a homeowners' association.
- Revises s. 720.303, F.S., regarding homeowners' association budgets.

The bill was then reported favorably with a committee substitute.

[19] This change was necessary because the use of members could vary if you had several members per parcel or if every parcel only had one member. By using 100 parcels, there is a determined set number that will not vary.

CHAMBER ACTION

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1 The Judiciary Appropriations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to community associations; creating s.
7 712.11, F.S.; providing for the revival of certain
8 covenants that have lapsed; amending s. 718.106, F.S.;
9 prohibiting local ordinances that limit the access of
10 certain persons to beaches that adjoin condominiums;
11 amending s. 718.110, F.S.; revising provisions relating to
12 the amendment of declarations; providing legislative
13 findings and a finding of compelling state interest;
14 providing criteria for consent to an amendment; requiring
15 notice regarding proposed amendments to mortgagees;
16 providing criteria for notification; providing for voiding
17 certain amendments; amending s. 718.112, F.S.; revising
18 the implementation date for retrofitting of common areas
19 with a sprinkler system; amending s. 718.114, F.S.;
20 providing that certain leaseholds, memberships, or other
21 possessory or use interests shall be considered a material
22 alteration or substantial addition to certain real
23 property; amending s. 718.404, F.S.; providing retroactive

24 application of provisions relating to mixed-use
25 condominiums; amending s. 719.103, F.S.; providing a
26 definition; amending s. 719.507, F.S.; prohibiting laws,
27 ordinances, or regulations that apply only to improvements
28 that are or may be subjected to an equity club form of
29 ownership; amending s. 720.302, F.S.; revising governing
30 provisions relating to corporations that operate
31 residential homeowners' associations; amending s. 720.303,
32 F.S.; revising application to include certain meetings;
33 requiring the association to provide certain information
34 to prospective purchasers or lienholders; authorizing the
35 association to charge a reasonable fee for providing
36 certain information; requiring the budget to provide for
37 annual operating expenses; authorizing the budget to
38 include reserve accounts for capital expenditures and
39 deferred maintenance; providing a formula for calculating
40 the amount to be reserved; authorizing the association to
41 adjust replacement reserve assessments annually;
42 authorizing the developer to vote to waive the reserves or
43 reduce the funding of reserves for a certain period;
44 revising provisions relating to financial reporting;
45 revising time periods in which the association must
46 complete its reporting; repealing s. 720.303(2), F.S., as
47 amended, relating to board meetings, to remove conflicting
48 versions of that subsection; creating s. 720.3035, F.S.;
49 providing for architectural control covenants and parcel
50 owner improvements; authorizing the review and approval of
51 plans and specifications; providing limitations; providing

52 rights and privileges for parcel owners as set forth in
53 the declaration of covenants; amending s. 720.305, F.S.;
54 providing that, where a member is entitled to collect
55 attorney's fees against the association, the member may
56 also recover additional amounts as determined by the
57 court; amending s. 720.306, F.S.; providing that certain
58 mergers or consolidations of an association shall not be
59 considered a material or adverse alteration of the
60 proportionate voting interest appurtenant to a parcel;
61 amending s. 720.307, F.S.; requiring developers to deliver
62 financial records to the board in any transition of
63 association control to members; requiring certain
64 information to be included in the records and for the
65 records to be prepared in a specified manner; amending s.
66 720.308, F.S.; providing circumstances under which a
67 guarantee of common expenses shall be effective; providing
68 for approval of the guarantee by association members;
69 providing for a guarantee period and extension thereof;
70 requiring the stated dollar amount of the guarantee to be
71 an exact dollar amount for each parcel identified in the
72 declaration; providing payments required from the
73 guarantor to be determined in a certain manner; providing
74 a formula to determine the guarantor's total financial
75 obligation to the association; providing that certain
76 expenses incurred in the production of certain revenues
77 shall not be included in the operating expenses; amending
78 s. 720.311, F.S.; revising provisions relating to dispute
79 resolution; providing that the filing of any petition for

80 arbitration or the serving of an offer for presuit
81 mediation shall toll the applicable statute of
82 limitations; providing that certain disputes between an
83 association and a parcel owner shall be subject to presuit
84 mediation; revising provisions to conform; providing that
85 temporary injunctive relief may be sought in certain
86 disputes subject to presuit mediation; authorizing the
87 court to refer the parties to mediation under certain
88 circumstances; requiring the aggrieved party to serve on
89 the responding party a written offer to participate in
90 presuit mediation; providing a form for such offer;
91 providing that service of the offer is effected by the
92 sending of such an offer in a certain manner; providing
93 that the prevailing party in any subsequent arbitration or
94 litigation proceedings is entitled to seek recovery of all
95 costs and attorney's fees incurred in the presuit
96 mediation process; requiring the mediator or arbitrator to
97 meet certain certification requirements; removing a
98 requirement relating to development of an education
99 program to increase awareness of the operation of
100 homeowners' associations and the use of alternative
101 dispute resolution techniques; providing effective dates.
102
103 Be It Enacted by the Legislature of the State of Florida:
104
105 Section 1. Section 712.11, Florida Statutes, is created to
106 read:

107 712.11 Covenant revitalization.--A homeowners' association
108 not otherwise subject to chapter 720 may use the procedures set
109 forth in ss. 720.403-720.407 to revive covenants that have
110 lapsed under the terms of this chapter.
111 Section 2. Subsection (5) is added to section 718.106,
112 Florida Statutes, to read:
113 718.106 Condominium parcels; appurtenances; possession and
114 enjoyment.--
115 (5) A local ordinance or regulation may not establish any
116 limitation on the ability of unit owners or an association to
117 permit guests, licensees, members, or invitees to use or access
118 their units or common elements for the purpose of accessing a
119 public beach or private beach adjacent to the condominium.
120 Section 3. Effective October 1, 2006, subsection (11) of
121 section 718.110, Florida Statutes, is amended to read:
122 718.110 Amendment of declaration; correction of error or
123 omission in declaration by circuit court.--
124 (11) The Legislature finds that the procurement of
125 mortgagee consent to amendments that do not affect the rights or
126 interests of mortgagees is an unreasonable and substantial
127 logistical and financial burden on the unit owners and that
128 there is a compelling state interest in enabling the members of
129 a condominium association to approve amendments to the
130 condominium documents through legal means. Accordingly, and
131 notwithstanding any provision to the contrary contained in this
132 section:
133 (a) As to any mortgage recorded on or after October 1,
134 2006, any provision in the declaration, articles of

135 incorporation, or bylaws that requires ~~recorded after April 1,~~
136 ~~1992, may not require~~ the consent or joinder of some or all
137 mortgagees of units or any other portion of the condominium
138 property to or in amendments to the declaration, articles of
139 incorporation, or bylaws or for any other matter shall be
140 enforceable only as to the following matters: ~~unless the~~
141 ~~requirement is limited to amendments materially affecting the~~
142 ~~rights or interests of the mortgagees, or as otherwise required~~
143 ~~by the Federal National Mortgage Association or the Federal Home~~
144 ~~Loan Mortgage Corporation, and unless the requirement provides~~
145 ~~that such consent may not be unreasonably withheld. It shall be~~
146 ~~presumed that, except as to~~
147 1. Those matters described in subsections (4) and (8).~~,~~
148 2. Amendments to the declaration, articles of
149 incorporation, or bylaws that adversely affect the priority of
150 the mortgagee's lien or the mortgagee's rights to foreclose its
151 lien or that otherwise materially affect the rights and
152 interests of the mortgagees.
153 (b) As to mortgages recorded before October 1, 2006, any
154 existing provisions in the declaration, articles of
155 incorporation, or bylaws requiring mortgagee consent shall be
156 enforceable.
157 (c) In securing consent or joinder, the association shall
158 be entitled to rely upon the public records to identify the
159 holders of outstanding mortgages. The association may use the
160 address provided in the original recorded mortgage document,
161 unless there is a different address for the holder of the
162 mortgage in a recorded assignment or modification of the

163 mortgage, which recorded assignment or modification must
164 reference the official records book and page on which the
165 original mortgage was recorded. Once the association has
166 identified the recorded mortgages of record, the association
167 shall, in writing, request of each unit owner whose unit is
168 encumbered by a mortgage of record any information the owner has
169 in his or her possession regarding the name and address of the
170 person to whom mortgage payments are currently being made.
171 Notice shall be sent to such person if the address provided in
172 the original recorded mortgage document is different from the
173 name and address of the mortgagee or assignee of the mortgage as
174 shown by the public record. The association shall be deemed to
175 have complied with this requirement by making the written
176 request of the unit owners required under this paragraph. Any
177 notices required to be sent to the mortgagees under this
178 paragraph shall be sent to all available addresses provided to
179 the association.
180 (d) Any notice to the mortgagees required under paragraph
181 (c) may be sent by a method that establishes proof of delivery,
182 and any mortgagee who fails to respond within 60 days after the
183 date of mailing shall be deemed to have consented to the
184 amendment.
185 (e) For those amendments requiring mortgagee consent on or
186 after October 1, 2006, ~~do not materially affect the rights or~~
187 ~~interests of mortgagees.~~ in the event mortgagee consent is
188 provided other than by properly recorded joinder, such consent
189 shall be evidenced by affidavit of the association recorded in
190 the public records of the county where the declaration is

191 recorded. Any amendment adopted without the required consent of
192 a mortgagee shall be voidable only by a mortgagee who was
193 entitled to notice and an opportunity to consent. An action to
194 void an amendment shall be subject to the statute of limitations
195 beginning 5 years from the date of discovery as to the
196 amendments described in subparagraph (a)2. and 5 years from the
197 date of recordation of the certificate of amendment for all
198 other amendments. This provision shall apply to all mortgages,
199 regardless of the date of recordation of the mortgage.
200 Section 4. Paragraph (l) of subsection (2) of section
201 718.112, Florida Statutes, is amended to read:
202 718.112 Bylaws.--
203 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the
204 following and, if they do not do so, shall be deemed to include
205 the following:
206 (l) Certificate of compliance.--There shall be a provision
207 that a certificate of compliance from a licensed electrical
208 contractor or electrician may be accepted by the association's
209 board as evidence of compliance of the condominium units with
210 the applicable fire and life safety code. Notwithstanding the
211 provisions of chapter 633 or of any other code, statute,
212 ordinance, administrative rule, or regulation, or any
213 interpretation of the foregoing, an association, condominium, or
214 unit owner is not obligated to retrofit the common elements or
215 units of a residential condominium with a fire sprinkler system
216 or other engineered lifesafety system in a building that has
217 been certified for occupancy by the applicable governmental
218 entity, if the unit owners have voted to forego such

219 retrofitting and engineered lifesafety system by the affirmative
220 vote of two-thirds of all voting interests in the affected
221 condominium. However, a condominium association may not vote to
222 forego the retrofitting with a fire sprinkler system of common
223 areas in a high-rise building. For purposes of this subsection,
224 the term "high-rise building" means a building that is greater
225 than 75 feet in height where the building height is measured
226 from the lowest level of fire department access to the floor of
227 the highest occupiable story. For purposes of this subsection,
228 the term "common areas" means any enclosed hallway, corridor,
229 lobby, stairwell, or entryway. In no event shall the local
230 authority having jurisdiction require completion of retrofitting
231 of common areas with a sprinkler system before the end of 2025
232 ~~2014~~.
233 1. A vote to forego retrofitting may be obtained by
234 limited proxy or by a ballot personally cast at a duly called
235 membership meeting, or by execution of a written consent by the
236 member, and shall be effective upon the recording of a
237 certificate attesting to such vote in the public records of the
238 county where the condominium is located. The association shall
239 mail, hand deliver, or electronically transmit to each unit
240 owner written notice at least 14 days prior to such membership
241 meeting in which the vote to forego retrofitting of the required
242 fire sprinkler system is to take place. Within 30 days after the
243 association's opt-out vote, notice of the results of the opt-out
244 vote shall be mailed, hand delivered, or electronically
245 transmitted to all unit owners. Evidence of compliance with this
246 30-day notice shall be made by an affidavit executed by the

247 person providing the notice and filed among the official records
248 of the association. After such notice is provided to each owner,
249 a copy of such notice shall be provided by the current owner to
250 a new owner prior to closing and shall be provided by a unit
251 owner to a renter prior to signing a lease.
252 2. As part of the information collected annually from
253 condominiums, the division shall require condominium
254 associations to report the membership vote and recording of a
255 certificate under this subsection and, if retrofitting has been
256 undertaken, the per-unit cost of such work. The division shall
257 annually report to the Division of State Fire Marshal of the
258 Department of Financial Services the number of condominiums that
259 have elected to forego retrofitting.
260 Section 5. Section 718.114, Florida Statutes, is amended
261 to read:
262 718.114 Association powers.--An association has the power
263 to enter into agreements, to acquire leaseholds, memberships,
264 and other possessory or use interests in lands or facilities
265 such as country clubs, golf courses, marinas, and other
266 recreational facilities. It has this power whether or not the
267 lands or facilities are contiguous to the lands of the
268 condominium, if they are intended to provide enjoyment,
269 recreation, or other use or benefit to the unit owners. All of
270 these leaseholds, memberships, and other possessory or use
271 interests existing or created at the time of recording the
272 declaration must be stated and fully described in the
273 declaration. Subsequent to the recording of the declaration,
274 agreements acquiring these leaseholds, memberships, or other

275 possessory or use interests not entered into within 12 months
276 following the recording of the declaration shall be considered a
277 material alteration or substantial addition to the real property
278 that is association property, and the association may not
279 acquire or enter into agreements acquiring these leaseholds,
280 memberships, or other possessory or use interests except as
281 authorized by the declaration as provided in s. 718.113. The
282 declaration may provide that the rental, membership fees,
283 operations, replacements, and other expenses are common expenses
284 and may impose covenants and restrictions concerning their use
285 and may contain other provisions not inconsistent with this
286 chapter. A condominium association may conduct bingo games as
287 provided in s. 849.0931.
288 Section 6. Subsections (1) and (2) of section 718.404,
289 Florida Statutes, are amended to read:
290 718.404 Mixed-use condominiums.--When a condominium
291 consists of both residential and commercial units, the following
292 provisions shall apply:
293 (1) The condominium documents shall not provide that the
294 owner of any commercial unit shall have the authority to veto
295 amendments to the declaration, articles of incorporation,
296 bylaws, or rules or regulations of the association. This
297 subsection shall apply retroactively as a remedial measure.
298 (2) Subject to s. 718.301, where the number of residential
299 units in the condominium equals or exceeds 50 percent of the
300 total units operated by the association, owners of the
301 residential units shall be entitled to vote for a majority of

302 the seats on the board of administration. This subsection shall
303 apply retroactively as a remedial measure.
304 Section 7. Subsections (18) through (27) of section
305 719.103, Florida Statutes, are renumbered as subsections (19)
306 through (28), respectively, and a new subsection (18) is added
307 to that section to read:
308 719.103 Definitions.--As used in this chapter:
309 (18) "Equity facilities club" means a club comprised of
310 recreational facilities in which proprietary membership
311 interests are sold to individuals, which membership interests
312 entitle the individuals to use certain physical facilities owned
313 by the equity club. Such physical facilities do not include a
314 residential unit or accommodation. For purposes of this
315 definition, the term "accommodation" shall include, but is not
316 limited to, any apartment, residential cooperative unit,
317 residential condominium unit, cabin, lodge, hotel or motel room,
318 or any other accommodation designed for overnight occupancy for
319 one or more individuals.
320 Section 8. Section 719.507, Florida Statutes, is amended
321 to read:
322 719.507 Zoning and building laws, ordinances, and
323 regulations.--All laws, ordinances, and regulations concerning
324 buildings or zoning shall be construed and applied with
325 reference to the nature and use of such property, without regard
326 to the form of ownership. No law, ordinance, or regulation shall
327 establish any requirement concerning the use, location,
328 placement, or construction of buildings or other improvements
329 which are, or may thereafter be, subjected to the cooperative or

330 equity facilities club form of ownership, unless such
331 requirement shall be equally applicable to all buildings and
332 improvements of the same kind not then, or thereafter to be,
333 subjected to the cooperative or equity facilities club form of
334 ownership. This section does not apply if the owner in fee of
335 any land enters into and records a covenant that existing
336 improvements or improvements to be constructed shall not be
337 converted to the cooperative form of residential ownership prior
338 to 5 years after the later of the date of the covenant or
339 completion date of the improvements. Such covenant shall be
340 entered into with the governing body of the municipality in
341 which the land is located or, if the land is not located in a
342 municipality, with the governing body of the county in which the
343 land is located.
344 Section 9. Subsections (4) and (5) of section 720.302,
345 Florida Statutes, are amended to read:
346 720.302 Purposes, scope, and application.--
347 (4) This chapter does not apply to any association that is
348 subject to regulation under chapter 718, chapter 719, or chapter
349 721~~,~~ or to any nonmandatory association formed under chapter
350 723, except to the extent that a provision of chapter 718,
351 chapter 719, or chapter 721 is expressly incorporated into this
352 chapter for the purpose of regulating homeowners' associations.
353 (5) Unless expressly stated to the contrary, corporations
354 ~~not for profit~~ that operate residential homeowners' associations
355 in this state shall be governed by and subject to chapter 607,
356 if the association was incorporated under that chapter, or to
357 chapter 617, if the association was incorporated under that

358 chapter, and this chapter. This subsection is intended to
359 clarify existing law.
360 Section 10. Paragraph (a) of subsection (2), subsection
361 (6), and subsection (7) of section 720.303, Florida Statutes, as
362 amended by section 18 of chapter 2004-345 and section 135 of
363 chapter 2005-2, Laws of Florida, are amended, and paragraph (d)
364 is added to subsection (5) of that section, to read:
365 720.303 Association powers and duties; meetings of board;
366 official records; budgets; financial reporting; association
367 funds; recalls.--
368 (2) BOARD MEETINGS.--
369 (a) A meeting of the board of directors of an association
370 occurs whenever a quorum of the board gathers to conduct
371 association business. All meetings of the board must be open to
372 all members except for meetings between the board and its
373 attorney with respect to proposed or pending litigation where
374 the contents of the discussion would otherwise be governed by
375 the attorney-client privilege. The provisions of this subsection
376 shall also apply to the meetings of any committee or other
377 similar body when a final decision will be made regarding the
378 expenditure of association funds and to meetings of any body
379 vested with the power to approve or disapprove architectural
380 decisions with respect to a specific parcel of residential
381 property owned by a member of the community.
382 (5) INSPECTION AND COPYING OF RECORDS.--The official
383 records shall be maintained within the state and must be open to
384 inspection and available for photocopying by members or their
385 authorized agents at reasonable times and places within 10

386 business days after receipt of a written request for access.
387 This subsection may be complied with by having a copy of the
388 official records available for inspection or copying in the
389 community. If the association has a photocopy machine available
390 where the records are maintained, it must provide parcel owners
391 with copies on request during the inspection if the entire
392 request is limited to no more than 25 pages.
393 (d) The association or its authorized agent is not
394 required to provide a prospective purchaser or lienholder with
395 information about the residential subdivision or the association
396 other than information or documents required by this chapter to
397 be made available or disclosed. The association or its
398 authorized agent may charge a reasonable fee to the prospective
399 purchaser or lienholder or the current parcel owner or member
400 for providing good faith responses to requests for information
401 by or on behalf of a prospective purchaser or lienholder, other
402 than that required by law, if the fee does not exceed $50 plus
403 the reasonable cost of photocopying and any attorney's fees
404 incurred by the association in connection with the response.
405 (6) BUDGETS.--
406 (a) The association shall prepare an annual budget that
407 sets out the annual operating expenses. The budget must reflect
408 the estimated revenues and expenses for that year and the
409 estimated surplus or deficit as of the end of the current year.
410 The budget must set out separately all fees or charges paid for
411 by the association for recreational amenities, whether owned by
412 the association, the developer, or another person. The
413 association shall provide each member with a copy of the annual

414 budget or a written notice that a copy of the budget is
415 available upon request at no charge to the member. The copy must
416 be provided to the member within the time limits set forth in
417 subsection (5).
418 (b) In addition to annual operating expenses, the budget
419 may include reserve accounts for capital expenditures and
420 deferred maintenance for which the association is responsible to
421 the extent that the governing documents do not limit increases
422 in assessments, including reserves. If the budget of the
423 association includes reserve accounts, such reserves shall be
424 determined, maintained, and waived in the manner provided in
425 this subsection. Once an association provides for reserve
426 accounts in the budget, the association shall thereafter
427 determine, maintain, and waive reserves in compliance with the
428 provisions of this subsection.
429 (c) If the budget of the association does not provide for
430 reserve accounts governed by this subsection and the association
431 is responsible for the repair and maintenance of capital
432 improvements that may result in a special assessment if reserves
433 are not provided, each financial report for the preceding fiscal
434 year required by subsection (7) shall contain the following
435 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
436 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
437 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
438 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
439 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
440 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
441 INTERESTS OF THE ASSOCIATION.

442 (d) An association shall be deemed to have provided for
443 reserve accounts when reserve accounts have been initially
444 established by the developer or when the membership of the
445 association affirmatively elects to provide for reserves. If
446 reserve accounts are not initially provided for by the
447 developer, the membership of the association may elect to do so
448 upon the affirmative approval of not less than a majority of the
449 total voting interests of the association. Such approval may be
450 attained by vote of the members at a duly called meeting of the
451 membership or upon a written consent executed by not less than a
452 majority of the total voting interests in the community. The
453 approval action of the membership shall state that reserve
454 accounts shall be provided for in the budget and designate the
455 components for which the reserve accounts are to be established.
456 Upon approval by the membership, the board of directors shall
457 provide for the required reserve accounts for inclusion in the
458 budget in the next fiscal year following the approval and in
459 each year thereafter. Once established as provided in this
460 subsection, the reserve accounts shall be funded or maintained
461 or shall have their funding waived in the manner provided in
462 paragraph (f).
463 (e) The amount to be reserved in any account established
464 shall be computed by means of a formula that is based upon
465 estimated remaining useful life and estimated replacement cost
466 or deferred maintenance expense of each reserve item. The
467 association may adjust replacement reserve assessments annually
468 to take into account any changes in estimates of cost or useful
469 life of a reserve item.

470 (f) Once a reserve account or reserve accounts are
471 established, the membership of the association, upon a majority
472 vote at a meeting at which a quorum is present, may provide for
473 no reserves or less reserves than required by this section. If a
474 meeting of the unit owners has been called to determine whether
475 to waive or reduce the funding of reserves and no such result is
476 achieved or a quorum is not present, the reserves as included in
477 the budget shall go into effect. After the turnover, the
478 developer may vote its voting interest to waive or reduce the
479 funding of reserves. Any vote taken pursuant to this subsection
480 to waive or reduce reserves shall be applicable only to one
481 budget year.
482 (g) Funding formulas for reserves authorized by this
483 section shall be based on either a separate analysis of each of
484 the required assets or a pooled analysis of two or more of the
485 required assets.
486 1. If the association maintains separate reserve accounts
487 for each of the required assets, the amount of the contribution
488 to each reserve account shall be the sum of the following two
489 calculations:
490 a. The total amount necessary, if any, to bring a negative
491 component balance to zero.
492 b. The total estimated deferred maintenance expense or
493 estimated replacement cost of the reserve component less the
494 estimated balance of the reserve component as of the beginning
495 of the period for which the budget will be in effect. The
496 remainder, if greater than zero, shall be divided by the
497 estimated remaining useful life of the component.

498
499 The formula may be adjusted each year for changes in estimates
500 and deferred maintenance performed during the year and may
501 include factors such as inflation and earnings on invested
502 funds.
503 2. If the association maintains a pooled account of two or
504 more of the required reserve assets, the amount of the
505 contribution to the pooled reserve account as disclosed on the
506 proposed budget shall not be less than that required to ensure
507 that the balance on hand at the beginning of the period for
508 which the budget will go into effect plus the projected annual
509 cash inflows over the remaining estimated useful life of all of
510 the assets that make up the reserve pool are equal to or greater
511 than the projected annual cash outflows over the remaining
512 estimated useful lives of all of the assets that make up the
513 reserve pool, based on the current reserve analysis. The
514 projected annual cash inflows may include estimated earnings
515 from investment of principal. The reserve funding formula shall
516 not include any type of balloon payments.
517 (h) Reserve funds and any interest accruing thereon shall
518 remain in the reserve account or accounts and shall be used only
519 for authorized reserve expenditures unless their use for other
520 purposes is approved in advance by a majority vote at a meeting
521 at which a quorum is present. Prior to turnover of control of an
522 association by a developer to parcel owners, the developer-
523 controlled association shall not vote to use reserves for
524 purposes other than those for which they were intended without
525 the approval of a majority of all nondeveloper voting interests

526 voting in person or by limited proxy at a duly called meeting of
527 the association.
528 (7) FINANCIAL REPORTING.--Within 90 days after the end of
529 the fiscal year, or annually on the date provided in the bylaws,
530 the association shall prepare and complete, or contract with a
531 third party for the preparation and completion of, a financial
532 report for the preceding fiscal year. Within 21 days after the
533 final financial report is completed by the association or
534 received from the third party, but not later than 120 days after
535 the end of the fiscal year or other date as provided in the
536 bylaws, the association shall ~~prepare an annual financial report~~
537 ~~within 60 days after the close of the fiscal year. The~~
538 ~~association shall~~, within the time limits set forth in
539 subsection (5), provide each member with a copy of the annual
540 financial report or a written notice that a copy of the
541 financial report is available upon request at no charge to the
542 member. Financial reports shall be prepared as follows:
543 (a) An association that meets the criteria of this
544 paragraph shall prepare or cause to be prepared a complete set
545 of financial statements in accordance with generally accepted
546 accounting principles as adopted by the Board of Accountancy.
547 The financial statements shall be based upon the association's
548 total annual revenues, as follows:
549 1. An association with total annual revenues of $100,000
550 or more, but less than $200,000, shall prepare compiled
551 financial statements.

552 2. An association with total annual revenues of at least
553 $200,000, but less than $400,000, shall prepare reviewed
554 financial statements.
555 3. An association with total annual revenues of $400,000
556 or more shall prepare audited financial statements.
557 (b)1. An association with total annual revenues of less
558 than $100,000 shall prepare a report of cash receipts and
559 expenditures.
560 2. An association in a community of fewer than 50 parcels,
561 regardless of the association's annual revenues, may prepare a
562 report of cash receipts and expenditures in lieu of financial
563 statements required by paragraph (a) unless the governing
564 documents provide otherwise.
565 3. A report of cash receipts and disbursement must
566 disclose the amount of receipts by accounts and receipt
567 classifications and the amount of expenses by accounts and
568 expense classifications, including, but not limited to, the
569 following, as applicable: costs for security, professional, and
570 management fees and expenses; taxes; costs for recreation
571 facilities; expenses for refuse collection and utility services;
572 expenses for lawn care; costs for building maintenance and
573 repair; insurance costs; administration and salary expenses; and
574 reserves if maintained by the association.
575 (c) If 20 percent of the parcel owners petition the board
576 for a level of financial reporting higher than that required by
577 this section, the association shall duly notice and hold a
578 meeting of members within 30 days of receipt of the petition for
579 the purpose of voting on raising the level of reporting for that

580 fiscal year. Upon approval of a majority of the total voting
581 interests of the parcel owners, the association shall prepare or
582 cause to be prepared, shall amend the budget or adopt a special
583 assessment to pay for the financial report regardless of any
584 provision to the contrary in the governing documents, and shall
585 provide within 90 days of the meeting or the end of the fiscal
586 year, whichever occurs later:
587 1. Compiled, reviewed, or audited financial statements, if
588 the association is otherwise required to prepare a report of
589 cash receipts and expenditures;
590 2. Reviewed or audited financial statements, if the
591 association is otherwise required to prepare compiled financial
592 statements; or
593 3. Audited financial statements if the association is
594 otherwise required to prepare reviewed financial statements.
595 (d) If approved by a majority of the voting interests
596 present at a properly called meeting of the association, an
597 association may prepare or cause to be prepared:
598 1. A report of cash receipts and expenditures in lieu of a
599 compiled, reviewed, or audited financial statement;
600 2. A report of cash receipts and expenditures or a
601 compiled financial statement in lieu of a reviewed or audited
602 financial statement; or
603 3. A report of cash receipts and expenditures, a compiled
604 financial statement, or a reviewed financial statement in lieu
605 of an audited financial statement.

606 Section 11. Subsection (2) of section 720.303, Florida
607 Statutes, as amended by section 2 of chapter 2004-345 and
608 section 15 of chapter 2004-353, Laws of Florida, is repealed.
609 Section 12. Section 720.3035, Florida Statutes, is created
610 to read:
611 720.3035 Architectural control covenants; parcel owner
612 improvements; rights and privileges.--
613 (1) The authority of an association or any architectural,
614 construction improvement, or other such similar committee of an
615 association to review and approve plans and specifications for
616 the location, size, type, or appearance of any structure or
617 other improvement on a parcel, or to enforce standards for the
618 external appearance of any structure or improvement located on a
619 parcel, shall only be permitted to the extent that the authority
620 is specifically stated or reasonably inferred as to such
621 location, size, type, or appearance in the declaration of
622 covenants or other published guidelines and standards authorized
623 by the declaration of covenants.
624 (2) If the declaration of covenants or other published
625 guidelines and standards authorized by the declaration of
626 covenants provides options for the use of material, the size of
627 the structure or improvement, the design of the structure or
628 improvement, or the location of the structure or improvement on
629 the parcel, neither the association nor any architectural,
630 construction improvement, or other such similar committee of the
631 association shall restrict the right of a parcel owner to select
632 from the options provided in the declaration of covenants or

633 other published guidelines and standards authorized by the
634 declaration of covenants.
635 (3) Unless otherwise specifically stated in the
636 declaration of covenants or other published guidelines and
637 standards authorized by the declaration of covenants, each
638 parcel shall be deemed to have only one front for purposes of
639 determining the required front setback even if the parcel is
640 bounded by a roadway or other easement on more than one side.
641 When the declaration of covenants or other published guidelines
642 and standards authorized by the declaration of covenants do not
643 provide for specific setback limitations, the applicable county
644 or municipal setback limitations shall apply, and neither the
645 association nor any architectural, construction improvement, or
646 other such similar committee of the association shall enforce or
647 attempt to enforce any setback limitation that is inconsistent
648 with the applicable county or municipal standard or standards.
649 (4) Each parcel owner shall be entitled to the rights and
650 privileges set forth in the declaration of covenants or other
651 published guidelines and standards authorized by the declaration
652 of covenants concerning the use of the parcel, and the
653 construction of permitted structures and improvements on the
654 parcel and such rights and privileges shall not be unreasonably
655 infringed upon or impaired by the association or any
656 architectural, construction improvement, or other such similar
657 committee of the association. If the association or any
658 architectural, construction improvement, or other such similar
659 committee of the association should knowingly and willfully
660 infringe upon or impair the rights and privileges set forth in

661 the declaration of covenants or other published guidelines and
662 standards authorized by the declaration of covenants, the
663 adversely affected parcel owner shall be entitled to recover
664 damages caused by such infringement or impairment, including any
665 costs and reasonable attorney's fees incurred in preserving or
666 restoring the rights and privileges of the parcel owner set
667 forth in the declaration of covenants or other published
668 guidelines and standards authorized by the declaration of
669 covenants.
670 (5) Neither the association nor any architectural,
671 construction improvement, or other such similar committee of the
672 association shall enforce any policy or restriction that is
673 inconsistent with the rights and privileges of a parcel owner
674 set forth in the declaration of covenants or other published
675 guidelines and standards authorized by the declaration of
676 covenants, whether uniformly applied or not. Neither the
677 association nor any architectural, construction improvement, or
678 other such similar committee of the association may rely upon a
679 policy or restriction that is inconsistent with the declaration
680 of covenants or other published guidelines and standards
681 authorized by the declaration of covenants, whether uniformly
682 applied or not, in defense of any action taken in the name of or
683 on behalf of the association against a parcel owner.
684 Section 13. Subsection (1) of section 720.305, Florida
685 Statutes, is amended to read:
686 720.305 Obligations of members; remedies at law or in
687 equity; levy of fines and suspension of use rights; failure to
688 fill sufficient number of vacancies on board of directors to

689 constitute a quorum; appointment of receiver upon petition of
690 any member.--
691 (1) Each member and the member's tenants, guests, and
692 invitees, and each association, are governed by, and must comply
693 with, this chapter, the governing documents of the community,
694 and the rules of the association. Actions at law or in equity,
695 or both, to redress alleged failure or refusal to comply with
696 these provisions may be brought by the association or by any
697 member against:
698 (a) The association;
699 (b) A member;
700 (c) Any director or officer of an association who
701 willfully and knowingly fails to comply with these provisions;
702 and
703 (d) Any tenants, guests, or invitees occupying a parcel or
704 using the common areas.
705
706 The prevailing party in any such litigation is entitled to
707 recover reasonable attorney's fees and costs. A member
708 prevailing in an action between the association and the member
709 under this section, in addition to recovering his or her
710 reasonable attorney's fees, may recover additional amounts as
711 determined by the court to be necessary to reimburse the member
712 for his or her share of assessments levied by the association to
713 fund its expenses of the litigation. This relief does not
714 exclude other remedies provided by law. This section does not
715 deprive any person of any other available right or remedy.

716 Section 14. Paragraph (c) of subsection (1) of section
717 720.306, Florida Statutes, is amended to read:
718 720.306 Meetings of members; voting and election
719 procedures; amendments.--
720 (1) QUORUM; AMENDMENTS.--
721 (c) Unless otherwise provided in the governing documents
722 as originally recorded or permitted by this chapter or chapter
723 617, an amendment may not materially and adversely alter the
724 proportionate voting interest appurtenant to a parcel or
725 increase the proportion or percentage by which a parcel shares
726 in the common expenses of the association unless the record
727 parcel owner and all record owners of liens on the parcels join
728 in the execution of the amendment. For purposes of this section,
729 a change in quorum requirements is not an alteration of voting
730 interests. <u>The merger or consolidation of one or more</u>
731 <u>associations under a plan of merger or consolidation under</u>
732 <u>chapter 607 or chapter 617 shall not be considered a material or</u>
733 <u>adverse alteration of the proportionate voting interest</u>
734 <u>appurtenant to a parcel.</u>
735 Section 15. Paragraph (t) is added to subsection (3) of
736 section 720.307, Florida Statutes, to read:
737 720.307 Transition of association control in a
738 community.--With respect to homeowners' associations:
739 (3) At the time the members are entitled to elect at least
740 a majority of the board of directors of the homeowners'
741 association, the developer shall, at the developer's expense,
742 within no more than 90 days deliver the following documents to
743 the board:

744 (t) The financial records, including financial statements
745 of the association, and source documents from the incorporation
746 of the association through the date of turnover. The records
747 shall be audited by an independent certified public accountant
748 for the period from the incorporation of the association or from
749 the period covered by the last audit, if an audit has been
750 performed for each fiscal year since incorporation. All
751 financial statements shall be prepared in accordance with
752 generally accepted accounting principles and shall be audited in
753 accordance with generally accepted auditing standards, as
754 prescribed by the Board of Accountancy, pursuant to chapter 473.
755 The certified public accountant performing the audit shall
756 examine to the extent necessary supporting documents and
757 records, including the cash disbursements and related paid
758 invoices to determine if expenditures were for association
759 purposes and the billings, cash receipts, and related records of
760 the association to determine that the developer was charged and
761 paid the proper amounts of assessments. This paragraph applies
762 to associations with a date of incorporation after December 31,
763 2006.
764 Section 16. Section 720.308, Florida Statutes, is amended
765 to read:
766 720.308 Assessments and charges.--
767 (1) ASSESSMENTS.--For any community created after October
768 1, 1995, the governing documents must describe the manner in
769 which expenses are shared and specify the member's proportional
770 share thereof. Assessments levied pursuant to the annual budget
771 or special assessment must be in the member's proportional share

772 of expenses as described in the governing document, which share
773 may be different among classes of parcels based upon the state
774 of development thereof, levels of services received by the
775 applicable members, or other relevant factors. While the
776 developer is in control of the homeowners' association, it may
777 be excused from payment of its share of the operating expenses
778 and assessments related to its parcels for any period of time
779 for which the developer has, in the declaration, obligated
780 itself to pay any operating expenses incurred that exceed the
781 assessments receivable from other members and other income of
782 the association. This section does not apply to an association,
783 no matter when created, if the association is created in a
784 community that is included in an effective development-of-
785 regional-impact development order as of the effective date of
786 this act, together with any approved modifications thereto.
787 (2) GUARANTEES OF COMMON EXPENSES.--
788 (a) Establishment of a guarantee.--If a guarantee of the
789 assessments of parcel owners is not included in the purchase
790 contracts or declaration, any agreement establishing a guarantee
791 shall only be effective upon the approval of a majority of the
792 voting interests of the members other than the developer.
793 Approval shall be expressed at a meeting of the members voting
794 in person or by limited proxy or by agreement in writing without
795 a meeting if provided in the bylaws. Such guarantee shall meet
796 the requirements of this section.
797 (b) Guarantee period.--The period of time for the
798 guarantee shall be indicated by a specific beginning and ending
799 date or event.

800 1. The ending date or event shall be the same for all of
801 the members of an association, including members in different
802 phases of the development.
803 2. The guarantee may provide for different intervals of
804 time during a guarantee period with different dollar amounts for
805 each such interval.
806 3. The guarantee may provide that after the initial stated
807 period, the developer has an option to extend the guarantee for
808 one or more additional stated periods. The extension of a
809 guarantee is limited to extending the ending date or event;
810 therefore, the developer does not have the option of changing
811 the level of assessments guaranteed.
812 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
813 amount of the guarantee shall be an exact dollar amount for each
814 parcel identified in the declaration. Regardless of the stated
815 dollar amount of the guarantee, assessments charged to a member
816 shall not exceed the maximum obligation of the member based on
817 the total amount of the adopted budget and the member's
818 proportionate ownership share of the common elements.
819 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash
820 payments required from the guarantor during the guarantee period
821 shall be determined as follows:
822 (a) If at any time during the guarantee period the funds
823 collected from member assessments at the guaranteed level and
824 other revenues collected by the association are not sufficient
825 to provide payment, on a timely basis, of all assessments,
826 including the full funding of the reserves unless properly

827 waived, the guarantor shall advance sufficient cash to the
828 association at the time such payments are due.
829 (b) Expenses incurred in the production of nonassessment
830 revenues, not in excess of the nonassessment revenues, shall not
831 be included in the assessments. If the expenses attributable to
832 nonassessment revenues exceed nonassessment revenues, only the
833 excess expenses must be funded by the guarantor. Interest earned
834 on the investment of association funds may be used to pay the
835 income tax expense incurred as a result of the investment; such
836 expense shall not be charged to the guarantor; and the net
837 investment income shall be retained by the association. Each
838 such nonassessment-revenue-generating activity shall be
839 considered separately. Any portion of the parcel assessment that
840 is budgeted for designated capital contributions of the
841 association shall not be used to pay operating expenses.
842 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
843 guarantor's total financial obligation to the association at the
844 end of the guarantee period shall be determined on the accrual
845 basis using the following formula: the guarantor shall pay any
846 deficits that exceed the guaranteed amount, less the total
847 regular periodic assessments earned by the association from the
848 members other than the guarantor during the guarantee period
849 regardless of whether the actual level charged was less than the
850 maximum guaranteed amount.
851 (6) EXPENSES.--Expenses incurred in the production of
852 nonassessment revenues, not in excess of the nonassessment
853 revenues, shall not be included in the operating expenses. If
854 the expenses attributable to nonassessment revenues exceed

855 nonassessment revenues, only the excess expenses must be funded
856 by the guarantor. Interest earned on the investment of
857 association funds may be used to pay the income tax expense
858 incurred as a result of the investment; such expense shall not
859 be charged to the guarantor; and the net investment income shall
860 be retained by the association. Each such nonassessment-revenue-
861 generating activity shall be considered separately. Any portion
862 of the parcel assessment that is budgeted for designated capital
863 contributions of the association shall not be used to pay
864 operating expenses.
865 Section 17. Section 720.311, Florida Statutes, is amended
866 to read:
867 720.311 Dispute resolution.--
868 (1) The Legislature finds that alternative dispute
869 resolution has made progress in reducing court dockets and
870 trials and in offering a more efficient, cost-effective option
871 to litigation. The filing of any petition for ~~mediation or~~
872 arbitration or the serving of an offer for presuit mediation as
873 provided for in this section shall toll the applicable statute
874 of limitations. Any recall dispute filed with the department
875 pursuant to s. 720.303(10) shall be conducted by the department
876 in accordance with the provisions of ss. 718.112(2)(j) and
877 718.1255 and the rules adopted by the division. In addition, the
878 department shall conduct mandatory binding arbitration of
879 election disputes between a member and an association pursuant
880 to s. 718.1255 and rules adopted by the division. Neither
881 election disputes nor recall disputes are eligible for presuit
882 mediation; these disputes shall be arbitrated by the department.

883 At the conclusion of the proceeding, the department shall charge
884 the parties a fee in an amount adequate to cover all costs and
885 expenses incurred by the department in conducting the
886 proceeding. Initially, the petitioner shall remit a filing fee
887 of at least $200 to the department. The fees paid to the
888 department shall become a recoverable cost in the arbitration
889 proceeding, and the prevailing party in an arbitration
890 proceeding shall recover its reasonable costs and attorney's
891 fees in an amount found reasonable by the arbitrator. The
892 department shall adopt rules to effectuate the purposes of this
893 section.
894 (2)(a) Disputes between an association and a parcel owner
895 regarding use of or changes to the parcel or the common areas
896 and other covenant enforcement disputes, disputes regarding
897 amendments to the association documents, disputes regarding
898 meetings of the board and committees appointed by the board,
899 membership meetings not including election meetings, and access
900 to the official records of the association shall be the subject
901 of an offer ~~filed with the department~~ for presuit ~~mandatory~~
902 mediation served by an aggrieved party before the dispute is
903 filed in court. Presuit mediation proceedings must be conducted
904 in accordance with the applicable Florida Rules of Civil
905 Procedure, and these proceedings are privileged and confidential
906 to the same extent as court-ordered mediation. Disputes subject
907 to presuit mediation under this section shall not include the
908 collection of any assessment, fine, or other financial
909 obligation, including attorney's fees and costs, claimed to be
910 due or any action to enforce a prior mediation settlement

911 agreement between the parties. Also, in any dispute subject to
912 presuit mediation under this section where emergency relief is
913 required, a motion for temporary injunctive relief may be filed
914 with the court without first complying with the presuit
915 mediation requirements of this section. After any issues
916 regarding emergency or temporary relief are resolved, the court
917 may either refer the parties to a mediation program administered
918 by the courts or require mediation under this section. An
919 arbitrator or judge may not consider any information or evidence
920 arising from the presuit mediation proceeding except in a
921 proceeding to impose sanctions for failure to attend a presuit
922 mediation session or with the parties' agreement in a proceeding
923 seeking to enforce the agreement. Persons who are not parties to
924 the dispute may not attend the presuit mediation conference
925 without the consent of all parties, except for counsel for the
926 parties and a corporate representative designated by the
927 association. When mediation is attended by a quorum of the
928 board, such mediation is not a board meeting for purposes of
929 notice and participation set forth in s. 720.303. An aggrieved
930 party shall serve on the responding party a written offer to
931 participate in presuit mediation in substantially the following
932 form:
933
934 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION
935
936 The alleged aggrieved party, _____, hereby
937 offers to _____, as the responding party,
938 to enter into presuit mediation in connection with the

939 following dispute, which by statute is of a type that
940 is subject to presuit mediation:
941
942 (List specific nature of the dispute or disputes to be
943 mediated and the authority supporting a finding of a
944 violation as to each dispute.)
945
946 Pursuant to section 720.311, Florida Statutes, this
947 offer to resolve the dispute through presuit mediation
948 is required before a lawsuit can be filed concerning
949 the dispute. Pursuant to the statute, the aggrieved
950 party is hereby offering to engage in presuit
951 mediation with a neutral third-party mediator in order
952 to attempt to resolve this dispute without court
953 action, and the aggrieved party demands that you
954 likewise agree to this process. If you fail to agree
955 to presuit mediation, or if you agree and later fail
956 to follow through with your agreement to mediate, suit
957 may be brought against you without further warning.
958
959 The process of mediation involves a supervised
960 negotiation process in which a trained, neutral third-
961 party mediator meets with both parties and assists
962 them in exploring possible opportunities for resolving
963 part or all of the dispute. The mediation process is a
964 voluntary one. By agreeing to participate in presuit
965 mediation, you are not bound in any way to change your
966 position or to enter into any type of agreement.

967 Furthermore, the mediator has no authority to make any
968 decisions in this matter or to determine who is right
969 or wrong and merely acts as a facilitator to ensure
970 that each party understands the position of the other
971 party and that all reasonable settlement options are
972 fully explored. All mediation communications are
973 confidential under the Mediation Confidentiality and
974 Privilege Act pursuant to sections 44.401-44.406,
975 Florida Statutes, and a mediation participant may not
976 disclose a mediation communication to a person other
977 than a mediation participant or a participant's
978 counsel.
979
980 If an agreement is reached, it shall be reduced to
981 writing and becomes a binding and enforceable
982 commitment of the parties. A resolution of one or more
983 disputes in this fashion avoids the need to litigate
984 these issues in court. The failure to reach an
985 agreement, or the failure of a party to participate in
986 the process, results in the mediator's declaring an
987 impasse in the mediation, after which the aggrieved
988 party may proceed to court on all outstanding,
989 unsettled disputes.
990
991 The aggrieved party has selected and hereby lists
992 three certified mediators who we believe to be neutral
993 and qualified to mediate the dispute. You have the
994 right to select any one of these mediators. The fact

995 that one party may be familiar with one or more of the
996 listed mediators does not mean that the mediator
997 cannot act as a neutral and impartial facilitator. Any
998 mediator who cannot act in this capacity ethically
999 must decline to accept engagement. The mediators that
1000 we suggest, and their current hourly rates, are as
1001 follows:
1002
1003 (List the names, addresses, telephone numbers, and
1004 hourly rates of the mediators. Other pertinent
1005 information about the background of the mediators may
1006 be included as an attachment.)
1007
1008 You may contact the offices of these mediators to
1009 confirm that the listed mediators will be neutral and
1010 will not show any favoritism toward either party. The
1011 names of certified mediators may be found through the
1012 office of the clerk of the circuit court for this
1013 circuit.
1014
1015 If you agree to participate in the presuit mediation
1016 process, the statute requires that each party is to
1017 pay one-half of the costs and fees involved in the
1018 presuit mediation process unless otherwise agreed by
1019 all parties. An average mediation may require 3 to 4
1020 hours of the mediator's time, including some
1021 preparation time, and each party would need to pay
1022 one-half of the mediator's fees as well as his or her

1023 own attorney's fees if he or she chooses to employ an
1024 attorney in connection with the mediation. However,
1025 use of an attorney is not required and is at the
1026 option of each party. The mediator may require the
1027 advance payment of some or all of the anticipated
1028 fees. The aggrieved party hereby agrees to pay or
1029 prepay one-half of the mediator's estimated fees and
1030 to forward this amount or such other reasonable
1031 advance deposits as the mediator may require for this
1032 purpose. Any funds deposited will be returned to you
1033 if these are in excess of your share of the fees
1034 incurred.
1035
1036 If you agree to participate in presuit mediation in
1037 order to attempt to resolve the dispute and thereby
1038 avoid further legal action, please sign below and
1039 clearly indicate which mediator is acceptable to you.
1040 We will then ask the mediator to schedule a mutually
1041 convenient time and place for the mediation conference
1042 to be held. The mediation conference must be held
1043 within 90 days after the date of this letter unless
1044 extended by mutual written agreement. In the event
1045 that you fail to respond within 20 days after the date
1046 of this letter, or if you fail to agree to at least
1047 one of the mediators that we have suggested and to pay
1048 or prepay to the mediator one-half of the costs
1049 involved, the aggrieved party will be authorized to
1050 proceed with the filing of a lawsuit against you

1051 without further notice and may seek an award of
1052 attorney's fees or costs incurred in attempting to
1053 obtain mediation.
1054
1055 Should you wish, you may also elect to waive presuit
1056 mediation so that this matter may proceed directly to
1057 court.
1058
1059 Therefore, please give this matter your immediate
1060 attention. By law, your response must be mailed by
1061 certified mail, return receipt requested, with an
1062 additional copy being sent by regular first-class mail
1063 to the address shown on this offer.
1064
1065 _____
1066 _____
1067
1068 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
1069 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
1070 CHOICE.
1071
1072 AGREEMENT TO MEDIATE
1073
1074 The undersigned hereby agrees to participate in
1075 presuit mediation and agrees to the following mediator
1076 or mediators as acceptable to mediate this dispute:
1077
1078 (List acceptable mediator or mediators.)

1079
1080 I/we further agree to pay or prepay one-half of the
1081 mediator's fees and to forward such advance deposits
1082 as the mediator may require for this purpose.
1083
1084 _____
1085 Signature of responding party #1
1086
1087 _____
1088 Signature of responding party #2 (if applicable)(if
1089 property is owned by more than one person, all owners
1090 must sign)
1091
1092 WAIVER OF MEDIATION
1093
1094 The undersigned hereby waives the right to participate
1095 in presuit mediation of the dispute listed above and
1096 agrees to allow the aggrieved party to proceed in
1097 court on such matters.
1098
1099 _____
1100 Signature of responding party #1
1101
1102 _____
1103 Signature of responding party #2 (if applicable)(if
1104 property is owned by more than one person, all owners
1105 must sign)
1106

1107 (b) Service of the statutory offer to participate in
1108 presuit mediation shall be effected by sending a letter in
1109 substantial conformity with the above form by certified mail,
1110 return receipt requested, with an additional copy being sent by
1111 regular first-class mail, to the address of the responding party
1112 as it last appears on the books and records of the association.
1113 The responding party shall have 20 days from the date of the
1114 mailing of the statutory offer to serve a response to the
1115 aggrieved party in writing. The response shall be served by
1116 certified mail, return receipt requested, with an additional
1117 copy being sent by regular first-class mail, to the address
1118 shown on the statutory offer. In the alternative, the responding
1119 party may waive mediation in writing. Notwithstanding the
1120 foregoing, once the parties have agreed on a mediator, the
1121 mediator may reschedule the mediation for a date and time
1122 mutually convenient to the parties. ~~The department shall conduct~~
1123 ~~the proceedings through the use of department mediators or refer~~
1124 ~~the disputes to private mediators who have been duly certified~~
1125 ~~by the department as provided in paragraph (c).~~ The parties
1126 shall share the costs of presuit mediation equally, including
1127 the fee charged by the mediator, if any, unless the parties
1128 agree otherwise, and the mediator may require advance payment of
1129 its reasonable fees and costs. The failure of any party to
1130 respond to a demand or response, to agree upon a mediator, to
1131 make payment of fees and costs within the time established by
1132 the mediator, or to appear for a scheduled mediation session
1133 shall operate as an impasse in the presuit mediation by such
1134 party, entitling the other party to proceed in court and to seek

1135 an award of the costs and fees associated with the mediation.
1136 Additionally, if any presuit mediation session cannot be
1137 scheduled and conducted within 90 days after the offer to
1138 participate in mediation was filed, an impasse shall be deemed
1139 to have occurred unless both parties agree to extend this
1140 deadline. ~~If a department mediator is used, the department may~~
1141 ~~charge such fee as is necessary to pay expenses of the~~
1142 ~~mediation, including, but not limited to, the salary and~~
1143 ~~benefits of the mediator and any travel expenses incurred. The~~
1144 ~~petitioner shall initially file with the department upon filing~~
1145 ~~the disputes, a filing fee of $200, which shall be used to~~
1146 ~~defray the costs of the mediation. At the conclusion of the~~
1147 ~~mediation, the department shall charge to the parties, to be~~
1148 ~~shared equally unless otherwise agreed by the parties, such~~
1149 ~~further fees as are necessary to fully reimburse the department~~
1150 ~~for all expenses incurred in the mediation.~~
1151 (c) ~~(b)~~ If presuit mediation as described in paragraph (a)
1152 is not successful in resolving all issues between the parties,
1153 the parties may file the unresolved dispute in a court of
1154 competent jurisdiction or elect to enter into binding or
1155 nonbinding arbitration pursuant to the procedures set forth in
1156 s. 718.1255 and rules adopted by the division, with the
1157 arbitration proceeding to be conducted by a department
1158 arbitrator or by a private arbitrator certified by the
1159 department. If all parties do not agree to arbitration
1160 proceedings following an unsuccessful presuit mediation, any
1161 party may file the dispute in court. A final order resulting
1162 from nonbinding arbitration is final and enforceable in the

1163 courts if a complaint for trial de novo is not filed in a court
1164 of competent jurisdiction within 30 days after entry of the
1165 order. As to any issue or dispute that is not resolved at
1166 presuit mediation, and as to any issue that is settled at
1167 presuit mediation but is thereafter subject to an action seeking
1168 enforcement of the mediation settlement, the prevailing party in
1169 any subsequent arbitration or litigation proceeding shall be
1170 entitled to seek recovery of all costs and attorney's fees
1171 incurred in the presuit mediation process.
1172 (d) ~~(c) The department shall develop a certification and~~
1173 ~~training program for private mediators and private arbitrators~~
1174 ~~which shall emphasize experience and expertise in the area of~~
1175 ~~the operation of community associations.~~ A mediator or
1176 arbitrator shall be certified to conduct mediation or
1177 arbitration under this section ~~by the department~~ only if he or
1178 she has been certified as a circuit court civil mediator or
1179 arbitrator, respectively, pursuant to the requirements
1180 established ~~attended at least 20 hours of training in mediation~~
1181 ~~or arbitration, as appropriate, and only if the applicant has~~
1182 ~~mediated or arbitrated at least 10 disputes involving community~~
1183 ~~associations within 5 years prior to the date of the~~
1184 ~~application, or has mediated or arbitrated 10 disputes in any~~
1185 ~~area within 5 years prior to the date of application and has~~
1186 ~~completed 20 hours of training in community association~~
1187 ~~disputes. In order to be certified by the department, any~~
1188 ~~mediator must also be certified~~ by the Florida Supreme Court.
1189 ~~The department may conduct the training and certification~~
1190 ~~program within the department or may contract with an outside~~

1191 ~~vendor to perform the training or certification. The expenses of~~
1192 ~~operating the training and certification and training program~~
1193 ~~shall be paid by the moneys and filing fees generated by the~~
1194 ~~arbitration of recall and election disputes and by the mediation~~
1195 ~~of those disputes referred to in this subsection and by the~~
1196 ~~training fees.~~
1197 (e) ~~(d)~~ The presuit mediation procedures provided by this
1198 subsection may be used by a Florida corporation responsible for
1199 the operation of a community in which the voting members are
1200 parcel owners or their representatives, in which membership in
1201 the corporation is not a mandatory condition of parcel
1202 ownership, or which is not authorized to impose an assessment
1203 that may become a lien on the parcel.
1204 ~~(3) The department shall develop an education program to~~
1205 ~~assist homeowners, associations, board members, and managers in~~
1206 ~~understanding and increasing awareness of the operation of~~
1207 ~~homeowners' associations pursuant to this chapter and in~~
1208 ~~understanding the use of alternative dispute resolution~~
1209 ~~techniques in resolving disputes between parcel owners and~~
1210 ~~associations or between owners. Such education program may~~
1211 ~~include the development of pamphlets and other written~~
1212 ~~instructional guides, the holding of classes and meetings by~~
1213 ~~department employees or outside vendors, as the department~~
1214 ~~determines, and the creation and maintenance of a website~~
1215 ~~containing instructional materials. The expenses of operating~~
1216 ~~the education program shall be initially paid by the moneys and~~
1217 ~~filing fees generated by the arbitration of recall and election~~

1218 ~~disputes and by the mediation of those disputes referred to in~~
1219 ~~this subsection.~~
1220 Section 18. Except as otherwise expressly provided in this
1221 act, this act shall take effect July 1, 2006.

HB 469

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 CS Human Trafficking
SPONSOR(S): Gannon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Ferguson	Kramer
2) Future of Florida's Families Committee	8 Y, 0 N, w/CS	Preston	Collins
3) Criminal Justice Appropriations Committee	5 Y, 0 N	Burns	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

Currently, section 787.06, F.S., makes it a second degree felony to knowingly engage in human trafficking with the intent that the trafficked person engage in forced labor or services.

HB 469 expands the definition of "forced labor or services" to include labor or services obtained from a person by:

- Isolating a person without lawful authority and against his or her will; or
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of that person or another; or
- Using lending practices under which the labor or services are pledged as security for the debt but are not applied toward liquidation of the debt; and
- Fraud or coercion.

HB 469 amends section 787.06 (3), F.S., by adding criminal penalties for knowingly benefiting financially or receiving anything of value from human trafficking. The section also defines the terms, "financial harm' and "maintain".

HB 469 amends section 772.102, F.S., by expanding the definition of the term "criminal activity" to include the offenses of human trafficking and sex trafficking for the purpose of seeking civil remedies for criminal offenses.

HB 469 amends section 772.104, F.S., by providing that any person injured as a result of sex trafficking has a civil cause of action for threefold the amount of profit gained from the sex trafficking.

HB 469 amends section 895.02, F.S., by redefining the term "racketeering activity" to include the offense of human trafficking for purposes of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

HB 469 provides an effective date of October 1, 2006.

The Criminal Justice Estimating Conference determined that passage of this bill would not have an impact on the prison bed population for the Department of Corrections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the scope of the offense of human trafficking.

B. EFFECT OF PROPOSED CHANGES:

Human Trafficking

In 2000, Congress passed the "Victims of Trafficking and Violence Protection Act of 2000" and published findings including the following[1]:

> As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.
>
> Many of these persons are trafficked into the international sex trade, often by force, fraud or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominately women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.
>
> Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human trafficking rights standards worldwide.

On June 3, 2005, Secretary of State Condoleezza Rice released the Fifth Annual Department of State Trafficking In Persons Report[2]:

> We estimate that up to 800,000 people are trafficked across international borders every year. And millions more are trafficked internally. Victims of trafficking, most of them women and children, are forced, defrauded or coerced into inhumane conditions. They are made to toil on farms and in work camps, in brothels and in sweatshops. Children are even forced to become soldiers. Whatever cruel form of servitude they may take, trafficking victims live in fear and misery. And wherever the trafficking trade flourishes, the rule of law erodes, corruption thrives, public health suffers and organized crime threatens the security of entire communities.

Federal legislation

As part of the Victims of Trafficking and Violence Protection Act, Congress created 18 U.S.C. 1591 which prohibits sex trafficking. The section makes it a felony to recruit, entice, harbor, transport or provide another person knowing that force, fraud or coercion will be used to cause the person to engage in a "commercial sex act."

Current law

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[1] Public Law 106-386, sec. 102.

[2] Trafficking in Persons Report June 2005. *See* http://www.state.gov/secretary/rm/2005/47193.htm

On October 1, 2004, section 787.06, F.S., was enacted providing that any person who knowingly engages in human trafficking with the intent that the trafficked person engage in "forced labor or services" commits a felony of the second degree.

"Human trafficking" is defined as transporting, soliciting, recruiting, harboring, providing or obtaining another person for transport.

"Forced labor or services" is currently defined as:

- Using or threatening to use physical force against that person or another person; or
- Restraining or confining or threatening to restrain or confine that person or another person without lawful authority and against her or his will.

Effect of bill

HB 469 amends section 787.06, F.S., providing legislative findings and intent; those findings are summarized as follows:

The Legislature finds that human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, and adults. Thousands of victims are trafficked annually across international boarders worldwide. Many of these victims are trafficked into this state. The Legislature finds that while many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work. The Legislature finds that traffickers use various techniques to instill fear in victims and to keep them enslaved. It is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies.

HB 469 amends section 787.06, F.S., by expanding the term "forced labor or services" to include:

- Isolating a person without lawful authority and against his or her will; or
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of that person or another; or
- Fraud or coercion.

The section also defines the terms, "financial harm' and "maintain".

HB 469 amends section 787.06 (3), F.S., by adding criminal penalties for knowingly benefiting financially or receiving anything of value from human trafficking.

HB 469 amends section 787.06, F.S., to provide:

> The Florida Court Educational Council shall establish standards of instruction for circuit and county court judges who hear cases involving victims of human trafficking and shall provide for periodic and timely instruction.

The Florida Court Educational Council is statutorily created. Section 25.384, F.S., states that, "There is created a Court Education Trust Fund to be administered by the Supreme Court through the Florida Court Educational Council." This statute provides that trust fund moneys shall be used to provide education and training for judges and other court personnel as defined and determined by the Florida Court Education Council.[3]

[3] *See* section 25.384(2)(a), F.S.

HB 469 amends section 772.102, F.S., by expanding the definition of the term "criminal activity" to include the offenses of human trafficking and sex trafficking for purposes of seeking civil remedies for criminal offenses.

HB 469 amends section 772.104, F.S., by providing that any injured person as a result of sex trafficking has a civil cause of action for threefold the amount of profit gained from the sex trafficking.

HB 469 amends section 895.02, F.S., by redefining the term "racketeering activity" to include the offense of human trafficking for purposes of the Florida RICO Act.

HB 469 reenacts ss. 16.56(1) (a), 655.50(3) (g), 896.101(2) (g), and 905.34, F.S., relating to the authority of the Office of the Statewide Prosecutor, the definition of "specified unlawful activity" in a law prohibiting money laundering in financial institutions and in the Florida Money Laundering Act, and the subject matter jurisdiction of a statewide grand jury.

HB 469 provides an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 787.06, F.S., providing legislative findings and intent; redefining the term "forced labor or services", defining the terms "financial harm" and "forced labor services", and establishing standards for circuit and county judges.

Section 2. Amends s. 772.102, F.S., expanding the definition of the term "criminal activity".

Section 3. Amends s. 772.104, F.S., to provide the person injured a cause of action for threefold the amount of profit gained from the sex trafficking or human trafficking.

Section 4. Amends s. 895.02, F.S., redefining the term "racketeering activity."

Section 5. Reenacts s. 16.56 (1) (a), F.S., relating to the authority of the Office of the Statewide Prosecutor.

Section 6. Reenacts s. 655.50 (3) (g), F.S., relating to the definition of "specified unlawful activity" in a law prohibiting money laundering in financial institutions.

Section 7. Reenacts s. 896.101 (2) (g), F.S., relating to the definition of "specified unlawful activity" in the Florida Money Laundering Act.

Section 8. Reenacts s. 905.34, F.S., relating to the subject matter jurisdiction of a statewide grand jury.

Section 9. Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   On January 9, 2006, the Criminal Justice Estimating Conference met and determined that HB 469 would have no impact on the prison bed population for the Department of Corrections. Workload increases on the Florida Court Education Council, will be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 8, 2006, the Criminal Justice Committee passed House Bill 469 with three amendments. The first amendment adds fraud or coercion to the term "forced labor or services." The second amendment adds criminal penalties for knowingly benefiting financially or receiving anything of value from human trafficking. The third amendment provides that a person injured as a result of sex trafficking has a civil cause of action for threefold the amount of profit gained from the sex trafficking.

This analysis reflects HB 469 as a committee substitute.

On March 8, 2006, the Future of Florida's Families Committee adopted one amendment. The amendment defined the terms, "financial harm" and "maintain", which are not currently used in the bill.

The bill was reported favorably as a committee substitute.

On April 11, 2006, the Criminal Justice Appropriations Committee adopted a strike all amendment and favorably reported HB 469 as a committee substitute.

CHAMBER ACTION

1 The Criminal Justice Appropriations Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to human trafficking; amending s. 787.06,
8 F.S.; providing legislative findings and intent; defining
9 the term "financial harm"; redefining the term "forced
10 labor or services" to include circumstances involving the
11 use of fraud or coercion against a person, the use of
12 certain debt practices, and the destruction, concealing,
13 or withholding of a person's identification documents;
14 providing for attempted human trafficking to be an equal
15 crime to human trafficking; prohibiting knowingly
16 benefiting financially or receiving anything of value from
17 human trafficking when the trafficked person engages in
18 forced labor or services; providing criminal penalties;
19 amending s. 772.102, F.S.; expanding the definition of the
20 term "criminal activity" to include the offense of human
21 trafficking and the offense of sex trafficking for
22 purposes of seeking civil remedies for criminal offenses;
23 amending s. 772.104, F.S.; revising a civil cause of

24 action relating to injuries by reason of criminal
25 activity; providing for alternative damages for violations
26 relating to sex trafficking and human trafficking;
27 amending s. 895.02, F.S.; redefining the term
28 "racketeering activity" to include the offense of human
29 trafficking for purposes of the Florida RICO Act;
30 reenacting ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g),
31 and 905.34, F.S., relating to the authority of the Office
32 of the Statewide Prosecutor, the definition of "specified
33 unlawful activity" in a law prohibiting money laundering
34 in financial institutions and in the Florida Money
35 Laundering Act, and the subject matter jurisdiction of a
36 statewide grand jury, to incorporate the amendments made
37 to s. 895.02, F.S., in references thereto; providing an
38 effective date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Section 787.06, Florida Statutes, is amended to
43 read:
44 787.06 Human trafficking.--
45 (1)(a) The Legislature finds that human trafficking is a
46 form of modern-day slavery. Victims of human trafficking are
47 young children, teenagers, and adults. Thousands of victims are
48 trafficked annually across international borders worldwide. Many
49 of these victims are trafficked into this state. The Legislature
50 finds that victims of human trafficking are subjected to force,

51 fraud, or coercion for the purpose of sexual exploitation or
52 forced labor.
53 (b) The Legislature finds that while many victims of human
54 trafficking are forced to work in prostitution or the sexual
55 entertainment industry, trafficking also occurs in forms of
56 labor exploitation, such as domestic servitude, restaurant work,
57 janitorial work, sweatshop factory work, and migrant
58 agricultural work.
59 (c) The Legislature finds that traffickers use various
60 techniques to instill fear in victims and to keep them enslaved.
61 Some traffickers keep their victims under lock and key. However,
62 the most frequently used practices are less obvious techniques
63 that include isolating victims from the public and family
64 members; confiscating passports, visas, or other identification
65 documents; using or threatening to use violence toward victims
66 or their families; telling victims that they will be imprisoned
67 or deported for immigration violations if they contact
68 authorities; and controlling the victims' funds by holding the
69 money for "safekeeping."
70 (d) It is the intent of the Legislature that the
71 perpetrators of human trafficking be penalized for their illegal
72 conduct and that the victims of trafficking be protected and
73 assisted by this state and its agencies. In furtherance of this
74 policy, it is the intent of the Legislature that the state
75 Supreme Court, The Florida Bar, and relevant state agencies
76 prepare and implement training programs in order that judges,
77 attorneys, law enforcement personnel, investigators, and others
78 are able to identify traffickers and victims of human

79 trafficking and direct victims to appropriate agencies for
80 assistance. It is the intent of the Legislature that the
81 Department of Children and Family Services and other state
82 agencies cooperate with other state and federal agencies to
83 ensure that victims of human trafficking can access social
84 services and benefits to alleviate their plight.
85 (2) ~~(1)~~ As used in this section, the term:
86 (a) "Financial harm" includes extortionate extension of
87 credit, loan sharking as defined in s. 687.071, or employment
88 contracts that violate the statute of frauds as provided in s.
89 725.01.
90 (b) "Forced labor or services" means labor or services
91 obtained from a person by:
92 1. Using or threatening to use physical force against that
93 person or another person; ~~or~~
94 2. Restraining, isolating, or confining or threatening to
95 restrain, isolate, or confine that person or another person
96 without lawful authority and against her or his will; ~~.~~
97 3. Using lending or other credit methods to establish a
98 debt by that person or another person when the labor or services
99 are pledged as a security for the debt, if the value of the
100 labor or services as reasonably assessed is not applied toward
101 the liquidation of the debt or the length and nature of the
102 labor or services are not respectively limited and defined;
103 4. Destroying, concealing, removing, confiscating,
104 withholding, or possessing any actual or purported passport,
105 visa, or other immigration document, or any other actual or

106 purported government identification document, of that person or
107 another person; or
108 5. Causing or threatening to cause financial harm to any
109 person.
110 (c) ~~(b)~~ "Human trafficking" means transporting, soliciting,
111 recruiting, harboring, providing, or obtaining another person
112 for transport.
113 (3) ~~(2)~~ Any person who knowingly engages or attempts to
114 engage in human trafficking with the intent that the trafficked
115 person engage in forced labor or services or who knowingly
116 benefits financially or knowingly receives anything of value
117 from human trafficking when the trafficked person engages in
118 forced labor or services commits a felony of the second degree,
119 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
120 Section 2. Subsection (1) of section 772.102, Florida
121 Statutes, is amended to read:
122 772.102 Definitions.--As used in this chapter, the term:
123 (1) "Criminal activity" means to commit, to attempt to
124 commit, to conspire to commit, or to solicit, coerce, or
125 intimidate another person to commit:
126 (a) Any crime that ~~which~~ is chargeable by indictment or
127 information under the following provisions:
128 1. Section 210.18, relating to evasion of payment of
129 cigarette taxes.
130 2. Section 414.39, relating to public assistance fraud.
131 3. Section 440.105 or s. 440.106, relating to workers'
132 compensation.
133 4. Part IV of chapter 501, relating to telemarketing.

134 5. Chapter 517, relating to securities transactions.
135 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
136 to dogracing and horseracing.
137 7. Chapter 550, relating to jai alai frontons.
138 8. Chapter 552, relating to the manufacture, distribution,
139 and use of explosives.
140 9. Chapter 562, relating to beverage law enforcement.
141 10. Section 624.401, relating to transacting insurance
142 without a certificate of authority, s. 624.437(4)(c)1., relating
143 to operating an unauthorized multiple-employer welfare
144 arrangement, or s. 626.902(1)(b), relating to representing or
145 aiding an unauthorized insurer.
146 11. Chapter 687, relating to interest and usurious
147 practices.
148 12. Section 721.08, s. 721.09, or s. 721.13, relating to
149 real estate timeshare plans.
150 13. Chapter 782, relating to homicide.
151 14. Chapter 784, relating to assault and battery.
152 15. Chapter 787, relating to kidnapping <u>or human</u>
153 <u>trafficking</u>.
154 16. Chapter 790, relating to weapons and firearms.
155 17. Section 796.03, s. 796.04, <u>s. 796.045,</u> s. 796.05, or
156 s. 796.07, relating to prostitution.
157 18. Chapter 806, relating to arson.
158 19. Section 810.02(2)(c), relating to specified burglary
159 of a dwelling or structure.
160 20. Chapter 812, relating to theft, robbery, and related
161 crimes.

162 21. Chapter 815, relating to computer-related crimes.
163 22. Chapter 817, relating to fraudulent practices, false
164 pretenses, fraud generally, and credit card crimes.
165 23. Section 827.071, relating to commercial sexual
166 exploitation of children.
167 24. Chapter 831, relating to forgery and counterfeiting.
168 25. Chapter 832, relating to issuance of worthless checks
169 and drafts.
170 26. Section 836.05, relating to extortion.
171 27. Chapter 837, relating to perjury.
172 28. Chapter 838, relating to bribery and misuse of public
173 office.
174 29. Chapter 843, relating to obstruction of justice.
175 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
176 s. 847.07, relating to obscene literature and profanity.
177 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
178 849.25, relating to gambling.
179 32. Chapter 893, relating to drug abuse prevention and
180 control.
181 33. Section 914.22 or s. 914.23, relating to witnesses,
182 victims, or informants.
183 34. Section 918.12 or s. 918.13, relating to tampering
184 with jurors and evidence.
185 (b) Any conduct which is subject to indictment or
186 information as a criminal offense and listed in 18 U.S.C. s.
187 1961(1) (A), (B), (C), or (D).
188 Section 3. Section 772.104, Florida Statutes, is amended
189 to read:

190 772.104 Civil cause of action.--
191 (1) Any person who proves by clear and convincing evidence
192 that he or she has been injured by reason of any violation of
193 the provisions of s. 772.103 shall have a cause of action for
194 threefold the actual damages sustained and, in any such action,
195 is entitled to minimum damages in the amount of $200, and
196 reasonable attorney's fees and court costs in the trial and
197 appellate courts.
198 (2) As an alternative to recovery under subsection (1),
199 any person who proves by clear and convincing evidence that he
200 or she has been injured by reason of any violation of the
201 provisions of s. 772.103 due to sex trafficking or human
202 trafficking shall have a cause of action for threefold the
203 amount gained from the sex trafficking or human trafficking and,
204 in any such action, is entitled to minimum damages in the amount
205 of $200 and reasonable attorney's fees and court costs in the
206 trial and appellate courts.
207 (3) In no event shall punitive damages be awarded under
208 this section. The defendant shall be entitled to recover
209 reasonable attorney's fees and court costs in the trial and
210 appellate courts upon a finding that the claimant raised a claim
211 which was without substantial fact or legal support. In awarding
212 attorney's fees and costs under this section, the court shall
213 not consider the ability of the opposing party to pay such fees
214 and costs. Nothing under this section shall be interpreted as
215 limiting any right to recover attorney's fees or costs provided
216 under other provisions of law.

217 Section 4. Subsection (1) of section 895.02, Florida
218 Statutes, as amended by section 3 of chapter 2005-362, Laws of
219 Florida, is amended to read:
220 895.02 Definitions.--As used in ss. 895.01-895.08, the
221 term:
222 (1) "Racketeering activity" means to commit, to attempt to
223 commit, to conspire to commit, or to solicit, coerce, or
224 intimidate another person to commit:
225 (a) Any crime that ~~which~~ is chargeable by indictment or
226 information under the following provisions of the Florida
227 Statutes:
228 1. Section 210.18, relating to evasion of payment of
229 cigarette taxes.
230 2. Section 403.727(3)(b), relating to environmental
231 control.
232 3. Section 409.920 or s. 409.9201, relating to Medicaid
233 fraud.
234 4. Section 414.39, relating to public assistance fraud.
235 5. Section 440.105 or s. 440.106, relating to workers'
236 compensation.
237 6. Section 443.071(4), relating to creation of a
238 fictitious employer scheme to commit unemployment compensation
239 fraud.
240 7. Section 465.0161, relating to distribution of medicinal
241 drugs without a permit as an Internet pharmacy.
242 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
243 499.0691, relating to crimes involving contraband and
244 adulterated drugs.

245 9. Part IV of chapter 501, relating to telemarketing.
246 10. Chapter 517, relating to sale of securities and
247 investor protection.
248 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
249 to dogracing and horseracing.
250 12. Chapter 550, relating to jai alai frontons.
251 13. Section 551.109, relating to slot machine gaming.
252 14. Chapter 552, relating to the manufacture,
253 distribution, and use of explosives.
254 15. Chapter 560, relating to money transmitters, if the
255 violation is punishable as a felony.
256 16. Chapter 562, relating to beverage law enforcement.
257 17. Section 624.401, relating to transacting insurance
258 without a certificate of authority, s. 624.437(4)(c)1., relating
259 to operating an unauthorized multiple-employer welfare
260 arrangement, or s. 626.902(1)(b), relating to representing or
261 aiding an unauthorized insurer.
262 18. Section 655.50, relating to reports of currency
263 transactions, when such violation is punishable as a felony.
264 19. Chapter 687, relating to interest and usurious
265 practices.
266 20. Section 721.08, s. 721.09, or s. 721.13, relating to
267 real estate timeshare plans.
268 21. Chapter 782, relating to homicide.
269 22. Chapter 784, relating to assault and battery.
270 23. Chapter 787, relating to kidnapping <u>or human</u>
271 <u>trafficking</u>.
272 24. Chapter 790, relating to weapons and firearms.

273 25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
274 796.05, or s. 796.07, relating to prostitution and sex
275 trafficking.
276 26. Chapter 806, relating to arson.
277 27. Section 810.02(2)(c), relating to specified burglary
278 of a dwelling or structure.
279 28. Chapter 812, relating to theft, robbery, and related
280 crimes.
281 29. Chapter 815, relating to computer-related crimes.
282 30. Chapter 817, relating to fraudulent practices, false
283 pretenses, fraud generally, and credit card crimes.
284 31. Chapter 825, relating to abuse, neglect, or
285 exploitation of an elderly person or disabled adult.
286 32. Section 827.071, relating to commercial sexual
287 exploitation of children.
288 33. Chapter 831, relating to forgery and counterfeiting.
289 34. Chapter 832, relating to issuance of worthless checks
290 and drafts.
291 35. Section 836.05, relating to extortion.
292 36. Chapter 837, relating to perjury.
293 37. Chapter 838, relating to bribery and misuse of public
294 office.
295 38. Chapter 843, relating to obstruction of justice.
296 39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
297 s. 847.07, relating to obscene literature and profanity.
298 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
299 849.25, relating to gambling.
300 41. Chapter 874, relating to criminal street gangs.

301 42. Chapter 893, relating to drug abuse prevention and
302 control.
303 43. Chapter 896, relating to offenses related to financial
304 transactions.
305 44. Sections 914.22 and 914.23, relating to tampering with
306 a witness, victim, or informant, and retaliation against a
307 witness, victim, or informant.
308 45. Sections 918.12 and 918.13, relating to tampering with
309 jurors and evidence.
310 (b) Any conduct defined as "racketeering activity" under
311 18 U.S.C. s. 1961(1).
312 Section 5. For the purpose of incorporating the amendment
313 made by this act to section 895.02, Florida Statutes, in a
314 reference thereto, paragraph (a) of subsection (1) of section
315 16.56, Florida Statutes, is reenacted to read:
316 16.56 Office of Statewide Prosecution.--
317 (1) There is created in the Department of Legal Affairs an
318 Office of Statewide Prosecution. The office shall be a separate
319 "budget entity" as that term is defined in chapter 216. The
320 office may:
321 (a) Investigate and prosecute the offenses of:
322 1. Bribery, burglary, criminal usury, extortion, gambling,
323 kidnapping, larceny, murder, prostitution, perjury, robbery,
324 carjacking, and home-invasion robbery;
325 2. Any crime involving narcotic or other dangerous drugs;
326 3. Any violation of the provisions of the Florida RICO
327 (Racketeer Influenced and Corrupt Organization) Act, including
328 any offense listed in the definition of racketeering activity in

329 s. 895.02(1)(a), providing such listed offense is investigated
330 in connection with a violation of s. 895.03 and is charged in a
331 separate count of an information or indictment containing a
332 count charging a violation of s. 895.03, the prosecution of
333 which listed offense may continue independently if the
334 prosecution of the violation of s. 895.03 is terminated for any
335 reason;
336 4. Any violation of the provisions of the Florida Anti-
337 Fencing Act;
338 5. Any violation of the provisions of the Florida
339 Antitrust Act of 1980, as amended;
340 6. Any crime involving, or resulting in, fraud or deceit
341 upon any person;
342 7. Any violation of s. 847.0135, relating to computer
343 pornography and child exploitation prevention, or any offense
344 related to a violation of s. 847.0135;
345 8. Any violation of the provisions of chapter 815;
346 9. Any criminal violation of part I of chapter 499;
347 10. Any violation of the provisions of the Florida Motor
348 Fuel Tax Relief Act of 2004;
349 11. Any criminal violation of s. 409.920 or s. 409.9201;
350 or
351 12. Any crime involving voter registration, voting, or
352 candidate or issue petition activities;
353
354 or any attempt, solicitation, or conspiracy to commit any of the
355 crimes specifically enumerated above. The office shall have such
356 power only when any such offense is occurring, or has occurred,

357 in two or more judicial circuits as part of a related
358 transaction, or when any such offense is connected with an
359 organized criminal conspiracy affecting two or more judicial
360 circuits.
361 Section 6. For the purpose of incorporating the amendment
362 made by this act to section 895.02, Florida Statutes, in a
363 reference thereto, paragraph (g) of subsection (3) of section
364 655.50, Florida Statutes, is reenacted to read:
365 655.50 Florida Control of Money Laundering in Financial
366 Institutions Act; reports of transactions involving currency or
367 monetary instruments; when required; purpose; definitions;
368 penalties.--
369 (3) As used in this section, the term:
370 (g) "Specified unlawful activity" means any "racketeering
371 activity" as defined in s. 895.02.
372 Section 7. For the purpose of incorporating the amendment
373 made by this act to section 895.02, Florida Statutes, in a
374 reference thereto, paragraph (g) of subsection (2) of section
375 896.101, Florida Statutes, is reenacted to read:
376 896.101 Florida Money Laundering Act; definitions;
377 penalties; injunctions; seizure warrants; immunity.--
378 (2) As used in this section, the term:
379 (g) "Specified unlawful activity" means any "racketeering
380 activity" as defined in s. 895.02.
381 Section 8. For the purpose of incorporating the amendment
382 made by this act to section 895.02, Florida Statutes, in a
383 reference thereto, section 905.34, Florida Statutes, is
384 reenacted to read:

385 905.34 Powers and duties; law applicable.--The
386 jurisdiction of a statewide grand jury impaneled under this
387 chapter shall extend throughout the state. The subject matter
388 jurisdiction of the statewide grand jury shall be limited to the
389 offenses of:
390 (1) Bribery, burglary, carjacking, home-invasion robbery,
391 criminal usury, extortion, gambling, kidnapping, larceny,
392 murder, prostitution, perjury, and robbery;
393 (2) Crimes involving narcotic or other dangerous drugs;
394 (3) Any violation of the provisions of the Florida RICO
395 (Racketeer Influenced and Corrupt Organization) Act, including
396 any offense listed in the definition of racketeering activity in
397 s. 895.02(1)(a), providing such listed offense is investigated
398 in connection with a violation of s. 895.03 and is charged in a
399 separate count of an information or indictment containing a
400 count charging a violation of s. 895.03, the prosecution of
401 which listed offense may continue independently if the
402 prosecution of the violation of s. 895.03 is terminated for any
403 reason;
404 (4) Any violation of the provisions of the Florida Anti-
405 Fencing Act;
406 (5) Any violation of the provisions of the Florida
407 Antitrust Act of 1980, as amended;
408 (6) Any violation of the provisions of chapter 815;
409 (7) Any crime involving, or resulting in, fraud or deceit
410 upon any person;
411 (8) Any violation of s. 847.0135, s. 847.0137, or s.
412 847.0138 relating to computer pornography and child exploitation

413 prevention, or any offense related to a violation of s.
414 847.0135, s. 847.0137, or s. 847.0138;
415 (9) Any criminal violation of part I of chapter 499; or
416 (10) Any criminal violation of s. 409.920 or s. 409.9201;
417
418 or any attempt, solicitation, or conspiracy to commit any
419 violation of the crimes specifically enumerated above, when any
420 such offense is occurring, or has occurred, in two or more
421 judicial circuits as part of a related transaction or when any
422 such offense is connected with an organized criminal conspiracy
423 affecting two or more judicial circuits. The statewide grand
424 jury may return indictments and presentments irrespective of the
425 county or judicial circuit where the offense is committed or
426 triable. If an indictment is returned, it shall be certified and
427 transferred for trial to the county where the offense was
428 committed. The powers and duties of, and law applicable to,
429 county grand juries shall apply to a statewide grand jury except
430 when such powers, duties, and law are inconsistent with the
431 provisions of ss. 905.31-905.40.
432 Section 9. This act shall take effect October 1, 2006.

HB 595

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 595 CS Community Behavioral Health Agencies
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	12 Y, 0 N, w/CS	Thomas	Hogge
2) Health Care Appropriations Committee	11 Y, 0 N, w/CS	Ekholm	Massengale
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The bill limits liability in negligence actions involving crisis services provided by detoxification programs, addictions receiving facilities, or designated public receiving facilities. The bill requires that net economic damages be limited to $1 million per liability claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity. Additionally, any noneconomic damages are limited to $200,000 per claim.

The bill specifies that the limitations on liability enjoyed by a provider under the provisions of this act extend to an employer of the provider when the employee is acting in furtherance of the provider's responsibilities under its contract with the Department of Children and Family Services. However, these limitations are not applicable to a provider or employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression when such acts result in injury or death.

The bill requires each provider to obtain and maintain liability insurance coverage in the amount of $1 million per claim and $3 million per incident.

Conditional limitations on damages specified by the act are increased at the rate of 5 percent each year, to be prorated from its effective date to the date at which damages subject to such limitations are awarded by final judgment or settlement.

The effective date of this bill is July 1, 2006.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill mandates that each provider obtain and maintain liability insurance coverage in the amount of $1 million per claim and $3 million per incident.

Promote personal responsibility—The bill limits the liability of a provider in certain civil actions.

Empower families—To the extent that providers reduce their costs for liability insurance and from legal immunity, the offering of services, with the attendant emotional and financial benefits, may increase for families.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Background on the Provision of Mental Health Services Prevention of Substance Abuse

Part I of chapter 394, F.S., is the Florida Mental Health Act, also known as "the Baker Act." The Baker Act describes the criteria and process for the involuntary examination of a person who is believed to have a mental illness and, because of that illness, has refused voluntary examination or is unable to determine that an examination is necessary and is a danger to themself or others or likely to suffer from self-neglect to the degree that it endangers his or her well-being. The statute authorizes law enforcement, certain mental health clinical professionals, or the court to require that an individual be involuntarily detained for evaluation for a period up to 72 hours.

In addition to procedural requirements for involuntary examination and voluntary and involuntary treatment, the Baker Act provides a framework for the public mental health service delivery system. The "front door" to that system is the public receiving facility. Receiving facilities admit persons for involuntary examination and are defined in the statute as "any public or private facility designated by the Department of Children and Family Services (DCF) to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment."[1] Public receiving facilities are those facilities that receive public funds specifically for Baker Act examinations. Under s. 394.459(2), F.S., receiving facilities are required to examine and provide treatment to everyone, regardless of their diagnosis or ability to pay. Public receiving facilities are usually co-located with a community mental health provider agency or a public hospital.

A crisis stabilization unit is defined as "a program that provides an alternative to inpatient hospitalization and that provides brief, intensive services 24 hours a day, seven days a week, for mentally ill individuals who are in an acutely disturbed state."[2] The definition of "crisis stabilization unit" and licensure requirements for these programs are found in part IV of chapter 394, F.S., the Community Substance Abuse and Mental Health Services Act.

Part V of chapter 397, F.S., provides criteria and procedures for the involuntary admission of an individual in an acute substance abuse crisis. A person meets the criteria for involuntary admission if he or she is substance abuse impaired and because of such impairment has lost the power of self-control with respect to substance use and either is likely to harm himself or herself or others or is in need of substance abuse services and his or her judgment has been so impaired that the person is unable to appreciate the need for treatment or services.[3] An individual may be compelled to

[1] Section 394.455(26), F.S.
[2] Section 394.67(5), F.S.
[3] Section 397.675, F.S.

emergency admission for detoxification, assessment, or stabilization through one of several pathways including law enforcement, physician certification, parent or guardian consent, or court order.

Substance abuse providers may be licensed by the DCF for one or several separate service components.[4] Included in these licensed service components are detoxification programs and addictions receiving facilities. Detoxification services may be provided within a facility that is licensed as a substance abuse treatment program or in a hospital licensed under chapter 395, F.S. Addictions receiving facilities (ARFs) are state-owned, state-operated, or state-contracted programs licensed by the DCF and designated as secure facilities to provide an intensive level of care. All persons admitted to ARFs are considered clients of the DCF and their admission cannot be denied solely on the basis of their inability to contribute to the cost of their care.[5] However, admission may be denied because of failure to meet admission criteria, medical or behavioral conditions beyond management capabilities of the program, or lack of space, services, or financial resources to pay for care.[6] Detoxification services may be provided on a residential or outpatient basis to assist an individual with the physiological and psychological withdrawal from the effects of substance abuse. While most of these programs are funded by the DCF, some of them are private, for-profit organizations that receive no funding from DCF.

As of Fiscal Year (FY) 2004-2005, DCF maintained contracts with 168 substance abuse providers and 249 community mental health provider agencies. There are currently 75 public receiving facilities and 53 private receiving facilities designated by the DCF. Among the public facilities, 47 are licensed by the Agency for Health Care Administration and designated as crisis stabilization units. The agency may not issue a license to a crisis stabilization unit unless the unit receives state funds. Of the substance abuse providers, 32 provide substance abuse detoxification services and 10 are licensed as ARFs. In FY 2004-2005, services were provided to 69,059 individuals through mental health or substance abuse crisis services agencies under contract with the DCF.

Current DCF contracts specify that a provider is an independent contractor and not an agent of the department and that the provider agrees to indemnify, defend and hold the department, its agencies, officers, and employees harmless from all claims, suits, judgments, or damages including attorneys' fees arising out of any act, actions, neglect or omission by the provider, its agents or employees. According to the Florida Council for Community Health (the "Council"), approximately 98 percent of persons served by these facilities are low income, uninsured individuals, or Medicaid eligible and virtually all funding for receiving facilities comes from local, state and federal government sources.

According to the council, the cost of medical malpractice liability insurance is limiting the ability of publicly-supported community mental health and substance abuse agencies to provide critical treatment and intervention services that are relied upon by law enforcement, local communities and state agencies. The Council states that medical malpractice insurance rates for community mental health and substance abuse agencies have increased 105 percent over the past three years, approximately 35 percent per year. In some cases, 5 percent or more of a facility's operating budget is used to pay for liability insurance.

The average cost of liability insurance for a community behavioral health provider was $238,847 in FY 2002-2003. The average yearly cost in FY 2003-2004 was $355,715, and increase of 49 percent. As an example of the impact on treatment capacity, a community mental health provider could have provided an additional 1,457 bed days of crisis stabilization care in lieu of paying for liability insurance during FY 2003-2004. The following chart provided by the council shows examples of the escalation of liability insurance premiums (which includes medical malpractice, officers and directors insurance and other liability insurance) for a sample of behavioral health care providers:

Sample of Community Providers' Annual Insurance Premium Increases
FY 2002-03 through FY 2005-06

[4] Section 397.311(18), F.S.
[5] Section 397.431(5), F.S.
[6] Section 397.6751, F.S.

Facility	FY 2002-03 Premiums	FY 2003-04 Premiums	FY 2004-05 Premiums	FY 2005-06 Premiums	% Increase from '02-03 to '05-06
Act Corporation	$391,000	$425,000	$582,061	$619,603	58.5%
Lakeview Center	$555,301	$793,063	$1,063,966	$1,236,461	122.7%
Personal Enrichment	$72,315	$225,662	$187,556	$159,454	120.5%
Meridian Behavioral Health	$306,364	$420,174	$520,896	$543,201	77.3%
Apalachee Center	$95,630	$247,239	$186,031	$272,355	184.8%
Bayview Center	$59,280	$88,952	$119,629	$137,646	132.2%
Manatee Glens	$99,744	$125,379	$137,404	$162,473	62.9%
LifeStream	$137,843	$167,463	$221,535	$257,879	87.1%
Bridgeway	$160,250	$281,539	$219,817	$238,270	48.7%
Average Cost / % Change	$208,636	$308,275	$359,877	$403,038	93.18%

Source: Florida Council for Behavioral Healthcare, Helping Florida Families in Crisis: Liability Limits for State Funded Detoxification and Public Receiving Facilities, January 1, 2006

Report by the Department of Children and Family Services on the Experience of Public Receiving Facilities in Securing and Maintaining Medical Malpractice Insurance

In 2004, the Florida Legislature, in proviso language in the General Appropriations Act, mandated that the DCF develop a report that reviewed the experience of public receiving facilities in securing and maintaining medical malpractice insurance. The review was to include the current cost of insurance and the rate of increase or decrease in these costs over the past three years and the experience of these facilities with lawsuits and associated awards. The department was directed to investigate whether these facilities were experiencing problems with malpractice insurance and the impact such problems have on service delivery. The department delivered the report to the Governor and the Senate and House Appropriations committees by December 31, 2004.

The report states that the median cost of insurance for public receiving facilities rose by 72.5 percent during the four years 2001 to 2004, from $15,210 in FY 2001-2002 to $26,239 in FY 2003-2004. During this same period, the reporting agencies' acute care budgets increased by 23.01 percent.

Similar Statutory Provisions

Liability limits and immunity provisions similar to those proposed in this bill are extended to health care[7] and other providers serving inmates of the state correctional system,[8] providers under contract with the Department of Juvenile Justice,[9] and eligible child welfare lead agencies.[10] These immunities are not applicable to a provider or employee who acts in a culpably negligent manner or with willful and wanton disregard or unproved physical aggression when such acts result in injury or death.

EFFECT OF PROPOSED CHANGES

The bill creates s. 394.9085, F.S., to specify that certain facilities or programs [a detoxification program defined in s. 397.311(18)(b), F.S, an addictions receiving facility defined in s. 397.311(18)(a), F.S., or a designated public receiving facility defined in s. 394.455(26), F.S.] shall have liability limits in negligence actions based on services for crisis stabilization. The bill requires that net economic damages be limited to $1 million per liability claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity. The bill also specifies that damages be offset by

[7] Section 456.048, F.S.
[8] Section 946.5026, F.S.
[9] Section 985.31(5)(d), F.S.
[10] Section 409.1671(1)(h), F.S.

any collateral source payment that is paid in accordance with s. 768.76, F.S. Additionally, any noneconomic damages specified against the entities specified by this bill are limited to $200,000 per claim. The provider or its insurer must assume any costs for defending actions brought under this section.

The bill specifies that the limitations on liability enjoyed by a provider under the provisions of this act extend to an employee of the provider when the employee is acting in furtherance of the provider's responsibilities under its contract with DCF. However, these limitations are not applicable to a provider or employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression when such acts result in injury or death.

The bill specifies that a person who provides contractual services to DCF is not an employee or agent of the state for the purposes of chapter 440, F.S. (Worker's Compensation). The bill requires each provider to obtain and maintain liability insurance coverage in the amount of $1 million per claim and $3 million per incident.

The bill additionally specifies that the conditional limitations on damages specified by this act shall be increased at the rate of five percent each year, to be prorated from its effective date to the date at which damages subject to such limitations are awarded by final judgment or settlement.

The bill specifies that the newly-created section shall not be construed to waive sovereign immunity for any governmental unit or other entity protected by sovereign immunity. Further, Section 768.28, F.S., regarding waiver of sovereign immunity in tort actions shall continue to apply to all governmental units and such entities.

C. SECTION DIRECTORY:

Section 1. Creates 768.0755, F.S., relating to behavioral provider liability.

Section 2. Provides that the bill takes effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of this bill limit the economic damages recoverable by certain individuals who have been damaged in tort and require that certain substance abuse and mental health providers purchase general liability coverage.

The Department of Children and Family Services reports that limiting the damages awarded to an individual may have a direct positive impact on certain mental health and substance abuse providers by containing the cost of their insurance premiums, thereby reducing their administrative costs.

To the extent that providers reduce their costs for insurance and legal fees, there may be increased funding available for services. Conversely, to the extent that injured persons are not able to recover fully for their injuries, more families may be dependent on government-funded assistance programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."[11] The Legislature must not unduly or unreasonably burden or restrict access. The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."[12] In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida and, if so, that it has not provided a reasonable alternative for redress and that there is not an "overpowering public necessity" for eliminating the right.[13]

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 & COMBINED BILL CHANGES

On March 28, 2006, the Judiciary Committee adopted one amendment to this bill. The amendment rewrote a portion of the original bill to:

- clarify that the bill applies to negligence actions arising out of the provision of crisis stabilization services;
- remove the provisions relating to allowing a claims bill;
- clarify that the required insurance coverage is for paying claims arising out of these negligence actions;
- address the technical drafting concerns raised in the bill analysis.

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[11] *See generally* 10A FLA. JUR. 2D CONSTITUTIONAL LAW §§ 360-69.
[12] Fla. Jur. 2d., s. 360.
[13] Kluger v. White, 281 So.2d 1, 4 (Fla. 1973).

On April 11, 2006, the Health Care Appropriations Committee adopted one amendment to the bill to clarify that the newly-created section is not to be construed to waive sovereign immunity for any governmental unit or other entity protected by sovereign immunity and that s. 768.28, F.S., shall continue to apply to all governmental units and such entities.

CHAMBER ACTION

1 The Health Care Appropriations Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to community behavioral health agencies;
8 creating s. 394.9085, F.S.; providing that certain
9 facilities or programs have liability limits in negligence
10 actions under certain circumstances; limiting net economic
11 damages allowed per claim; requiring that damages be
12 offset by collateral source payment in accordance with s.
13 768.76, F.S.; requiring that costs to defend actions be
14 assumed by the provider or its insurer; specifying
15 occasions upon which the limitations on liability enjoyed
16 by the provider extend to the employee; requiring that
17 providers obtain and maintain specified liability
18 coverage; specifying that persons providing contractual
19 services to the state are not considered agents or
20 employees under ch. 440, F.S.; providing for an annual
21 increase in the conditional limitations on damages;
22 providing definitions; providing construction; preserving
23 sovereign immunity for governmental units and entities

24 protected by sovereign immunity; providing an effective
25 date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Section 394.9085, Florida Statutes, is created
30 to read:
31 394.9085 Behavioral provider liability.--
32 (1)(a) In any negligence action for damages for personal
33 injury or wrongful death arising out of the provision of
34 services for crisis stabilization brought against a
35 detoxification program, an addictions receiving facility, or a
36 designated public receiving facility, net economic damages shall
37 be limited to $1 million per liability claim, including, but not
38 limited to, past and future medical expenses, wage loss, and
39 loss of earning capacity. In computing net economic damages,
40 such damages shall be offset by any collateral source payment
41 paid in accordance with s. 768.76.
42 (b) In any negligence action for damages for personal
43 injury or wrongful death arising out of the provision of
44 services for crisis stabilization brought against any
45 detoxification program, an addictions receiving facility, or a
46 designated public receiving facility, noneconomic damages shall
47 be limited to $200,000 per claim.
48 (c) Any costs in defending actions brought under this
49 section shall be assumed by the provider or its insurer.
50 (2) The limitations on liability of a detoxification
51 program, an addictions receiving facility, or any designated

52 public receiving facility as described in subsection (1) shall
53 be exclusive. Such limitations apply to each employee of the
54 provider when the employee is acting in furtherance of the
55 provider's responsibilities under its contract with the
56 department. Such limitations do not apply to a provider or
57 employee who acts in a culpably negligent manner or with willful
58 and wanton disregard or unprovoked physical aggression if such
59 acts result in injury or death.
60 (3) The eligible provider under this section must, as part
61 of its contract, obtain and maintain an insurance policy
62 providing a minimum of $1 million per claim and $3 million per
63 incident in coverage for claims described in subsection (1).
64 (4) This section does not designate a person who provides
65 contracted services to the department as an employee or agent of
66 the state for purposes of chapter 440.
67 (5) The Legislature is cognizant of the increasing costs
68 of goods and services each year and recognizes that fixing a set
69 amount of compensation actually has the effect of a reduction in
70 compensation each year. Accordingly, the conditional limitations
71 on damages in this section shall be increased at the rate of 5
72 percent each year, prorated from July 1, 2006, to the date at
73 which damages subject to such limitations are awarded by final
74 judgment or settlement.
75 (6) For purposes of this section, the terms
76 "detoxification program," "addictions receiving facility," and
77 "receiving facility" have the same meanings as those provided in
78 ss. 397.311(18)(b), 397.311(18)(a), and 394.455(26),
79 respectively.

80 (7) This section shall not be construed to waive sovereign
81 immunity for any governmental unit or other entity protected by
82 sovereign immunity. Section 768.28 shall continue to apply to
83 all governmental units and such entities.
84 Section 2. This act shall take effect July 1, 2006.

HB 651

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Secondhand Dealers
SPONSOR(S): Kottkamp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) Business Regulation Committee	18 Y, 0 N	Livingston	Liepshutz
3) Governmental Operations Committee	5 Y, 0 N	Brown	Williamson
4) Justice Council			
5)			

SUMMARY ANALYSIS

This bill modifies provisions relating to secondhand dealers, and adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property.

Changes include:

- Revising definitions of what constitutes secondhand goods and exempting persons.
- Repealing the exemption from regulation for mail order sales.
- Specifically exempting certain internet business from regulation as a secondhand dealer.
- Revising the recordkeeping requirements and increasing criminal penalties.
- Increasing the time law enforcement can order a hold on stolen goods.

This bill does not appear to have a fiscal impact on state or local governments, although it is likely to have a negative fiscal impact on secondhand dealers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases regulation of secondhand dealers.

B. EFFECT OF PROPOSED CHANGES:

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Chapter 538, F.S., regulates secondhand dealers; the registration requirements are administered by the Department of Revenue.[1]

Prior to 1996, pawnbrokers also were regulated by chapter 538, F.S., but pawnbrokers are now regulated pursuant to chapter 539, F.S. This bill deletes references to pawnbrokers from chapter 538, F.S., and generally increases the regulation of secondhand dealers. The regulations are similar to the regulations governing pawnbrokers.

Items Regulated

Section 538.03(1)(g), F.S., currently defines "secondhand goods". That definition is limited to a list of specified items. This bill removes the current list and defines secondhand goods as personal property previously owned or used which is not "regulated metals property"[2] and which is purchased, consigned, or traded as used property. The bill lists goods that are specifically excluded. This list contains office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

Mail Order Sales/Internet Sales

Section 538.03(2), F.S., currently lists entities and types of sales exempt from regulation pursuant to chapter 538, F.S. Included in the list of exemptions is the sale of secondhand goods by mail order, including internet sales.[3]

The bill deletes the exemption, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail, or through computer services, is subject to regulation as a secondhand goods dealer under chapter 538, F.S. However, this bill adds an exception for a business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an internet website, and that maintains a shop, store, or other business premises for this purpose if:

- The secondhand goods are available for viewing on the website at no charge;
- The records of the sale, purchase, consignment, or trade are maintained for two years;
- The records of the sale, purchase, consignment, or trade contain the serial number of each item, if any;
- The secondhand goods are searchable by state or zip code on the website;
- The name under which the company conducts business is provided to the appropriate law enforcement agency;

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[1] Initial registration as a secondhand dealer is $6.00 per location, plus $47.00 for each principal to conduct a criminal history background check. Annual renewal is $6.00 per location.

[2] "Regulated metals property" refers to certain precious metals and is governed by Part II of chapter 538, F.S.

[3] Specifically, the current exemption covers: "Any person purchasing, consigning, or pawning secondhand goods ordered by mail, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited shopping or shopping by other means of media communication, including, but not limited to, direct mail advertising, unsolicited distribution of catalogs, television, radio, or other electronic media, telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order."

- The business allows the appropriate law enforcement agency to inspect its premises any time during normal business hours;
- Any payment for sale, purchase, consignment, or trade must be made by check or via a money transmitter licensed under part II of chapter 560; and
    - At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business verifies the item is not stolen via its serial number against the FDLE stolen property database; or
    - The business provides the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods within 24 hours after entering into the contract unless other arrangements are made between the business and law enforcement.

This bill also exempts any person offering his or her own personal property for sale, purchase, consignment, or trade via an internet website when that person is not required to have a local occupational or business license for this purpose.

The bill exempts a business whose primary business is the sale, rental, or trade of motion picture videos or video games if the business:

- Requires the sellers to have a current account with the business;
- Has on file the name, address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
- Purchases secondhand goods from the property owner or representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states the seller is the lawful owner;
- Retains such purchase agreements for at least one year; and
- Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or authorized user of seller's account.

Recordkeeping Requirements

Section 538.04, F.S., requires a secondhand dealer to maintain records of all goods purchased and requires that a copy of each purchase record be forwarded to local law enforcement within 24 hours of purchase. The form for providing that information must be approved by the Florida Department of Law Enforcement. Section 538.06(4), F.S., requires a secondhand dealer to keep the forms for five years.

This bill increases the amount of information that must be obtained on the form to match the information that a pawnbroker must collect. The increased information includes a requirement that the person selling or consigning goods to the secondhand dealer must furnish a thumbprint. The retention time for the forms is reduced from five years to three years and forms must be maintained at the licensed premises for the first year. This bill also provides that if local law enforcement provides appropriate software and equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulations in chapter 539, F.S.

Criminal Penalties

Section 538.04(4), F.S., provides that it is a criminal offense for any person to knowingly give false verification of ownership[4] and receive money from a secondhand dealer for goods sold. If the amount received is less than $300, it is a first degree misdemeanor; if greater than $300, it is a third degree felony.

[4] This includes false or altered identification. *See* s. 538.04(4), F.S.

This bill adds goods "consigned or traded" to the penalty provisions and increases the penalties to a third degree felony when the amount received is less than $300 and a second degree felony when the amount received is greater than $300. These penalties are analogous to the statute applicable to pawnbrokers.[5]

Section 538.07(2), F.S., currently provides that, upon a conviction for theft, violation of the secondhand dealer law, or dealing in stolen property, a court must order the defendant to make restitution to the secondhand dealer. This bill provides that restitution must be made to the secondhand dealer or to the lawful owner of the property, as applicable.

Inspection by Law Enforcement

The registered premises of a secondhand dealer, including any purchase records, may be inspected during regular business hours. The local police department may inspect the premises if they are located in a municipality. The sheriff may inspect, if the premises are located outside a municipality.

This bill specifies that the "entire" registered premises is open to inspection and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Thus, this bill provides that county sheriffs may inspect secondhand dealers located anywhere in their county.

Minimum Holding Period and Law Enforcement Holds

Section 538.06(1), F.S., provides that a secondhand dealer must hold property 15 days before re-selling the property, unless the person who sold the property to the dealer buys it back. Chapter 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

Section 538.06(3), F.S., provides that a law enforcement officer may extend the hold period for 60 days if the law enforcement officer has probable cause to believe the property is stolen.

This bill amends the law enforcement hold period for secondhand dealers to 90 days. This bill also provides that, if a 90-day hold is in effect, the secondhand dealer may be compelled to surrender property believed to be stolen property to local law enforcement for use in a criminal proceeding. The criminal court may order the property returned to the person from whom it was stolen, in which case the thief must pay restitution, including attorney's fees and costs, to the secondhand dealer. This provision is identical to one currently applicable to pawnbrokers.[6]

Registration as a Secondhand Dealer

Section 538.09(5), F.S., currently provides the requirements for registration as a secondhand goods dealer. Included is a requirement that a principal in the business may not have been convicted of, or entered a plea of guilty or no contest to a crime against the laws of Florida, any other state, or the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of section 812.015, or any fraudulent dealing within the previous five years.

This bill changes the time period from "previous 5 years" to "previous 10 years," and adds that merely having adjudication withheld for any of the enumerated offenses disqualifies a person from being a principal in a business acting as a secondhand dealer.[7]

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[5] *See* section 539.001(8)(b)8.a. and b., F.S. The felony criminal offenses in s. 538.04(4), F.S., are not classified in the offense severity ranking chart of the Criminal Punishment Code; accordingly the amended third degree felony will be a Level 1 offense and the second degree felony will be a Level 4 offense. [s. 921.0023, F.S.]

[6] Section 539.001(16)(e)2., F.S.

[7] Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. *See* section 539.001(4)(a)4., F.S.

This bill also amends section 538.09, F.S., to add, upon the request of a law enforcement official, the Department of Revenue shall release the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

The effective date of this bill is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to chapter 538, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements to provide criminal penalties.

Section 3 amends s. 538.05, F.S., regarding provisions relating to the inspection or records and premises.

Section 4 amends s. 538.06, F.S., regarding how long a secondhand goods dealer must hold stolen goods.

Section 5 amends s. 538.07, F.S., regarding restitution from a secondhand dealer.

Section 6 amends s. 538.09, F.S., regarding registration as a secondhand goods dealer.

Section 7 repeals s. 538.16, F.S., regarding disposal of pawned property.

Section 8 amends s. 516.02, F.S., to remove cross-references.

Section 9 reenacts s. 790.335 (3)(f), F.S., regarding firearm records to provide criminal penalties.

Section 10 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a direct negative fiscal impact on businesses that deal in secondhand goods and are not exempt from the regulation. They will be required to hold merchandise longer before selling it, which is likely to increase storage costs and floor plan interest costs. They will also have increased transactional and recordkeeping costs related to the increased amount of information required for the secondhand transaction form.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to secondhand dealers; amending s. 538.03,
3 F.S.; revising definitions; revising applicability of ch.
4 538, F.S.; exempting persons or entities offering
5 secondhand goods or personal property for sale, purchase,
6 consignment, or trade via the Internet from the provisions
7 of ch. 538, F.S., under certain circumstances; exempting
8 certain businesses that sell, rent, or trade motion
9 picture videos or video games from ch. 538, F.S.; amending
10 s. 538.04, F.S.; revising recordkeeping requirements for
11 secondhand dealers; providing penalties for knowingly
12 giving false verification of ownership or a false or
13 altered identification, and for receiving money from a
14 secondhand dealer for goods sold, consigned, or traded if
15 the value of the money received is less than $300, and if
16 the value of the money received is $300 or more; providing
17 for the electronic transfer of secondhand dealer
18 transactions under specified circumstances; authorizing
19 appropriate law enforcement agencies to provide a
20 secondhand dealer with a computer and other equipment
21 necessary to electronically transfer secondhand dealer
22 transactions; providing procedures with respect to
23 electronic transfer of secondhand dealer transactions;
24 amending s. 538.05, F.S.; revising provisions relating to
25 the inspection of records and premises of secondhand
26 dealers; amending s. 538.06, F.S.; revising provisions
27 with respect to the holding of goods upon probable cause
28 that the goods are stolen; providing for payment of

29 restitution, attorney's fees, and costs to a secondhand
30 dealer under specified circumstances; revising the time
31 limit for maintenance of transaction records by dealers in
32 secondhand property; amending s. 538.07, F.S.; revising
33 provisions relating to restitution for stolen property
34 recovered from a secondhand dealer; amending s. 538.09,
35 F.S.; revising provisions with respect to registration as
36 a secondhand dealer; revising conditions under which
37 registration may be denied, revoked, restricted, or
38 suspended by the Department of Revenue; repealing s.
39 538.16, F.S., relating to disposal of property by
40 secondhand dealers; amending s. 516.02, F.S.; removing
41 cross-references; reenacting s. 790.335(3)(f), F.S., which
42 provides a second degree felony penalty for any secondhand
43 dealer who contracts with a specified third-party provider
44 or electronically transmits certain records of firearms
45 transactions to any third-party provider; providing an
46 effective date.
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50 Section 1. Section 538.03, Florida Statutes, is amended to
51 read:
52 538.03 Definitions; applicability.--
53 (1) As used in this part, the term:
54 (a) "Secondhand dealer" means any person, corporation, or
55 other business organization or entity which is not a secondary
56 metals recycler subject to part II and which is engaged in the

57 business of purchasing, consigning, or trading ~~pawning~~
58 secondhand goods. ~~However, secondhand dealers are not limited to~~
59 ~~dealing only in items defined as secondhand goods in paragraph~~
60 ~~(g). Except as provided in subsection (2), the term means~~
61 ~~pawnbrokers, jewelers, precious metals dealers, garage sale~~
62 ~~operators, secondhand stores, and consignment shops.~~
63 (b) "Precious metals dealer" means a secondhand dealer who
64 normally or regularly engages in the business of buying used
65 precious metals for resale. The term does not include those
66 persons involved in the bulk sale of precious metals from one
67 secondhand or precious metals dealer to another.
68 ~~(c) "Pawnbroker" means any person, corporation, or other~~
69 ~~business organization or entity which is regularly engaged in~~
70 ~~the business of making pawns but does not include a financial~~
71 ~~institution as defined in s. 655.005 or any person who regularly~~
72 ~~loans money or any other thing of value on stocks, bonds, or~~
73 ~~other securities.~~
74 ~~(d) "Pawn" means either of the following transactions:~~
75 ~~1. Loan of money. A written or oral bailment of personal~~
76 ~~property as security for an engagement or debt, redeemable on~~
77 ~~certain terms and with the implied power of sale on default.~~
78 ~~2. Buy-sell agreement. An agreement whereby a purchaser~~
79 ~~agrees to hold property for a specified period of time to allow~~
80 ~~the seller the exclusive right to repurchase the property. A~~
81 ~~buy-sell agreement is not a loan of money.~~
82 (c) ~~(e)~~ "Secondhand store" means the place or premises at
83 which a secondhand dealer is registered to conduct business as a
84 secondhand dealer~~,~~ or conducts business~~, including pawn shops~~.

85 (d) ~~(f)~~ "Consignment shop" means a shop engaging in the
86 business of accepting for sale, on consignment, secondhand goods
87 which, having once been used or transferred from the
88 manufacturer to the dealer, are then received into the
89 possession of a third party.
90 (e) "Acquire" means to obtain by purchase, consignment, or
91 trade.
92 (f) ~~(g)~~ "Secondhand goods" means personal property
93 previously owned or used, which is not regulated metals property
94 regulated under part II and which is purchased, consigned, or
95 traded ~~pawned~~ as used property. Such secondhand goods shall not
96 include office furniture, pianos, books, clothing, organs,
97 coins, motor vehicles, costume jewelry, and secondhand sports
98 equipment that is not permanently labeled with a serial number.
99 For purposes of this paragraph, "secondhand sports equipment"
100 does not include golf clubs. ~~be limited to watches; diamonds,~~
101 ~~gems, and other precious stones; fishing rods, reels, and~~
102 ~~tackle; audio and video electronic equipment, including~~
103 ~~television sets, compact disc players, radios, amplifiers,~~
104 ~~receivers, turntables, tape recorders; video tape recorders;~~
105 ~~speakers and citizens' band radios; computer equipment; radar~~
106 ~~detectors; depth finders; trolling motors; outboard motors;~~
107 ~~sterling silver flatware and serving pieces; photographic~~
108 ~~equipment, including cameras, video and film cameras, lenses,~~
109 ~~electronic flashes, tripods, and developing equipment; microwave~~
110 ~~ovens; animal fur coats; marine equipment; video games and~~
111 ~~cartridges; power lawn and landscape equipment; office equipment~~
112 ~~such as copiers, fax machines, and postage machines but~~

113 ~~excluding furniture; sports equipment; golf clubs; weapons,~~
114 ~~including knives, swords, and air guns; telephones, including~~
115 ~~cellular and portable; firearms; tools; calculators; musical~~
116 ~~instruments, excluding pianos and organs; lawnmowers; bicycles;~~
117 ~~typewriters; motor vehicles; gold, silver, platinum, and other~~
118 ~~precious metals excluding coins; and jewelry, excluding costume~~
119 ~~jewelry.~~
120 (g) ~~(h)~~ "Transaction" means any purchase, consignment, or
121 trade ~~pawn~~ of secondhand goods by a secondhand dealer.
122 (h) ~~(i)~~ "Precious metals" means any item containing any
123 gold, silver, or platinum, or any combination thereof,
124 excluding~~:~~
125 ~~1.~~ any chemical or any automotive, photographic,
126 electrical, medical, or dental materials or electronic parts.
127 ~~2. Any coin with an intrinsic value less than its~~
128 ~~numismatic value.~~
129 ~~3. Any gold bullion coin.~~
130 ~~4. Any gold, silver, or platinum bullion that has been~~
131 ~~assayed and is properly marked as to its weight and fineness.~~
132 ~~5. Any coin which is mounted in a jewelry setting.~~
133 (i) ~~(j)~~ "Department" means the Department of Revenue.
134 ~~(k) "Pledge" means pawn or buy-sell agreement.~~
135 (2) This chapter does not apply to:
136 (a) Any secondhand goods transaction involving an
137 organization or entity registered with the state as a nonprofit,
138 religious, or charitable organization or any school-sponsored
139 association or organization other than a secondary metals
140 recycler subject to the provisions of part II.

141 (b) A law enforcement officer acting in an official
142 capacity.
143 (c) A trustee in bankruptcy, executor, administrator, or
144 receiver who has presented proof of such status to the
145 secondhand dealer.
146 (d) Any public official acting under judicial process or
147 authority who has presented proof of such status to the
148 secondhand dealer.
149 (e) A sale on the execution, or by virtue of any process
150 issued by a court, if proof thereof has been presented to the
151 secondhand dealer.
152 (f) Any garage sale operator who holds garage sales less
153 than 10 weekends per year.
154 (g) Any person at antique, coin, or collectible shows or
155 sales.
156 (h) Any person who sells household personal property as an
157 agent for the property owner or their representative pursuant to
158 a written agreement at that person's residence.
159 (i) The purchase, consignment, or trade ~~pawn~~ of secondhand
160 goods from one secondhand dealer to another secondhand dealer
161 when the selling secondhand dealer has complied with the
162 requirements of this chapter.
163 (j) Any person accepting a secondhand good as a trade-in
164 for a similar item of greater value.
165 (k) Any person purchasing, consigning, or trading ~~pawning~~
166 secondhand goods at a flea market regardless of whether at a
167 temporary or permanent business location at the flea market.
168 (l) Any auction business as defined in s. 468.382(1).

169 (m) Any business that is registered with the Department of
170 Revenue for sales tax purposes as an antique dealer pursuant to
171 chapter 212 and that purchases secondhand goods from the
172 property owner or her or his representative at the property
173 owner's residence pursuant to a written agreement that states
174 the name, address, and telephone number of the property owner
175 and the type of property purchased.
176 (n) A business that contracts with other persons or
177 entities to offer its secondhand goods for sale, purchase,
178 consignment, or trade via an Internet website, and that
179 maintains a shop, store, or other business premises for this
180 purpose, if all of the following apply:
181 1. The secondhand goods must be available on the website
182 for viewing by the general public at no charge;
183 2. The records of the sale, purchase, consignment, or
184 trade must be maintained for at least 2 years;
185 3. The records of the sale, purchase, consignment, or
186 trade, and the description of the secondhand goods as listed on
187 the website, must contain the serial number of each item, if
188 any;
189 4. The secondhand goods listed on the website must be
190 searchable based upon the state or zip code;
191 5. The business must provide the appropriate law
192 enforcement agency with the name or names under which it
193 conducts business on the website;
194 6. The business must allow the appropriate law enforcement
195 agency to inspect its business premises at any time during
196 normal business hours;

197 7. Any payment by the business resulting from such a sale,
198 purchase, consignment, or trade must be made to the person or
199 entity with whom the business contracted to offer the goods and
200 must be made by check or via a money transmitter licensed under
201 part II of chapter 560; and
202 8.a. At least 48 hours after the estimated time of
203 contracting to offer the secondhand goods, the business must
204 verify that any item having a serial number is not stolen
205 property by entering the serial number of the item into the
206 Department of Law Enforcement's stolen article database located
207 at the Florida Crime Information Center's public access system
208 website. The business shall record the date and time of such
209 verification on the contract covering the goods. If such
210 verification reveals that an item is stolen property, the
211 business shall immediately remove the item from any website on
212 which it is being offered and notify the appropriate law
213 enforcement agency; or
214 b. The business must provide the appropriate law
215 enforcement agency with an electronic copy of the name, address,
216 phone number, driver's license number, and issuing state of the
217 person with whom the business contracted to offer the goods, as
218 well as an accurate description of the goods, including make,
219 model, serial number, and any other unique identifying marks,
220 numbers, names, or letters that may be on an item, in a format
221 agreed upon by the business and the appropriate law enforcement
222 agency. This information must be provided to the appropriate law
223 enforcement agency within 24 hours after entering into the
224 contract unless other arrangements are made between the business

225 and the law enforcement agency. ~~Any person purchasing,~~
226 ~~consigning, or pawning secondhand goods ordered by mail,~~
227 ~~computer-assisted shopping, media-assisted, media-facilitated,~~
228 ~~or media-solicited shopping or shopping by other means of media~~
229 ~~communication, including, but not limited to, direct mail~~
230 ~~advertising, unsolicited distribution of catalogs, television,~~
231 ~~radio, or other electronic media, telephone, magazine, or~~
232 ~~newspaper advertising, so long as such person is in this state~~
233 ~~at the time of the order.~~
234 (o) Any person offering his or her own personal property
235 for sale, purchase, consignment, or trade via an Internet
236 website, or a person or entity offering the personal property of
237 others for sale, purchase, consignment, or trade via an Internet
238 website, when that person or entity does not have, and is not
239 required to have, a local occupational or business license for
240 this purpose.
241 (p) A business whose primary business is the sale, rental,
242 or trade of motion picture videos or video games, if the
243 business:
244 1. Requires the sellers of secondhand goods to have a
245 current account with the business;
246 2. Has on file in a readily accessible format the name,
247 current residential address, home and work telephone numbers,
248 government-issued identification number, place of employment,
249 date of birth, gender, and right thumbprint of each seller of
250 secondhand goods;
251 3. Purchases secondhand goods from the property owner or
252 his or her representative at the place of business pursuant to

253 an agreement in writing and signed by the property owner which
254 describes the property purchased, states the date and time of
255 the purchase, and states that the seller is the lawful owner of
256 the property;
257 4. Retains such purchase agreements for not less than 1
258 year; and
259 5. Pays for the purchased property in the form of a store
260 credit that is issued to the seller and is redeemable solely by
261 the seller or another authorized user of the seller's account
262 with that business.
263 (q) ~~(o)~~ A motor vehicle dealer as defined in s. 320.27.
264 (3) This part does not apply to secondary metals recyclers
265 regulated under part II, except for s. 538.11, which applies to
266 both secondhand dealers and secondary metals recyclers.
267 Section 2. Section 538.04, Florida Statutes, is amended to
268 read:
269 538.04 Recordkeeping requirements; penalties.--
270 (1) Secondhand dealers shall complete a secondhand dealers
271 transaction form at the time of the actual transaction. A
272 secondhand dealer shall maintain a copy of a completed
273 transaction form on the registered premises for at least 1 year
274 after the date of the transaction. However, the secondhand
275 dealer shall maintain a copy of the transaction form for a
276 period of no less than 3 years. ~~Secondhand dealers shall~~
277 ~~maintain records of all transactions of secondhand goods on the~~
278 ~~premises.~~ Unless other arrangements have been agreed upon by the
279 secondhand dealer and the appropriate law enforcement agency,
280 the secondhand dealer shall, within 24 hours after ~~of~~ the

281 acquisition of any secondhand goods, ~~by purchase or pledge as~~
282 ~~security for a loan, a secondhand dealer shall~~ deliver to the
283 police department of the municipality where the goods were
284 acquired ~~purchased~~ or, if the goods were acquired ~~purchased~~
285 outside of a municipality, to the sheriff's department of the
286 county where the goods were acquired ~~purchased~~, a record of the
287 transaction on a form approved by the Department of Law
288 Enforcement. Such record shall contain:
289 (a) The time, date, and place of the transaction.
290 (b) A complete and accurate description of the goods
291 acquired, including the following information, if applicable:
292 ~~any serial numbers, manufacturer's numbers, or other identifying~~
293 ~~marks or characteristics.~~
294 1. Brand name.
295 2. Model number.
296 3. Manufacturer's serial number.
297 4. Size.
298 5. Color, as apparent to the untrained eye.
299 6. Precious metal type, weight, and content, if known.
300 7. Gemstone description, including the number of stones,
301 if applicable.
302 8. In the case of firearms, the type of action, caliber or
303 gauge, number of barrels, barrel length, and finish.
304 9. Any other unique identifying marks, numbers, or
305 letters.
306 (c) A description of the person from whom the goods were
307 acquired, including:
308 1. Full name, current residential address, workplace, and

309 home and work phone numbers.
310 2. Height, weight, date of birth, race, gender, hair
311 color, eye color, and any other identifying marks.
312 3. The right thumbprint, free of smudges and smears, of
313 the person from whom the goods were acquired.
314 (d) Any other information required by the form approved by
315 the Department of Law Enforcement.
316 (2) The secondhand dealer shall require verification of
317 the identification by the exhibition of a government-issued
318 photographic identification card such as a driver's license or
319 military identification card. The record shall contain the type
320 of identification exhibited, the issuing agency, and the number
321 thereon.
322 (3) The seller shall sign a statement verifying that the
323 seller is the rightful owner of the goods or is entitled to
324 sell, consign, or trade ~~pledge~~ the goods.
325 (4) Any person who knowingly gives false verification of
326 ownership or who gives a false or altered identification, and
327 who receives money from a secondhand dealer for goods sold,
328 consigned, or traded ~~pledged~~ commits:
329 (a) If the value of the money received is less than $300,
330 a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as
331 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.
332 (b) If the value of the money received is $300 or more, a
333 felony of the second ~~third~~ degree, punishable as provided in s.
334 775.082, s. 775.083, or s. 775.084.
335 (5) Secondhand dealers are exempt from the provisions of
336 this section for all transactions involving secondhand sports

337 equipment except secondhand sports equipment that is permanently
338 labeled with a serial number.
339 (6) If the appropriate law enforcement agency supplies a
340 secondhand dealer with appropriate software and the secondhand
341 dealer has computer capability, secondhand dealer transactions
342 shall be electronically transferred. If a secondhand dealer does
343 not have computer capability, the appropriate law enforcement
344 agency may provide the secondhand dealer with a computer and all
345 necessary equipment for the purpose of electronically
346 transferring secondhand dealer transactions. The appropriate law
347 enforcement agency shall retain ownership of the computer,
348 unless otherwise agreed upon. The secondhand dealer shall
349 maintain the computer in good working order, ordinary wear and
350 tear excepted. In the event the secondhand dealer transfers
351 secondhand dealer transactions electronically, the secondhand
352 dealer is not required to also deliver to the appropriate law
353 enforcement agency the original or copies of the secondhand
354 transaction forms. For the purpose of a criminal investigation,
355 the appropriate law enforcement agency may request that the
356 secondhand dealer produce an original of a transaction form that
357 has been electronically transferred. The secondhand dealer shall
358 deliver this form to the appropriate law enforcement agency
359 within 24 hours after the request.
360 (7) If the original transaction form is lost or destroyed
361 by the appropriate law enforcement agency, a copy may be used by
362 the secondhand dealer as evidence in court. When an electronic
363 image of a customer's identification is accepted for a
364 transaction, the secondhand dealer must maintain the electronic

365 image in order to meet the recordkeeping requirements applicable
366 to the original transaction form. If a criminal investigation
367 occurs, the secondhand dealer shall, upon request, provide a
368 clear and legible copy of the image to the appropriate law
369 enforcement agency.
370 Section 3. Section 538.05, Florida Statutes, is amended to
371 read:
372 538.05 Inspection of records and premises of secondhand
373 dealers.--
374 (1) The entire registered premises and required records of
375 each secondhand dealer are subject to inspection during regular
376 business hours by any law enforcement officer with jurisdiction
377 ~~the police department if the premises are located within a~~
378 ~~municipality or, if located outside a municipality, by the~~
379 ~~sheriff's department of the county in which the premises are~~
380 ~~located, and by any state law enforcement officer who has~~
381 ~~jurisdiction over the dealer~~.
382 (2) The inspection authorized by subsection (1) shall
383 consist of an examination on the registered premises of the
384 inventory and required records to determine whether the records
385 and inventory are being maintained on the registered premises as
386 required by s. 538.04 and whether the holding period required by
387 s. 538.06 is being complied with.
388 Section 4. Section 538.06, Florida Statutes, is amended to
389 read:
390 538.06 Holding period.--
391 (1) A secondhand dealer shall not sell, barter, exchange,
392 alter, adulterate, use, or in any way dispose of any secondhand

393 goods within 15 calendar days after ~~of~~ the date of acquisition
394 of the goods. Such holding periods are not applicable when the
395 person known by the secondhand dealer to be the person from whom
396 the goods were acquired desires to redeem, repurchase, or
397 recover the goods, provided the dealer can produce the record of
398 the original transaction with verification that the customer is
399 the person from whom the goods were originally acquired.
400 (2) A secondhand dealer must maintain actual physical
401 possession of all secondhand goods throughout a transaction. It
402 is unlawful for a secondhand dealer to accept title or any other
403 form of security in secondhand goods in lieu of actual physical
404 possession. A secondhand dealer who accepts title or any other
405 form of security in secondhand goods in lieu of actual physical
406 possession commits a misdemeanor of the first degree, punishable
407 as provided in s. 775.082 or s. 775.083.
408 (3) Upon probable cause that goods held by a secondhand
409 dealer are stolen, a law enforcement officer with jurisdiction
410 may place a 90-day written hold order on the goods ~~extend the~~
411 ~~holding period to a maximum of 60 days~~. However, the hold
412 ~~holding period~~ may be extended beyond 90 ~~60~~ days by a court of
413 competent jurisdiction upon a finding of probable cause that the
414 property is stolen and further holding is necessary for the
415 purposes of trial or to safeguard such property. The dealer
416 shall assume all responsibility, civil or criminal, relative to
417 the property or evidence in question, including responsibility
418 for the actions of any employee with respect thereto.
419 (4) While a hold order is in effect, the secondhand dealer
420 must, upon request, release the property subject to the hold

421 order to the custody of a law enforcement officer with
422 jurisdiction for use in a criminal investigation. The release of
423 the property to the custody of the law enforcement officer is
424 not considered a waiver or release of the secondhand dealer's
425 rights or interest in the property. Upon completion of the
426 criminal proceeding, the property must be returned to the
427 secondhand dealer unless the court orders other disposition.
428 When such other disposition is ordered, the court shall
429 additionally order the person from whom the secondhand dealer
430 acquired the property to pay restitution to the secondhand
431 dealer in the amount that the secondhand dealer paid for the
432 property together with reasonable attorney's fees and costs.
433 (5) ~~(4)~~ All dealers in secondhand property regulated by
434 this chapter shall maintain transaction records for 3 ~~5~~ years.
435 Section 5. Section 538.07, Florida Statutes, is amended to
436 read:
437 538.07 Penalty for violation of chapter.--
438 (1) Except as ~~where~~ otherwise provided herein, a person
439 who knowingly violates any provision of this chapter commits a
440 misdemeanor of the first degree, punishable as provided in s.
441 775.082 and by a fine not to exceed $10,000.
442 (2) When the lawful owner recovers stolen property from a
443 secondhand dealer and the person who sold or pledged the stolen
444 property to the secondhand dealer is convicted of theft, a
445 violation of this section, or dealing in stolen property, the
446 court shall order the defendant to make restitution to either
447 the secondhand dealer or the lawful owner, as applicable,
448 pursuant to s. 775.089.

449 Section 6. Section 538.09, Florida Statutes, is amended to
450 read:
451 538.09 Registration.--
452 (1) A secondhand dealer shall not engage in the business
453 of purchasing, consigning, or trading ~~pawning~~ secondhand goods
454 from any location without registering with the Department of
455 Revenue. A fee equal to the federal and state costs for
456 processing required fingerprints must be submitted to the
457 department with each application for registration. One
458 application is required for each dealer. If a secondhand dealer
459 is the owner of more than one secondhand store location, the
460 application must list each location, and the department shall
461 issue a duplicate registration for each location. For purposes
462 of subsections (4) and (5) of this section, these duplicate
463 registrations shall be deemed individual registrations. A dealer
464 shall pay a fee of $6 per location at the time of registration
465 and an annual renewal fee of $6 per location on October 1 of
466 each year. All fees collected, less costs of administration,
467 shall be transferred into a trust fund to be established and
468 entitled the Secondhand Dealer and Secondary Metals Recycler
469 Clearing Trust Fund. The Department of Revenue shall forward the
470 full set of fingerprints to the Department of Law Enforcement
471 for state and federal processing, provided the federal service
472 is available, to be processed for any criminal justice
473 information as defined in s. 943.045. The cost of processing
474 such fingerprints shall be payable to the Department of Law
475 Enforcement by the Department of Revenue. The department may
476 issue a temporary registration to each location pending

477 completion of the background check by state and federal law
478 enforcement agencies, but shall revoke such temporary
479 registration if the completed background check reveals a
480 prohibited criminal background. An applicant for a secondhand
481 dealer registration must be a natural person who has reached the
482 age of 18 years.
483 (a) If the applicant is a partnership, all the partners
484 must apply.
485 (b) If the applicant is a joint venture, association, or
486 other noncorporate entity, all members of such joint venture,
487 association, or other noncorporate entity must make application
488 for registration as natural persons.
489 (c) If the applicant is a corporation, the registration
490 must include the name and address of such corporation's
491 registered agent for service of process in the state and a
492 certified copy of statement from the Secretary of State that the
493 corporation is duly organized in the state or, if the
494 corporation is organized in a state other than Florida, a
495 certified copy of statement from the Secretary of State that the
496 corporation is duly qualified to do business in this state. If
497 the dealer has more than one location, the application must list
498 each location owned by the same legal entity and the department
499 shall issue a duplicate registration for each location.
500 (2) The secondhand dealer shall furnish with her or his
501 registration a complete set of her or his fingerprints,
502 certified by an authorized law enforcement officer, and a recent
503 fullface photographic identification card of herself or himself.
504 The Department of Law Enforcement shall report its findings to

505 the Department of Revenue within 30 days after the date
506 fingerprint cards are submitted for criminal justice
507 information.
508 (3) The secondhand dealer's registration shall be
509 conspicuously displayed at her or his registered location
510 ~~principal place of business~~. A secondhand dealer must hold
511 secondhand goods at the registered location until 15 days after
512 the secondhand transaction or until any extension of the holding
513 period has expired, whichever is later~~, and must retain records~~
514 ~~of each transaction which is not specifically exempted by this~~
515 ~~chapter. A secondhand dealer shall not dispose of property at~~
516 ~~any location until the holding period has expired unless the~~
517 ~~transaction is specifically exempted by this chapter~~.
518 (4) The department may impose a civil fine of up to
519 $10,000 for each violation of this section, which fine shall be
520 transferred into the General Revenue Fund. If the fine is not
521 paid within 60 days, the department may bring a civil action
522 under s. 120.69 to recover the fine.
523 (5) In addition to the fine provided in subsection (4),
524 registration under this section may be denied or any
525 registration granted may be revoked, restricted, or suspended by
526 the department if the department determines that the applicant
527 or registrant:
528 (a) Has violated any provision of this chapter or any rule
529 or order made pursuant to this chapter;
530 (b) Has made a material false statement in the application
531 for registration;
532 (c) Has been guilty of a fraudulent act in connection with

533 any purchase or sale or has been or is engaged in or is about to
534 engage in any practice, purchase, or sale which is fraudulent or
535 in violation of the law;
536 (d) Has made a misrepresentation or false statement to, or
537 concealed any essential or material fact from, any person in
538 making any purchase or sale;
539 (e) Is making purchases or sales through any business
540 associate not registered in compliance with the provisions of
541 this chapter;
542 (f) Has, within the preceding 10-year ~~5-year~~ period for
543 new registrants who apply for registration on or after October
544 1, 2005, been convicted of, or has entered a plea of guilty or
545 nolo contendere to, or had adjudication withheld for, a crime
546 against the laws of this state or any other state or of the
547 United States which relates to registration as a secondhand
548 dealer or which involves theft, larceny, dealing in stolen
549 property, receiving stolen property, burglary, embezzlement,
550 obtaining property by false pretenses, possession of altered
551 property, any felony drug offense, any violation of s. 812.015,
552 or any fraudulent ~~or dishonest~~ dealing;
553 (g) Has had a final judgment entered against her or him in
554 a civil action upon grounds of fraud, embezzlement,
555 misrepresentation, or deceit; or
556 (h) Has failed to pay any sales tax owed to the Department
557 of Revenue.
558
559
560 In the event the department determines to deny an application or

561 revoke a registration, it shall enter a final order with its
562 findings on the register of secondhand dealers and their
563 business associates, if any; and denial, suspension, or
564 revocation of the registration of a secondhand dealer shall also
565 deny, suspend, or revoke the registration of such secondhand
566 dealer's business associates.
567 (6) Upon the request of a law enforcement official, the
568 Department of Revenue shall release to the official the name and
569 address of any secondhand dealer registered to do business
570 within the official's jurisdiction.
571 Section 7. Section 538.16, Florida Statutes, is repealed.
572 Section 8. Subsection (4) of section 516.02, Florida
573 Statutes, is amended to read:
574 516.02 Loans; lines of credit; rate of interest;
575 license.--
576 (4) This chapter does not apply to any person who does
577 business under, and as permitted by, any law of this state or of
578 the United States relating to banks, savings banks, trust
579 companies, building and loan associations, credit unions, or
580 industrial loan and investment companies. ~~This chapter also does~~
581 ~~not apply to title loans as defined in s. 538.03(1)(i) or pawns~~
582 ~~as defined in s. 538.03(1)(d).~~ A pawnbroker may not be licensed
583 to transact business under this chapter.
584 Section 9. For the purpose of incorporating the amendment
585 made by this act to section 538.03, Florida Statutes, in a
586 reference thereto, paragraph (f) of subsection (3) of section
587 790.335, Florida Statutes, is reenacted to read:
588 790.335 Prohibition of registration of firearms.--

589 (3) EXCEPTIONS.--The provisions of this section shall not
590 apply to:
591 (f) Firearm records, including paper pawn transaction
592 forms and contracts on firearm transactions, required by
593 chapters 538 and 539.
594 1. Electronic firearm records held pursuant to chapter 538
595 may only be kept by a secondhand dealer for 30 days after the
596 date of the purchase of the firearm by the secondhand dealer.
597 2. Electronic firearm records held pursuant to chapter 539
598 may only be kept by a pawnbroker for 30 days after the
599 expiration of the loan that is secured by a firearm or 30 days
600 after the date of purchase of a firearm, whichever is
601 applicable.
602 3. Except as required by federal law, any firearm records
603 kept pursuant to chapter 538 or chapter 539 shall not, at any
604 time, be electronically transferred to any public or private
605 entity, agency, business, or enterprise, nor shall any such
606 records be copied or transferred for purposes of accumulation of
607 such records into lists, registries, or databases.
608 4. Notwithstanding subparagraph 3., secondhand dealers and
609 pawnbrokers may electronically submit firearm transaction
610 records to the appropriate law enforcement agencies as required
611 by chapters 538 and 539; however, the law enforcement agencies
612 may not electronically submit such records to any other person
613 or entity and must destroy such records within 60 days after
614 receipt of such records.
615 5. Notwithstanding subparagraph 3., secondhand dealers and
616 pawnbrokers may electronically submit limited firearms records

617 consisting solely of the manufacturer, model, serial number, and
618 caliber of pawned or purchased firearms to a third-party private
619 provider that is exclusively incorporated, exclusively owned,
620 and exclusively operated in the United States and that restricts
621 access to such information to only appropriate law enforcement
622 agencies for legitimate law enforcement purposes. Such records
623 must be destroyed within 30 days by the third-party provider. As
624 a condition of receipt of such records, the third-party provider
625 must agree in writing to comply with the requirements of this
626 section. Any pawnbroker or secondhand dealer who contracts with
627 a third-party provider other than as provided in this act or
628 electronically transmits any records of firearms transactions to
629 any third-party provider other than the records specifically
630 allowed by this paragraph commits a felony of the second degree,
631 punishable as provided in s. 775.082 or s. 775.083.
632 Section 10. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 763 Luring or Enticing a Child
SPONSOR(S): Ambler and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Kramer	Kramer
2) Criminal Justice Appropriations Committee	5 Y, 0 N	Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Section 787.025, F.S., makes it unlawful for a person over the age of 18, who has been previously convicted of a sexual offense under chapter 794 or s. 800.04, F.S., to intentionally lure or entice or attempt to lure or entice a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose. The offense is a third degree felony.

This bill provides that it is a misdemeanor of the first degree for a person over the age of 18 to intentionally lure or entice, or attempt to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose. Unlike the current felony offense, this newly created misdemeanor will not require proof that the offender has previously been convicted of a sexual offense. In addition, this bill references a violation of the luring statute as a qualifying prior conviction under the felony luring provision, which requires that the person have a qualifying prior conviction.

The bill also authorizes a law enforcement officer to make a warrantless arrest for a violation of the luring statute where there is probable cause to believe the person committed such violation.

The Criminal Justice Impact Conference met on February 28, 2006 and determined that this bill would have an insignificant impact on the state's prison bed population. There may be a fiscal impact on local governments because the bill creates a new misdemeanor offense that may impact current jail capacity; however, the impact is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Provide limited government: The bill creates a new misdemeanor offense.

Promote personal responsibility: This bill creates a sanction for potentially injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

Luring or Enticing a Child
Section 787.025, F.S., makes it unlawful for a person over the age of 18, who has been previously convicted of a sexual offense under Chapter 794 or s. 800.04, F.S., to intentionally lure or entice or attempt to lure or entice a child under the age of 12 into a structure[1], dwelling[2], or conveyance[3] for other than a lawful purpose. The offense is a third degree felony.

The section further provides that the luring or enticing of a child under the age of 12 into a structure, dwelling or conveyance without the consent of the child's parent or legal guardian shall be prima facie evidence of other than a lawful purpose. It also provides that it is an affirmative defense to a prosecution for this offense that:

- the person reasonably believed that his or her action was necessary to prevent the child from being seriously injured;
- the person lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling or conveyance for a lawful purpose or
- the person's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

"An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." State v. Cohen, 568 So.2d 49, 51 (Fla.1990). A defendant has the burden of initially offering evidence to establish an affirmative defense, after which the burden shifts to the state to disprove the defense beyond a reasonable doubt.[4]

In State v. Brake, 796 So.2d 522 (Fla. 2001), the Florida Supreme Court overturned the Second District Court of Appeal who had found section 787.025, F.S. to be unconstitutionally vague. The lower court had ruled that the term "other than for a lawful purpose" failed to give "persons of common intelligence adequate warning of the proscribed conduct".[5] The Supreme Court ruled that the requirement that the offender lured or enticed a child "for other than a lawful purpose" can be construed to require that the state prove "that the defendant lured or enticed a child into the structure, dwelling or conveyance for an 'illegal' purpose, i.e. with intent to violate Florida law by committing a crime." However, the court ruled that the part of the statute which provides that luring a child "without the consent of the child's parent or legal guardian shall be prima facie evidence of other than a lawful purpose" created an unconstitutional

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[1]The term "structure" is defined as "a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof." Sec. 787.025(1)(a), F.S.
2 The term "dwelling" is defined as a "building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof." Sec. 787.025(1)(b), F.S.
[3] The term "conveyance" is defined as any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car". Sec. 787.025(1)(c), F.S.
[4] Hansman v. State, 679 So.2d 1216, 1217 (Fla. 4th DCA 1996).
[5] Brake v. State, 746 So. 2d 527 (Fla. 2nd DCA 1999).

statutory presumption.[6] The presumption that was struck down in Brake has not been removed from the statute.

HB 763 amends s. 787.025, F.S. to create a first degree misdemeanor offense for a person over the age of 18 who intentionally lures or entices or attempts to lure of entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose. Unlike the current felony offense, this newly created offense will not require proof that the offender has previously been convicted of a sexual offense.

The bill also amends the felony luring offense to add a prior conviction of the section as a qualifying offense. In other words, a person who unlawfully lures or entices a child will commit a felony offense if he or she has a prior conviction for the misdemeanor offense.

The bill also defines the term "convicted" for the purposes of the section to mean "a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld".

The bill also amends current cross-references in the dangerous sexual felony offender statute (s. 794.0115, F.S.), and other statutes related to sexual offenders (ss. 943.0435, 944.606, 944.607, 948.32, F.S.) in order to specifically designate the felony luring or enticing offense. The new misdemeanor offense would not be included in these sections of statute which apply only to felonies.

Warrantless arrests

Currently, section 901.15(8), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed child abuse, as defined in s. 827.03, F.S. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

This bill adds the luring or enticing a child offense to this statute. Because s. 901.15, F.S. already authorizes an officer to arrest a person without a warrant for any felony offense if the officer has probable cause, the specific inclusion of s. 787.025, F.S. to the warrantless arrest statute will serve to authorize an officer to arrest a person without a warrant for the newly created misdemeanor offense.

C. SECTION DIRECTORY:

Section 1. Amends s. 787.025, F.S.; creating misdemeanor offense.

Section 2. Amends s. 794.0115, F.S. to modify cross-reference

Section 3. Amends s. 943.0435, F.S. to modify cross-reference.

Section 4. Amends s. 944.606, F.S. to modify cross-reference.

Section 5. Amends s. 944.607, F.S. to modify cross-reference

Section 6. Amends s. 948.32, F.S. to modify cross-reference to section 787.025, F.S.

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[6] The court explained its holding as follows:

> [T]he statute permits the State to prove the mens rea element of the offense ("for other than a lawful purpose") by proving lack of parental consent for the child to enter the structure, dwelling or conveyance with the defendant. We cannot say with substantial assurance that a defendant's unlawful intent can be so presumed. For example, a neighbor who invited a child into their house for a perfectly innocent reason is not likely to seek parental permission. Thus, section 787.025(2)(b) must be deleted as an unconstitutional statutory presumption.

Id. at 529.

Section 7. Amends s. 901.15, F.S.; adding offense of luring or enticing a child to warrantless arrest statute.

Section 8. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The new misdemeanor may generate additional revenues through increased fines for the clerks of court and, indirectly, state government. The amount is likely to be indeterminate, yet minimal.

2. Expenditures:

   The Criminal Justice Impact Conference met on February 28, 2006 and determined that this bill would have an insignificant impact on the state's prison bed population.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   A misdemeanor may require the violator to pay a fine. Fines are payable to the local clerks of court. These funds are retained by the clerks with surplus funds accruing to the state. The amount of increased fine collections is likely to be minimal.

2. Expenditures:

   The bill creates a new misdemeanor offense that may impact current jail capacity; however, the fiscal impact on local governments is indeterminate because data on incidents that occurred prior to becoming an offense is unavailable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to luring or enticing a child; amending s.
3 787.025, F.S.; defining the term "convicted"; providing
4 that a person over the age of 18 who intentionally lures
5 or entices, or attempts to lure or entice, a child under
6 the age of 12 into a structure, dwelling, or conveyance
7 for other than a lawful purpose commits a misdemeanor of
8 the first degree; providing criminal penalties; providing
9 that a person who has previously been convicted of this
10 offense and who intentionally lures or entices, or
11 attempts to lure or entice, a child under the age of 12
12 into a structure, dwelling, or conveyance for other than a
13 lawful purpose commits a felony of the third degree;
14 providing criminal penalties; amending ss. 794.0115,
15 943.0435, 944.606, 944.607, and 948.32, F.S.; conforming
16 cross-references; amending s. 901.15, F.S.; authorizing a
17 law enforcement officer to arrest a person without a
18 warrant if there is probable cause to believe that the
19 person is intentionally luring or enticing, or attempting
20 to lure or entice, a child under the age of 12 into a
21 structure, dwelling, or conveyance for other than a lawful
22 purpose; providing an effective date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Section 787.025, Florida Statutes, is amended
27 to read:
28 787.025 Luring or enticing a child.--

29 (1) As used in this section, the term:
30 (a) "Structure" means a building of any kind, either
31 temporary or permanent, which has a roof over it, together with
32 the curtilage thereof.
33 (b) "Dwelling" means a building or conveyance of any kind,
34 either temporary or permanent, mobile or immobile, which has a
35 roof over it and is designed to be occupied by people lodging
36 together therein at night, together with the curtilage thereof.
37 (c) "Conveyance" means any motor vehicle, ship, vessel,
38 railroad car, trailer, aircraft, or sleeping car.
39 (d) "Convicted" means a determination of guilt which is
40 the result of a trial or the entry of a plea of guilty or nolo
41 contendere, regardless of whether adjudication is withheld.
42 (2)(a) A person over the age of 18 who intentionally lures
43 or entices, or attempts to lure or entice, a child under the age
44 of 12 into a structure, dwelling, or conveyance for other than a
45 lawful purpose commits a misdemeanor of the first degree,
46 punishable as provided in s. 775.082 or s. 775.083.
47 (b) A person over the age of 18 who, having been
48 previously convicted of a violation of this section, chapter
49 794, or s. 800.04, or a violation of a similar law of another
50 jurisdiction, intentionally lures or entices, or attempts to
51 lure or entice, a child under the age of 12 into a structure,
52 dwelling, or conveyance for other than a lawful purpose commits
53 a felony of the third degree, punishable as provided in s.
54 775.082, s. 775.083, or s. 775.084.
55 (3) ~~(b)~~ For purposes of this section, the luring or
56 enticing, or attempted luring or enticing, of a child under the

57 age of 12 into a structure, dwelling, or conveyance without the
58 consent of the child's parent or legal guardian is ~~shall be~~
59 prima facie evidence of other than a lawful purpose.
60 (4) ~~(3)~~ It is an affirmative defense to a prosecution under
61 this section that:
62 (a) The person reasonably believed that his or her action
63 was necessary to prevent the child from being seriously injured.
64 (b) The person lured or enticed, or attempted to lure or
65 entice, the child under the age of 12 into a structure,
66 dwelling, or conveyance for a lawful purpose.
67 (c) The person's actions were reasonable under the
68 circumstances and the defendant did not have any intent to harm
69 the health, safety, or welfare of the child.
70 Section 2. Subsection (2) of section 794.0115, Florida
71 Statutes, is amended to read:
72 794.0115 Dangerous sexual felony offender; mandatory
73 sentencing.--
74 (2) Any person who is convicted of a violation of s.
75 787.025(2)(b) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or (8);
76 s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3),
77 or (4); or s. 847.0145; or of any similar offense under a former
78 designation, which offense the person committed when he or she
79 was 18 years of age or older, and the person:
80 (a) Caused serious personal injury to the victim as a
81 result of the commission of the offense;
82 (b) Used or threatened to use a deadly weapon during the
83 commission of the offense;
84 (c) Victimized more than one person during the course of

85 the criminal episode applicable to the offense;
86 (d) Committed the offense while under the jurisdiction of
87 a court for a felony offense under the laws of this state, for
88 an offense that is a felony in another jurisdiction, or for an
89 offense that would be a felony if that offense were committed in
90 this state; or
91 (e) Has previously been convicted of a violation of s.
92 787.025(2)(b) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or (8);
93 s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3),
94 or (4); s. 847.0145; of any offense under a former statutory
95 designation which is similar in elements to an offense described
96 in this paragraph; or of any offense that is a felony in another
97 jurisdiction, or would be a felony if that offense were
98 committed in this state, and which is similar in elements to an
99 offense described in this paragraph,
100
101 is a dangerous sexual felony offender, who must be sentenced to
102 a mandatory minimum term of 25 years imprisonment up to, and
103 including, life imprisonment.
104 Section 3. Paragraph (a) of subsection (1) of section
105 943.0435, Florida Statutes, is amended to read:
106 943.0435 Sexual offenders required to register with the
107 department; penalty.--
108 (1) As used in this section, the term:
109 (a) "Sexual offender" means a person who:
110 1. Has been convicted of committing, or attempting,
111 soliciting, or conspiring to commit, any of the criminal
112 offenses proscribed in the following statutes in this state or

113 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
114 or s. 787.025(2)(b) ~~s. 787.025~~, where the victim is a minor and
115 the defendant is not the victim's parent; chapter 794, excluding
116 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s. 825.1025;
117 s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s. 847.0138;
118 s. 847.0145; or any similar offense committed in this state
119 which has been redesignated from a former statute number to one
120 of those listed in this subparagraph; and
121 2. Has been released on or after October 1, 1997, from the
122 sanction imposed for any conviction of an offense described in
123 subparagraph 1. For purposes of subparagraph 1., a sanction
124 imposed in this state or in any other jurisdiction includes, but
125 is not limited to, a fine, probation, community control, parole,
126 conditional release, control release, or incarceration in a
127 state prison, federal prison, private correctional facility, or
128 local detention facility; or
129 3. Establishes or maintains a residence in this state and
130 who has not been designated as a sexual predator by a court of
131 this state but who has been designated as a sexual predator, as
132 a sexually violent predator, or by another sexual offender
133 designation in another state or jurisdiction and was, as a
134 result of such designation, subjected to registration or
135 community or public notification, or both, or would be if the
136 person were a resident of that state or jurisdiction; or
137 4. Establishes or maintains a residence in this state who
138 is in the custody or control of, or under the supervision of,
139 any other state or jurisdiction as a result of a conviction for
140 committing, or attempting, soliciting, or conspiring to commit,

141 any of the criminal offenses proscribed in the following
142 statutes or similar offense in another jurisdiction: s. 787.01,
143 s. 787.02, or s. 787.025(2)(b) ~~s. 787.025~~, where the victim is a
144 minor and the defendant is not the victim's parent; chapter 794,
145 excluding ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.
146 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s.
147 847.0138; s. 847.0145; or any similar offense committed in this
148 state which has been redesignated from a former statute number
149 to one of those listed in this subparagraph.
150 Section 4. Paragraph (b) of subsection (1) of section
151 944.606, Florida Statutes, is amended to read:
152 944.606 Sexual offenders; notification upon release.--
153 (1) As used in this section:
154 (b) "Sexual offender" means a person who has been
155 convicted of committing, or attempting, soliciting, or
156 conspiring to commit, any of the criminal offenses proscribed in
157 the following statutes in this state or similar offenses in
158 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(b)
159 ~~s. 787.025~~, where the victim is a minor and the defendant is not
160 the victim's parent; chapter 794, excluding ss. 794.011(10) and
161 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
162 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
163 any similar offense committed in this state which has been
164 redesignated from a former statute number to one of those listed
165 in this subsection, when the department has received verified
166 information regarding such conviction; an offender's
167 computerized criminal history record is not, in and of itself,
168 verified information.

169 Section 5. Paragraph (a) of subsection (1) of section
170 944.607, Florida Statutes, is amended to read:
171 944.607 Notification to Department of Law Enforcement of
172 information on sexual offenders.--
173 (1) As used in this section, the term:
174 (a) "Sexual offender" means a person who is in the custody
175 or control of, or under the supervision of, the department or is
176 in the custody of a private correctional facility:
177 1. On or after October 1, 1997, as a result of a
178 conviction for committing, or attempting, soliciting, or
179 conspiring to commit, any of the criminal offenses proscribed in
180 the following statutes in this state or similar offenses in
181 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(b)
182 ~~s. 787.025~~, where the victim is a minor and the defendant is not
183 the victim's parent; chapter 794, excluding ss. 794.011(10) and
184 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
185 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
186 any similar offense committed in this state which has been
187 redesignated from a former statute number to one of those listed
188 in this paragraph; or
189 2. Who establishes or maintains a residence in this state
190 and who has not been designated as a sexual predator by a court
191 of this state but who has been designated as a sexual predator,
192 as a sexually violent predator, or by another sexual offender
193 designation in another state or jurisdiction and was, as a
194 result of such designation, subjected to registration or
195 community or public notification, or both, or would be if the
196 person were a resident of that state or jurisdiction.

197 Section 6. Subsection (1) of section 948.32, Florida
198 Statutes, is amended to read:
199 948.32 Requirements of law enforcement agency upon arrest
200 of persons for certain sex offenses.--
201 (1) When any state or local law enforcement agency
202 investigates or arrests a person for committing, or attempting,
203 soliciting, or conspiring to commit, a violation of s.
204 787.025(2)(b) ~~s. 787.025~~, chapter 794, s. 796.03, s. 800.04, s.
205 827.071, s. 847.0133, s. 847.0135, or s. 847.0145, the law
206 enforcement agency shall contact the Department of Corrections
207 to verify whether the person under investigation or under arrest
208 is on probation, community control, parole, conditional release,
209 or control release.
210 Section 7. Subsection (8) of section 901.15, Florida
211 Statutes, is amended to read:
212 901.15 When arrest by officer without warrant is
213 lawful.--A law enforcement officer may arrest a person without a
214 warrant when:
215 (8) There is probable cause to believe that the person has
216 committed child abuse, as defined in s. 827.03, or has violated
217 s. 787.025, relating to luring or enticing a child for unlawful
218 purposes. The decision to arrest does ~~shall~~ not require consent
219 of the victim or consideration of the relationship of the
220 parties. It is the public policy of this state to protect abused
221 children by strongly encouraging the arrest and prosecution of
222 persons who commit child abuse. A law enforcement officer who
223 acts in good faith and exercises due care in making an arrest
224 under this subsection is immune from civil liability that

225 otherwise might result by reason of his or her action.
226 Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 841 CS Supersedeas Bond
SPONSOR(S): Attkisson, Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	3 Y, 2 N, w/CS	Shaddock	Bond
2) Business Regulation Committee	13 Y, 3 N	Watson	Liepshutz
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Where a money judgment is entered by a court, the prevailing party may enforce the judgment even though an appeal is pending. In order to prevent collection on that judgment during the appeal process, an appealing party may post a supersedeas bond. A supersedeas bond also protects a prevailing party by insuring that a judgment can be enforced against the nonprevailing party.

The bill places an upper limit on a supersedeas bond at $25 million dollars regardless of the type of appeal or case except for class actions. As to an individual or an independently owned and operated business with 400 or fewer full-time employees, the cap is lowered to $1 million or 5% of the appealing party's net worth. These caps will not apply if the appellee can show that the appellant is moving assets in an attempt to avoid paying the judgment.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

When a money judgment is entered, a defendant[1] has a couple of options to consider. First the defendant must decide whether or not to appeal. If an appeal is to be taken, then the issue of a bond is to be considered. If no bond is posted, defendant risks the possibility that the plaintiff may begin collecting on the judgment while the appeal is ongoing.[2] It is possible that defendant could prevail on appeal but the judgment has already been executed and the defendant's money and assets have vanished.

A defendant can avoid this situation by posting a bond. A sufficient bond entitles defendant to an automatic stay of the judgment while the appellate court rules on the matter.[3] A sufficient bond, or a supersedeas bond, is a defendant's bond to stay the execution on a judgment during the appeal. Such a bond is obtained from a surety company authorized to do business in the state.[4] The amount of the supersedeas bond, set by the Florida Rules of Appellate Procedure and automatically accepted by the Clerk of the Court, is a combination of the final judgment plus two years of interest.[5] However, the trial court retains jurisdiction to determine the sufficiency of any bond.[6] The mandatory conditions of a bond must include a "condition to pay or comply with the order in full, including costs; interest; fees; and damages for delay, use, detention, and depreciation of property, if the review is dismissed or order affirmed...."[7]

The purpose behind a supersedeas bond requirement is that it will protect a plaintiff from the possibility that a judgment cannot be enforced because the defeated party has become insolvent. In other words, "[t]he effect of perfecting a supersedeas [bond] is that it 'stays further [collection] proceedings, but does not interfere with what has already been done.'"[8]

The following excerpt from "*Just what is a civil supersedeas bond and do I need one?*"[9] provides a short primer on supersedeas bonds.

> Supersedeas bonds are issued by a surety company authorized to do business in the State of Florida. Each circuit maintains a list of approved bonding companies. An insurance broker or surety underwriter is used to procure the bond. Almost all surety companies which issue supersedeas bonds require that

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[1] This analysis uses the terms plaintiff and defendant for ease of reference and should not be understood to imply that a plaintiff prevails in every legal action or that a defendant is always the nonprevailing party.
[2] A stay pending review may be essential to effective relief on appeal, yet one is not required for appellate review. *Freedom Insurors, Inc. v. M.D. Moody & Sons, Inc.*, 869 So. 2d 1283, 1285 (Fla. 4th DCA 2004)(quoting *Thalheim v. Camp Phosphate Co.*, 48 Fla. 190, 37 So. 523, 525 (1904)).
[3] Florida Rule of Appellate Procedure 9.310 provides: "[a] stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both."
[4] Rule 9.310(c)(1), Fla. R. App. P. In the absence of a bond, cash may be deposited in the circuit court clerk's office.
[5] Rule 9.310(b)(1), Fla. R. App. P.
[6] *Id.*
[7] Rule 9.310(c)(2), Fla. R. App. P.
[8] *Freedom Insurors, Inc.*, 869 So. 2d 1285.
[9] *Just what is a civil supersedeas bond and do I need one?*, Angela C. Flowers, The Record, Florida Bar Journal Appellate Practice Section, Fall, 1999.

security be given to protect them in the event the judgment debtor is unable to pay the sum due if the judgment is affirmed. A bond may be "fully collateralized" or "not fully collateralized." A "fully collateralized" bond usually means one that is secured by money, government securities, or other type of securities that can be immediately converted into cash. The premium for a "not fully collateralized" bond will be higher to account for the absence of liquid assets to back the bond. A large corporate judgment debtor or insurance company may be able to obtain a bond based upon its financial statement alone. An individual or small company will usually be required to post collateral for the bond....

The bond amount is a combination of the final judgment amount plus two years of interest at the statutory rate. Section 55.03 (1), Fla. Stat., requires the state comptroller to set the statutory rate of interest payable on judgments each year on December 1[10].... By statute, the "interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid."

Effect of Bill

In any civil action, under any legal theory, granting any type of relief, regardless of the amount of the judgment, the amount of a supersedeas bond necessary to stay execution of a judgment during the appeals or discretionary reviews may not exceed $25 million dollars for all defendants in the aggregate.[11] If a defendant is an individual or an independently owned and operated business with 400 or fewer full-time employees, the supersedeas bond, at the election of that defendant, may not exceed 5 percent of the defendant's net assets or $1 million dollars in the aggregate.[12] However, if a plaintiff proves that an appealing defendant, who has posted a supersedeas bond, is moving assets to avoiding paying the judgment, then a court may require the defendant post a supersedeas bond in the total amount of the judgment.[13]

C. SECTION DIRECTORY:

Section 1 creates s. 768.734, placing limitations on supersedeas bonds.

Section 2 provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[10] The interest rate established for calendar year 2006 has been set at 9.0% per annum or .0002466 per day, <http://www.fldfs.com/aadir/aam612.htm>, (last visited Feb. 9, 2006).
[11] Except for certified class actions subject to s. 768.733, F.S. Section 768.734(1).
[12] Section 768.734(2).
[13] Section 768.734(3).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the amount of fees collected by bonding companies for providing large supersedeas bonds to appealing parties. Furthermore, the party seeking to post a supersedeas bond will be able to procure such a bond at a reduced rate.

D. FISCAL COMMENTS:

In cases in which verdicts over $25 million are awarded or substantially less for "an individual or independently owned and operated business with 400 or fewer full-time employees," it may be substantially less expensive to appeal the judgment. This may increase the amount of appellate litigation. However, in those same judgments the prevailing party may be less able to enforce the judgment above the supersedeas bond due to the insolvency of the defeated party.

There may be a minimal but unknown fiscal impact on state government. The courts would be required to hold additional proceedings regarding determine whether or not an appellant is intentionally dissipating or diverting assets necessitating an increase in the supersedeas bond.

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:

<u>Exclusive Rulemaking/Separation of Powers</u>

This bill might raise an exclusive rulemaking/separation of powers issue. Supersedeas bonds are requirements of the Florida Rules of Appellate Procedure. Those rules of procedure are established by the Florida Supreme Court. The legislature has the authority to promulgate substantive laws,[14] whereas, matters of practice and procedure in all state courts are the exclusive domain of the Florida Supreme Court.[15]

The Florida Supreme Court has defined the terms as follows:

> Substantive law prescribes the duties and rights under our system of government. The responsibility to make substantive law is in the legislature within the limits of the state and federal constitutions. Procedural law concerns the means and method to apply and enforce those duties and rights. Procedural rules concerning the judicial branch are the responsibility of this Court, subject to repeal by the legislature in accordance with our constitutional provisions.[16] [17]

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[14] *Allen v. Butterworth*, 756 So. 2d 52 (2000).
[15] *Id.*
[16] *Hall v. State*, 823 So. 2d 757, 763 (Fla. 2002)(citing *Benyard v. Wainwright*, 322 So. 2d 473 (Fla. 1975)).
[17] *See also Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991)(internal citations and quotations omitted) which stated:

> Substantive law has been defined as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer. It includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property. On the other hand, practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion.

"The judiciary and legislature must work together to give effect to laws that combine substantive and procedural provisions in such a manner that neither branch encroaches on the other's constitutional powers."[18]

This bill could raise a constitutional concern if the limits imposed on supersedeas bonds were considered a procedural rather than a substantive law. It should be noted that the legislature has imposed other limitations on supersedeas bonds. Section 768.733, F.S., which became effective in 2000, imposes a limitation of $100 million dollars on such bonds in class actions. However, this statute has not been challenged.

Prospective and Retrospective Effect of a Change in Statutory Law

The distinction between substantive and procedural law is important for a determination regarding the effect of a statutory change. If a statute is substantive, then the statute is presumed to apply prospectively unless the Legislature expresses its clear intent to have the statute operate retrospectively. The rationale is that retrospective operation of law can act to impair or destroy an existing right. On the other hand, procedural or remedial statutes, would apply retrospectively and apply to pending cases. Accordingly, it would appear that any statutory change to the bond requirements in accordance with Rule 9.310, Fla. R. App. P, would apply to all pending cases where an award has not been reduced to judgment.

Access to Courts

"The right to go to court to resolve disputes is a fundamental right. Whether represented by an attorney or proceeding pro se, all litigants are afforded equal access to the courts. The Florida Constitution establishes the right commonly known as access to courts. It provides that the courts shall be open to any person for the redress of any injury and justice shall be administered without sale, denial, or delay."[19]

"There is no principle of law more fundamental than that which declares for every wrong there is a remedy. The constitutional right of access to courts guaranteed by the Florida Constitution, protects only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution. In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida."[20] However,"[a] reasonable restriction, or a condition precedent, to the filing of a claim is not a denial of access to courts."[21]

The bill would not appear to impinge upon an individual's Florida Constitutional right of access to courts since the legislature is not abolishing any cause of action, but is merely changing the procedures for a supersedeas bond.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter Placement

Practice and procedure may be described as the machinery of the judicial process as opposed to the product thereof.

[18] 10A Fla. Jur 2d, Constitutional Law, s. 197.

[19] 10A Fla. Jur 2d, Constitutional Law, s. 360.

[20] *Id.*

[21] 10A Fla. Jur 2d, Constitutional Law, s. 362.

The bill places this new language in s. 768.734, which is in ch. 768, F.S. dealing with negligence. The bill places limitations on supersedeas bonds for all civil actions brought under any legal theory, with the exception of class actions. Civil actions effected by this bill would include for example contract claims, anti-trust actions, and claims under Florida's Racketeering Influenced and Corrupt Organizations (RICO). It would seem more appropriate to place this new section in ch. 45, F.S. which pertains to civil practice and procedure.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment substituted the word election for discretion and included language to provide that an individual was eligible for a cap on a supersedeas bond. The bill was then reported favorably with a committee substitute.

This analysis has been updated to reflect the committee substitute adopted by the Civil Justice Committee at its March 8, 2006 meeting.

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to supersedeas bond; creating s. 768.734, F.S.; providing limits on the amount of supersedeas bond in the aggregate necessary to stay execution of a judgment; limiting the amount of supersedeas bond required for certain appellants; providing an exception to limits if an appellant engages in certain conduct for the purpose of avoiding payment of the judgment; providing an effective date.

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

Section 1. Section 768.734, Florida Statutes, is created to read:

768.734 Limitations on supersedeas bond; exception.--

(1) Except for certified class actions subject to s. 768.733, in any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting any type of relief during the entire course of

24 all appeals or discretionary reviews shall not exceed $25
25 million for all appellants in the aggregate, regardless of the
26 amount of the judgment appealed.
27 (2) If an appellant is an individual or is an
28 independently owned and operated business with 400 or fewer
29 full-time employees, the supersedeas bond, at the election of
30 the appellant, may not exceed 5 percent of the appellant's net
31 assets or $1 million in the aggregate.
32 (3) Notwithstanding subsections (1) and (2), if an
33 appellee proves by a preponderance of the evidence that an
34 appellant who has posted a supersedeas bond is intentionally
35 dissipating or diverting assets outside the course of its
36 ordinary business for the purpose of avoiding payment of the
37 judgment, a court may enter orders necessary to protect the
38 appellee or that require the appellant to post a supersedeas
39 bond in an amount up to and including the total amount of the
40 judgment.
41 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 957 CS Homeowners' and Community Associations
SPONSOR(S): Anderson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) State Administration Appropriations Committee	9 Y, 0 N, w/CS	Rayman	Belcher
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration of condominium may be amended as provided in the declaration. This bill revises condominium association powers and provides that leaseholds and other possesory and use interests can only be acquired by means provided in the declaration of condominium or by approval of 3/4 of the voting interest instead of 2/3 of the voting interest provided in current law.

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. This bill increases the regulation of homeowners' associations by:

- Providing that non-regulated homeowners' associations may use statutory provisions to revive expired covenants.
- Revising the requirements for providing information about a homeowners' association to a prospective purchaser or lienholder.
- Providing that homeowners' associations have the option of establishing reserve accounts in their annual budgets and providing requirements for funding the reserves.
- Expanding the deadline for preparing an annual financial report from 60 to 90 days after the close of the fiscal year.
- Specifying that merger or consolidation of associations is not a material or adverse alteration of the voting interest.
- Requiring that the developer deliver the financial records of the association to the board at the time the members are entitled to elect a majority of the board of directors.
- Establishing guarantees of common expenses for homeowners associations.

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

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases government regulation of community associations.

Promote personal responsibility -- This bill increases personal responsibility by allowing a fine for violating the governing documents of a homeowners' association to become a lien on member's parcel under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements".[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is like a constitution in that it:

> "Strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community."[3]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.[5]

A homeowners' association is a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Covenant Revitalization

The governing documents in some Florida homeowners' associations provide for an expiration of the community covenants after a specified number of years. The Marketable Record Title Act, s. 712.05, F.S., will cause covenants to lapse by operation of law either where the covenants are silent as to expiration, or where the Marketable Record Title Act period is shorter than the stated expiration time. Residents in these communities have the option to revive the covenants after the expiration by following the procedural steps found in ss. 720.403 - 720.407, F.S. Currently, the covenant revitalization procedures contained in ss. 720.403 - 720.407, F.S., are not available to any homeowners' association not governed by ch. 720, F.S., such as associations governing communities that are comprised of property primarily intended for commercial, industrial, or other non-residential

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)
[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 720.301(9), F.S.

use. Chapter 720, F.S., governs only residential homeowners' associations where membership is a mandatory condition for the owners of property upon which assessments are required and may become a lien on the parcel,[7] thus, non-mandatory associations may not revive covenants pursuant to ss. 702.403 - 702.407, F.S.

This bill creates s. 712.11, F.S., to provide that a homeowner's association that is not subject to ch. 720, F.S. may use the procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of chapter 712, F.S. This bill would allow homeowners' associations that are not regulated by ch. 720, F.S., to utilize the covenant revitalization procedures available to mandatory homeowners' associations.

Condominium Association Powers

Section 718.114, F.S., provides for the powers of a condominium association. Among other powers, an association has the authority to enter into agreements and acquire leaseholds, memberships, and other possesory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. All leaseholds, memberships, and other possesory or use interests existing or created at the time the declaration was recorded must be stated and fully described in the declaration. Following the recording of the declaration, the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possesory or use interests except as authorized by the declaration. If the declaration does not provide this authority, then the declaration can be amended if the amendment is approved by the owners of not less than 2/3 of the units.[8]

This bill amends s. 718.114, F.S., to provide that acquiring these leaseholds, memberships, or other possesory or use interests is a material alteration or substantial addition to association property, and the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possesory or use interests except as authorized by the provisions in s. 718.113, F.S. Section 718.113(2), F.S., provides that there can be no material alteration or substantial additions to the common elements or to real property that is association property, except as provided in the declaration. If the declaration does not specify the procedure for approval of material alterations or substantial additions, 75% of the total voting interests of the association must approve the alterations or additions. Therefore this bill provides that acquiring leaseholds, memberships, or other use interest is a material alteration or substantial addition, and therefore, where the declaration is silent regarding the procedure for acquiring these leaseholds, memberships, or other use interest, there must be approval by 3/4 of the total voting interest of the association instead of only 2/3 as required if it were not a material alteration or substantial addition.

Purpose, Scope, and Application of Homeowners' Association Statutes

Section 720.302, F.S., pertains to the purposes, scope, and application for ch. 720, F.S. Section 720.302(3), F.S., provides that ch. 720, F.S., does not apply to the following:

- A community that is composed of property primarily intended for commercial, industrial, or other nonresidential use; or
- The commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

Section 720.302(5), F.S., provides that unless expressly stated to the contrary, corporations not for profit that operate residential homeowners' associations in this state are to be governed by and subject to ch. 617, F.S. and ch. 720, F.S.

This bill amends s. 720.302(3), F.S., to provide that "except as specifically provided in ch. 720, F.S.," ch. 720, F.S, does not apply to the type of communities stated above.

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[7] Section 720.301(8) and (11), F.S.
[8] Section 718.110(1)(a), F.S.

This bill amends s. 720.302(5), F.S., to remove the reference to "not-for-profit" corporations so that a homeowners association can organize as a "for profit" corporation and not just a not-for-profit corporation. In reference to this change, this bill also provides that homeowners' associations in Florida must be governed by and subject to ch. 617, F.S. (non-profit corporations), or ch. 607, F.S. (corporations), if incorporated under that chapter," unless expressly stated to the contrary.

Homeowners' Association Inspection and Copying of Records

Section 720.303(5), F.S., requires that a homeowners' association allow its members to inspect and copy its official records within 10 days of a written request for access. A failure to comply with such a request in a timely fashion creates a rebuttable presumption that the association failed to do so, and entitles the requesting party to actual damages, or to a minimum of $50 per calendar day, commencing on the eleventh business day. A homeowners' association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's copy machine. If the association does not have a copy machine available where the records are kept, or if the records requested to be copied exceed 25 pages, then the association may have copies made by an outside vendor and may charge the actual cost of copying.

Current law expressly exempts the following from inspection by a member or parcel owner:

- Any record protected by attorney-client or work-product privilege;
- Information obtained in association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law; disciplinary, health, insurance and personnel records of the association's employees; or
- Medical records of parcel owners or other community residents.[9]

This bill amends s. 720.303(5), F.S., to provide that an association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association unless required by ch. 720, F.S., to be made available or disclosed. This bill also provides that an association or agent may charge a reasonable fee to a prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information, except for information required by law. The fee cannot exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

This bill provides that an association and its agent are not liable for providing information in good faith if the person providing the information includes a written statement in the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Homeowners' Association Budgets

Section 720.303(6), F.S., provides that an association must prepare an annual budget.

This bill amends s. 720.303(6), F.S., to require that the annual budget provide for the annual operating expenses.

This bill also amends s. 720.303(6), F.S., to provide that the budget may include reserve accounts for capital expenditures and deferred maintenance that the association in responsible for if the governing documents do not limit increases in assessments, including reserve accounts.

[9] Section 720.303(1), (2), (3), (4), F.S.

This bill provides that if the budget does not provide for reserve accounts and is responsible for the repair and maintenance of capital improvements that may result in a special assessment, each financial report for the preceding year must contain the following statement:

> The budget of the association does not provide for reserve accounts for capital expenditures and deferred maintenance that may result in special assessments. Owners may elect to provide for reserve accounts pursuant to the provisions of section 720.303(6), Florida Statutes, upon the approval of not less than a majority of the total voting interests of the association.

This bill also provides that an association is deemed to have provided reserve accounts when they have been initially established by the developer or when the association members elects to provide for reserves. The association members can elect to provide for reserves with approval of at least a majority of the total voting interest of the association. The approval action by the members must state that reserve accounts must be provided for in the budget and must designate the components for which reserve accounts are to be established.

The amount to be reserved must be computed using a formula that is based on the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association must adjust replacement reserve assessments annually.

Once a reserve account is established, the association members can provide for no reserves or less reserves than required by this section, upon a majority vote at a meeting where quorum is present. If the reserves are not voted favorably to be reduced or waived then the reserves as provided in the budget must go into effect. After turnover of control of an association by the developer to the parcel owners, the developer can vote its voting interest to waive or reduce the funding reserves. Any vote to waive or reduce reserves is only applicable to one budget year.

Funding formulas for reserves must be based on either a separate analysis of each required asset, or a pooled analysis of two or more required assets. This bill provides the calculations that must be used to determine the amount of funding to go into reserve accounts whether the association uses a separate analysis of each asset or a pooled analysis of each asset.

Reserve funds and any interest accruing must stay in the reserve account, and can only be used for reserve expenditures unless another use is approved by a majority vote of the association members. Prior to turnover of control of an association, the developer-controlled association must not vote to use reserves for purposes other than for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a meeting of the association.

Homeowners' Association Financial Reporting

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

This bill amends s. 720.303(7), F.S., to stipulate that within 90 (instead of 60) days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year. Within 21 (instead of 60) days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws.

This bill also provides that an association that must prepare a complete set of financial statements, do so in accordance with the generally accepted accounting principles "as adopted by the Florida Board of Accountancy."

Mergers

Section 720.306(1)(c), F.S., provides that an amendment may not materially and adversely alter the proportionate voting interest attached to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless all owners and lienholders join in the execution of the amendment.

This bill amends s. 720.306(1)(c), F.S., to provide that the merger or consolidation of associations under ch. 607, F.S. (regulating corporations) or ch. 617, F.S. (regulating non-profit corporations), is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Transition of Homeowners' Association Control

Section 720.307, F.S., provides procedures for turning over control of an association from the developer to parcel owners. The transition of association control begins with the election of the board of directors of the homeowners' association by the members. At the time the members elect the board of directors, the developer must deliver various documents to the board.

This bill amends s. 720.307, F.S., to require additional documents that the developer must provide to the board of directors. Along with the documents that must be provided by the developer under current law, this bill requires that the developer also provide the board of directors the financial records, including the statements of the association, and source documents from the incorporation of the association through the date of turnover. This bill also provides that an independent certified public accountant must audit the records and determine that the developer was charged with, and paid, the proper amounts of assessments.

The language in this section of the bill is taken from language found in s. 718.301(4)(c), F.S., of the condominium law. The current law for homeowners' associations pertaining to transition of association control is very similar to the current condominium law and this bill provides conformity between the homeowners' associations and the condominium associations.

Guarantees of Common Expenses

The developer of a community is responsible for paying the costs of the common expenses of the community until the sale of the parcels to a purchaser in which time the developer pays a proportionate share of the common expenses with the parcel owners. Condominium law allows a developer to be excused from payment of common expenses if the common expenses of all unit owners are guaranteed not to increase and the developer agrees to pay all common expenses incurred but not covered by unit owner payments during the period of the guarantee.[10]

This bill amends s. 720.308, F.S., to incorporate the guarantees of common expenses provision found in condominium law into homeowners' association law. Currently, s. 720.308, F.S., provides for guarantees of common expenses if it is provided for in the declaration. This bill amends s. 720.308, F.S., to provide for guarantees of common expenses if a guarantee is not included in the purchase contract or declaration. This bill provides that a guarantee is effective only upon approval of a majority of the voting interests of the members other than the developer. This bill also provides that:

- The time period of a guarantee must have a specific beginning and ending date or event;
- The dollar amount of the guarantee must be an exact dollar amount for each parcel identified in the declaration;

[10] Section 718.116, F.S.

- The cash payments required from the developer must be when the revenue collected by the association are not sufficient to provide payment for all common expenses; and
- The expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, must not be included in the common expenses. If expenses attributable to non-assessment revenues exceed non-assessment revenues, then the developer must only fund the excess expenses.

This bill also provides the formula for determining what the developer's final obligation is to the association at the end of the guarantee period.

Publication of False and Misleading Information

Section 720.402, F.S., creates a cause of action to rescind the contract for sale or for damages against a developer for false or misleading material statements. After closing, the purchaser has a cause of action against the developer for one year after the date upon which the last of the following events takes place:

- The closing of the transaction;
- The issuance of a certificate of occupancy or other evidence to allow lawful occupancy of the residence;
- The date of lawful occupancy in counties or municipalities in which certificates of occupancy or other evidence of lawful occupancy are not customarily issued;
- The completion by the developer of the common areas and recreational facilities, whether or not they are common areas, which the developer is obligated to complete or provide under the terms of the written contract;
- The completion by the developer of the common areas and such recreational facilities, whether or not they are common areas, that the developer is obligated to complete under any rule of law if there is no written contract.

Section 720.402, F.S., also limits any cause of action brought under this provision to five years after the closing of the transaction, provides that the prevailing party may recover reasonable attorney's fees, and prohibits the developer from using association funds to defend a suit brought under this section.

This bill amends s. 720.402, F.S., to provide that this section does not limit any rights provided by common law. This section as currently written does not limit the right to sue under other legal theories. It is unclear what effect, if any, this change makes.

C. SECTION DIRECTORY:

Section 1. Creates s. 712.11, F.S., to provide that homeowners' associations may use procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of ch. 712, F.S.

Section 2. Amends s. 718.114, F.S., to revise condominium association powers pertaining to agreements acquiring possesory or use interests after recording the declaration.

Section 3. Amends s. 720.302, F.S., to revise the purpose, scope, and application of ch. 720, F.S.

Section 4. Amends 720.303(5), F.S., relating to the copying and inspection of homeowners' association records. This section amends s. 720.303(6), F.S., to revise provisions regarding association budgets by providing an association the option of establishing reserve accounts. This section amends 720.303(7), F.S., revising the time period for when an association must prepare and complete a financial report for the preceding fiscal year.

Section 5. Amends s. 720.306, F.S., revising provisions pertaining to meetings of members and amendments providing that merger or consolidation of associations is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 6. Amends s. 720.307(3), F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors the developer must deliver the financial records of the association.

Section 7. Amends s. 720.308, F.S., to establish guarantees of common expenses if a guarantee is not included in the purchase contract or declaration.

Section 8. Amends s. 720.402, F.S., to add a provision that the section does not limit any rights provided by common law.

Section 9. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   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:

   This bill provides that a fine cannot become a lien against a parcel "unless it is levied for a violation of governing documents that have been recorded in the public records of the county where the

property is located." This exception could possibly be a violation of the Contract Clause of the Florida Constitution. Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[11] "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."[12] [13]

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.[14] The *Pomponio* Court indicated that the "well-accepted" principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

> [T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.
> Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

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[11] Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . . "
[12] 10a Fla. Jur. s. 414, Constitutional Law.
[13] The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.
[14] The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The department indicates that the bill may raise concerns with the single subject limitation in Article III, Section 6, of the Florida Constitution as it combines chapter 712 marketable record title act, chapter 718 condominium amendments, and chapter 720 homeowners' association amendments.

The bill, in permitting an unpaid fine to become an association lien against the parcel, may result in a foreclosure of the parcel for the failure of the homeowner to pay a fine imposed by the association. In addition, permitting an unpaid fine to become a lien is contrary to the findings and legislation proposed by the 2004 Homeowners' Association Task Force (See, the Final Report of the HOA Task Force, pp. 14, 32, available at: http://www.state.fl.us/dbpr/lsc/hoa/information/hoa_final_report.pdf

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Civil Justice Committee adopted 1 strike-all amendment to this bill. The amendment made the following revisions to the bill:

- Removed the section of the bill repealing s. 720.311, F.S., pertaining to dispute resolution, and removed revisions made to other sections that referenced s. 720.311, F.S.
- Removed "not-for-profit" from s. 720.302(5), F.S.
- Removed the section in the bill revising s. 720.303(2), F.S.
- Amended s. 720.303(6), F.S., regarding homeowners' association budgets, to provide for reserve accounts and funding for those accounts.
- Amended s. 720.303(7), F.S., regarding financial reporting by homeowners associations, to remove the provision from the bill that the association provide each member with a copy of the annual report within "21 days after the report is prepared but no later than 120 days after the end of the fiscal year."
- Removed provisions relating to the homeowners association members' right to speak on meeting agenda items.
- Amended s. 720.307(3), F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors the developer must deliver the financial records of the association.
- Amended s. 720.308, F.S., to establish guarantees of common expenses for homeowners associations.
- Removed revision to s. 720.405, F.S., regarding the requirements to a proposed revived declaration.

This bill was then reported favorably with a committee substitute.

On April 17, 2006, the State Administration Appropriations Committee adopted two amendments to the Committee Substitute. The amendments made the following revisions to the bill:

- .Amended 720.303(7), F.S., to stipulate that within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year. Adds back the provision from the original bill that within 21 (instead of 60) days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws.
- Removed the section in the bill revising 720.305(2), F.S.

This bill was then reported favorably with a committee substitute. The analysis has been updated for the amendments.

CHAMBER ACTION

1 The State Administration Appropriations Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to community associations; creating s.
8 712.11, F.S.; authorizing certain associations to revive
9 lapsed covenants; amending s. 718.114, F.S.; providing
10 that certain leaseholds, memberships, or other possessory
11 or use interests shall be considered a material alteration
12 or substantial addition to certain real property; amending
13 s. 720.302, F.S.; revising application; amending s.
14 720.303, F.S.; authorizing associations to charge
15 specified fees for providing certain information to
16 prospective purchasers or lienholders; limiting liability
17 for providing such information; revising what must be
18 included in an association's annual budget; providing for
19 reserve accounts for capital expenditures and deferred
20 maintenance; revising certain time requirements relating
21 to annual reports of associations; amending s. 720.306,
22 F.S.; providing that certain mergers or consolidations do
23 not alter specified voting interests; amending s. 720.307,

24 F.S.; providing additional documents that the developer
25 must deliver at the time the association members elect the
26 board of directors; amending s. 720.308, F.S.; providing
27 that a guarantee of common expenses shall be effective
28 under certain circumstances; requiring the guarantee to
29 meet certain requirements; authorizing the guarantee to
30 provide certain requirements; requiring the stated dollar
31 amount of the guarantee to be an exact dollar amount for
32 each parcel identified in the declaration; providing
33 payments required from the guarantor to be determined in a
34 certain manner; providing a formula to determine the
35 guarantor's total financial obligation to the association;
36 providing that certain expenses incurred in the production
37 of certain revenues shall not be included in the operating
38 expenses; amending s. 720.402, F.S., relating to
39 publication of false or misleading information; clarifying
40 that the section does not limit common-law rights;
41 providing an effective date.
42
43 Be It Enacted by the Legislature of the State of Florida:
44
45 Section 1. Section 712.11, Florida Statutes, is created to
46 read:
47 712.11 Covenant revitalization.--A homeowners' association
48 that is not subject to chapter 720 may use the procedures in ss.
49 720.403-720.407 to revive covenants that have lapsed pursuant to
50 this chapter.

51 Section 2. Section 718.114, Florida Statutes, is amended
52 to read:
53 718.114 Association powers.--An association has the power
54 to enter into agreements, to acquire leaseholds, memberships,
55 and other possessory or use interests in lands or facilities
56 such as country clubs, golf courses, marinas, and other
57 recreational facilities. It has this power whether or not the
58 lands or facilities are contiguous to the lands of the
59 condominium, if they are intended to provide enjoyment,
60 recreation, or other use or benefit to the unit owners. All of
61 these leaseholds, memberships, and other possessory or use
62 interests existing or created at the time of recording the
63 declaration must be stated and fully described in the
64 declaration. Subsequent to the recording of the declaration,
65 agreements acquiring these leaseholds, memberships, or other
66 possessory or use interests not entered into within 12 months
67 following the recording of the declaration shall be considered a
68 material alteration or substantial addition to the real property
69 that is association property, and the association may not
70 acquire or enter into agreements acquiring these leaseholds,
71 memberships, or other possessory or use interests except as
72 authorized by the declaration as provided in s. 718.113. The
73 declaration may provide that the rental, membership fees,
74 operations, replacements, and other expenses are common expenses
75 and may impose covenants and restrictions concerning their use
76 and may contain other provisions not inconsistent with this
77 chapter. A condominium association may conduct bingo games as
78 provided in s. 849.0931.

79 Section 3. Subsections (3) and (5) of section 720.302,
80 Florida Statutes, are amended to read:
81 720.302 Purposes, scope, and application.--
82 (3) Except as specifically provided in this chapter, this
83 chapter does not apply to:
84 (a) A community that is composed of property primarily
85 intended for commercial, industrial, or other nonresidential
86 use; or
87 (b) The commercial or industrial parcels in a community
88 that contains both residential parcels and parcels intended for
89 commercial or industrial use.
90 (5) Unless expressly stated to the contrary, corporations
91 ~~not for profit~~ that operate residential homeowners' associations
92 in this state shall be governed by and subject to chapter 617
93 and this chapter or chapter 607 if incorporated under that
94 chapter. This subsection is intended to clarify existing law.
95 Section 4. Subsections (5), (6), and (7) of section
96 720.303, Florida Statutes, are amended to read:
97 720.303 Association powers and duties; meetings of board;
98 official records; budgets; financial reporting; association
99 funds; recalls.--
100 (5) INSPECTION AND COPYING OF RECORDS.--The official
101 records shall be maintained within the state and must be open to
102 inspection and available for photocopying by members or their
103 authorized agents at reasonable times and places within 10
104 business days after receipt of a written request for access.
105 This subsection may be complied with by having a copy of the
106 official records available for inspection or copying in the

107 community. If the association has a photocopy machine available
108 where the records are maintained, it must provide parcel owners
109 with copies on request during the inspection if the entire
110 request is limited to no more than 25 pages.
111 (a) The failure of an association to provide access to the
112 records within 10 business days after receipt of a written
113 request creates a rebuttable presumption that the association
114 willfully failed to comply with this subsection.
115 (b) A member who is denied access to official records is
116 entitled to the actual damages or minimum damages for the
117 association's willful failure to comply with this subsection.
118 The minimum damages are to be $50 per calendar day up to 10
119 days, the calculation to begin on the 11th business day after
120 receipt of the written request.
121 (c) The association may adopt reasonable written rules
122 governing the frequency, time, location, notice, records to be
123 inspected, and manner of inspections, but may not impose a
124 requirement that a parcel owner demonstrate any proper purpose
125 for the inspection, state any reason for the inspection, or
126 limit a parcel owner's right to inspect records to less than one
127 8-hour business day per month. The association may impose fees
128 to cover the costs of providing copies of the official records,
129 including, without limitation, the costs of copying. The
130 association may charge up to 50 cents per page for copies made
131 on the association's photocopier. If the association does not
132 have a photocopy machine available where the records are kept,
133 or if the records requested to be copied exceed 25 pages in
134 length, the association may have copies made by an outside

135 vendor and may charge the actual cost of copying. The
136 association shall maintain an adequate number of copies of the
137 recorded governing documents, to ensure their availability to
138 members and prospective members. Notwithstanding the provisions
139 of this paragraph, the following records shall not be accessible
140 to members or parcel owners:
141 1. Any record protected by the lawyer-client privilege as
142 described in s. 90.502 and any record protected by the work-
143 product privilege, including, but not limited to, any record
144 prepared by an association attorney or prepared at the
145 attorney's express direction which reflects a mental impression,
146 conclusion, litigation strategy, or legal theory of the attorney
147 or the association and was prepared exclusively for civil or
148 criminal litigation or for adversarial administrative
149 proceedings or which was prepared in anticipation of imminent
150 civil or criminal litigation or imminent adversarial
151 administrative proceedings until the conclusion of the
152 litigation or adversarial administrative proceedings.
153 2. Information obtained by an association in connection
154 with the approval of the lease, sale, or other transfer of a
155 parcel.
156 3. Disciplinary, health, insurance, and personnel records
157 of the association's employees.
158 4. Medical records of parcel owners or community
159 residents.
160 (d) The association is not required to give a prospective
161 purchaser or lienholder information about the subdivision or the
162 association other than that required to be disclosed under this

163 chapter. It may charge the prospective purchaser, lienholder, or
164 current parcel owner or member a reasonable fee not to exceed
165 $150 to provide such information, other than information
166 required by law, plus the reasonable cost of photocopying and
167 attorney's fees incurred by the association in connection with
168 the response.
169 (e) An association is not liable for providing such
170 information in good faith pursuant to a written request if the
171 person providing the information includes a written statement in
172 substantially the following form: "The responses herein are made
173 in good faith and to the best of my ability as to their
174 accuracy."
175 (6) BUDGETS.--
176 (a) The association shall prepare an annual budget that
177 sets out the annual operating expenses. The budget must reflect
178 the estimated revenues and expenses for that year and the
179 estimated surplus or deficit as of the end of the current year.
180 The budget must set out separately all fees or charges paid for
181 by the association for recreational amenities, whether owned by
182 the association, the developer, or another person. The
183 association shall provide each member with a copy of the annual
184 budget or a written notice that a copy of the budget is
185 available upon request at no charge to the member. The copy must
186 be provided to the member within the time limits set forth in
187 subsection (5).
188 (b) In addition to annual operating expenses, the budget
189 may include reserve accounts for capital expenditures and
190 deferred maintenance for which the association is responsible to

191 the extent that the governing documents do not limit increases
192 in assessments, including reserves. If the budget of the
193 association includes reserve accounts, such reserves shall be
194 determined, maintained, and waived in the manner provided in
195 this subsection. Once an association provides for reserve
196 accounts in the budget, the association shall thereafter
197 determine, maintain, and waive reserves in compliance with the
198 provisions of this subsection.
199 (c) If the budget of the association does not provide for
200 reserve accounts governed by this subsection and is responsible
201 for the repair and maintenance of capital improvements that may
202 result in a special assessment, each financial report for the
203 preceding fiscal year required by subsection (7) shall contain
204 the following statement in conspicuous type: THE BUDGET OF THE
205 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
206 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL
207 ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
208 PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA
209 STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE
210 TOTAL VOTING INTERESTS OF THE ASSOCIATION.
211 (d) An association shall be deemed to have provided for
212 reserve accounts when reserve accounts have been initially
213 established by the developer or when the membership of the
214 association affirmatively elects to provide for reserves. If
215 reserve accounts are not initially provided for by the
216 developer, the membership of the association may elect to do so
217 upon the affirmative approval of not less than a majority of the
218 total voting interests of the association. Such approval may be

219 attained by vote of the members at a duly called meeting of the
220 membership or upon a written consent executed by not less than a
221 majority of the total voting interests in the community. The
222 approval action of the membership shall state that reserve
223 accounts shall be provided for in the budget and shall designate
224 the components for which the reserve accounts are to be
225 established. Upon approval by the membership, the board of
226 directors shall provide for the required reserve accounts to be
227 included in the budget in the next fiscal year following the
228 approval and in each year thereafter. Once established as
229 provided in this paragraph, the reserve accounts shall be funded
230 or maintained or shall have their funding waived in the manner
231 provided in paragraph (f).
232 (e) The amount to be reserved in any account established
233 shall be computed by means of a formula that is based upon
234 estimated remaining useful life and estimated replacement cost
235 or deferred maintenance expense of each reserve item. The
236 association may adjust replacement reserve assessments annually
237 to take into account any changes in estimates of cost or useful
238 life of a reserve item.
239 (f) Once a reserve account is established, the membership
240 of the association, upon a majority vote at a meeting at which a
241 quorum is present, may provide for no reserves or less reserves
242 than required by this section. If a meeting of the unit owners
243 has been called to determine whether to waive or reduce the
244 funding of reserves and no such result is achieved or a quorum
245 is not attained, the reserves as included in the budget shall go
246 into effect. After the turnover of control of an association by

247 a developer to parcel owners, the developer may vote its voting
248 interest to waive or reduce the funding of reserves. Any vote
249 taken pursuant to this paragraph to waive or reduce reserves
250 shall be applicable only to one budget year.
251 (g) Funding formulas for reserves authorized by this
252 subsection shall be based on either a separate analysis of each
253 of the required assets or a pooled analysis of two or more of
254 the required assets.
255 1. If the association maintains separate reserve accounts
256 for each of the required assets, the amount of the contribution
257 to each reserve account shall be the sum of the following two
258 calculations:
259 a. The total amount necessary, if any, to bring a negative
260 component balance to zero.
261 b. The total estimated deferred maintenance expense or
262 estimated replacement cost of the reserve component less the
263 estimated balance of the reserve component as of the beginning
264 of the period for which the budget will be in effect. The
265 remainder, if greater than zero, shall be divided by the
266 estimated remaining useful life of the component. The formula
267 may be adjusted each year for changes in estimates and deferred
268 maintenance performed during the year and may consider factors
269 such as inflation and earnings on invested funds.
270 2. If the association maintains a pooled account of two or
271 more of the required reserve assets, the amount of the
272 contribution to the pooled reserve account as disclosed in the
273 proposed budget shall be not less than that required to ensure
274 that the balance on hand at the beginning of the period for

275 which the budget will go into effect plus the projected annual
276 cash inflows over the remaining estimated useful lives of all of
277 the assets that make up the reserve pool are equal to or greater
278 than the projected annual cash outflows over the remaining
279 estimated useful life of all of the assets that make up the
280 reserve pool, based on the current reserve analysis. The
281 projected annual cash inflows may include estimated earnings
282 from investment of principal. The reserve funding formula shall
283 not include any type of balloon payments.
284 (h) Reserve funds and any interest accruing thereon shall
285 remain in the reserve account or accounts and shall be used only
286 for authorized reserve expenditures unless their use for other
287 purposes is approved in advance by a majority vote at a meeting
288 at which a quorum is present. Prior to turnover of control of an
289 association by a developer to parcel owners, the developer-
290 controlled association shall not vote to use reserves for
291 purposes other than that for which they were intended without
292 the approval of a majority of all nondeveloper voting interests
293 voting in person or by limited proxy at a duly called meeting of
294 the association.
295 (7) FINANCIAL REPORTING.--Within 90 days after the end of
296 the fiscal year, or annually on the date provided in the bylaws,
297 the association shall prepare and complete, or contract for the
298 preparation and completion of, a ~~an annual~~ financial report for
299 the preceding fiscal year. Within 21 ~~60~~ days after the final
300 financial report is completed by the association or received
301 from the third party, but not later than 120 days after the end
302 of the fiscal year or other date as provided in the bylaws,

303 ~~close of the fiscal year.~~ the association shall, within the time
304 limits set forth in subsection (5), provide each member with a
305 copy of the annual financial report or a written notice that a
306 copy of the financial report is available upon request at no
307 charge to the member. Financial reports shall be prepared as
308 follows:
309 (a) An association that meets the criteria of this
310 paragraph shall prepare or cause to be prepared a complete set
311 of financial statements in accordance with generally accepted
312 accounting principles as adopted by the Florida Board of
313 Accountancy. The financial statements shall be based upon the
314 association's total annual revenues, as follows:
315 1. An association with total annual revenues of $100,000
316 or more, but less than $200,000, shall prepare compiled
317 financial statements.
318 2. An association with total annual revenues of at least
319 $200,000, but less than $400,000, shall prepare reviewed
320 financial statements.
321 3. An association with total annual revenues of $400,000
322 or more shall prepare audited financial statements.
323 (b)1. An association with total annual revenues of less
324 than $100,000 shall prepare a report of cash receipts and
325 expenditures.
326 2. An association in a community of fewer than 50 parcels,
327 regardless of the association's annual revenues, may prepare a
328 report of cash receipts and expenditures in lieu of financial
329 statements required by paragraph (a) unless the governing
330 documents provide otherwise.

331 3. A report of cash receipts and disbursement must
332 disclose the amount of receipts by accounts and receipt
333 classifications and the amount of expenses by accounts and
334 expense classifications, including, but not limited to, the
335 following, as applicable: costs for security, professional, and
336 management fees and expenses; taxes; costs for recreation
337 facilities; expenses for refuse collection and utility services;
338 expenses for lawn care; costs for building maintenance and
339 repair; insurance costs; administration and salary expenses; and
340 reserves if maintained by the association.
341 (c) If 20 percent of the parcel owners petition the board
342 for a level of financial reporting higher than that required by
343 this section, the association shall duly notice and hold a
344 meeting of members within 30 days of receipt of the petition for
345 the purpose of voting on raising the level of reporting for that
346 fiscal year. Upon approval of a majority of the total voting
347 interests of the parcel owners, the association shall prepare or
348 cause to be prepared, shall amend the budget or adopt a special
349 assessment to pay for the financial report regardless of any
350 provision to the contrary in the governing documents, and shall
351 provide within 90 days of the meeting or the end of the fiscal
352 year, whichever occurs later:
353 1. Compiled, reviewed, or audited financial statements, if
354 the association is otherwise required to prepare a report of
355 cash receipts and expenditures;
356 2. Reviewed or audited financial statements, if the
357 association is otherwise required to prepare compiled financial
358 statements; or

359 3. Audited financial statements if the association is
360 otherwise required to prepare reviewed financial statements.
361 (d) If approved by a majority of the voting interests
362 present at a properly called meeting of the association, an
363 association may prepare or cause to be prepared:
364 1. A report of cash receipts and expenditures in lieu of a
365 compiled, reviewed, or audited financial statement;
366 2. A report of cash receipts and expenditures or a
367 compiled financial statement in lieu of a reviewed or audited
368 financial statement; or
369 3. A report of cash receipts and expenditures, a compiled
370 financial statement, or a reviewed financial statement in lieu
371 of an audited financial statement.
372 Section 5. Subsection (1) of section 720.306, Florida
373 Statutes, is amended to read:
374 720.306 Meetings of members; voting and election
375 procedures; amendments.--
376 (1) QUORUM; AMENDMENTS.--
377 (a) Unless a lower number is provided in the bylaws, the
378 percentage of voting interests required to constitute a quorum
379 at a meeting of the members shall be 30 percent of the total
380 voting interests. Unless otherwise provided in this chapter or
381 in the articles of incorporation or bylaws, decisions that
382 require a vote of the members must be made by the concurrence of
383 at least a majority of the voting interests present, in person
384 or by proxy, at a meeting at which a quorum has been attained.
385 (b) Unless otherwise provided in the governing documents
386 or required by law, and other than those matters set forth in

387 paragraph (c), any governing document of an association may be
388 amended by the affirmative vote of two-thirds of the voting
389 interests of the association.
390 (c) Unless otherwise provided in the governing documents
391 as originally recorded or permitted by this chapter or chapter
392 617, an amendment may not materially and adversely alter the
393 proportionate voting interest appurtenant to a parcel or
394 increase the proportion or percentage by which a parcel shares
395 in the common expenses of the association unless the record
396 parcel owner and all record owners of liens on the parcels join
397 in the execution of the amendment. For purposes of this section,
398 a change in quorum requirements is not an alteration of voting
399 interests. The merger or consolidation of associations under a
400 plan of merger or consolidation pursuant to chapter 607 or
401 chapter 617 is not a material or adverse alteration of the
402 proportionate voting interest appurtenant to a parcel.
403 Section 6. Paragraph (t) is added to subsection (3) of
404 section 720.307, Florida Statutes, to read:
405 720.307 Transition of association control in a
406 community.--With respect to homeowners' associations:
407 (3) At the time the members are entitled to elect at least
408 a majority of the board of directors of the homeowners'
409 association, the developer shall, at the developer's expense,
410 within no more than 90 days deliver the following documents to
411 the board:
412 (t) The financial records, including financial statements
413 of the association, and source documents from the incorporation
414 of the association through the date of turnover. The records

415 shall be audited by an independent certified public accountant
416 for the period from the incorporation of the association or from
417 the period covered by the last audit, if an audit has been
418 performed for each fiscal year since incorporation. All
419 financial statements shall be prepared in accordance with
420 generally accepted accounting principles and shall be audited in
421 accordance with generally accepted auditing standards, as
422 prescribed by the Florida Board of Accountancy, pursuant to
423 chapter 473. The certified public accountant performing the
424 audit shall examine to the extent necessary supporting documents
425 and records, including the cash disbursements and related paid
426 invoices, to determine if expenditures were for association
427 purposes, and the billings, cash receipts, and related records
428 to determine that the developer was charged and paid the proper
429 amounts of assessments. This paragraph applies to associations
430 with a date of incorporation after December 31, 2006.
431 Section 7. Section 720.308, Florida Statutes, is amended
432 to read:
433 720.308 Assessments and charges.--
434 (1) ASSESSMENTS.--For any community created after October
435 1, 1995, the governing documents must describe the manner in
436 which expenses are shared and specify the member's proportional
437 share thereof. Assessments levied pursuant to the annual budget
438 or special assessment must be in the member's proportional share
439 of expenses as described in the governing document, which share
440 may be different among classes of parcels based upon the state
441 of development thereof, levels of services received by the
442 applicable members, or other relevant factors. While the

443 developer is in control of the homeowners' association, it may
444 be excused from payment of its share of the operating expenses
445 and assessments related to its parcels for any period of time
446 for which the developer has, in the declaration, obligated
447 itself to pay any operating expenses incurred that exceed the
448 assessments receivable from other members and other income of
449 the association. This section does not apply to an association,
450 no matter when created, if the association is created in a
451 community that is included in an effective development-of-
452 regional-impact development order as of the effective date of
453 this act, together with any approved modifications thereto.
454 (2) GUARANTEE OF COMMON EXPENSES.--
455 (a) Establishment of a guarantee.--If a guarantee of the
456 assessments of parcel owners is not included in the purchase
457 contracts or declaration, any agreement establishing a guarantee
458 shall be effective only upon the approval of a majority of the
459 voting interests of the members other than the developer.
460 Approval shall be expressed at a meeting of the members, voting
461 in person or by limited proxy, or by agreement in writing
462 without a meeting if provided in the bylaws. Such guarantee
463 shall meet the requirements of this section.
464 (b) Guarantee period.--The period of time for the
465 guarantee shall be indicated by a specific beginning and ending
466 date or event.
467 1. The ending date or event shall be the same for all of
468 the members of a homeowners' association, including members in
469 different phases of the development.

470 2. The guarantee may provide for different intervals of
471 time during a guarantee period with different dollar amounts for
472 each such interval.
473 (c) Guarantee extension.--The guarantee may provide that
474 after the initial stated period the developer has an option to
475 extend the guarantee for one or more additional stated periods.
476 The extension of a guarantee is limited to extending the ending
477 date or event; therefore, the developer does not have the option
478 of changing the level of assessments guaranteed.
479 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
480 amount of the guarantee shall be an exact dollar amount for each
481 parcel identified in the declaration. Regardless of the stated
482 dollar amount of the guarantee, assessments charged to a member
483 shall not exceed the maximum obligation of the member based on
484 the total amount of the adopted budget and the member's
485 proportionate ownership share of the common elements.
486 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash
487 payments required from the guarantor during the guarantee period
488 shall be determined as follows:
489 (a) If at any time during the guarantee period the funds
490 collected from member assessments at the guaranteed level and
491 other revenues collected by the association are not sufficient
492 to provide payment, on a timely basis, of all assessments,
493 including the full funding of the reserves unless properly
494 waived, the guarantor shall advance sufficient cash to the
495 association at the time such payments are due.
496 (b) Expenses incurred in the production of nonassessment
497 revenues, not in excess of the nonassessment revenues, shall not

498 be included in the assessments. If the expenses attributable to
499 nonassessment revenues exceed nonassessment revenues, only the
500 excess expenses must be funded by the guarantor. Interest earned
501 on the investment of association funds may be used to pay the
502 income tax expense incurred as a result of the investment; such
503 expense shall not be charged to the guarantor; and the net
504 investment income shall be retained by the association. Each
505 such nonassessment revenue-generating activity shall be
506 considered separately. Any portion of the parcel assessments
507 that is budgeted for designated capital contributions of the
508 association shall not be used to pay operating expenses.
509 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
510 guarantor's total financial obligation to the association at the
511 end of the guarantee period shall be determined on the accrual
512 basis using the following formula: the guarantor shall pay any
513 deficits that exceed the guaranteed amount, less the total
514 regular periodic assessments earned by the association from the
515 members other than the guarantor during the guarantee period,
516 regardless of whether the actual level charged was less than the
517 maximum guaranteed amount.
518 (6) EXPENSES.--Expenses incurred in the production of
519 nonassessment revenues, not in excess of the nonassessment
520 revenues, shall not be included in the operating expenses. If
521 the expenses attributable to nonassessment revenues exceed
522 nonassessment revenues, only the excess expenses must be funded
523 by the guarantor. Interest earned on the investment of
524 association funds may be used to pay the income tax expense
525 incurred as a result of the investment; such expense shall not

526 be charged to the guarantor; and the net investment income shall
527 be retained by the association. Each such nonassessment revenue-
528 generating activity shall be considered separately. Any portion
529 of the parcel assessment that is budgeted for designated capital
530 contributions of the association shall not be used to pay
531 operating expenses.
532 Section 8. Subsection (3) is added to section 720.402,
533 Florida Statutes, to read:
534 720.402 Publication of false and misleading information.--
535 (3) This section does not limit any rights provided by
536 common law.
537 Section 9. This act shall take effect July 1, 2006.

HB 1169

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1169 Vehicular Accidents Involving Death or Personal Injuries
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N	Kramer	Kramer
2) Criminal Justice Appropriations Committee	5 Y, 0 N	Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1169 requires the imposition of a two-year minimum mandatory sentence for the offense of leaving the scene of an accident involving death where the offender was driving under the influence. The bill also requires that a judge order an offender to make restitution to the victim upon conviction for the offenses of leaving the scene of an accident involving injury or death. The bill authorizes the imposition of "victim injury points" for these offenses. This would have the effect of significantly increasing the lowest permissible sentence that a judge can impose for the offense of leaving the scene of an accident involving death.

The bill requires the imposition of a four-year minimum mandatory sentence for the offense of DUI manslaughter. Because the lowest permissible sentence for this offense is already greater than 4 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a reduced sentence.

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, yet minimal, fiscal impact on the prison bed population in the Department of Corrections.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires the imposition of minimum mandatory terms of imprisonment for certain criminal offenses.

Promote personal responsibility: The bill increases the severity of the sanction for injurious behavior. The bill requires that an offender be required to pay restitution to a victim in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Leaving the Scene of an Accident Involving Injuries or Death: Section 316.062, F.S. requires a driver of a vehicle involved in a crash resulting in property damage or injury or death to provide certain information to the person who was injured or whose property was damaged or to law enforcement investigating the crash. The driver must provide his or her name, address, vehicle registration number and driver's license. The driver also must render reasonable assistance to the injured person.[1]

Section 316.027(1), F.S. provides that a driver of a vehicle involved in a crash resulting in the injury or death of any person must immediately stop the vehicle at or near the scene of the crash, and must remain at the scene until he or she has complied with the requirements of s. 316.062, F.S., listed above. A willful violation of this provision is a third degree felony where injury occurs and is commonly known as leaving the scene of an accident involving injury. A willful violation of this provision is a second degree felony where death occurs and is commonly known as leaving the scene of an accident involving death. It is not necessary that a person *caused* the accident – merely that he or she willfully left the scene without complying with s. 316.062, F.S. in order to be charged under s. 316.027(1), F.S.

Criminal Punishment Code: The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"[2] from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."[3] The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years.[4]

Victim injury: For sentencing purposes, victim injury is defined to mean the "physical injury or death suffered by a person as a *direct result*" of the criminal offense.[5] Generally, victim injury points are not assessed for the offense of leaving the scene of an accident involving injury or death because the injury or death is not a direct result of the offender leaving the scene.[6] There are only two reported decisions

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[1] A violation of this provision is considered a nonmoving violation punishable by a thirty dollar fine. s. 318.18(2)
[2] s. 921.0022, F.S.
[3] s. 921.0026, F.S.
[4] s. 775.082, F.S.
[5] s. 921.0021(7)(a), F.S.
[6] Geary v. State, 675 So.2d 625 (Fla. 2nd DCA 1996).

affirming an assessment of victim injury points for leaving the scene of an accident involving death. In both cases, there was evidence that the victim was dragged after being hit. In May v. State, 747 So.2d 459 (Fla. 4th DCA 1999) the offender dragged the victim for 500 feet and there was evidence that the dragging was a direct cause of death. In Sims v. State, 869 So.2d 45, 48 (Fla. 5th DCA 2004), the court concluded that because there was evidence that the victim was dragged after being hit by the offender's vehicle, "there was sufficient causal connection between the leaving of the accident scene and the death to justify the imposition of victim injury points."

HB 1169 amends section 921.0021, F.S. to authorize that victim injury points be assessed when a person is convicted of leaving the scene of an accident involving death or injury. In cases where the judge assessed victim injury points, this would have the effect of significantly increasing the lowest permissible sentence for the offense. The offense of leaving the scene of an accident involving injuries is ranked in Level 5 of the ranking chart. The sentence for this offense for a first time offender ranges from any non-state prison sanction to five years in prison. The addition of victim injury points would change the lowest permissible sentence, depending on the severity of the injury. If the victim injury was severe, the lowest permissible sentence would increase to 30 months in prison; if the injury was moderate, the lowest permissible sentence would be increased to13.5 months in prison and if the victim injury was slight, the lowest permissible sentence would remain any non-state prison sanction. The maximum sentence for the offense would still be five years in prison.

The offense of leaving the scene of an accident involving death is a Level 7 felony. The sentence for this offense for a first time offender ranges from 21 months to 15 years in prison. The addition of victim injury points for the death of the victim would greatly increase the lowest permissible sentence for the offense to 111 months (9 years and 3 months) in prison.

Minimum mandatory sentence: HB 1169[7] amends s. 316.027(1)(b), F.S. to provide that a person who commits the offense of leaving the scene of an accident involving death, while driving under the influence, shall be sentenced to a mandatory minimum term of imprisonment of 2 years. Because the lowest permissible sentence for this offense, as a result of the addition of victim injury points as authorized by this bill, would be greater than 2 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a downward departure sentence of less than 2 years in prison in cases in which a defendant is convicted of leaving the scene of an accident while driving under the influence.

Restitution: A judge is required to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode unless the judge finds clear and compelling reasons not to order such restitution.[8] Generally, restitution cannot be ordered against a person convicted of the offense of leaving the scene of an accident involving injury or death.[9] HB 1169 provides that if the driver of a vehicle commits the offense of leaving the scene of an accident involving injury or death, the court must order the driver to

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[7] Section 1 of the bill provides that sections 316.027 and 316.193, F.S. may be cited as the "Adam Arnold Act". According to newspaper accounts, Adam Arnold was a 16 year old who was killed in an automobile accident in 1996 where the driver of the other vehicle left the scene of the accident and was apprehended two days later. http://www.bradenton.com/mld/bradenton/13970830.htm

[8] s. 775.089(1), F.S.

[9] In Schuette v. State, 822 So.2d 1275 (Fla 2002), the defendant was charged with and convicted of driving with a suspended license and leaving the scene of an accident involving an injury. Florida Supreme Court held that

> [T]he mere occurrence of an accident, while the defendant is engaged in the criminal offense of driving with a suspended license does not as a matter of law mandate the award of restitution for the damages arising out of the accident. An award of restitution requires the existence of a causal relationship between the criminal offense of driving with a suspended license and the accident that resulted in the damaged or loss."

In the opinion, the Supreme Court relied on State v. Williams, 520 So.2d 276 (Fla. 1988), an earlier opinion which struck an award of restitution for the offense of leaving the scene of an accident and noted the lower court's assertion that it "is undisputed that restitution could not be ordered [based on] the conviction for leaving the scene of an accident." Id. at 1277. See also, Longshore v. State, 655 So.2d 1139 (Fla. 5th DCA 1995); Triplett v. State, 709 So.2d 107 (Fla. 5th DCA 1998)(court certified question of court may impose restitution for damages which are related to but not caused by the offense for which the defendant pleads guilty; review was denied by Florida Supreme Court, see State v. Triplett, 725 So.2d 1110 (Fla. Sep 25, 1998).

make restitution to the victim for any damage or loss unless the court finds clear and convincing reasons not to order the restitution. Consistent with s. 775.089(1)(a), the restitution statute, the bill provides that:

- restitution may be monetary or non-monetary
- the court must make the payment of restitution a condition of probation in accordance with s. 948.03, F.S.
- requiring the court to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crime Compensation Trust Fund pursuant to chapter 960
- payment of an award by this trust fund creates an order of restition

Driving Under the Influence: The offense of driving under the influence is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

A person who is in violation of the above provision, who operates a vehicle and who by reason of such operation, causes or contributes to causing the death of any human being commits DUI manslaughter. The offense is a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S., described above.

The offense of DUI manslaughter (where the offender did not leave the scene) is ranked in level 8 of the offense severity ranking chart. A key factor in calculating the lowest permissible sentence for this offense is the large number of victim injury points that must be scored for the death of the victim. This results in a lowest permissible sentence for a first time offender of 124.5 months (10 years and 4.5 months) in prison. The maximum sentence, based on the fact that the offense is a second degree felony, is 15 years in prison.

HB 1169 provides that a person convicted of DUI manslaughter must be sentenced to a mandatory term of imprisonment of 4 years. Because the lowest permissible sentence for this offense is already greater than 4 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a downward departure sentence of less than 4 years in prison in cases in which a defendant is convicted of DUI manslaughter.

C. SECTION DIRECTORY:

Section 1. Provides that sections 316.027 and 316.193, F.S. may be cited as the "Adam Arnold Act."

Section 2. Amends s. 316.027, F.S., relating to leaving the scene of an accident involving injury or death; requiring minimum mandatory sentence; authorizing imposition of victim injury points; requiring restitution.

Section 3. Amends s. 316.193, F.S., relating to leaving the driving under the influence; requiring minimum mandatory sentence for DUI manslaughter.

Section 4. Amends s. 921.0021, F.S., relating to restitution for the offense of leaving the scene of an accident.

Section 5. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require a defendant who commits the offense of leaving the scene of an accident involving injury or death to pay restitution for the victim's injuries.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on March 21, 2006 and determined that the bill would have an indeterminate, yet minimal, impact on the prison bed population of the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to vehicular accidents involving death or
3 personal injuries; providing a short title; amending s.
4 316.027, F.S.; requiring a court to sentence a driver of a
5 vehicle to a minimum term of imprisonment if the person is
6 driving under the influence and leaves the scene of a
7 crash that results in death; requiring a court to order
8 the driver of a vehicle to make restitution to the victim
9 for any damage or loss if a driver leaves the scene of an
10 accident that results in injury or death; requiring a
11 court to make the payment of restitution a condition of
12 probation; providing that an order requiring the defendant
13 to make restitution to a victim does not remove or
14 diminish the requirement that the court order payment to
15 the Crimes Compensation Trust Fund; amending s. 316.193,
16 F.S.; requiring that a person convicted of DUI
17 manslaughter be sentenced to a mandatory minimum term of
18 imprisonment; amending s. 921.0021, F.S.; allowing
19 assessment of victim injury points for certain offenses if
20 the court finds that the offender caused victim injury;
21 providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. <u>Sections 316.027 and 316.193, Florida Statutes,</u>
26 <u>may be cited as the "Adam Arnold Act."</u>
27 Section 2. Subsection (1) of section 316.027, Florida
28 Statutes, is amended to read:

29 316.027 Crash involving death or personal injuries.--
30 (1)(a) The driver of any vehicle involved in a crash
31 resulting in injury of any person must immediately stop the
32 vehicle at the scene of the crash, or as close thereto as
33 possible, and must remain at the scene of the crash until he or
34 she has fulfilled the requirements of s. 316.062. Any person who
35 willfully violates this paragraph commits ~~is guilty of~~ a felony
36 of the third degree, punishable as provided in s. 775.082, s.
37 775.083, or s. 775.084.
38 (b) The driver of any vehicle involved in a crash
39 resulting in the death of any person must immediately stop the
40 vehicle at the scene of the crash, or as close thereto as
41 possible, and must remain at the scene of the crash until he or
42 she has fulfilled the requirements of s. 316.062. Any person who
43 willfully violates this paragraph commits ~~is guilty of~~ a felony
44 of the second degree, punishable as provided in s. 775.082, s.
45 775.083, or s. 775.084. Any person who willfully violates this
46 paragraph while driving under the influence as set forth in s.
47 316.193(1) shall be sentenced to a mandatory minimum term of
48 imprisonment of 2 years.
49 (c) Notwithstanding s. 775.089(1)(a), if the driver of a
50 vehicle violates paragraph (a) or paragraph (b), the court shall
51 order the driver to make restitution to the victim for any
52 damage or loss unless the court finds clear and compelling
53 reasons not to order the restitution. Restitution may be
54 monetary or nonmonetary restitution. The court shall make the
55 payment of restitution a condition of probation in accordance
56 with s. 948.03. An order requiring the defendant to make

57 restitution to a victim does not remove or diminish the
58 requirement that the court order payment to the Crimes
59 Compensation Trust Fund pursuant to chapter 960. Payment of an
60 award by the Crimes Compensation Trust Fund creates an order of
61 restitution to the Crimes Compensation Trust Fund unless
62 specifically waived in accordance with s. 775.089(1)(b).
63 Section 3. Subsection (3) of section 316.193, Florida
64 Statutes, is amended to read:
65 316.193 Driving under the influence; penalties.--
66 (3) Any person:
67 (a) Who is in violation of subsection (1);
68 (b) Who operates a vehicle; and
69 (c) Who, by reason of such operation, causes or
70 contributes to causing:
71 1. Damage to the property or person of another commits a
72 misdemeanor of the first degree, punishable as provided in s.
73 775.082 or s. 775.083.
74 2. Serious bodily injury to another, as defined in s.
75 316.1933, commits a felony of the third degree, punishable as
76 provided in s. 775.082, s. 775.083, or s. 775.084.
77 3. The death of any human being or unborn quick child
78 commits DUI manslaughter, and commits:
79 a. A felony of the second degree, punishable as provided
80 in s. 775.082, s. 775.083, or s. 775.084.
81 b. A felony of the first degree, punishable as provided in
82 s. 775.082, s. 775.083, or s. 775.084, if:
83 (I) At the time of the crash, the person knew, or should
84 have known, that the crash occurred; and

85 (II) The person failed to give information and render aid
86 as required by s. 316.062.
87
88 For purposes of this subsection, the definition of the term
89 "unborn quick child" shall be determined in accordance with the
90 definition of viable fetus as set forth in s. 782.071. A person
91 who is convicted of DUI manslaughter shall be sentenced to a
92 mandatory minimum term of imprisonment of 4 years.
93 Section 4. Subsection (7) of section 921.0021, Florida
94 Statutes, is amended to read:
95 921.0021 Definitions.--As used in this chapter, for any
96 felony offense, except any capital felony, committed on or after
97 October 1, 1998, the term:
98 (7)(a) "Victim injury" means the physical injury or death
99 suffered by a person as a direct result of the primary offense,
100 or any additional offense, for which an offender is convicted
101 and which is pending before the court for sentencing at the time
102 of the primary offense.
103 (b) Except as provided in paragraph (c) or paragraph (d),
104 1. If the conviction is for an offense involving sexual
105 contact that includes sexual penetration, the sexual penetration
106 must be scored in accordance with the sentence points provided
107 under s. 921.0024 for sexual penetration, regardless of whether
108 there is evidence of any physical injury.
109 2. If the conviction is for an offense involving sexual
110 contact that does not include sexual penetration, the sexual
111 contact must be scored in accordance with the sentence points
112 provided under s. 921.0024 for sexual contact, regardless of

113 whether there is evidence of any physical injury.
114
115 If the victim of an offense involving sexual contact suffers any
116 physical injury as a direct result of the primary offense or any
117 additional offense committed by the offender resulting in
118 conviction, such physical injury must be scored separately and
119 in addition to the points scored for the sexual contact or the
120 sexual penetration.
121 (c) The sentence points provided under s. 921.0024 for
122 sexual contact or sexual penetration may not be assessed for a
123 violation of s. 944.35(3)(b)2.
124 (d) If the conviction is for the offense described in s.
125 872.06, the sentence points provided under s. 921.0024 for
126 sexual contact or sexual penetration may not be assessed.
127 (e) Notwithstanding paragraph (a), if the conviction is
128 for an offense described in s. 316.027 and the court finds that
129 the offender caused victim injury, sentence points for victim
130 injury may be assessed against the offender.
131 Section 5. This act shall take effect July 1, 2006.

HB 1271

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 CS Division of Alcoholic Beverages and Tobacco
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 2412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Cunningham	Kramer
2) State Administration Appropriations Committee	9 Y, 0 N, w/CS	Rayman	Belcher
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries.

Currently, employees of the Division may be certified as law enforcement officers. Such Alcoholic Beverages and Tobacco (AB&T) officers have *felony* arrest powers statewide. AB&T officers also have all of the powers of a deputy sheriff to:

- Enforce all criminal laws of the state within specified jurisdictions where the Division is a party to a written mutual-aid agreement with a state agency, sheriff, or municipal police department; and
- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
    - Laws *relating to alcoholic beverages and tobacco products*; and
    - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.

This bill provides that AB&T officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc.), and have statewide jurisdiction. The bill specifies that the primary responsibilities of an AB&T officer include enforcing the laws relating to alcoholic beverages and tobacco products, and the secondary responsibility to enforce all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in coordination with the local sheriff's office.

The DBPR indicates there is no significant fiscal impact on the state.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division.

Maintain Public Security: This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division.

B. EFFECT OF PROPOSED CHANGES:

The Division, housed within the DBPR, licenses the alcoholic beverage and tobacco industries,[1] collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries, pursuant to chapters 210, 561-565, and 567-569, F.S.[2] The Division carries out these responsibilities through three bureaus: Licensing, Auditing, and Enforcement.[3]

Currently, employees of the Division may be certified as law enforcement officers under chapter 943, F.S.[4] (for purposes of this analysis, such employees will be referred to as AB&T officers). AB&T officers currently have statewide *felony* arrest powers, described in s. 901.15, F.S., which authorize them to arrest a person without a warrant if:

- they reasonably believe that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing a felony;
- while engaged in the exercise of his or her state law enforcement duties, the AB&T officer reasonably believes that a felony has been or is being committed; or
- a felony warrant for the arrest has been issued and is being held for execution by another peace officer.[5]

AB&T officers also have all of the powers of a deputy sheriff to:

- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
  - Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
  - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.
- Enforce all criminal laws of the state within specified jurisdictions when the Division is a party to a written mutual-aid agreement with a state agency, sheriff, or municipal police department, or when the Division participates in the Florida Mutual Aid Plan during a declared state of emergency.[6]

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[1] Florida has approximately 71,000 active alcoholic beverage and tobacco license holders.
[2] http://www.myflorida.com/dbpr/abt/index.shtml
[3] *Id.*
[4] In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of law enforcement officers (LEO). Every prospective LEO must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification. http://www.fdle.state.fl.us/cjst/commission/index.html
[5] *See* ss. 20.165 and 901.15, F.S.
[6] s. 20.165, F.S.

A review of the above authorities reveals that AB&T officers do not currently have the authority to enforce certain laws or respond (e.g. pursue, detain, and arrest) to certain crimes. For example, an AB&T officer may not enforce misdemeanor violations when not on the premises of a Division-licensed entity. In such instances, the AB&T officer would be limited to simply notifying local law enforcement of the crime. This limited authority has also caused concern in that AB&T officers must consider whether responding to a crime is within the scope of their authorized duties, whether the Division would support their actions, whether they will incur any liability for their actions, etc...

Effect of the Bill
The bill provides that Division employees serving as law enforcement officers must meet the qualifications for employment as a law enforcement officer set forth under s. 943.13, F.S.,[7] and must be certified as a law enforcement officer by the Florida Department of Law Enforcement (FDLE). This portion of the bill appears to have little effect in that AB&T officers who are currently certified as law enforcement officers are certified as such by FDLE and must meet the requirements of s. 943.13, F.S.

The bill also provides that AB&T officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc.), and have statewide jurisdiction. The bill specifies that AB&T officers also have the arrest authority provided for state law enforcement officers in s. 901.15, F.S. (discussed above). The bill further provides that an AB&T officer has full law enforcement powers granted to other peace officers in the state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

Although the bill expands an AB&T officer's powers and jurisdiction, the bill specifies that the primary responsibilities of an AB&T officer include enforcing the laws relating to Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce. An AB&T officer's secondary responsibilities include enforcing all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., requiring AB&T officers serving as law enforcement officers to meet certain qualifications; requiring AB&T officers to be certified as law enforcement officers; providing AB&T officers with certain powers, authority, and jurisdiction; and specifying primary and secondary responsibilities of AB&T officers.

Section 2. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[7] Section 943.13, F.S. provides minimum employment qualifications for officers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation indicates there is no significant fiscal impact on the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment provides than an AB&T officer's primary responsibilities also include enforcing all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

The staff analysis reflects the CS.

On April 17, 2006, the State Administration Appropriations Committee adopted a strike-all and amendment to the strike-all and reported the bill favorably with committee substitute. The amendments provide that AB&T Officers' secondary responsibility is to enforce state laws other than those relating to alcoholic beverages & tobacco products.

The staff analysis reflects the Committee Substitute.

CHAMBER ACTION

The State Administration Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Division of Alcoholic Beverages and Tobacco; amending s. 20.165, F.S.; requiring each employee serving as a law enforcement officer for the division to meet the qualifications of a law enforcement officer set forth in ch. 943, F.S., for employment or appointment; requiring each such employee to be certified as a law enforcement officer by the Department of Law Enforcement; providing the law enforcement officer with certain powers, authority, and jurisdiction; specifying the primary and secondary responsibilities for law enforcement officers of the division; providing an effective date.

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

Section 1. Paragraph (b) of subsection (9) of section 20.165, Florida Statutes, is amended to read:

23 20.165 Department of Business and Professional
24 Regulation.--There is created a Department of Business and
25 Professional Regulation.
26 (9)
27 (b) Each employee serving as a law enforcement officer for
28 the division must meet the qualifications for employment or
29 appointment as a law enforcement officer set forth under s.
30 943.13 and must be certified as a law enforcement officer by the
31 Department of Law Enforcement under chapter 943. Upon
32 certification, each law enforcement officer is subject to and
33 has the same authority as provided for law enforcement officers
34 generally in chapter 901 and has statewide jurisdiction. Each
35 officer also has arrest authority as provided for state law
36 enforcement officers in s. 901.15. Each officer possesses the
37 full law enforcement powers granted to other peace officers of
38 this state, including the authority to make arrests, carry
39 firearms, serve court process, and seize contraband and the
40 proceeds of illegal activities.
41 1. The primary responsibility of each officer appointed
42 under this section is ~~All employees certified under chapter 943~~
43 ~~as law enforcement officers shall have felony arrest powers~~
44 ~~under s. 901.15(10) and shall have all the powers of deputy~~
45 ~~sheriffs~~ to~~:~~
46 ~~1.~~ investigate, enforce, and prosecute, throughout the
47 state, violations and violators of~~:~~
48 ~~a.~~ parts I and II of chapter 210,~~;~~ part VII of chapter
49 559,~~;~~ and chapters 561-569,~~;~~ and the rules adopted ~~promulgated~~
50 thereunder, as well as other state laws that ~~which~~ the division,

51 all state law enforcement officers, or beverage enforcement
52 agents are specifically authorized to enforce.
53 2.~~b.~~ The secondary responsibility of each officer
54 appointed under this section is to enforce all other state laws,
55 provided that the enforcement is incidental to exercising the
56 officer's primary responsibility as provided in subparagraph 1.,
57 and the officer ~~employee~~ exercises the powers of a deputy
58 sheriff, only after consultation or ~~and in~~ coordination with the
59 appropriate local sheriff's office~~, and only if the violation~~
60 ~~could result in an administrative proceeding against a license~~
61 ~~or permit issued by the division.~~
62 ~~2. Enforce all criminal laws of the state within specified~~
63 ~~jurisdictions when the division is a party to a written mutual~~
64 ~~aid agreement with a state agency, sheriff,~~ or municipal police
65 department~~,~~ or when the division participates in the Florida
66 Mutual Aid Plan during a declared state emergency.
67 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7029 PCB JUVJ 06-01 Ch. 985, F.S.-- Reorganization
SPONSOR(S): Juvenile Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Juvenile Justice Committee	5 Y, 0 N	White	White
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Ch. 985, F.S., addresses Florida's juvenile justice system. Some judges, prosecutors, defense attorneys, and agency personnel have indicated that the chapter's current organization is difficult to utilize in practice.

The bill reorganizes ch. 985, F.S., to provide a chronological presentation of the delinquency proceeding from the introduction of the child into the system to the case outcome. It divides the chapter into 13 parts and it divides larger sections within the chapter into smaller parts that are given more meaningful section and subheading names to better describe and organize the chapter's contents.

As the bill is strictly a technical rewrite of ch. 985, F.S., with no substantive changes to current law, only a minimal fiscal impact is anticipated for costs associated with the republication of documents that contain references to current ch. 985, F.S., provisions that are renumbered by the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Ch. 985, F.S., addresses Florida's juvenile justice system. Some judges, prosecutors, defense attorneys, and agency personnel have indicated that the chapter's current organization is difficult to utilize in practice. For example, even though the chapter contains s. 985.201, F.S., entitled "Jurisdiction," wherein all matters related to juvenile jurisdiction presumably would be located, numerous other sections in the chapter also contain provisions relating to jurisdiction. *See e.g.* ss. 985.23, 985.231, 985.31, and 985.313, F.S.

The bill is purely technical and is designed to make the juvenile delinquency statutes more "user-friendly" for all stakeholders: state attorneys, public defenders, children, parents, judges, employees of the Department of Juvenile Justice (DJJ), and private providers of delinquency services.[1] "Whereas" clauses contained in the bill specify that the Legislature recognizes that ch. 985, F.S., has become disjointed and disorganized due to numerous amendments since its original enactment and that the Legislature intends for the bill, ". . . to strictly effect a technical reorganization of ch. 985, F.S., without any substantive change to its contents, for the purpose of simplifying the chapter's presentation and providing greater clarity for its users . . . ."

The bill reorganizes ch. 985, F.S., as follows:

Chronological Presentation -- Chapter 985, F.S. is reorganized to provide a chronological presentation of the delinquency proceeding from the introduction of the child into the system to the case outcome. It divides the chapter into the following 13 parts:

1. General Provisions
2. Records and Information
3. Custody and Intake; Intervention and Diversion
4. Examinations and Evaluations
5. Detention
6. Petition, Arraignment and Adjudication
7. Disposition; Post-Disposition
8. Authority of Court Over Parents or Guardians
9. Appeal
10. Transfer to Adult Court
11. Department of Juvenile Justice
12. Miscellaneous Offenses
13. Interstate Compact on Juveniles

Topical Reorganization -- The bill divides larger sections of ch. 985, F.S., into smaller parts that are given more meaningful section and subheading names to better describe and organize the chapter's contents.

[1] A Subcommittee of the Steering Committee of Families and Children in the Court, comprised of representatives from State Attorney offices, Public Defender offices, the DJJ, the judiciary, and a law school, met in 2003 and 2004 to develop a draft for the reorganization of ch. 985, F.S.

C. SECTION DIRECTORY:

Section 1. Reorganizes heading titles of ch. 985, F.S.

Section 2. Amends s. 985.01, F.S. to change section heading; makes technical drafting changes.

Section 3. Amends s. 985.02, F.S., to make conforming changes.

Section 4. Renumbers subsections (1) through (6), (8) through (31), (33) through (48), and (50) through (60) of s. 985.03, F.S., as subsections (1) through (57); corrects cross-references; makes conforming changes.

Section 5. Renumbers s. 985.201, F.S., and s. 985.219(8), F.S., as s. 985.0301, F.S.; reinstates text relating to jurisdiction that is struck in other sections of bill; corrects cross-references; makes conforming changes.

Section 6. Renumbers s. 985.202, F.S., as s. 985.032, F.S.

Section 7. Renumbers s. 985.203, F.S., as s. 985.033, F.S.; corrects cross-references; clarifies that right to counsel does not include transfer proceedings pursuant to 985.441(3), F.S., unless the court sets a hearing to review the transfer; makes conforming changes; makes technical drafting changes.

Section 8. Renumbers s. 985.205, F.S., as s. 985.035, F.S.

Section 9. Renumbers s. 985.206, F.S., as s. 985.036, F.S.; reinstates text that is struck by other sections of bill; makes conforming changes.

Section 10. Renumbers s. 985.216, F.S., as s. 985.037, F.S.; strikes text that is reinstated in other sections of bill; corrects cross-references; makes conforming changes.

Section 11. Renumbers s. 985.2311, F.S., as s. 985.039, F.S.; makes technical drafting changes.

Section 12. Amends s. 985.04, F.S.; corrects cross-references; makes conforming and technical drafting changes.

Section 13. Renumbers s. 985.05, F.S., as s. 985.045, F.S.; corrects cross-references; makes technical drafting changes.

Section 14. Renumbers ss. 985.06 and 985.08, F.S., respectively as ss. 985.046 and 985.047, F.S.

Section 15. Renumbers ss. 985.207 and 985.215(3), F.S., as s. 985.101, F.S.; corrects cross-references; makes conforming and technical drafting changes.

Section 16. Renumbers s. 985.2075, F.S., as s. 985.105, F.S.; makes technical drafting changes.

Section 17. Renumbers s. 985.212, F.S., as s. 985.11, F.S.; corrects cross-references.

Section 18. Renumbers s. 985.211 (1), (2), (5), and (7), F.S., as s. 985.115, F.S.; corrects cross-references; makes technical drafting and conforming changes.

Section 19. Renumbers s. 985.301, F.S., as s. 985.12, F.S.; corrects cross-references.

Section 20. Renumbers s. 985.3065, F.S., as s. 985.125, F.S.

Section 21. Renumbers s. 985.211(3), (4), and (6), F.S., as s. 985.13, F.S.; amends section title; corrects cross-references; makes technical drafting and conforming changes.

Section 22. Renumbers s. 985.209, F.S., as s. 985.135, F.S.; makes technical drafting changes.

Section 23. Renumbers s. 985.21(1) and (2), F.S., as s. 985.14, F.S.; amends section title; strikes text that is reinstated in other sections of bill; reinstates text that is struck by other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 24. Renumbers s. 985.21(3), (4), and (5), F.S., as s. 985.145, F.S.; reinstates text that is struck by other sections of bill; strikes text that is reinstated in other sections of bill; corrects cross-references; makes conforming changes.

Section 25. Creates s. 985.15, F.S.; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 26. Renumbers s. 985.303, F.S., as 985.155, F.S.

Section 27. Renumbers s. 985.304, F.S., as s. 985.16, F.S.; corrects cross-references.

Section 28. Renumbers ss. 985.224(1) through (8) and 985.215(10)(e), F.S., as s. 985.224, F.S.

Section 29. Renumbers s. 985.229(1) and (2), F.S., as s. 985.185, F.S.; amends section title; strikes text that is reinstated in other sections of bill; corrects cross-references.

Section 30. Renumbers ss. 985.223 and 985.418, F.S., as ss. 985.19 and 985.195, F.S., respectively.

Section 31. Renumbers ss. 985.213(1) and (4), and 985.214(1) and (2), F.S., as s. 985.24, F.S; amends section title; corrects cross-references; makes technical drafting and conforming changes.

Section 32. Renumbers s. 985.213(2), F.S., as s. 985.245, F.S.; amends section title; strikes text that is reinstated in other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 33. Renumbers s. 985.215(1) and (5)(b), F.S., as s. 985.25, F.S.; amends section title; corrects cross-references; makes technical drafting and conforming changes.

Section 34. Renumbers s. 985.215(2), F.S., as s. 985.255, F.S.; amends section title; reinstates text that is struck by other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 35. Renumbers s. 985.215(5)(a) and (c) through (g) and (7), F.S., as 985.26, F.S.; amends section title; reinstates text that is struck at end of this section; strikes text that is reinstated earlier in this section; corrects cross-references; makes technical drafting and conforming changes.

Section 36. Renumbers ss. 985.215(4), (8), (9), and (11), and 985.213(3), F.S., as 985.265, F.S.; amends section title; corrects cross-references; makes technical drafting and conforming changes.

Section 37. Renumbers s. 985.215(10)(a) through (d) and (f), F.S., as s. 985.27, F.S.; amends section title; reinstates text that is struck by other sections of bill; strikes text that is reinstated in other sections of bill; makes conforming changes.

Section 38. Renumbers s. 985.208, F.S., as 985.275, F.S.; corrects cross-references.

Section 39. Renumbers s. 985.218, F.S., as s. 985.318, F.S.

Section 40. Renumbers s. 985.219(1) through (7) and (9) through (12), F.S., as s. 985.319, F.S.; corrects a cross-reference; makes technical drafting changes.

Section 41. Renumbers s. 985.22, F.S., as 985.325, F.S.; corrects cross-references.

Section 42. Renumbers ss. 985.221, 985.222, and 985.306, F.S., as ss. 985.331, 985.335, and 985.345, F.S., respectively.

Section 43. Renumbers s. 985.228, F.S., as s. 985.35, F.S.; adds text to reflect current context in ch. 985, F.S.; corrects cross-references; makes technical drafting and conforming changes.

Section 44. Renumbers s. 985.229(3), F.S., as s. 985.43, F.S; amends section title; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 45. Renumbers s. 985.23, F.S., as s. 985.433, F.S.; reinstates text that is struck by other sections of bill; strikes text that is reinstated in other sections of bill; makes technical drafting and conforming changes.

Section 46. Renumbers s. 985.231(1)(a), F.S., as s. 985.435, F.S.; amends section title; reinstates text that is struck by other sections of bill; strikes text that is reinstated in other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 47. Creates s. 985.437, F.S.; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 48. Creates s. 985.439, F.S.; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 49. Creates s. 985.441, F.S.; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 50. Renumbers s. 985.232, F.S., as 985.442, F.S.

Section 51. Renumbers s. 985.231(1)(j), F.S., as s. 985.445, F.S.; amends section title; corrects cross-references; makes technical drafting and conforming changes.

Section 52. Renumbers s. 985.231(1)(g), F.S., as s. 985.45, F.S.; amends section title; makes conforming changes.

Section 53. Renumbers s. 985.231(1)(d) and (h), F.S., as s. 985.455, F.S.; reinstates text that is struck by other sections of bill; strikes text that is reinstated in other sections of bill; makes conforming changes.

Section 54. Renumbers s. 985.316(4), F.S., as s. 985.46, F.S.; corrects cross-references.

Section 55. Renumbers s. 985.313, F.S., as s. 985.465, F.S.; strikes text that is reinstated in other sections of bill; makes technical drafting changes.

Section 56. Renumbers ss. 985.03(49) and 985.31(1) through (5), F.S., as s. 985.47, F.S.; amends subsection titles; strikes text that is reinstated in other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 57. Renumbers ss. 985.03(32) and 985.231(3), F.S., as s. 985.475, F.S.; amends section and subsection titles; corrects cross-references; makes technical drafting and conforming changes.

Section 58. Renumbers s. 985.308, F.S., as 985.48, F.S.

Section 59. Renumbers ss. 985.03(7) and 985.311(1) through (5), F.S., as s. 985.483, F.S.; amends subsection titles; corrects cross-references; makes technical drafting and conforming changes.

Section 60. Renumbers s. 985.312, F.S., as s. 985.486, F.S.; corrects cross-references.

Section 61. Renumbers s. 985.309, F.S., as s. 985.489, F.S.; corrects cross-references.

Section 62. Renumbers s. 985.314, F.S., as s. 985.494, F.S.; corrects cross-references.

Section 63. Creates s. 985.511, F.S.; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 64. Renumbers s. 985.204, F.S., as s. 985.512, F.S.

Section 65. Renumbers s. 985.231(1)(e), F.S., as s. 985.513 F.S.; reinstates text that is struck by other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 66. Creates s. 985.514, F.S.; reinstates text that is struck by other sections of bill; corrects cross-references.

Section 67. Renumbers s. 985.234, F.S., as s. 985.534, F.S.; corrects a cross-reference; makes technical drafting changes.

Section 68. Renumbers ss. 985.235, and 985.236, F.S., as ss. 985.535, and 985.536, F.S., respectively.

Section 69. Renumbers s. 985.226, F.S., as 985.556, F.S.; amends section and subsection titles; strikes text that is reinstated in other sections of bill; corrects cross-references; makes technical drafting and conforming changes.

Section 70. Renumbers s. 985.227, F.S., as s. 985.557, F.S.; amends section and subsection titles; corrects cross-references; makes technical drafting and conforming changes.

Section 71. Renumbers s. 985.225, F.S., as s. 985.56, F.S.; corrects cross-references; makes technical drafting changes.

Section 72. Renumbers s. 985.233(1) through (4), F.S., as s. 985.565, F.S.; amends paragraph titles; adds text to reflect current context of ch. 985, F.S.; corrects cross-references; makes technical drafting and conforming changes.

Section 73. Renumbers s. 985.417, F.S., as s. 985.57, F.S.

Section 74. Renumbers s. 985.404(1) through (12), F.S., as s. 985.601, F.S.; strikes text that is reinstated in other sections of bill; changes reference to Department of Labor and Employment Security to Agency for Workforce Innovation; corrects cross-references; makes conforming changes.

Section 75. Renumbers 985.4043, F.S., as s. 985.6015, F.S.; makes technical drafting changes.

Section 76. Renumbers s. 985.3045, F.S., as s. 985.605, F.S.; amends section title; strikes obsolete language; reinstates text that is struck previously in section; correct cross-references; makes technical drafting and conforming changes.

Section 77. Renumbers s. 985.3046, F.S., as s. 985.606, F.S.; amends section title; strikes obsolete language.

Section 78. Renumbers s. 985.305, F.S., as s. 985.61, F.S.

Section 79. Renumbers s. 985.2066, F.S., as s. 985.614, F.S.; makes technical drafting changes.

Section 80. Renumbers s. 985.315, F.S., as s. 985.618, F.S.; corrects cross-references.

Section 81. Renumbers s. 985.3155, F.S., as s. 985.622, F.S.

Section 82. Renumbers s. 985.317, F.S., as s. 985.625, F.S.; corrects a cross-reference.

Section 83. Renumbers s. 985.419, F.S., as s. 985.629, F.S.

Section 84. Renumbers s. 985.412, F.S., as s. 985.632, F.S.

Section 85. Renumbers s. 985.42, F.S., as s. 985.636, F.S.

Section 86. Renumbers s. 985.405, F.S., as s. 985.64, F.S.; amend section title; makes technical drafting changes.

Section 87. Renumbers ss. 985.01(2) and 985.407(1) through (5), F.S., as s. 985.644, F.S.

Section 88. Renumbers s. 985.408, F.S., as s. 985.648, F.S.; corrects a cross-reference; makes technical drafting changes.

Section 89. Renumbers s. 985.409, F.S., as s. 985.652, F.S.

Section 90. Renumbers s. 985.406, F.S., as s. 985.66, F.S.; amends section title; corrects a cross-reference; makes technical drafting changes.

Section 91. Renumbers s. 985.4135, F.S., as 985.664, F.S.; corrects a cross-reference.

Section 92. Renumbers ss. 985.416 and 985.4145, F.S., as ss. 985.668 and 985.672, F.S., respectively.

Section 93. Renumbers s. 985.415, F.S., as s. 985.676, F.S.; corrects cross-references; makes technical drafting changes.

Section 94. Renumbers s. 985.41, F.S., as s. 985.682, F.S.; corrects a cross-reference; makes technical drafting changes.

Section 95. Renumbers s. 985.2155, F.S., as s. 985.686, F.S.

Section 96. Renumbers s. 985.411, F.S., as 985.688, F.S.; corrects cross-references; makes technical drafting changes.

Section 97. Renumbers ss. 985.4075, 985.4041, and 985.4042, F.S., as ss. 985.69, 985.692, and 985.694, F.S., respectively.

Section 98. Renumbers ss. 985.4045 and 985.4046, F.S., as ss. 985.701 and 985.711, F.S., respectively.

Section 99. Renumbers s. 985.3141, F.S., as 985.721, F.S.; corrects a cross-reference.

Section 100. Renumbers s. 985.2065, F.S., as s. 985.731, F.S.; makes technical drafting changes.

Section 101. Renumbers ss. 985.501, 985.502, 985.503, 985.504, 985.505, 985.506, and 985.507, F.S., as ss. 985.801, 985.802, 985.803, 985.804, 985.805, 985.805, and 986.807, F.S., respectively.

Section 102. Renumbers s. 985.5025, F.S., as s. 985.8025, F.S.; corrects a cross-reference.

Section 103. Repeals ss. 985.215(6), 985.231(1)(b), (c), (f), and (i) and (2) and 985.233(4)(d), F.S.

Section 104. Amends s. 29.004, F.S.; corrects a cross-reference.

Section 105. Amends s. 29.008, F.S.; corrects a cross-reference.

Section 106. Amends s. 253.025(17), F.S.; corrects a cross-reference.

Section 107. Amends s. 318.21(1), F.S.; corrects a cross-reference.

Section 108. Amends s. 397.334, F.S.; corrects a cross-reference.

Section 109. Amends s. 400.953(3), F.S.; corrects a cross-reference.

Section 110. Amends s. 419.001(1)(d), F.S.; corrects a cross-reference.

Section 111. Amends s. 435.04(2)(tt) and (uu); corrects cross-references.

Section 112. Amends s. 790.115(4), F.S.; corrects cross-references.

Section 113. Amends s. 790.22(8) and (9), F.S.; corrects cross-references.

Section 114. Amends s. 921.0022(3)(c), F.S.; corrects a cross-reference.

Section 115. Amends s. 938.10, F.S.; corrects a cross-reference.

Section 116. Amends s. 943.053(9), F.S.; corrects a cross-reference.

Section 117. Amends s. 943.0582, F.S.; corrects a cross-reference.

Section 118. Amends s. 943.0585(4)(a), F.S.; corrects a cross-reference.

Section 119. Amends s. 943.059(4)(a), F.S.; corrects a cross-reference.

Section 120. Amends s. 948.51(2), F.S.; corrects a cross-reference.

Section 121. Amends s. 958.046, F.S.; corrects a cross-reference.

Section 122. Amends s. 960.001(1)(b) and (j), F.S.; corrects cross-references.

Section 123. Amends s. 984.03(48), F.S.; corrects a cross-reference.

Section 124. Amends s. 984.05, F.S.; corrects a cross-reference.

Section 125. Amends s. 984.09(4)(b), F.S.; corrects a cross-reference.

Section 126. Amends s. 984.226(2) and (6), F.S.; corrects cross-references.

Section 127. Amends s. 1003.52(22), F.S.; corrects a cross-reference.

Section 128. Amends s. 1006.08(2), F.S.; corrects a cross-reference.

Section 129. Amends s. 1006.13(5)(a), F.S.; corrects a cross-reference.

Section 130. Amends s. 1012.797(1), F.S.; corrects a cross-reference.

Section 131. Provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DJJ states that the bill's renumbering and reorganization of ch. 985, F.S., will require republication of department forms, policies, manuals, and contracts that contain references to current ch. 985, F.S., sections. The DJJ anticipates that printing and labor costs for such republication will be less than $5,000. It is also expected that Florida's court system may incur minimal costs for republication. Representatives from the Office of the State Court Administrator have indicated that such costs can be absorbed by existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to juvenile justice; reorganizing ch. 985,
3 F.S.; providing new section numbers and part titles;
4 amending s. 985.01, F.S., relating to purposes and intent
5 for the chapter; amending s. 985.02, F.S., relating to the
6 legislative intent for the juvenile justice system;
7 revising a reference and cross-references to conform;
8 amending s. 985.03, F.S., relating to definitions for the
9 chapter; amending, renumbering, and revising references
10 and cross-references to conform; creating s. 985.0301,
11 F.S., relating to the jurisdiction of the juvenile court;
12 amending and renumbering s. 985.201, F.S.; amending and
13 renumbering a provision of s. 985.219, F.S., that relates
14 to such jurisdiction; revising references and cross-
15 references to conform; creating s. 985.032, F.S., relating
16 to legal representation for delinquency cases; renumbering
17 s. 985.202, F.S.; creating s. 985.033, F.S., relating to
18 the right to counsel; amending and renumbering s. 985.203,
19 F.S.; revising references to conform; creating s. 985.035,
20 F.S., relating to open hearings; renumbering s. 985.205,
21 F.S.; creating s. 985.036, F.S., relating to the rights of
22 victims in juvenile proceedings; amending and renumbering
23 s. 985.206, F.S.; providing for the release of certain
24 information to victims; creating s. 985.037, F.S.,
25 relating to punishment for contempt of court and
26 alternative sanctions; amending and renumbering s.
27 985.216, F.S.; revising provisions relating to contempt of
28 court; creating s. 985.039, F.S., relating to cost of

29 supervision and care; amending and renumbering s.
30 985.2311, F.S.; amending and renumbering s. 985.04, F.S.;
31 clarifying a provision relating to the release of certain
32 information; revising references and cross-references to
33 conform; creating s. 985.045, F.S., relating to court
34 records; amending and renumbering s. 985.05, F.S.;
35 revising references and cross-references to conform;
36 creating s. 985.046, F.S., relating to the statewide
37 information-sharing system and interagency workgroup;
38 renumbering s. 985.06, F.S.; creating s. 985.047, F.S.,
39 relating to information systems; renumbering s. 985.08,
40 F.S.; creating s. 985.101, F.S., relating to taking a
41 child into custody; amending and renumbering s. 985.207,
42 F.S.; creating s. 985.105, F.S., relating to intake and
43 case management; renumbering a provision of s. 985.215,
44 F.S., relating to transporting a child who has been taken
45 into custody; revising a reference and cross-references to
46 conform; creating s. 985.105, F.S., relating to youth
47 custody officers; amending and renumbering s. 985.2075,
48 F.S.; creating s. 985.11, F.S., relating to fingerprinting
49 and photographing; amending and renumbering s. 985.212,
50 F.S.; revising a cross-reference to conform; creating s.
51 985.115, F.S., relating to release or delivery from
52 custody; amending and renumbering provisions of s.
53 985.211, F.S., that relate to such release or delivery;
54 revising cross-references to conform; creating s. 985.12,
55 F.S., relating to civil citations; amending and
56 renumbering s. 985.301, F.S.; revising a cross-reference

57 to conform; creating s. 985.125, F.S., relating to
58 prearrest or postarrest diversion programs; renumbering s.
59 985.3065, F.S.; creating s. 985.13, F.S., relating to
60 probable cause affidavits; amending and renumbering
61 provisions of s. 985.211, F.S., that relate to probable
62 cause affidavits and certain requirements upon the taking
63 of a child into custody; revising cross-references to
64 conform; creating s. 985.135, F.S., relating to juvenile
65 assessment centers; amending and renumbering s. 985.209,
66 F.S.; creating s. 985.14, F.S., relating to the intake and
67 case management system; amending, renumbering, and
68 redesignating provisions of s. 985.21, F.S., that relate
69 to intake and case management; revising cross-references
70 to conform; creating s. 985.145, F.S., relating to the
71 responsibilities of the juvenile probation officer during
72 intake and to screenings and assessments; amending and
73 redesignating provisions of s. 985.21, F.S., that relate
74 to such responsibilities, screenings, and assessments;
75 revising cross-references to conform; creating s. 985.15,
76 F.S., relating to filing decisions in juvenile cases;
77 revising cross-references to conform; creating s. 985.155,
78 F.S., relating to neighborhood restorative justice;
79 renumbering s. 985.303, F.S.; creating s. 985.16, F.S.,
80 relating to community arbitration; amending and
81 renumbering s. 985.304; F.S.; revising a reference to
82 conform; creating s. 985.18, F.S., relating to medical,
83 psychiatric, psychological, substance abuse, and
84 educational examination and treatment; renumbering s.

85 985.224, F.S.; redesignating a provision of s. 985.215,
86 F.S., that relates to comprehensive evaluations of certain
87 youth; creating s. 985.185, F.S., relating to evaluations
88 for dispositions; amending and renumbering provisions of
89 s. 985.229, F.S., that relate to such evaluations;
90 creating s. 985.19, F.S., relating to incompetency in
91 juvenile delinquency cases; renumbering s. 985.223, F.S.;
92 creating s. 985.195, F.S., relating to transfer to other
93 treatment services; renumbering s. 985.418, F.S.; creating
94 s. 985.24, F.S., relating to the use of detention and to
95 prohibitions on the use of detention; renumbering
96 provisions of s. 985.213, F.S., that relate to the use of
97 detention; renumbering s. 985.214, F.S.; creating s.
98 985.245, F.S., relating to the risk assessment instrument;
99 amending and renumbering a provision of s. 985.213, F.S.,
100 that relates to such instrument; revising cross-references
101 to conform; creating s. 985.25, F.S., relating to
102 detention intake; amending, renumbering, and redesignating
103 provisions of s. 985.215, F.S., that relate to detention
104 intake; revising cross-references to conform; creating s.
105 985.255, F.S., relating to detention criteria and
106 detention hearings; amending and renumbering a provision
107 of s. 985.215, F.S., that relates to such criteria and
108 hearings; revising cross-references to conform; revising a
109 cross-reference to conform; creating s. 985.26, F.S.,
110 relating to length of detention; amending, renumbering,
111 and redesignating provisions of s. 985.215, F.S., that
112 relate to length of detention; revising cross-references

113 to conform; creating s. 985.265, F.S., relating to
114 detention transfer and release, education of juvenile
115 offenders while in detention or on detention status, and
116 holding of juvenile offenders in adult jails; amending and
117 renumbering provisions of s. 985.215, F.S., that relate to
118 transfer, release, and holding juvenile offenders in adult
119 jails; renumbering a provision of s. 985.213, F.S., that
120 relates to education of juvenile offenders while in
121 detention or on detention status; revising references and
122 cross-references to conform; creating s. 985.27, F.S.,
123 relating to postcommitment detention of juvenile offenders
124 while such offenders are awaiting residential placement;
125 amending and redesignating provisions of s. 985.215, F.S.,
126 that relate to such detention; limiting the use of such
127 detention; revising references to "detention" to clarify
128 that such term means "secure detention" in certain
129 circumstances; creating s. 985.275, F.S., relating to the
130 detention of an escapee; amending and renumbering s.
131 985.208, F.S.; revising a cross-reference to conform;
132 creating s. 985.318, F.S., relating to petitions;
133 renumbering s. 985.218, F.S.; creating s. 985.319, F.S.,
134 relating to process and service; renumbering provisions of
135 s. 985.219, F.S., that relate to process and service;
136 creating s. 985.325, relating to prohibitions against
137 threatening or dismissing employees; amending and
138 renumbering s. 985.22, F.S.; revising cross-references to
139 conform; creating s. 985.331, F.S., relating to court and
140 witness fees; renumbering s. 985.221, F.S.; creating s.

141 985.335, F.S., relating to answering a petition;
142 renumbering s. 985.222, F.S.; creating s. 985.345, F.S.,
143 relating to delinquency pretrial intervention programs;
144 renumbering s. 985.306, F.S.; creating s. 985.35, F.S.,
145 relating to adjudicatory hearings, withholding of
146 adjudication, and orders of adjudication; amending and
147 renumbering s. 985.228, F.S.; repealing a provision
148 prohibiting a person from possessing a firearm in certain
149 circumstances; revising a reference and cross-references
150 to conform; creating s. 985.43, F.S., relating to
151 predisposition reports and other evaluations; amending and
152 renumbering provisions of s. 985.229, F.S., that relate to
153 such reports and evaluations; revising cross-references to
154 conform; creating s. 985.433, F.S., relating to
155 disposition hearings in delinquency cases; amending and
156 renumbering s. 985.23, F.S.; clarifying who is considered
157 a party to a juvenile case; specifying who must be given
158 an opportunity to comment on the issue of disposition;
159 revising cross-references to conform; amending a provision
160 of s. 985.231, F.S., relating to requirement of written
161 disposition orders; creating s. 985.435, F.S., relating to
162 probation, postcommitment probation, and community
163 service; amending and redesignating a provision of s.
164 985.231, F.S., relating to probation, postcommitment
165 probation, and community control; creating s. 985.437,
166 F.S., relating to restitution; revising a reference and
167 cross-reference to conform; creating s. 985.439, F.S.,
168 relating to violations of probation or postcommitment

169 probation; revising cross-references to conform; creating
170 s. 985.441, F.S., relating to commitment; providing a
171 requirement for commitment of a child as a juvenile sexual
172 offender; revising cross-references to conform; creating
173 s. 985.442, F.S., relating to the form of commitment;
174 renumbering s. 985.232, F.S.; creating s. 985.445, F.S.,
175 relating to disposition of delinquency cases involving
176 grand theft of a motor vehicle; amending and redesignating
177 a provision of s. 985.231, F.S., that relates to
178 disposition in such cases; creating s. 985.45, F.S.,
179 relating to liability and remuneration for work; amending
180 and redesignating a provision of s. 985.231, F.S., that
181 relates to liability and remuneration; creating s.
182 985.455, F.S., relating to other dispositional issues;
183 amending and redesignating provisions of s. 985.231, F.S.,
184 that relate to determination of sanctions, rehabilitation
185 programs, and certain contact with the victim subsequent
186 to disposition; redesignating provisions of s. 985.231,
187 F.S., that specify the duration of commitment and
188 suspension of disposition; revising a cross-reference to
189 conform; creating s. 985.46, F.S., relating to conditional
190 release; amending and renumbering s. 985.316, F.S.;
191 revising a cross-reference to conform; creating s.
192 985.465, F.S., relating to juvenile correctional
193 facilities and juvenile prisons; amending and renumbering
194 s. 985.313, F.S.; creating s. 985.47, F.S., relating to
195 serious and habitual juvenile offenders; amending and
196 renumbering a provision of s. 985.03, F.S., that relates

197 to such offenders; amending and renumbering s. 985.31,
198 F.S.; revising a reference and cross-references to
199 conform; creating s. 985.475, F.S., relating to juvenile
200 sexual offenders; amending and renumbering a provision of
201 s. 985.03, F.S., that relates to such offenders; revising
202 a cross-reference to conform; amending and renumbering a
203 provision of s. 985.231, F.S., that relates to such
204 offenders; revising cross-references to conform; creating
205 s. 985.48, F.S., relating to juvenile sexual offender
206 commitment programs and sexual abuse intervention
207 networks; renumbering s. 985.308, F.S.; creating s.
208 985.483, F.S., relating to intensive residential treatment
209 programs for juvenile offenders less than 13 years of age;
210 amending and renumbering a provision of s. 985.03, F.S.,
211 that relates to such offenders; amending and renumbering
212 s. 985.311, F.S.; revising cross-references to conform;
213 creating s. 985.486, F.S, relating to the prerequisites
214 for commitment of juvenile offenders less than 13 years of
215 age to intensive residential treatment programs; amending
216 and renumbering s. 985.312, F.S.; revising cross-
217 references to conform; creating s. 985.489, F.S., relating
218 to boot camp for children; amending and renumbering s.
219 985.309, F.S.; revising cross-references to conform;
220 creating s. 985.494, F.S., relating to commitment programs
221 for juvenile felony offenders; amending and renumbering s.
222 985.314, F.S.; revising cross-references to conform;
223 creating s. 985.511, F.S., relating to the child's right
224 to counsel and the cost of representation; creating s.

225 985.512, F.S., relating to the powers of the court with
226 respect to certain children; renumbering s. 985.204, F.S.;
227 creating s. 985.513, F.S., relating to the powers of the
228 court over parents or guardians at disposition of the
229 child's case; amending and redesignating provisions of s.
230 985.231, F.S., that relate to such powers; revising cross-
231 references to conform; creating s. 985.514, F.S., relating
232 to the responsibilities of the parents or guardians of a
233 child for certain fees related to the cost of care;
234 revising a cross-reference to conform; creating s.
235 985.534, F.S., relating to appeals in juvenile cases;
236 renumbering s. 985.234, F.S.; creating s. 985.535, F.S.,
237 relating to time for taking appeal by the state;
238 renumbering s. 985.235, F.S.; creating s. 985.536, F.S.,
239 relating to orders or decisions when the state appeals;
240 renumbering s. 985.236, F.S.; creating s. 985.556, F.S.,
241 relating to voluntary and involuntary waivers of juvenile
242 court jurisdiction and hearings for such waivers; amending
243 and renumbering s. 985.226, F.S.; revising cross-
244 references to conform; creating s. 985.557, F.S., relating
245 to discretionary and mandatory criteria for the direct
246 filing of an information against a juvenile offender in
247 the criminal division of the circuit court; amending and
248 renumbering s. 985.227, F.S.; revising cross-references to
249 conform; creating s. 985.56, F.S., relating to indictment
250 of juvenile offenders; amending and renumbering s.
251 985.225, F.S.; revising a reference and cross-references
252 to conform; creating s. 985.565, F.S., relating to powers,

253 procedures, and alternatives available to the court when
254 sentencing juvenile offenders prosecuted as adults;
255 amending, renumbering, and redesignating provisions of s.
256 985.233, F.S., that relate to such powers, procedures, and
257 alternatives; revising cross-references to conform;
258 creating s. 985.57, F.S., relating to the transfer of
259 children from the Department of Corrections to the
260 Department of Juvenile Justice; renumbering s. 985.417;
261 creating s. 985.601, F.S., relating to administering the
262 juvenile justice continuum; renumbering provisions of s.
263 985.404, F.S., that relate to such administration;
264 amending and renumbering s. 985.4043, F.S.; creating s.
265 985.6015, F.S., relating to the Shared County/State
266 Juvenile Detention Trust Fund; creating s. 985.605, F.S.,
267 relating to requirements for prevention service programs;
268 amending and renumbering s. 985.3045, F.S.; revising
269 cross-references to conform; creating s. 985.606, F.S.,
270 relating to requirements for agencies and entities
271 providing prevention services; amending and renumbering s.
272 985.3046, F.S.; revising a cross-reference to conform;
273 creating s. 985.61, F.S., relating to criteria for early
274 delinquency intervention programs; renumbering s. 985.305,
275 F.S.; creating s. 985.614, F.S., relating to interagency
276 cooperation for children who are locked out of their
277 homes; amending and renumbering s. 985.2066, F.S.;
278 creating s. 985.618, F.S., relating to educational and
279 career-related programs; amending and renumbering s.
280 985.315, F.S.; revising a cross-reference to conform;

281 creating s. 985.622, F.S., relating to a multiagency plan
282 for vocational education; renumbering s. 985.3155, F.S.;
283 creating s. 985.625, F.S., relating to literacy programs
284 for juvenile offenders; amending and renumbering s.
285 985.317, F.S.; revising a cross-reference to conform;
286 creating s. 985.629, F.S., relating to contracts for the
287 transfer of Florida children in federal custody;
288 renumbering s. 985.419, F.S.; creating s. 985.632, F.S.,
289 relating to quality assurance and cost-effectiveness;
290 renumbering s. 985.412, F.S.; creating s. 985.636, F.S.,
291 relating to the Office of the Inspector General within the
292 Department of Juvenile Justice; renumbering s. 985.42,
293 F.S.; creating s. 985.64, F.S., relating to the authority
294 of the Department of Juvenile Justice to adopt rules;
295 amending and renumbering s. 985.405, F.S.; creating s.
296 985.644, F.S., relating to the contracting powers and the
297 personnel standards and screening requirements of the
298 Department of Juvenile Justice; renumbering a provision of
299 s. 985.01, F.S., that relates to such powers; renumbering
300 s. 985.407, F.S.; creating s. 985.648, F.S., relating to
301 consultants; renumbering s. 985.408, F.S.; creating s.
302 985.652, F.S., relating to participation of certain
303 juvenile programs in the State Risk Management Trust Fund;
304 renumbering s. 985.409, F.S.; creating s. 985.66, F.S.,
305 relating to juvenile justice training academies, the
306 Juvenile Justice Standards and Training Commission, and
307 the Juvenile Justice Trust Fund; amending and renumbering
308 s. 985.406, F.S.; revising a cross-reference to conform;

309 creating s. 985.664, F.S., relating to juvenile justice
310 circuit boards and juvenile justice county councils;
311 amending and renumbering s. 985.4135, F.S.; revising a
312 cross-reference to conform; creating s. 985.668, F.S.,
313 relating to innovation zones; renumbering s. 985.416,
314 F.S.; creating s. 985.672, F.S., relating to direct-
315 support organizations; renumbering s. 985.4145, F.S.;
316 creating s. 985.676, F.S., relating to community juvenile
317 justice partnership grants; amending and renumbering s.
318 985.415, F.S.; revising cross-references to conform;
319 creating s. 985.682, F.S., relating to studies and
320 criteria for siting juvenile facilities; amending and
321 renumbering s. 985.41, F.S.; creating s. 985.686, F.S.,
322 relating to shared county and state responsibility for
323 juvenile detention; renumbering s. 985.2155, F.S.;
324 creating s. 985.688, F.S., relating to administering
325 county and municipal delinquency programs and facilities;
326 amending and renumbering s. 985.411, F.S.; revising a
327 cross-reference to conform; creating s. 985.69, F.S.,
328 relating to one-time startup funding for juvenile justice
329 purposes; renumbering s. 985.4075, F.S.; creating s.
330 985.692, F.S., relating to the Juvenile Welfare Trust
331 Fund; renumbering s. 985.4041, F.S.; creating s. 985.694,
332 F.S., relating to the Juvenile Care and Maintenance Trust
333 Fund; renumbering s. 985.4042, F.S.; creating s. 985.701,
334 F.S., relating to prohibiting sexual misconduct, reporting
335 requirements, and penalties; renumbering s. 985.4045,
336 F.S.; creating s. 985.711, F.S., relating to penalties for

337 the introduction, removal, or possession of certain
338 articles; renumbering s. 985.4046, F.S.; creating s.
339 985.721, F.S., relating to escapes from secure detention
340 or residential commitment facilities; amending and
341 renumbering s. 985.3141, F.S.; revising a cross-reference
342 to conform; creating s. 985.731, F.S., relating to
343 sheltering or aiding unmarried minors; renumbering s.
344 985.2065, F.S.; creating s. 985.801, F.S., relating to
345 legislative findings, policy, and implementation of the
346 Interstate Compact on Juveniles; renumbering s. 985.501,
347 F.S.; creating s. 985.802, F.S., relating to execution of
348 the interstate compact; renumbering s. 985.502, F.S.;
349 creating s. 985.803, F.S., relating to the administrator
350 of the juvenile compact; renumbering s. 985.503, F.S.;
351 creating s. 985.804, F.S., relating to supplementary
352 agreements to the compact; renumbering s. 985.504, F.S.;
353 creating s. 985.805, F.S., relating to financial
354 arrangements related to the compact; renumbering s.
355 985.505, F.S.; creating s. 985.806, F.S., relating to the
356 responsibilities of state departments, agencies, and
357 officers; renumbering s. 985.506, F.S.; creating s.
358 985.807, F.S., relating to procedures in addition to those
359 provided under the compact; renumbering s. 985.507, F.S.;
360 creating s. 985.8025, F.S., relating to the State Council
361 for Interstate Juvenile Offender Supervision; renumbering
362 s. 985.5023, F.S.; repealing ss. 985.215(6),
363 985.231(1)(b), (c), (f), and (i), and (2) and
364 985.233(4)(d), F.S.; amending ss. 29.004, 29.008, 253.025,

365 318.21, 397.334, 400.953, 419.001, 435.04, 790.115,
366 790.22, 921.0022, 938.10, 943.053, 943.0582, 943.0585,
367 943.059, 948.51, 958.046, 960.001, 984.03, 984.05, 984.09,
368 984.226, 1003.52, 1006.08, 1006.13, and 1012.797, F.S.;
369 conforming cross-references; providing an effective date.
370
371 WHEREAS, the Legislature recognizes that chapter 985,
372 Florida Statutes, entitled "DELINQUENCY; INTERSTATE COMPACT ON
373 JUVENILES," which sets forth the policies and procedures
374 applicable to Florida's juvenile justice system, has become
375 disjointed and unorganized due to numerous amendments since its
376 original enactment and that, as a result, it is difficult for
377 judges, attorneys, affected parties, and the public to use the
378 chapter in practice, and
379 WHEREAS, the Legislature recognizes that chapter 985,
380 Florida Statutes, would be better organized and easier to use if
381 it provided a chronological presentation of delinquency
382 proceedings from the introduction of the child into the juvenile
383 justice system to the child's case outcome and if each section
384 of the chapter was topically organized to contain all related
385 policies and procedures, and
386 WHEREAS, the Legislature intends for the following
387 legislation to strictly effect a technical reorganization of
388 chapter 985, Florida Statutes, without any substantive change to
389 its contents, for the purpose of simplifying the chapter's
390 presentation and providing greater clarity for its users, NOW,
391 THEREFORE,
392

393 Be It Enacted by the Legislature of the State of Florida:
394
395 Section 1. The provisions of chapter 985, Florida
396 Statutes, are substantially reorganized and renumbered or
397 redesignated as follows:
398 (1) Chapter 985, Florida Statutes, is retitled "JUVENILE
399 JUSTICE; INTERSTATE COMPACT ON JUVENILES."
400 (2) Part I of chapter 985, Florida Statutes, consisting of
401 ss. 985.01, 985.02, 985.03, 985.0301, 985.032, 985.033, 985.035,
402 985.036, 985.037, and 985.039, Florida Statutes, is titled
403 "GENERAL PROVISIONS."
404 (3) Part II of chapter 985, Florida Statutes, consisting
405 of ss. 985.04, 985.045, 985.046, and 985.047, Florida Statutes,
406 is retitled "RECORDS AND INFORMATION."
407 (4) Part III of chapter 985, Florida Statutes, consisting
408 of ss. 985.101, 985.105, 985.11, 985.115, 985.12, 985.125,
409 985.13, 985.135, 985.14, 985.145, 985.15, 985.155, and 985.16,
410 Florida Statutes, is retitled "CUSTODY AND INTAKE; INTERVENTION
411 AND DIVERSION."
412 (5) Part IV of chapter 985, Florida Statutes, consisting
413 of ss. 985.18, 985.185, 985.19, and 985.195, Florida Statutes,
414 is retitled "EXAMINATIONS AND EVALUATIONS."
415 (6) Part V of chapter 985, Florida Statutes, consisting of
416 ss. 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27,
417 and 985.275, Florida Statutes, is retitled "DETENTION."
418 (7) Part VI of chapter 985, Florida Statutes, consisting
419 of ss. 985.318, 985.319, 985.325, 985.331, 985.335, 985.345, and
420 985.35, Florida Statutes, is created and entitled "PETITION,

421 ARRAIGNMENT, AND ADJUDICATION."
422 (8) Part VII of chapter 985, Florida Statutes, consisting
423 of ss. 985.43, 985.433, 985.435, 985.437, 985.439, 985.441,
424 985.442, 985.445, 985.45, 985.455, 985.46, 985.465, 985.47,
425 985.475, 985.48, 985.483, 985.486, 985.489, and 985.494, Florida
426 Statutes, is created and entitled "DISPOSITION;
427 POSTDISPOSITION."
428 (9) Part VIII of chapter 985, Florida Statutes, consisting
429 of ss. 985.511, 985.512, 985.513, and 985.514, Florida Statutes,
430 is created and entitled "AUTHORITY OF THE COURT OVER PARENTS OR
431 GUARDIANS."
432 (10) Part IX of chapter 985, Florida Statutes, consisting
433 of ss. 985.534, 985.535, and 985.536, Florida Statutes, is
434 created and entitled "APPEAL."
435 (11) Part X of chapter 985, Florida Statutes, consisting
436 of ss. 985.556, 985.557, 985.56, 985.565, and 985.57, Florida
437 Statutes, is created and entitled "TRANSFER TO ADULT COURT."
438 (12) Part XI of chapter 985, Florida Statutes, consisting
439 of ss. 985.601, 985.6015, 985.605, 985.606, 985.61, 985.614,
440 985.618, 985.622, 985.625, 985.629, 985.632, 985.636, 985.64,
441 985.644, 985.648, 985.652, 985.66, 985.664, 985.668, 985.672,
442 985.676, 985.682, 985.686, 985.688, 985.69, 985.692, and
443 985.694, Florida Statutes, is created and entitled "DEPARTMENT
444 OF JUVENILE JUSTICE."
445 (13) Part XII of chapter 985, Florida Statutes, consisting
446 of ss. 985.701, 985.711, 985.721, and 985.731, Florida Statutes,
447 is created and entitled "MISCELLANEOUS OFFENSES."
448 (14) Part XIII of chapter 985, Florida Statutes,

449 consisting of ss. 985.801, 985.802, 985.8025, 985.803, 985.804,
450 985.805, 985.806, and 985.807, Florida Statutes, is created and
451 entitled "INTERSTATE COMPACT ON JUVENILES."
452 Section 2. Paragraph (f) of subsection (1) and subsection
453 (3) of section 985.01, Florida Statutes, are amended to read:
454 985.01 Purposes and intent~~; personnel standards and~~
455 ~~screening~~.--
456 (1) The purposes of this chapter are:
457 (f) To provide children committed to the department ~~of~~
458 ~~Juvenile Justice~~ with training in life skills, including career
459 education.
460 (2) ~~(3)~~ It is the intent of the Legislature that this
461 chapter be liberally interpreted and construed in conformity
462 with its declared purposes.
463 Section 3. Paragraph (a) of subsection (4) of section
464 985.02, Florida Statutes, is amended to read:
465 985.02 Legislative intent for the juvenile justice
466 system.--
467 (4) DETENTION.--
468 (a) The Legislature finds that there is a need for a
469 secure placement for certain children alleged to have committed
470 a delinquent act. The Legislature finds that detention ~~under~~
471 ~~part II~~ should be used only when less restrictive interim
472 placement alternatives prior to adjudication and disposition are
473 not appropriate. The Legislature further finds that decisions to
474 detain should be based in part on a prudent assessment of risk
475 and be limited to situations where there is clear and convincing
476 evidence that a child presents a risk of failing to appear or

477 presents a substantial risk of inflicting bodily harm on others
478 as evidenced by recent behavior; presents a history of
479 committing a serious property offense prior to adjudication,
480 disposition, or placement; has acted in direct or indirect
481 contempt of court; or requests protection from imminent bodily
482 harm.
483 Section 4. Subsections (1) through (6), (8) through (31),
484 (33) through (48), and (50) through (60) of section 985.03,
485 Florida Statutes, are renumbered, respectively, as subsections
486 (1) through (6), (7) through (30), (31) through (46), and (47)
487 through (57), and subsections (2), (9), (16), (21), (22), (46),
488 and (60) of that section are amended, to read:
489 985.03 Definitions.--As used in this chapter, the term:
490 (2) "Adjudicatory hearing" means a hearing for the court
491 to determine whether or not the facts support the allegations
492 stated in the petition, as is provided for under s. 985.35
493 ~~985.228~~ in delinquency cases.
494 (8) ~~(9)~~ "Child who has been found to have committed a
495 delinquent act" means a child who, under this chapter, is found
496 by a court to have committed a violation of law or to be in
497 direct or indirect contempt of court, except that this
498 definition does not include an act constituting contempt of
499 court arising out of a dependency proceeding or a proceeding
500 concerning a child or family in need of services ~~under part III~~
501 ~~of this chapter~~.
502 (15) ~~(16)~~ (a) "Delinquency program" means any intake,
503 probation, or similar program; regional detention center or
504 facility; or community-based program, whether owned and operated

505 by or contracted by the department, or institution owned and
506 operated by or contracted by the department, which provides
507 intake, supervision, or custody and care of children who are
508 alleged to be or who have been found to be delinquent under this
509 chapter ~~part II~~.
510 (b) "Delinquency program staff" means supervisory and
511 direct care staff of a delinquency program as well as support
512 staff who have direct contact with children in a delinquency
513 program.
514 (c) "Delinquency prevention programs" means programs
515 designed for the purpose of reducing the occurrence of
516 delinquency, including youth and street gang activity, and
517 juvenile arrests. The term excludes arbitration, diversionary or
518 mediation programs, and community service work or other
519 treatment available subsequent to a child committing a
520 delinquent act.
521 (20) ~~(21)~~ "Detention hearing" means a hearing for the court
522 to determine if a child should be placed in temporary custody,
523 as provided for under part V ~~ss. 985.213 and 985.215~~ in
524 delinquency cases.
525 (21) ~~(22)~~ "Disposition hearing" means a hearing in which
526 the court determines the most appropriate dispositional services
527 in the least restrictive available setting provided for under
528 part VII ~~s. 985.231~~, in delinquency cases.
529 (44) ~~(46)~~ "Restrictiveness level" means the level of
530 programming and security provided by programs that service the
531 supervision, custody, care, and treatment needs of committed
532 children. Sections 985.721 ~~985.3141~~ and 985.601(10) ~~985.404(11)~~

533 apply to children placed in programs at any residential
534 commitment level. The restrictiveness levels of commitment are
535 as follows:
536 (a) Minimum-risk nonresidential.--Programs or program
537 models at this commitment level work with youth who remain in
538 the community and participate at least 5 days per week in a day
539 treatment program. Youth assessed and classified for programs at
540 this commitment level represent a minimum risk to themselves and
541 public safety and do not require placement and services in
542 residential settings. Youth in this level have full access to,
543 and reside in, the community. Youth who have been found to have
544 committed delinquent acts that involve firearms, that are sexual
545 offenses, or that would be life felonies or first degree
546 felonies if committed by an adult may not be committed to a
547 program at this level.
548 (b) Low-risk residential.--Programs or program models at
549 this commitment level are residential but may allow youth to
550 have unsupervised access to the community. Youth assessed and
551 classified for placement in programs at this commitment level
552 represent a low risk to themselves and public safety but do
553 require placement and services in residential settings. Children
554 who have been found to have committed delinquent acts that
555 involve firearms, delinquent acts that are sexual offenses, or
556 delinquent acts that would be life felonies or first degree
557 felonies if committed by an adult shall not be committed to a
558 program at this level.
559 (c) Moderate-risk residential.--Programs or program models
560 at this commitment level are residential but may allow youth to

561 have supervised access to the community. Facilities are either
562 environmentally secure, staff secure, or are hardware-secure
563 with walls, fencing, or locking doors. Facilities shall provide
564 24-hour awake supervision, custody, care, and treatment of
565 residents. Youth assessed and classified for placement in
566 programs at this commitment level represent a moderate risk to
567 public safety and require close supervision. The staff at a
568 facility at this commitment level may seclude a child who is a
569 physical threat to himself or herself or others. Mechanical
570 restraint may also be used when necessary.
571 (d) High-risk residential.--Programs or program models at
572 this commitment level are residential and do not allow youth to
573 have access to the community except that, temporary release
574 providing community access for up to 72 continuous hours may be
575 approved by a court for a youth who has made successful progress
576 in his or her program in order for the youth to attend a family
577 emergency or, during the final 60 days of his or her placement,
578 to visit his or her home, enroll in school or a vocational
579 program, complete a job interview, or participate in a community
580 service project. High-risk residential facilities are hardware-
581 secure with perimeter fencing and locking doors. Facilities
582 shall provide 24-hour awake supervision, custody, care, and
583 treatment of residents. Youth assessed and classified for this
584 level of placement require close supervision in a structured
585 residential setting. Placement in programs at this level is
586 prompted by a concern for public safety that outweighs placement
587 in programs at lower commitment levels. The staff at a facility
588 at this commitment level may seclude a child who is a physical

589 threat to himself or herself or others. Mechanical restraint may
590 also be used when necessary. The facility may provide for single
591 cell occupancy.
592 (e) Maximum-risk residential.--Programs or program models
593 at this commitment level include juvenile correctional
594 facilities and juvenile prisons. The programs are long-term
595 residential and do not allow youth to have access to the
596 community. Facilities are maximum-custody hardware-secure with
597 perimeter security fencing and locking doors. Facilities shall
598 provide 24-hour awake supervision, custody, care, and treatment
599 of residents. The staff at a facility at this commitment level
600 may seclude a child who is a physical threat to himself or
601 herself or others. Mechanical restraint may also be used when
602 necessary. The facility shall provide for single cell occupancy,
603 except that youth may be housed together during prerelease
604 transition. Youth assessed and classified for this level of
605 placement require close supervision in a maximum security
606 residential setting. Placement in a program at this level is
607 prompted by a demonstrated need to protect the public.
608 (57) ~~(60)~~ "Waiver hearing" means a hearing provided for
609 under s. 985.556(4) ~~985.226(3)~~.
610 Section 5. Section 985.201, Florida Statutes, is amended
611 and renumbered as section 985.0301, Florida Statutes, and
612 subsection (8) of section 985.219, Florida Statutes, is amended
613 and renumbered as subsection (2) of section 985.0301, Florida
614 Statutes, to read:
615 985.0301 ~~985.201~~ Jurisdiction.--

616 (1) The circuit court has exclusive original jurisdiction
617 of proceedings in which a child is alleged to have committed a
618 delinquent act or violation of law.
619 (2) ~~(8)~~ The jurisdiction of the court shall attach to the
620 child and the case when the summons is served upon the child and
621 a parent or legal or actual custodian or guardian of the child,
622 or when the child is taken into custody with or without service
623 of summons and before or after the filing of a petition,
624 whichever first occurs, and thereafter the court may control the
625 child and the case in accordance with this chapter ~~part~~.
626 (3) ~~(2)~~ During the prosecution of any violation of law
627 against any person who has been presumed to be an adult, if it
628 is shown that the person was a child at the time the offense was
629 committed and that the person does not meet the criteria for
630 prosecution and sentencing as an adult, the court shall
631 immediately transfer the case, together with the physical
632 custody of the person and all physical evidence, papers,
633 documents, and testimony, original and duplicate, connected
634 therewith, to the appropriate court for proceedings under this
635 chapter. The circuit court is exclusively authorized to assume
636 jurisdiction over any juvenile offender who is arrested and
637 charged with violating a federal law or a law of the District of
638 Columbia, who is found or is living or domiciled in a county in
639 which the circuit court is established, and who is surrendered
640 to the circuit court as provided in 18 U.S.C. s. 5001.
641 (4) ~~(3)~~ (a) Petitions alleging delinquency ~~filed under this~~
642 ~~part~~ shall be filed in the county where the delinquent act or
643 violation of law occurred, but the circuit court for that county

644 may transfer the case to the circuit court of the circuit in
645 which the child resides or will reside at the time of detention
646 or placement for dispositional purposes. A child who has been
647 detained shall be transferred to the appropriate detention
648 center or facility or other placement directed by the receiving
649 court.
650 (b) The jurisdiction to be exercised by the court when a
651 child is taken into custody before the filing of a petition
652 under subsection (2) ~~s. 985.219(8)~~ shall be exercised by the
653 circuit court for the county in which the child is taken into
654 custody, which court shall have personal jurisdiction of the
655 child and the child's parent or legal guardian. Upon the filing
656 of a petition in the appropriate circuit court, the court that
657 is exercising initial jurisdiction of the person of the child
658 shall, if the child has been detained, immediately order the
659 child to be transferred to the detention center or facility or
660 other placement as ordered by the court having subject matter
661 jurisdiction of the case.
662 (5) ~~(4)~~ (a) Notwithstanding ss. 743.07, 985.43 ~~985.229~~,
663 985.433 ~~985.23~~, 985.435, 985.439, and 985.441 ~~985.231~~, and
664 except as provided in ss. 985.465 and 985.47 ~~985.31~~ and
665 paragraph (f) ~~985.313~~, when the jurisdiction of any child who is
666 alleged to have committed a delinquent act or violation of law
667 is obtained, the court shall retain jurisdiction, unless
668 relinquished by its order, until the child reaches 19 years of
669 age, with the same power over the child that the court had prior
670 to the child becoming an adult.

671 (b) Notwithstanding ss. 743.07 and 985.455(3), and except
672 as provided in s. 985.47, the term of any order placing a child
673 in a probation program must be until the child's 19th birthday
674 unless he or she is released by the court on the motion of an
675 interested party or on his or her own motion.
676 (c) Notwithstanding ss. 743.07 and 985.455(3), and except
677 as provided in s. 985.47, the term of the commitment must be
678 until the child is discharged by the department or until he or
679 she reaches the age of 21 years. Notwithstanding ss. 743.07,
680 985.435, 985.437, 985.439, 985.441, 985.445, 985.455, and
681 985.513 and except as provided in this section and s. 985.47, a
682 child may not be held under a commitment from a court under s.
683 985.439, s. 985.441(1)(a) or (b), s. 985.445, or s. 985.455
684 after becoming 21 years of age.
685 (d) ~~(b)1.~~ The court may retain jurisdiction over a child
686 committed to the department for placement in a juvenile prison
687 or in a high-risk or maximum-risk residential commitment program
688 to allow the child to participate in a juvenile conditional
689 release program pursuant to s. 985.46 ~~985.316~~. In no case shall
690 the jurisdiction of the court be retained beyond the child's
691 22nd birthday. However, if the child is not successful in the
692 conditional release program, the department may use the transfer
693 procedure under s. 985.441(3) ~~985.404~~.
694 (e) ~~2.~~ The court may retain jurisdiction over a child
695 committed to the department for placement in an intensive
696 residential treatment program for 10-year-old to 13-year-old
697 offenders, in the residential commitment program in a juvenile
698 prison, in a residential sex offender program, or in a program

699 for serious or habitual juvenile offenders as provided in s.
700 985.47 ~~985.311~~ or s. 985.483 ~~985.31~~ until the child reaches the
701 age of 21. If the court exercises this jurisdiction retention,
702 it shall do so solely for the purpose of the child completing
703 the intensive residential treatment program for 10-year-old to
704 13-year-old offenders, in the residential commitment program in
705 a juvenile prison, in a residential sex offender program, or the
706 program for serious or habitual juvenile offenders. Such
707 jurisdiction retention does not apply for other programs, other
708 purposes, or new offenses.
709 (f) The court may retain jurisdiction over a child
710 committed to a juvenile correctional facility or a juvenile
711 prison until the child reaches the age of 21 years, specifically
712 for the purpose of allowing the child to complete such program.
713 (g)1. Notwithstanding ss. 743.07 and 985.455(3), a serious
714 or habitual juvenile offender shall not be held under commitment
715 from a court under s. 985.47, s. 985.441(1)(c), or s. 985.565
716 after becoming 21 years of age. This subparagraph shall apply
717 only for the purpose of completing the serious or habitual
718 juvenile offender program under this chapter and shall be used
719 solely for the purpose of treatment.
720 2. The court may retain jurisdiction over a child who has
721 been placed in a program or facility for serious or habitual
722 juvenile offenders until the child reaches the age of 21,
723 specifically for the purpose of the child completing the
724 program.
725 (h) The court may retain jurisdiction over a juvenile
726 sexual offender who has been placed in a program or facility for

727 juvenile sexual offenders until the juvenile sexual offender
728 reaches the age of 21, specifically for the purpose of
729 completing the program.
730 (i) ~~(c)~~ The court may retain jurisdiction over a child and
731 the child's parent or legal guardian whom the court has ordered
732 to pay restitution until the restitution order is satisfied. To
733 retain jurisdiction, the court shall enter a restitution order,
734 which is separate from any disposition or order of commitment,
735 on or prior to the date that the court's jurisdiction would
736 cease under this section. The contents of the restitution order
737 shall be limited to the child's name and address, the name and
738 address of the parent or legal guardian, the name and address of
739 the payee, the case number, the date and amount of restitution
740 ordered, any amount of restitution paid, the amount of
741 restitution due and owing, and a notation that costs, interest,
742 penalties, and attorney's fees may also be due and owing. The
743 terms of the restitution order are subject to ~~the provisions of~~
744 s. 775.089(5).
745 (j) ~~(d)~~ This subsection does not prevent the exercise of
746 jurisdiction by any court having jurisdiction of the child if
747 the child, after becoming an adult, commits a violation of law.
748 (6) The court may at any time enter an order ending its
749 jurisdiction over any child.
750 Section 6. Section 985.202, Florida Statutes, is
751 renumbered as section 985.032, Florida Statutes.
752 Section 7. Section 985.203, Florida Statutes, is
753 renumbered as section 985.033, Florida Statutes, subsections (2)
754 through (4) are redesignated subsections (3) through (5),

755 subsection (1) of that section is amended, and a new subsection
756 (2) is added to read:
757 985.033 ~~985.203~~ Right to counsel.--
758 (1) A child is entitled to representation by legal counsel
759 at all stages of any delinquency court proceedings under this
760 chapter ~~part~~. If the child and the parents or other legal
761 guardian are indigent and unable to employ counsel for the
762 child, the court shall appoint counsel under ~~pursuant to~~ s.
763 27.52. Determination of indigence and costs of representation
764 shall be as provided by ss. 27.52 and 938.29. Legal counsel
765 representing a child who exercises the right to counsel shall be
766 allowed to provide advice and counsel to the child at any time
767 subsequent to the child's arrest, including prior to a detention
768 hearing while in secure detention care. A child shall be
769 represented by legal counsel at all stages of all court
770 proceedings unless the right to counsel is freely, knowingly,
771 and intelligently waived by the child. If the child appears
772 without counsel, the court shall advise the child of his or her
773 rights with respect to representation of court-appointed
774 counsel.
775 (2) This section does not apply to transfer proceedings
776 under s. 985.441(3), unless the court sets a hearing to review
777 the transfer.
778 Section 8. Section 985.205, Florida Statutes, is
779 renumbered as section 985.035, Florida Statutes.
780 Section 9. Section 985.206, Florida Statutes, is
781 renumbered as section 985.036, Florida Statutes, and amended to
782 read:

783 985.036 ~~985.206~~ Rights of victims; juvenile proceedings.--
784 (1) Nothing in this chapter prohibits:
785 (a) ~~(1)~~ The victim of the offense;
786 (b) ~~(2)~~ The victim's parent or guardian if the victim is a
787 minor;
788 (c) ~~(3)~~ The lawful representative of the victim or of the
789 victim's parent or guardian if the victim is a minor; or
790 (d) ~~(4)~~ The next of kin if the victim is a homicide victim,
791
792 from the right to be informed of, to be present during, and to
793 be heard when relevant at, all crucial stages of the proceedings
794 involving the juvenile offender, to the extent that such rights
795 do not interfere with the constitutional rights of the juvenile
796 offender. A person enumerated in this section may not reveal to
797 any outside party any confidential information obtained under
798 ~~pursuant to~~ this subsection ~~paragraph~~ regarding a case involving
799 a juvenile offense, except as is reasonably necessary to pursue
800 legal remedies.
801 (2) A law enforcement agency may release a copy of the
802 juvenile offense report to the victim of the offense. However,
803 information gained by the victim under this chapter, including
804 the next of kin of a homicide victim, regarding any case handled
805 in juvenile court must not be revealed to any outside party,
806 except as is reasonably necessary in pursuit of legal remedies.
807 Section 10. Section 985.216, Florida Statutes, is
808 renumbered as section 985.037, Florida Statutes, and subsection
809 (2) and paragraphs (b) and (d) of subsection (4) of that section
810 are amended to read:

811 985.037 ~~985.216~~ Punishment for contempt of court;
812 alternative sanctions.--
813 (2) PLACEMENT IN A SECURE FACILITY.--A child may be placed
814 in a secure facility for purposes of punishment for contempt of
815 court if alternative sanctions are unavailable or inappropriate,
816 or if the child has already been ordered to serve an alternative
817 sanction but failed to comply with the sanction.
818 ~~(a)~~ A delinquent child who has been held in direct or
819 indirect contempt may be placed in a secure detention facility
820 not to exceed 5 days for a first offense and not to exceed 15
821 days for a second or subsequent offense.
822 ~~(b) A child in need of services who has been held in~~
823 ~~direct contempt or indirect contempt may be placed, not to~~
824 ~~exceed 5 days for a first offense and not to exceed 15 days for~~
825 ~~a second or subsequent offense, in a staff-secure shelter or a~~
826 ~~staff-secure residential facility solely for children in need of~~
827 ~~services if such placement is available, or, if such placement~~
828 ~~is not available, the child may be placed in an appropriate~~
829 ~~mental health facility or substance abuse facility for~~
830 ~~assessment. In addition to disposition under this paragraph, a~~
831 ~~child in need of services who is held in direct contempt or~~
832 ~~indirect contempt may be placed in a physically secure facility~~
833 ~~as provided under s. 984.226 if conditions of eligibility are~~
834 ~~met.~~
835 (4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE
836 PROCESS.--
837 (b) If a child is charged with indirect contempt of court,
838 the court must hold a hearing within 24 hours to determine

839 whether the child committed indirect contempt of a valid court
840 order. At the hearing, the following due process rights must be
841 provided to the child:
842 1. Right to a copy of the order to show cause alleging
843 facts supporting the contempt charge.
844 2. Right to an explanation of the nature and the
845 consequences of the proceedings.
846 3. Right to legal counsel and the right to have legal
847 counsel appointed by the court if the juvenile is indigent,
848 under ~~pursuant to~~ s. 985.033 ~~985.203~~.
849 4. Right to confront witnesses.
850 5. Right to present witnesses.
851 6. Right to have a transcript or record of the proceeding.
852 7. Right to appeal to an appropriate court.
853
854 The child's parent or guardian may address the court regarding
855 the due process rights of the child. The court shall review the
856 placement of the child every 72 hours to determine whether it is
857 appropriate for the child to remain in the facility.
858 (d) In addition to any other sanction imposed under this
859 section, the court may direct the Department of Highway Safety
860 and Motor Vehicles to withhold issuance of, or suspend, a
861 child's driver's license or driving privilege. The court may
862 order that a child's driver's license or driving privilege be
863 withheld or suspended for up to 1 year for a first offense of
864 contempt and up to 2 years for a second or subsequent offense.
865 If the child's driver's license or driving privilege is
866 suspended or revoked for any reason at the time the sanction for

867 contempt is imposed, the court shall extend the period of
868 suspension or revocation by the additional period ordered under
869 this paragraph. If the child's driver's license is being
870 withheld at the time the sanction for contempt is imposed, the
871 period of suspension or revocation ordered under this paragraph
872 shall begin on the date on which the child is otherwise eligible
873 to drive. ~~For a child in need of services whose driver's license~~
874 ~~or driving privilege is suspended under this paragraph, the~~
875 ~~court may direct the Department of Highway Safety and Motor~~
876 ~~Vehicles to issue the child a license for driving privileges~~
877 ~~restricted to business or employment purposes only, as defined~~
878 ~~in s. 322.271, or for the purpose of completing court-ordered~~
879 ~~community service, if the child is otherwise qualified for a~~
880 ~~license. However, the department may not issue a restricted~~
881 ~~license unless specifically ordered to do so by the court.~~
882 Section 11. Section 985.2311, Florida Statutes, is
883 renumbered as section 985.039, Florida Statutes, and paragraph
884 (b) of subsection (1) and subsection (10) of that section are
885 amended to read:
886 985.039 ~~985.2311~~ Cost of supervision; cost of care.--
887 (1) Except as provided in subsection (3) or subsection
888 (4):
889 (b) When any child is placed into secure detention or
890 placed on committed status and the temporary legal custody of
891 such child is placed with the department ~~of Juvenile Justice~~,
892 the court shall order the parent of such child to pay to the
893 department a fee for the cost of the care of such child in the

894 amount of $5 per day for each day that the child is in the
895 temporary legal custody of the department.
896 (10) The department or the collection agency shall provide
897 to the payor documentation of the payment of any fee paid
898 pursuant to this section. Except as provided in subsection (9),
899 all payments received by the department or the collection agency
900 pursuant to this section shall be deposited in the department's
901 ~~state~~ Grants and Donations Trust Fund ~~within the Department of~~
902 ~~Juvenile Justice~~.
903 Section 12. Section 985.04, Florida Statutes, is amended
904 to read:
905 985.04 Oaths; records; confidential information.--
906 (1) ~~(3)(a)~~ Except as provided in subsections (2), (3) ~~(4),~~
907 ~~(5), and~~ (6), and (7) and s. 943.053, all information obtained
908 under this chapter ~~part~~ in the discharge of official duty by any
909 judge, any employee of the court, any authorized agent of the
910 department ~~of Juvenile Justice~~, the Parole Commission, the
911 Department of Corrections, the juvenile justice circuit boards,
912 any law enforcement agent, or any licensed professional or
913 licensed community agency representative participating in the
914 assessment or treatment of a juvenile is confidential and may be
915 disclosed only to the authorized personnel of the court, the
916 department ~~of Juvenile Justice~~ and its designees, the Department
917 of Corrections, the Parole Commission, law enforcement agents,
918 school superintendents and their designees, any licensed
919 professional or licensed community agency representative
920 participating in the assessment or treatment of a juvenile, and
921 others entitled under this chapter to receive that information,

922 or upon order of the court. Within each county, the sheriff, the
923 chiefs of police, the district school superintendent, and the
924 department shall enter into an interagency agreement for the
925 purpose of sharing information about juvenile offenders among
926 all parties. The agreement must specify the conditions under
927 which summary criminal history information is to be made
928 available to appropriate school personnel, and the conditions
929 under which school records are to be made available to
930 appropriate department personnel. Such agreement shall require
931 notification to any classroom teacher of assignment to the
932 teacher's classroom of a juvenile who has been placed in a
933 probation or commitment program for a felony offense. The
934 agencies entering into such agreement must comply with s.
935 943.0525, and must maintain the confidentiality of information
936 that is otherwise exempt from s. 119.07(1), as provided by law.
937 (2) ~~(5)~~ Notwithstanding any other provisions of this
938 chapter ~~part~~, the name, photograph, address, and crime or arrest
939 report of a child:
940 (a) Taken into custody if the child has been taken into
941 custody by a law enforcement officer for a violation of law
942 which, if committed by an adult, would be a felony;
943 (b) Found by a court to have committed three or more
944 violations of law which, if committed by an adult, would be
945 misdemeanors;
946 (c) Transferred to the adult system under ~~pursuant to~~ s.
947 985.557 ~~985.227~~, indicted under ~~pursuant to~~ s. 985.56 ~~985.225~~,
948 or waived under ~~pursuant to~~ s. 985.556 ~~985.226~~;

949 (d) Taken into custody by a law enforcement officer for a
950 violation of law subject to ~~the provisions of~~ s. 985.557
951 ~~985.227~~(2)(b) or (d); or
952 (e) Transferred to the adult system but sentenced to the
953 juvenile system under ~~pursuant to~~ s. 985.565 ~~985.233~~
954
955 shall not be considered confidential and exempt from ~~the~~
956 ~~provisions of~~ s. 119.07(1) solely because of the child's age.
957 (3) ~~(6)~~ A law enforcement agency may release a copy ~~This~~
958 ~~part does not prohibit the release~~ of the juvenile offense
959 report ~~by a law enforcement agency~~ to the victim of the offense.
960 However, information gained by the victim under ~~pursuant to~~ this
961 chapter, including the next of kin of a homicide victim,
962 regarding any case handled in juvenile court, must not be
963 revealed to any outside party, except as is reasonably necessary
964 in pursuit of legal remedies.
965 (4) ~~(7)~~(a) Notwithstanding any other provision of this
966 section, when a child of any age is taken into custody by a law
967 enforcement officer for an offense that would have been a felony
968 if committed by an adult, or a crime of violence, the law
969 enforcement agency must notify the superintendent of schools
970 that the child is alleged to have committed the delinquent act.
971 (b) Notwithstanding paragraph (a) or any other provision
972 of this section, when a child of any age is formally charged by
973 a state attorney with a felony or a delinquent act that would be
974 a felony if committed by an adult, the state attorney shall
975 notify the superintendent of the child's school that the child
976 has been charged with such felony or delinquent act. The

977 information obtained by the superintendent of schools under
978 ~~pursuant to~~ this section must be released within 48 hours after
979 receipt to appropriate school personnel, including the principal
980 of the school of the child. The principal must immediately
981 notify the child's immediate classroom teachers. Upon
982 notification, the principal is authorized to begin disciplinary
983 actions under ~~pursuant to~~ s. 1006.09(1)-(4).
984 (c) ~~(b)~~ The department shall disclose to the school
985 superintendent the presence of any child in the care and custody
986 or under the jurisdiction or supervision of the department who
987 has a known history of criminal sexual behavior with other
988 juveniles; is an alleged juvenile sexual ~~sex~~ offender, as
989 defined in s. 39.01; or has pled guilty or nolo contendere to,
990 or has been found to have committed, a violation of chapter 794,
991 chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless
992 of adjudication. Any employee of a district school board who
993 knowingly and willfully discloses such information to an
994 unauthorized person commits a misdemeanor of the second degree,
995 punishable as provided in s. 775.082 or s. 775.083.
996 (5) ~~(1)~~ Authorized agents of the department ~~of Juvenile~~
997 ~~Justice~~ may administer oaths and affirmations.
998 (6) ~~(2)~~ Records maintained by the department ~~of Juvenile~~
999 ~~Justice~~, including copies of records maintained by the court,
1000 which pertain to a child found to have committed a delinquent
1001 act which, if committed by an adult, would be a crime specified
1002 in ss. 435.03 and 435.04 may not be destroyed under ~~pursuant to~~
1003 this section for a period of 25 years after the youth's final
1004 referral to the department, except in cases of the death of the

1005 child. Such records, however, shall be sealed by the court for
1006 use only in meeting the screening requirements for personnel in
1007 s. 402.3055 and the other sections cited above, or under
1008 ~~pursuant to~~ departmental rule; however, current criminal history
1009 information must be obtained from the Department of Law
1010 Enforcement in accordance with s. 943.053. The information shall
1011 be released to those persons specified in the above cited
1012 sections for the purposes of complying with those sections. The
1013 court may punish by contempt any person who releases or uses the
1014 records for any unauthorized purpose.
1015 (7) ~~(4)~~ (a) Records in the custody of the department ~~of~~
1016 ~~Juvenile Justice~~ regarding children are not open to inspection
1017 by the public. Such records may be inspected only upon order of
1018 the Secretary of Juvenile Justice or his or her authorized agent
1019 by persons who have sufficient reason and upon such conditions
1020 for their use and disposition as the secretary or his or her
1021 authorized agent deems proper. The information in such records
1022 may be disclosed only to other employees of the department ~~of~~
1023 ~~Juvenile Justice~~ who have a need therefor in order to perform
1024 their official duties ~~duty~~; to other persons as authorized by
1025 rule of the department ~~of Juvenile Justice~~; and, upon request,
1026 to the Department of Corrections. The secretary or his or her
1027 authorized agent may permit properly qualified persons to
1028 inspect and make abstracts from records for statistical purposes
1029 under whatever conditions upon their use and disposition the
1030 secretary or his or her authorized agent deems proper, provided
1031 adequate assurances are given that children's names and other
1032 identifying information will not be disclosed by the applicant.

1033 (b) The destruction of records pertaining to children
1034 committed to or supervised by the department ~~of Juvenile Justice~~
1035 pursuant to a court order, which records are retained until a
1036 child reaches the age of 24 years or until a serious or habitual
1037 delinquent child reaches the age of 26 years, shall be subject
1038 to chapter 943.
1039 (8) Criminal history information made available to
1040 governmental agencies by the Department of Law Enforcement or
1041 other criminal justice agencies shall not be used for any
1042 purpose other than that specified in the provision authorizing
1043 the releases.
1044 Section 13. Section 985.05, Florida Statutes, is
1045 renumbered as section 985.045, Florida Statutes, and amended to
1046 read:
1047 985.045 ~~985.05~~ Court records.--
1048 (1) The clerk of the court shall make and keep records of
1049 all cases brought before it under ~~pursuant to~~ this chapter ~~part~~.
1050 The court shall preserve the records pertaining to a child
1051 charged with committing a delinquent act or violation of law
1052 until the child reaches 24 years of age or reaches 26 years of
1053 age if he or she is a serious or habitual delinquent child,
1054 until 5 years after the last entry was made, or until 3 years
1055 after the death of the child, whichever is earlier, and may then
1056 destroy them, except that records made of traffic offenses in
1057 which there is no allegation of delinquency may be destroyed as
1058 soon as this can be reasonably accomplished. The court shall
1059 make official records of all petitions and orders filed in a
1060 case arising under ~~pursuant to~~ this chapter ~~part~~ and of any

1061 other pleadings, certificates, proofs of publication, summonses,
1062 warrants, and writs that are filed pursuant to the case.
1063 (2) The clerk shall keep all official records required by
1064 this section separate from other records of the circuit court,
1065 except those records pertaining to motor vehicle violations,
1066 which shall be forwarded to the Department of Highway Safety and
1067 Motor Vehicles. Except as provided in ss. 943.053 and
1068 985.04(7)~~(4)~~, official records required by this chapter are not
1069 open to inspection by the public, but may be inspected only upon
1070 order of the court by persons deemed by the court to have a
1071 proper interest therein, except that a child and the parents,
1072 guardians, or legal custodians of the child and their attorneys,
1073 law enforcement agencies, the Department of Juvenile Justice and
1074 its designees, the Parole Commission, the Department of
1075 Corrections, and the Justice Administrative Commission shall
1076 always have the right to inspect and copy any official record
1077 pertaining to the child. The court may permit authorized
1078 representatives of recognized organizations compiling statistics
1079 for proper purposes to inspect, and make abstracts from,
1080 official records under whatever conditions upon the use and
1081 disposition of such records the court may deem proper and may
1082 punish by contempt proceedings any violation of those
1083 conditions.
1084 (3) All orders of the court entered under ~~pursuant to~~ this
1085 chapter ~~part~~ must be in writing and signed by the judge, except
1086 that the clerk or deputy clerk may sign a summons or notice to
1087 appear.

1088 (4) A court record of proceedings under this chapter ~~part~~
1089 is not admissible in evidence in any other civil or criminal
1090 proceeding, except that:
1091 (a) Orders transferring a child for trial as an adult are
1092 admissible in evidence in the court in which he or she is tried,
1093 but create no presumption as to the guilt of the child; nor may
1094 such orders be read to, or commented upon in the presence of,
1095 the jury in any trial.
1096 (b) Orders binding an adult over for trial on a criminal
1097 charge, made by the committing trial court judge, are admissible
1098 in evidence in the court to which the adult is bound over.
1099 (c) Records of proceedings under this chapter ~~part~~ forming
1100 a part of the record on appeal must be used in the appellate
1101 court in the manner provided in s. 985.534 ~~985.234~~.
1102 (d) Records are admissible in evidence in any case in
1103 which a person is being tried upon a charge of having committed
1104 perjury, to the extent such records are necessary to prove the
1105 charge.
1106 (e) Records of proceedings under this chapter ~~part~~ may be
1107 used to prove disqualification under ~~pursuant to~~ ss. 110.1127,
1108 393.0655, 394.457, 397.451, 402.305, 402.313, 409.175, 409.176,
1109 and 985.644 ~~985.407~~.
1110 (5) This chapter does not prohibit a circuit court from
1111 providing a restitution order containing the information
1112 prescribed in s. 985.0301(5)(i) ~~985.201(4)(c)~~ to a collection
1113 court or a private collection agency for the sole purpose of
1114 collecting unpaid restitution ordered in a case in which the
1115 circuit court has retained jurisdiction over the child and the

1116 child's parent or legal guardian. The collection court or
1117 private collection agency shall maintain the confidential status
1118 of the information to the extent such confidentiality is
1119 provided by law.
1120 Section 14. Sections 985.06 and 985.08, Florida Statutes,
1121 are renumbered, respectively, as sections 985.046 and 985.047,
1122 Florida Statutes.
1123 Section 15. Section 985.207, Florida Statutes, is amended
1124 and renumbered as section 985.101, Florida Statutes, and
1125 subsection (3) of section 985.215, Florida Statutes, is
1126 renumbered as subsection (2) of section 985.101, Florida
1127 Statutes, and amended to read:
1128 985.101 ~~985.207~~ Taking a child into custody.--
1129 (1) A child may be taken into custody under the following
1130 circumstances:
1131 (a) Pursuant to an order of the circuit court issued under
1132 this chapter ~~part~~, based upon sworn testimony, either before or
1133 after a petition is filed.
1134 (b) For a delinquent act or violation of law, pursuant to
1135 Florida law pertaining to a lawful arrest. If such delinquent
1136 act or violation of law would be a felony if committed by an
1137 adult or involves a crime of violence, the arresting authority
1138 shall immediately notify the district school superintendent, or
1139 the superintendent's designee, of the school district with
1140 educational jurisdiction of the child. Such notification shall
1141 include other education providers such as the Florida School for
1142 the Deaf and the Blind, university developmental research
1143 schools, and private elementary and secondary schools. The

1144 information obtained by the superintendent of schools pursuant
1145 to this section must be released within 48 hours after receipt
1146 to appropriate school personnel, including the principal of the
1147 child's school, or as otherwise provided by law. The principal
1148 must immediately notify the child's immediate classroom
1149 teachers. Information provided by an arresting authority under
1150 ~~pursuant to~~ this paragraph may not be placed in the student's
1151 permanent record and shall be removed from all school records no
1152 later than 9 months after the date of the arrest.
1153 (c) By a law enforcement officer for failing to appear at
1154 a court hearing after being properly noticed.
1155 (d) By a law enforcement officer who has probable cause to
1156 believe that the child is in violation of the conditions of the
1157 child's probation, home detention, post commitment probation, or
1158 conditional release supervision, has absconded from
1159 nonresidential commitment, or has escaped from residential
1160 commitment.
1161
1162 Nothing in this subsection shall be construed to allow the
1163 detention of a child who does not meet the detention criteria in
1164 part V ~~s. 985.215~~.
1165 (2) ~~(3)~~ Except in emergency situations, a child may not be
1166 placed into or transported in any police car or similar vehicle
1167 that at the same time contains an adult under arrest, unless the
1168 adult is alleged or believed to be involved in the same offense
1169 or transaction as the child.
1170 (3) ~~(2)~~ When a child is taken into custody as provided in
1171 this section, the person taking the child into custody shall

1172 attempt to notify the parent, guardian, or legal custodian of
1173 the child. The person taking the child into custody shall
1174 continue such attempt until the parent, guardian, or legal
1175 custodian of the child is notified or the child is delivered to
1176 a juvenile probation officer under ss. 985.14 and 985.145
1177 ~~pursuant to s. 985.21~~, whichever occurs first. If the child is
1178 delivered to a juvenile probation officer before the parent,
1179 guardian, or legal custodian is notified, the juvenile probation
1180 officer shall continue the attempt to notify until the parent,
1181 guardian, or legal custodian of the child is notified. Following
1182 notification, the parent or guardian must provide identifying
1183 information, including name, address, date of birth, social
1184 security number, and driver's license number or identification
1185 card number of the parent or guardian to the person taking the
1186 child into custody or the juvenile probation officer.
1187 (4) ~~(3)~~ Taking a child into custody is not an arrest except
1188 for the purpose of determining whether the taking into custody
1189 or the obtaining of any evidence in conjunction therewith is
1190 lawful.
1191 Section 16. Section 985.2075, Florida Statutes, is
1192 renumbered as section 985.105, Florida Statutes and subsections
1193 (1) and (2) of that section are amended to read:
1194 985.105 ~~985.2075~~ Youth custody officer.--
1195 (1) There is created within the department ~~of Juvenile~~
1196 ~~Justice~~ the position of youth custody officer. The duties of
1197 each youth custody officer shall be to take youth into custody
1198 if the officer has probable cause to believe that the youth has
1199 violated the conditions of probation, home detention,

1200 conditional release, or postcommitment probation, or has failed
1201 to appear in court after being properly noticed. The authority
1202 of the youth custody officer to take youth into custody is
1203 specifically limited to this purpose.
1204 (2) A youth custody officer must meet the minimum
1205 qualifications for employment or appointment, be certified under
1206 chapter 943, and comply with the requirements for continued
1207 employment required by s. 943.135. The department ~~of Juvenile~~
1208 ~~Justice~~ must comply with the responsibilities provided for an
1209 employing agency under s. 943.133 for each youth custody
1210 officer.
1211 Section 17. Section 985.212, Florida Statutes, is
1212 renumbered as section 985.11, Florida Statutes, and paragraph
1213 (b) of subsection (1) of that section is amended to read:
1214 985.11 ~~985.212~~ Fingerprinting and photographing.--
1215 (1)
1216 (b) A child who is charged with or found to have committed
1217 one of the following offenses shall be fingerprinted, and the
1218 fingerprints shall be submitted to the Department of Law
1219 Enforcement as provided in s. 943.051(3)(b):
1220 1. Assault, as defined in s. 784.011.
1221 2. Battery, as defined in s. 784.03.
1222 3. Carrying a concealed weapon, as defined in s.
1223 790.01(1).
1224 4. Unlawful use of destructive devices or bombs, as
1225 defined in s. 790.1615(1).
1226 5. Negligent treatment of children, as defined in former
1227 s. 827.05.

1228 6. Assault on a law enforcement officer, a firefighter, or
1229 other specified officers, as defined in s. 784.07(2)(a).
1230 7. Open carrying of a weapon, as defined in s. 790.053.
1231 8. Exposure of sexual organs, as defined in s. 800.03.
1232 9. Unlawful possession of a firearm, as defined in s.
1233 790.22(5).
1234 10. Petit theft, as defined in s. 812.014.
1235 11. Cruelty to animals, as defined in s. 828.12(1).
1236 12. Arson, resulting in bodily harm to a firefighter, as
1237 defined in s. 806.031(1).
1238 13. Unlawful possession or discharge of a weapon or
1239 firearm at a school-sponsored event or on school property as
1240 defined in s. 790.115.
1241
1242 A law enforcement agency may fingerprint and photograph a child
1243 taken into custody upon probable cause that such child has
1244 committed any other violation of law, as the agency deems
1245 appropriate. Such fingerprint records and photographs shall be
1246 retained by the law enforcement agency in a separate file, and
1247 these records and all copies thereof must be marked "Juvenile
1248 Confidential." These records are not available for public
1249 disclosure and inspection under s. 119.07(1) except as provided
1250 in ss. 943.053 and 985.04(2) ~~985.04(5)~~, but shall be available
1251 to other law enforcement agencies, criminal justice agencies,
1252 state attorneys, the courts, the child, the parents or legal
1253 custodians of the child, their attorneys, and any other person
1254 authorized by the court to have access to such records. In
1255 addition, such records may be submitted to the Department of Law

1256 Enforcement for inclusion in the state criminal history records
1257 and used by criminal justice agencies for criminal justice
1258 purposes. These records may, in the discretion of the court, be
1259 open to inspection by anyone upon a showing of cause. The
1260 fingerprint and photograph records shall be produced in the
1261 court whenever directed by the court. Any photograph taken
1262 pursuant to this section may be shown by a law enforcement
1263 officer to any victim or witness of a crime for the purpose of
1264 identifying the person who committed such crime.
1265 Section 18. Subsections (2) and (5) of section 985.211,
1266 Florida Statutes, are renumbered, respectively, as subsections
1267 (2) and (3) of section 985.115, Florida Statutes, and
1268 subsections (1) and (7) of section 985.211, Florida Statutes,
1269 are renumbered, respectively, as subsections (1) and (4) of
1270 section 985.115, Florida Statutes, and amended to read:
1271 985.115 ~~985.211~~ Release or delivery from custody.--
1272 (1) A child taken into custody shall be released from
1273 custody as soon as is reasonably possible.
1274 (2) Unless otherwise ordered by the court under s. 985.255
1275 or s. 985.26 ~~pursuant to s. 985.215~~, and unless there is a need
1276 to hold the child, a person taking a child into custody shall
1277 attempt to release the child as follows:
1278 (a) To the child's parent, guardian, or legal custodian
1279 or, if the child's parent, guardian, or legal custodian is
1280 unavailable, unwilling, or unable to provide supervision for the
1281 child, to any responsible adult. Prior to releasing the child to
1282 a responsible adult, other than the parent, guardian, or legal
1283 custodian, the person taking the child into custody may conduct

1284 a criminal history background check of the person to whom the
1285 child is to be released. If the person has a prior felony
1286 conviction, or a conviction for child abuse, drug trafficking,
1287 or prostitution, that person is not a responsible adult for the
1288 purposes of this section. The person to whom the child is
1289 released shall agree to inform the department or the person
1290 releasing the child of the child's subsequent change of address
1291 and to produce the child in court at such time as the court may
1292 direct, and the child shall join in the agreement.
1293 (b) Contingent upon specific appropriation, to a shelter
1294 approved by the department or to an authorized agent under
1295 ~~pursuant to~~ s. 39.401(2)(b).
1296 (c) If the child is believed to be suffering from a
1297 serious physical condition which requires either prompt
1298 diagnosis or prompt treatment, to a law enforcement officer who
1299 shall deliver the child to a hospital for necessary evaluation
1300 and treatment.
1301 (d) If the child is believed to be mentally ill as defined
1302 in s. 394.463(1), to a law enforcement officer who shall take
1303 the child to a designated public receiving facility as defined
1304 in s. 394.455 for examination under ~~pursuant to the provisions~~
1305 ~~of~~ s. 394.463.
1306 (e) If the child appears to be intoxicated and has
1307 threatened, attempted, or inflicted physical harm on himself or
1308 herself or another, or is incapacitated by substance abuse, to a
1309 law enforcement officer who shall deliver the child to a
1310 hospital, addictions receiving facility, or treatment resource.

1311 (f) If available, to a juvenile assessment center equipped
1312 and staffed to assume custody of the child for the purpose of
1313 assessing the needs of the child in custody. The center may then
1314 release or deliver the child under ~~pursuant to~~ this section with
1315 a copy of the assessment.
1316 (3) ~~(5)~~ Upon taking a child into custody, a law enforcement
1317 officer may deliver the child, for temporary custody not to
1318 exceed 6 hours, to a secure booking area of a jail or other
1319 facility intended or used for the detention of adults, for the
1320 purpose of fingerprinting or photographing the child or awaiting
1321 appropriate transport to the department or as provided in s.
1322 985.13(2) ~~subsection (4)~~, provided no regular sight and sound
1323 contact between the child and adult inmates or trustees is
1324 permitted and the receiving facility has adequate staff to
1325 supervise and monitor the child's activities at all times.
1326 (4) ~~(7)~~ Nothing in this section or s. 985.13 shall prohibit
1327 the proper use of law enforcement diversion programs. Law
1328 enforcement agencies may initiate and conduct diversion programs
1329 designed to divert a child from the need for department custody
1330 or judicial handling. Such programs may be cooperative projects
1331 with local community service agencies.
1332 Section 19. Section 985.301, Florida Statutes, is
1333 renumbered as section 985.12, Florida Statutes, and subsection
1334 (4) of that section is amended to read:
1335 985.12 ~~985.301~~ Civil citation.--
1336 (4) If the juvenile fails to report timely for a work
1337 assignment, complete a work assignment, or comply with assigned
1338 intervention services within the prescribed time, or if the

1339 juvenile commits a third or subsequent misdemeanor, the law
1340 enforcement officer shall issue a report alleging the child has
1341 committed a delinquent act, at which point a juvenile probation
1342 officer shall perform a preliminary determination as provided
1343 under s. 985.145 ~~985.21(4)~~.
1344 Section 20. Section 985.3065, Florida Statutes, is
1345 renumbered as section 985.125, Florida Statutes.
1346 Section 21. Subsections (3), (4), and (6) of section
1347 985.211, Florida Statutes, are renumbered as section 985.13,
1348 Florida Statutes, and amended to read:
1349 985.13 Probable cause affidavits.--
1350 (1) ~~(3)~~ If the child is released, the person taking the
1351 child into custody shall make a written report or probable cause
1352 affidavit to the appropriate juvenile probation officer within
1353 24 hours after such release, stating the facts and the reason
1354 for taking the child into custody. Such written report or
1355 probable cause affidavit shall:
1356 (a) Identify the child, the parents, guardian, or legal
1357 custodian, and the person to whom the child was released.
1358 (b) Contain sufficient information to establish the
1359 jurisdiction of the court and to make a prima facie showing that
1360 the child has committed a violation of law or a delinquent act.
1361 (2) ~~(4)~~ A person taking a child into custody who
1362 determines, under part V ~~pursuant to s. 985.215~~, that the child
1363 should be detained or released to a shelter designated by the
1364 department, shall make a reasonable effort to immediately notify
1365 the parent, guardian, or legal custodian of the child and shall,
1366 without unreasonable delay, deliver the child to the appropriate

1367 juvenile probation officer or, if the court has so ordered under
1368 ~~pursuant to~~ s. 985.255 or s. 985.26 ~~985.215~~, to a detention
1369 center or facility. Upon delivery of the child, the person
1370 taking the child into custody shall make a written report or
1371 probable cause affidavit to the appropriate juvenile probation
1372 officer. Such written report or probable cause affidavit must:
1373 (a) Identify the child and, if known, the parents,
1374 guardian, or legal custodian.
1375 (b) Establish that the child was legally taken into
1376 custody, with sufficient information to establish the
1377 jurisdiction of the court and to make a prima facie showing that
1378 the child has committed a violation of law.
1379 (3) ~~(6)~~ (a) A copy of the probable cause affidavit or
1380 written report made by the person taking the child into custody
1381 shall be filed, by the law enforcement agency which employs the
1382 person making such affidavit or written report, with the clerk
1383 of the circuit court for the county in which the child is taken
1384 into custody or in which the affidavit or report is made within
1385 24 hours after the affidavit or report is made, excluding
1386 Saturdays, Sundays, and legal holidays. Such affidavit or report
1387 is a case for the purpose of assigning a uniform case number
1388 under ~~pursuant to~~ this subsection.
1389 (b) Upon the filing of a copy of a probable cause
1390 affidavit or written report by a law enforcement agency with the
1391 clerk of the circuit court, the clerk shall immediately assign a
1392 uniform case number to the affidavit or report, forward a copy
1393 to the state attorney, and forward a copy to the intake office

1394 of the department which serves the county in which the case
1395 arose.
1396 (c) Each letter of recommendation, written notice, report,
1397 or other paper required by law pertaining to the case shall bear
1398 the uniform case number of the case, and a copy shall be filed
1399 with the clerk of the circuit court by the issuing agency. The
1400 issuing agency shall furnish copies to the juvenile probation
1401 officer and the state attorney.
1402 (d) Upon the filing of a petition based on the allegations
1403 of a previously filed probable cause affidavit or written
1404 report, the agency filing the petition shall include the
1405 appropriate uniform case number on the petition.
1406 Section 22. Section 985.209, Florida Statutes, is
1407 renumbered as section 985.135, Florida Statutes, and subsection
1408 (1) of that section is amended to read:
1409 985.135 ~~985.209~~ Juvenile assessment centers.--
1410 (1) As used in this section, "center" means a juvenile
1411 assessment center comprising community operated facilities and
1412 programs which provide collocated central intake and screening
1413 services for youth referred to the department ~~of Juvenile~~
1414 ~~Justice~~.
1415 Section 23. Subsections (1) and (2) of section 985.21,
1416 Florida Statutes, are renumbered as section 985.14, Florida
1417 Statutes, and amended to read:
1418 985.14 ~~985.21~~ Intake and case management system.--
1419 (1)~~(a) During the intake process, the juvenile probation~~
1420 ~~officer shall screen each child or shall cause each child to be~~
1421 ~~screened in order to determine:~~

1422 ~~1. Appropriateness for release, referral to a diversionary~~
1423 ~~program including, but not limited to, a teen court program,~~
1424 ~~referral for community arbitration, or referral to some other~~
1425 ~~program or agency for the purpose of nonofficial or nonjudicial~~
1426 ~~handling.~~
1427 ~~2. The presence of medical, psychiatric, psychological,~~
1428 ~~substance abuse, educational, or vocational problems, or other~~
1429 ~~conditions that may have caused the child to come to the~~
1430 ~~attention of law enforcement or the Department of Juvenile~~
1431 ~~Justice. The child shall also be screened to determine whether~~
1432 ~~the child poses a danger to himself or herself or others in the~~
1433 ~~community. The results of this screening shall be made available~~
1434 ~~to the court and to court officers. In cases where such~~
1435 ~~conditions are identified, and a nonjudicial handling of the~~
1436 ~~case is chosen, the juvenile probation officer shall attempt to~~
1437 ~~refer the child to a program or agency, together with all~~
1438 ~~available and relevant assessment information concerning the~~
1439 ~~child's precipitating condition.~~
1440 ~~3~~. The department ~~of Juvenile Justice~~ shall develop an
1441 intake and a case management system whereby a child brought into
1442 intake is assigned a juvenile probation officer if the child was
1443 not released, referred to a diversionary program, referred for
1444 community arbitration, or referred to some other program or
1445 agency for the purpose of nonofficial or nonjudicial handling,
1446 and shall make every reasonable effort to provide case
1447 management services for the child; provided, however, that case
1448 management for children committed to residential programs may be
1449 transferred as provided in s. 985.46 ~~985.316~~.

1450 (2) The intake process shall be performed by the
1451 department through a case management system. The purpose of the
1452 intake process is to assess the child's needs and risks and to
1453 determine the most appropriate treatment plan and setting for
1454 the child's programmatic needs and risks. The intake process
1455 shall result in choosing the most appropriate services through a
1456 balancing of the interests and needs of the child with those of
1457 the family and the public. The juvenile probation officer shall
1458 be responsible for making informed decisions and recommendations
1459 to other agencies, the state attorney, and the courts so that
1460 the child and family may receive the least intrusive service
1461 alternative throughout the judicial process. The department
1462 shall establish uniform procedures for the juvenile probation
1463 officer to provide a preliminary screening of the child and
1464 family for substance abuse and mental health services prior to
1465 the filing of a petition or as soon as possible thereafter and
1466 prior to a disposition hearing.
1467 ~~4. In addition to duties specified in other sections and~~
1468 ~~through departmental rules, the assigned juvenile probation~~
1469 ~~officer shall be responsible for the following:~~
1470 ~~a. Ensuring that a risk assessment instrument establishing~~
1471 ~~the child's eligibility for detention has been accurately~~
1472 ~~completed and that the appropriate recommendation was made to~~
1473 ~~the court.~~
1474 ~~b. Inquiring as to whether the child understands his or~~
1475 ~~her rights to counsel and against self-incrimination.~~
1476 ~~c. Performing the preliminary screening and making~~
1477 ~~referrals for comprehensive assessment regarding the child's~~

1478 ~~need for substance abuse treatment services, mental health~~
1479 ~~services, retardation services, literacy services, or other~~
1480 ~~educational or treatment services.~~
1481 ~~d. Coordinating the multidisciplinary assessment when~~
1482 ~~required, which includes the classification and placement~~
1483 ~~process that determines the child's priority needs, risk~~
1484 ~~classification, and treatment plan. When sufficient evidence~~
1485 ~~exists to warrant a comprehensive assessment and the child fails~~
1486 ~~to voluntarily participate in the assessment efforts, it is the~~
1487 ~~responsibility of the juvenile probation officer to inform the~~
1488 ~~court of the need for the assessment and the refusal of the~~
1489 ~~child to participate in such assessment. This assessment,~~
1490 ~~classification, and placement process shall develop into the~~
1491 ~~predisposition report.~~
1492 ~~e. Making recommendations for services and facilitating~~
1493 ~~the delivery of those services to the child, including any~~
1494 ~~mental health services, educational services, family counseling~~
1495 ~~services, family assistance services, and substance abuse~~
1496 ~~services. The juvenile probation officer shall serve as the~~
1497 ~~primary case manager for the purpose of managing, coordinating,~~
1498 ~~and monitoring the services provided to the child. Each program~~
1499 ~~administrator within the Department of Children and Family~~
1500 ~~Services shall cooperate with the primary case manager in~~
1501 ~~carrying out the duties and responsibilities described in this~~
1502 ~~section.~~
1503
1504 ~~The Department of Juvenile Justice shall annually advise the~~
1505 ~~Legislature and the Executive Office of the Governor of the~~

1506 ~~resources needed in order for the intake and case management~~
1507 ~~system to maintain a staff-to-client ratio that is consistent~~
1508 ~~with accepted standards and allows the necessary supervision and~~
1509 ~~services for each child. The intake process and case management~~
1510 ~~system shall provide a comprehensive approach to assessing the~~
1511 ~~child's needs, relative risks, and most appropriate handling,~~
1512 ~~and shall be based on an individualized treatment plan.~~
1513 (3) ~~(b)~~ The intake and case management system shall
1514 facilitate consistency in the recommended placement of each
1515 child, and in the assessment, classification, and placement
1516 process, with the following purposes:
1517 (a) ~~1.~~ An individualized, multidisciplinary assessment
1518 process that identifies the priority needs of each individual
1519 child for rehabilitation and treatment and identifies any needs
1520 of the child's parents or guardians for services that would
1521 enhance their ability to provide adequate support, guidance, and
1522 supervision for the child. This process shall begin with the
1523 detention risk assessment instrument and decision, shall include
1524 the intake preliminary screening and comprehensive assessment
1525 for substance abuse treatment services, mental health services,
1526 retardation services, literacy services, and other educational
1527 and treatment services as components, additional assessment of
1528 the child's treatment needs, and classification regarding the
1529 child's risks to the community and, for a serious or habitual
1530 delinquent child, shall include the assessment for placement in
1531 a serious or habitual delinquent children program under ~~pursuant~~
1532 ~~to~~ s. 985.47 ~~985.31~~. The completed multidisciplinary assessment
1533 process shall result in the predisposition report.

1534 (b)~~2.~~ A classification system that assigns a relative risk
1535 to the child and the community based upon assessments including
1536 the detention risk assessment results when available to classify
1537 the child's risk as it relates to placement and supervision
1538 alternatives.
1539 (c)~~3.~~ An admissions process that facilitates for each
1540 child the utilization of the treatment plan and setting most
1541 appropriate to meet the child's programmatic needs and provide
1542 the minimum program security needed to ensure public safety.
1543 (4) The department shall annually advise the Legislature
1544 and the Executive Office of the Governor of the resources needed
1545 in order for the intake and case management system to maintain a
1546 staff-to-client ratio that is consistent with accepted standards
1547 and allows the necessary supervision and services for each
1548 child. The intake process and case management system shall
1549 provide a comprehensive approach to assessing the child's needs,
1550 relative risks, and most appropriate handling, and shall be
1551 based on an individualized treatment plan.
1552 ~~(2) The intake process shall be performed by the~~
1553 ~~department through a case management system. The purpose of the~~
1554 ~~intake process is to assess the child's needs and risks and to~~
1555 ~~determine the most appropriate treatment plan and setting for~~
1556 ~~the child's programmatic needs and risks. The intake process~~
1557 ~~shall result in choosing the most appropriate services through a~~
1558 ~~balancing of the interests and needs of the child with those of~~
1559 ~~the family and the public. The juvenile probation officer is~~
1560 ~~responsible for making informed decisions and recommendations to~~
1561 ~~other agencies, the state attorney, and the courts so that the~~

1562 ~~child and family may receive the least intrusive service~~
1563 ~~alternative throughout the judicial process. The department~~
1564 ~~shall establish uniform procedures for the juvenile probation~~
1565 ~~officer to provide, prior to the filing of a petition or as soon~~
1566 ~~as possible thereafter and prior to a disposition hearing, a~~
1567 ~~preliminary screening of the child and family for substance~~
1568 ~~abuse and mental health services.~~
1569 Section 24. Subsections (3), (4), and (5) of section
1570 985.21, Florida Statutes, are renumbered as section 985.145,
1571 Florida Statutes, and amended to read:
1572 985.145 Responsibilities of juvenile probation officer
1573 during intake; screenings and assessments.--
1574 (1) The juvenile probation officer shall serve as the
1575 primary case manager for the purpose of managing, coordinating,
1576 and monitoring the services provided to the child. Each program
1577 administrator within the Department of Children and Family
1578 Services shall cooperate with the primary case manager in
1579 carrying out the duties and responsibilities described in this
1580 section. In addition to duties specified in other sections and
1581 through departmental rules, the assigned juvenile probation
1582 officer shall be responsible for the following:
1583 (a) ~~(3)~~ Reviewing probable cause affidavit.--The juvenile
1584 probation officer shall make a preliminary determination as to
1585 whether the report, affidavit, or complaint is complete,
1586 consulting with the state attorney as may be necessary. A
1587 report, affidavit, or complaint alleging that a child has
1588 committed a delinquent act or violation of law shall be made to
1589 the intake office operating in the county in which the child is

1590 found or in which the delinquent act or violation of law
1591 occurred. Any person or agency having knowledge of the facts may
1592 make such a written report, affidavit, or complaint and shall
1593 furnish to the intake office facts sufficient to establish the
1594 jurisdiction of the court and to support a finding by the court
1595 that the child has committed a delinquent act or violation of
1596 law.
1597 (b) ~~(4)~~ Notification concerning apparent insufficiencies in
1598 probable cause affidavit.--~~The juvenile probation officer shall~~
1599 ~~make a preliminary determination as to whether the report,~~
1600 ~~affidavit, or complaint is complete, consulting with the state~~
1601 ~~attorney as may be necessary.~~ In any case where the juvenile
1602 probation officer or the state attorney finds that the report,
1603 affidavit, or complaint is insufficient by the standards for a
1604 probable cause affidavit, the juvenile probation officer or
1605 state attorney shall return the report, affidavit, or complaint,
1606 without delay, to the person or agency originating the report,
1607 affidavit, or complaint or having knowledge of the facts or to
1608 the appropriate law enforcement agency having investigative
1609 jurisdiction of the offense, and shall request, and the person
1610 or agency shall promptly furnish, additional information in
1611 order to comply with the standards for a probable cause
1612 affidavit.
1613 (c) Screening.--During the intake process, the juvenile
1614 probation officer shall screen each child or shall cause each
1615 child to be screened in order to determine:
1616 1. Appropriateness for release; referral to a diversionary
1617 program, including, but not limited to, a teen court program;

1618 referral for community arbitration; or referral to some other
1619 program or agency for the purpose of nonofficial or nonjudicial
1620 handling.
1621 2. The presence of medical, psychiatric, psychological,
1622 substance abuse, educational, or vocational problems, or other
1623 conditions that may have caused the child to come to the
1624 attention of law enforcement or the department. The child shall
1625 also be screened to determine whether the child poses a danger
1626 to himself or herself or others in the community. The results of
1627 this screening shall be made available to the court and to court
1628 officers. In cases where such conditions are identified and a
1629 nonjudicial handling of the case is chosen, the juvenile
1630 probation officer shall attempt to refer the child to a program
1631 or agency, together with all available and relevant assessment
1632 information concerning the child's precipitating condition.
1633 (d) Completing risk assessment instrument.--The juvenile
1634 probation officer shall ensure that a risk assessment instrument
1635 establishing the child's eligibility for detention has been
1636 accurately completed and that the appropriate recommendation was
1637 made to the court.
1638 (e) Rights.--The juvenile probation officer shall inquire
1639 as to whether the child understands his or her rights to counsel
1640 and against self-incrimination.
1641 (f) Multidisciplinary assessment.--The juvenile probation
1642 officer shall coordinate the multidisciplinary assessment when
1643 required, which includes the classification and placement
1644 process that determines the child's priority needs, risk
1645 classification, and treatment plan. When sufficient evidence

1646 exists to warrant a comprehensive assessment and the child fails
1647 to voluntarily participate in the assessment efforts, the
1648 juvenile probation officer shall inform the court of the need
1649 for the assessment and the refusal of the child to participate
1650 in such assessment. This assessment, classification, and
1651 placement process shall develop into the predisposition report.
1652 (g) Comprehensive assessment.--The juvenile probation
1653 officer, pursuant to uniform procedures established by the
1654 department and upon determining that the report, affidavit, or
1655 complaint is complete, shall:
1656 1. Perform the preliminary screening and make referrals
1657 for a comprehensive assessment regarding the child's need for
1658 substance abuse treatment services, mental health services,
1659 retardation services, literacy services, or other educational or
1660 treatment services.
1661 2. When indicated by the preliminary screening, provide
1662 for a comprehensive assessment of the child and family for
1663 substance abuse problems, using community-based licensed
1664 programs with clinical expertise and experience in the
1665 assessment of substance abuse problems.
1666 3. When indicated by the preliminary screening, provide
1667 for a comprehensive assessment of the child and family for
1668 mental health problems, using community-based psychologists,
1669 psychiatrists, or other licensed mental health professionals who
1670 have clinical expertise and experience in the assessment of
1671 mental health problems.
1672 (h) Referrals for services.--The juvenile probation
1673 officer shall make recommendations for services and facilitate

1674 the delivery of those services to the child, including any
1675 mental health services, educational services, family counseling
1676 services, family assistance services, and substance abuse
1677 services.
1678 (i) Recommendation concerning a petition.--Upon
1679 determining that the report, affidavit, or complaint complies
1680 with the standards of a probable cause affidavit and that the
1681 interest of the child and the public will be best served, the
1682 juvenile probation officer may recommend that a delinquency
1683 petition not be filed. If such a recommendation is made, the
1684 juvenile probation officer shall advise in writing the person or
1685 agency making the report, affidavit, or complaint, the victim,
1686 if any, and the law enforcement agency having investigative
1687 jurisdiction over the offense of the recommendation; the reasons
1688 therefore; and that the person or agency may submit, within 10
1689 days after the receipt of such notice, the report, affidavit, or
1690 complaint to the state attorney for special review. The state
1691 attorney, upon receiving a request for special review, shall
1692 consider the facts presented by the report, affidavit, or
1693 complaint, and by the juvenile probation officer who made the
1694 recommendation that no petition be filed, before making a final
1695 decision as to whether a petition or information should or
1696 should not be filed.
1697 (j) Completing intake report.--Subject to the interagency
1698 agreement authorized under this paragraph, the juvenile
1699 probation officer for each case in which a child is alleged to
1700 have committed a violation of law or delinquent act and is not
1701 detained shall submit a written report to the state attorney,

1702 including the original report, complaint, or affidavit, or a
1703 copy thereof, including a copy of the child's prior juvenile
1704 record, within 20 days after the date the child is taken into
1705 custody. In cases in which the child is in detention, the intake
1706 office report must be submitted within 24 hours after the child
1707 is placed into detention. The intake office report may include a
1708 recommendation that a petition or information be filed or that
1709 no petition or information be filed and may set forth reasons
1710 for the recommendation. The state attorney and the department
1711 may, on a district-by-district basis, enter into interagency
1712 agreements denoting the cases that will require a recommendation
1713 and those for which a recommendation is unnecessary.
1714 ~~(a) The juvenile probation officer, upon determining that~~
1715 ~~the report, affidavit, or complaint is complete, pursuant to~~
1716 ~~uniform procedures established by the department, shall:~~
1717 ~~1. When indicated by the preliminary screening, provide~~
1718 ~~for a comprehensive assessment of the child and family for~~
1719 ~~substance abuse problems, using community-based licensed~~
1720 ~~programs with clinical expertise and experience in the~~
1721 ~~assessment of substance abuse problems.~~
1722 ~~2. When indicated by the preliminary screening, provide~~
1723 ~~for a comprehensive assessment of the child and family for~~
1724 ~~mental health problems, using community-based psychologists,~~
1725 ~~psychiatrists, or other licensed mental health professionals~~
1726 ~~with clinical expertise and experience in the assessment of~~
1727 ~~mental health problems.~~
1728

1729 ~~When indicated by the comprehensive assessment, the department~~
1730 ~~is authorized to contract within appropriated funds for services~~
1731 ~~with a local nonprofit community mental health or substance~~
1732 ~~abuse agency licensed or authorized under chapter 394, or~~
1733 ~~chapter 397, or other authorized nonprofit social service agency~~
1734 ~~providing related services. The determination of mental health~~
1735 ~~or substance abuse services shall be conducted in coordination~~
1736 ~~with existing programs providing mental health or substance~~
1737 ~~abuse services in conjunction with the intake office. Client~~
1738 ~~information resulting from the screening and evaluation shall be~~
1739 ~~documented pursuant to rules established by the department and~~
1740 ~~shall serve to assist the juvenile probation officer in~~
1741 ~~providing the most appropriate services and recommendations in~~
1742 ~~the least intrusive manner. Such client information shall be~~
1743 ~~used in the multidisciplinary assessment and classification of~~
1744 ~~the child, but such information, and any information obtained~~
1745 ~~directly or indirectly through the assessment process, is~~
1746 ~~inadmissible in court prior to the disposition hearing, unless~~
1747 ~~the child's written consent is obtained. At the disposition~~
1748 ~~hearing, documented client information shall serve to assist the~~
1749 ~~court in making the most appropriate custody, adjudicatory, and~~
1750 ~~dispositional decision. If the screening and assessment indicate~~
1751 ~~that the interest of the child and the public will be best~~
1752 ~~served thereby, the juvenile probation officer, with the~~
1753 ~~approval of the state attorney, may refer the child for care,~~
1754 ~~diagnostic and evaluation services, substance abuse treatment~~
1755 ~~services, mental health services, retardation services, a~~
1756 ~~diversionary or arbitration or mediation program, community~~

1757 ~~service work, or other programs or treatment services~~
1758 ~~voluntarily accepted by the child and the child's parents or~~
1759 ~~legal guardians. The victim, if any, and the law enforcement~~
1760 ~~agency which investigated the offense shall be notified~~
1761 ~~immediately by the state attorney of the action taken under this~~
1762 ~~paragraph. Whenever a child volunteers to participate in any~~
1763 ~~work program under this chapter or volunteers to work in a~~
1764 ~~specified state, county, municipal, or community service~~
1765 ~~organization supervised work program or to work for the victim,~~
1766 ~~the child shall be considered an employee of the state for the~~
1767 ~~purposes of liability. In determining the child's average weekly~~
1768 ~~wage, unless otherwise determined by a specific funding program,~~
1769 ~~all remuneration received from the employer is considered a~~
1770 ~~gratuity, and the child is not entitled to any benefits~~
1771 ~~otherwise payable under s. 440.15, regardless of whether the~~
1772 ~~child may be receiving wages and remuneration from other~~
1773 ~~employment with another employer and regardless of the child's~~
1774 ~~future wage earning capacity.~~
1775 ~~(b) The juvenile probation officer, upon determining that~~
1776 ~~the report, affidavit, or complaint complies with the standards~~
1777 ~~of a probable cause affidavit and that the interest of the child~~
1778 ~~and the public will be best served, may recommend that a~~
1779 ~~delinquency petition not be filed. If such a recommendation is~~
1780 ~~made, the juvenile probation officer shall advise in writing the~~
1781 ~~person or agency making the report, affidavit, or complaint, the~~
1782 ~~victim, if any, and the law enforcement agency having~~
1783 ~~investigative jurisdiction of the offense of the recommendation~~
1784 ~~and the reasons therefor; and that the person or agency may~~

1785 ~~submit, within 10 days after the receipt of such notice, the~~
1786 ~~report, affidavit, or complaint to the state attorney for~~
1787 ~~special review. The state attorney, upon receiving a request for~~
1788 ~~special review, shall consider the facts presented by the~~
1789 ~~report, affidavit, or complaint, and by the juvenile probation~~
1790 ~~officer who made the recommendation that no petition be filed,~~
1791 ~~before making a final decision as to whether a petition or~~
1792 ~~information should or should not be filed.~~
1793 ~~(c) Subject to the interagency agreement authorized under~~
1794 ~~this paragraph, the juvenile probation officer for each case in~~
1795 ~~which a child is alleged to have committed a violation of law or~~
1796 ~~delinquent act and is not detained shall submit a written report~~
1797 ~~to the state attorney, including the original report, complaint,~~
1798 ~~or affidavit, or a copy thereof, including a copy of the child's~~
1799 ~~prior juvenile record, within 20 days after the date the child~~
1800 ~~is taken into custody. In cases in which the child is in~~
1801 ~~detention, the intake office report must be submitted within 24~~
1802 ~~hours after the child is placed into detention. The intake~~
1803 ~~office report may include a recommendation that a petition or~~
1804 ~~information be filed or that no petition or information be~~
1805 ~~filed, and may set forth reasons for the recommendation. The~~
1806 ~~State Attorney and the Department of Juvenile Justice may, on a~~
1807 ~~district-by-district basis, enter into interagency agreements~~
1808 ~~denoting the cases that will require a recommendation and those~~
1809 ~~for which a recommendation is unnecessary.~~
1810 ~~(d) The state attorney may in all cases take action~~
1811 ~~independent of the action or lack of action of the juvenile~~
1812 ~~probation officer, and shall determine the action which is in~~

1813 ~~the best interest of the public and the child. If the child~~
1814 ~~meets the criteria requiring prosecution as an adult pursuant to~~
1815 ~~s. 985.226, the state attorney shall request the court to~~
1816 ~~transfer and certify the child for prosecution as an adult or~~
1817 ~~shall provide written reasons to the court for not making such~~
1818 ~~request. In all other cases, the state attorney may:~~
1819 ~~1. File a petition for dependency;~~
1820 ~~2. File a petition pursuant to chapter 984;~~
1821 ~~3. File a petition for delinquency;~~
1822 ~~4. File a petition for delinquency with a motion to~~
1823 ~~transfer and certify the child for prosecution as an adult;~~
1824 ~~5. File an information pursuant to s. 985.227;~~
1825 ~~6. Refer the case to a grand jury;~~
1826 ~~7. Refer the child to a diversionary, pretrial~~
1827 ~~intervention, arbitration, or mediation program, or to some~~
1828 ~~other treatment or care program if such program commitment is~~
1829 ~~voluntarily accepted by the child or the child's parents or~~
1830 ~~legal guardians; or~~
1831 ~~8. Decline to file.~~
1832 ~~(e) In cases in which a delinquency report, affidavit, or~~
1833 ~~complaint is filed by a law enforcement agency and the state~~
1834 ~~attorney determines not to file a petition, the state attorney~~
1835 ~~shall advise the clerk of the circuit court in writing that no~~
1836 ~~petition will be filed thereon.~~
1837 (2) ~~(5)~~ Prior to requesting that a delinquency petition be
1838 filed or prior to filing a dependency petition, the juvenile
1839 probation officer may request the parent or legal guardian of
1840 the child to attend a course of instruction in parenting skills,

1841 training in conflict resolution, and the practice of
1842 nonviolence; to accept counseling; or to receive other
1843 assistance from any agency in the community which notifies the
1844 clerk of the court of the availability of its services. Where
1845 appropriate, the juvenile probation officer shall request both
1846 parents or guardians to receive such parental assistance. The
1847 juvenile probation officer may, in determining whether to
1848 request that a delinquency petition be filed, take into
1849 consideration the willingness of the parent or legal guardian to
1850 comply with such request. The parent or guardian must provide
1851 the juvenile probation officer with identifying information,
1852 including the parent's or guardian's name, address, date of
1853 birth, social security number, and driver's license number or
1854 identification card number in order to comply with s. 985.039
1855 ~~985.2311~~.
1856 (3) When indicated by the comprehensive assessment, the
1857 department is authorized to contract within appropriated funds
1858 for services with a local nonprofit community mental health or
1859 substance abuse agency licensed or authorized under chapter 394
1860 or chapter 397 or other authorized nonprofit social service
1861 agency providing related services. The determination of mental
1862 health or substance abuse services shall be conducted in
1863 coordination with existing programs providing mental health or
1864 substance abuse services in conjunction with the intake office.
1865 (4) Client information resulting from the screening and
1866 evaluation shall be documented under rules of the department and
1867 shall serve to assist the juvenile probation officer in
1868 providing the most appropriate services and recommendations in

1869 the least intrusive manner. Such client information shall be
1870 used in the multidisciplinary assessment and classification of
1871 the child, but such information, and any information obtained
1872 directly or indirectly through the assessment process, is
1873 inadmissible in court prior to the disposition hearing, unless
1874 the child's written consent is obtained. At the disposition
1875 hearing, documented client information shall serve to assist the
1876 court in making the most appropriate custody, adjudicatory, and
1877 dispositional decision.
1878 (5) If the screening and assessment indicate that the
1879 interest of the child and the public will be best served
1880 thereby, the juvenile probation officer, with the approval of
1881 the state attorney, may refer the child for care, diagnostic,
1882 and evaluation services; substance abuse treatment services;
1883 mental health services; retardation services; a diversionary,
1884 arbitration, or mediation program; community service work; or
1885 other programs or treatment services voluntarily accepted by the
1886 child and the child's parents or legal guardian. Whenever a
1887 child volunteers to participate in any work program under this
1888 chapter or volunteers to work in a specified state, county,
1889 municipal, or community service organization supervised work
1890 program or to work for the victim, the child shall be considered
1891 an employee of the state for the purposes of liability. In
1892 determining the child's average weekly wage, unless otherwise
1893 determined by a specific funding program, all remuneration
1894 received from the employer is considered a gratuity, and the
1895 child is not entitled to any benefits otherwise payable under s.
1896 440.15, regardless of whether the child may be receiving wages

1897 and remuneration from other employment with another employer and
1898 regardless of the child's future wage-earning capacity.
1899 (6) The victim, if any, and the law enforcement agency
1900 that investigated the offense shall be notified immediately by
1901 the state attorney of the action taken under subsection (5).
1902 Section 25. Section 985.15, Florida Statutes, is created
1903 to read:
1904 985.15 Filing decisions.--
1905 (1) The state attorney may in all cases take action
1906 independent of the action or lack of action of the juvenile
1907 probation officer and shall determine the action that is in the
1908 best interest of the public and the child. If the child meets
1909 the criteria requiring prosecution as an adult under s. 985.556,
1910 the state attorney shall request the court to transfer and
1911 certify the child for prosecution as an adult or shall provide
1912 written reasons to the court for not making such a request. In
1913 all other cases, the state attorney may:
1914 (a) File a petition for dependency;
1915 (b) File a petition under chapter 984;
1916 (c) File a petition for delinquency;
1917 (d) File a petition for delinquency with a motion to
1918 transfer and certify the child for prosecution as an adult;
1919 (e) File an information under s. 985.557;
1920 (f) Refer the case to a grand jury;
1921 (g) Refer the child to a diversionary, pretrial
1922 intervention, arbitration, or mediation program, or to some
1923 other treatment or care program if such program commitment is

1924 voluntarily accepted by the child or the child's parents or
1925 legal guardian; or
1926 (h) Decline to file.
1927 (2) In cases in which a delinquency report, affidavit, or
1928 complaint is filed by a law enforcement agency and the state
1929 attorney determines not to file a petition, the state attorney
1930 shall advise the clerk of the circuit court in writing that no
1931 petition will be filed thereon.
1932 Section 26. Section 985.303, Florida Statutes, is
1933 renumbered as section 985.155, Florida Statutes.
1934 Section 27. Section 985.304, Florida Statutes, is
1935 renumbered as section 985.16, Florida Statutes, and subsection
1936 (3) of that section is amended to read:
1937 985.16 ~~985.304~~ Community arbitration.--
1938 (3) COMMUNITY ARBITRATORS.--The chief judge of each
1939 judicial circuit shall maintain a list of qualified persons who
1940 have agreed to serve as community arbitrators for the purpose of
1941 carrying out the provisions of this chapter ~~part~~. Community
1942 arbitrators shall meet the qualification and training
1943 requirements adopted in rule by the Supreme Court. Whenever
1944 possible, qualified volunteers shall be used as community
1945 arbitrators.
1946 (a) Each community arbitrator or member of a community
1947 arbitration panel shall be selected by the chief judge of the
1948 circuit, the senior circuit court judge assigned to juvenile
1949 cases in the circuit, and the state attorney. A community
1950 arbitrator or, in the case of a panel, the chief arbitrator

1951 shall have such powers as are necessary to conduct the
1952 proceedings in a fair and expeditious manner.
1953 (b) A community arbitrator or member of a community
1954 arbitration panel shall be trained or experienced in juvenile
1955 causes and shall be:
1956 1. Either a graduate of an accredited law school or of an
1957 accredited school with a degree in behavioral social work or
1958 trained in conflict resolution techniques; and
1959 2. A person of the temperament necessary to deal properly
1960 with cases involving children and with the family crises likely
1961 to be presented to him or her.
1962 Section 28. Subsections (1) through (4) and (5) through
1963 (8) of section 985.224, Florida Statutes, are renumbered,
1964 respectively, as subsections (1) through (4) and (6) through (9)
1965 of section 985.18, Florida Statutes, and paragraph (e) of
1966 subsection (10) of section 985.215, Florida Statutes, is
1967 renumbered as subsection (5) of section 985.18, Florida
1968 Statutes.
1969 Section 29. Subsections (1) and (2) of section 985.229,
1970 Florida Statutes, are renumbered as section 985.185, Florida
1971 Statutes, and amended to read:
1972 985.185 Evaluations for disposition.--
1973 (1) ~~Upon a finding that the child has committed a~~
1974 ~~delinquent act, the court may order a predisposition report~~
1975 ~~regarding the eligibility of the child for disposition other~~
1976 ~~than by adjudication and commitment to the department or for~~
1977 ~~disposition of adjudication, commitment to the department, and,~~
1978 ~~if appropriate, assignment of a residential commitment level.~~

1979 ~~The predisposition report shall be the result of the~~
1980 ~~multidisciplinary assessment when such assessment is needed, and~~
1981 ~~of the classification and placement process, and it shall~~
1982 ~~indicate and report the child's priority needs, recommendations~~
1983 ~~as to a classification of risk for the child in the context of~~
1984 ~~his or her program and supervision needs, and a plan for~~
1985 ~~treatment that recommends the most appropriate placement setting~~
1986 ~~to meet the child's needs with the minimum program security that~~
1987 ~~reasonably ensures public safety. A predisposition report shall~~
1988 ~~be ordered for any child for whom a residential commitment~~
1989 ~~disposition is anticipated or recommended by an officer of the~~
1990 ~~court or by the department.~~ A comprehensive evaluation for
1991 physical health, mental health, substance abuse, academic,
1992 educational, or vocational problems shall be ordered for any
1993 child for whom a residential commitment disposition is
1994 anticipated or recommended by an officer of the court or by the
1995 department. ~~If a comprehensive evaluation is ordered, the~~
1996 ~~predisposition report shall include a summary of the~~
1997 ~~comprehensive evaluation. The predisposition report shall be~~
1998 ~~submitted to the court upon completion of the report but no~~
1999 ~~later than 48 hours prior to the disposition hearing. The~~
2000 ~~predisposition report shall not be reviewed by the court without~~
2001 ~~the consent of the child and his or her legal counsel until the~~
2002 ~~child has been found to have committed a delinquent act.~~
2003 (2) ~~The court shall consider the child's entire assessment~~
2004 ~~and predisposition report and shall review the records of~~
2005 ~~earlier judicial proceedings~~ Prior to making a final disposition
2006 of the case, ~~.~~ the court may~~, by~~ order~~, require~~ additional

2007 evaluations and studies to be performed by the department, by
2008 the county school system, or by any social, psychological, or
2009 psychiatric agencies of the state. The court shall order the
2010 educational needs assessment completed under s. 985.18(2)
2011 ~~pursuant to s. 985.224(2)~~ to be included in the assessment and
2012 predisposition report.
2013 Section 30. Sections 985.223 and 985.418, Florida
2014 Statutes, are renumbered, respectively, as sections 985.19 and
2015 985.195, Florida Statutes.
2016 Section 31. Subsections (1) and (4) of section 985.213,
2017 Florida Statutes, are renumbered as subsections (1) and (4) of
2018 section 985.24, Florida Statutes, and subsections (1) and (2) of
2019 section 985.214, Florida Statutes, are renumbered as subsections
2020 (2) and (3) of section 985.24, Florida Statutes, and amended to
2021 read:
2022 985.24 ~~985.213~~ Use of detention; prohibitions.--
2023 (1) All determinations and court orders regarding the use
2024 of secure, nonsecure, or home detention shall be based primarily
2025 upon findings that the child:
2026 (a) Presents a substantial risk of not appearing at a
2027 subsequent hearing;
2028 (b) Presents a substantial risk of inflicting bodily harm
2029 on others as evidenced by recent behavior;
2030 (c) Presents a history of committing a property offense
2031 prior to adjudication, disposition, or placement;
2032 (d) Has committed contempt of court by:
2033 1. Intentionally disrupting the administration of the
2034 court;

2035 2. Intentionally disobeying a court order; or
2036 3. Engaging in a punishable act or speech in the court's
2037 presence which shows disrespect for the authority and dignity of
2038 the court; or
2039 (e) Requests protection from imminent bodily harm.
2040 ~~985.214 Prohibited uses of detention.--~~
2041 (2) ~~(1)~~ A child alleged to have committed a delinquent act
2042 or violation of law may not be placed into secure, nonsecure, or
2043 home detention care for any of the following reasons:
2044 (a) To allow a parent to avoid his or her legal
2045 responsibility.
2046 (b) To permit more convenient administrative access to the
2047 child.
2048 (c) To facilitate further interrogation or investigation.
2049 (d) Due to a lack of more appropriate facilities.
2050 (3) ~~(2)~~ A child alleged to be dependent under ~~part II of~~
2051 chapter 39 may not, under any circumstances, be placed into
2052 secure detention care.
2053 (4) The department ~~of Juvenile Justice~~ shall continue to
2054 identify alternatives to secure detention care and shall develop
2055 such alternatives and annually submit them to the Legislature
2056 for authorization and appropriation.
2057 Section 32. Subsection (2) of section 985.213, Florida
2058 Statutes, is renumbered as section 985.245, Florida Statutes,
2059 and amended to read:
2060 985.245 Risk assessment instrument.--
2061 (1) ~~(2)(a)~~ All determinations and court orders regarding
2062 placement of a child into detention care shall comply with all

2063 requirements and criteria provided in this part and shall be
2064 based on a risk assessment of the child, unless the child is
2065 placed into detention care as provided in s. 985.255(2)
2066 ~~subparagraph (b)3~~.
2067 (2)(a) ~~(b)1.~~ The risk assessment instrument for detention
2068 care placement determinations and orders shall be developed by
2069 the department ~~of Juvenile Justice~~ in agreement with
2070 representatives appointed by the following associations: the
2071 Conference of Circuit Judges of Florida, the Prosecuting
2072 Attorneys Association, the Public Defenders Association, the
2073 Florida Sheriffs Association, and the Florida Association of
2074 Chiefs of Police. Each association shall appoint two
2075 individuals, one representing an urban area and one representing
2076 a rural area. The parties involved shall evaluate and revise the
2077 risk assessment instrument as is considered necessary using the
2078 method for revision as agreed by the parties.
2079 (b) The risk assessment instrument shall take into
2080 consideration, but need not be limited to, prior history of
2081 failure to appear, prior offenses, offenses committed pending
2082 adjudication, any unlawful possession of a firearm, theft of a
2083 motor vehicle or possession of a stolen motor vehicle, and
2084 probation status at the time the child is taken into custody.
2085 The risk assessment instrument shall also take into
2086 consideration appropriate aggravating and mitigating
2087 circumstances, and shall be designed to target a narrower
2088 population of children than s. 985.255 ~~985.215(2)~~. The risk
2089 assessment instrument shall also include any information
2090 concerning the child's history of abuse and neglect. The risk

2091 assessment shall indicate whether detention care is warranted,
2092 and, if detention care is warranted, whether the child should be
2093 placed into secure, nonsecure, or home detention care.
2094 (3)~~2.~~ If, at the detention hearing, the court finds a
2095 material error in the scoring of the risk assessment instrument,
2096 the court may amend the score to reflect factual accuracy.
2097 ~~3. A child who is charged with committing an offense of~~
2098 ~~domestic violence as defined in s. 741.28 and who does not meet~~
2099 ~~detention criteria may be held in secure detention if the court~~
2100 ~~makes specific written findings that:~~
2101 ~~a. Respite care for the child is not available; and~~
2102 ~~b. It is necessary to place the child in secure detention~~
2103 ~~in order to protect the victim from injury.~~
2104
2105 ~~The child may not be held in secure detention under this~~
2106 ~~subparagraph for more than 48 hours unless ordered by the court.~~
2107 ~~After 48 hours, the court shall hold a hearing if the state~~
2108 ~~attorney or victim requests that secure detention be continued.~~
2109 ~~The child may continue to be held in detention care if the court~~
2110 ~~makes a specific, written finding that detention care is~~
2111 ~~necessary to protect the victim from injury. However, the child~~
2112 ~~may not be held in detention care beyond the time limits set~~
2113 ~~forth in s. 985.215.~~
2114 (4)~~4.~~ For a child who is under the supervision of the
2115 department through probation, home detention, nonsecure
2116 detention, conditional release, postcommitment probation, or
2117 commitment and who is charged with committing a new offense, the
2118 risk assessment instrument may be completed and scored based on

2119 the underlying charge for which the child was placed under the
2120 supervision of the department and the new offense.
2121 Section 33. Subsection (1) and paragraph (b) of subsection
2122 (5) of section 985.215, Florida Statutes, are renumbered as
2123 section 985.25, Florida Statutes, and amended to read:
2124 985.25 ~~985.215~~ Detention intake.--
2125 (1) The juvenile probation officer shall receive custody
2126 of a child who has been taken into custody from the law
2127 enforcement agency and shall review the facts in the law
2128 enforcement report or probable cause affidavit and make such
2129 further inquiry as may be necessary to determine whether
2130 detention care is required.
2131 (a) During the period of time from the taking of the child
2132 into custody to the date of the detention hearing, the initial
2133 decision as to the child's placement into secure detention care,
2134 nonsecure detention care, or home detention care shall be made
2135 by the juvenile probation officer under ss. 985.24 and
2136 985.245(1) ~~pursuant to ss. 985.213 and 985.214~~.
2137 (b) The juvenile probation officer shall base the decision
2138 whether or not to place the child into secure detention care,
2139 home detention care, or nonsecure detention care on an
2140 assessment of risk in accordance with the risk assessment
2141 instrument and procedures developed by the department ~~of~~
2142 ~~Juvenile Justice~~ under s. 985.245 ~~985.213~~. However, a child
2143 charged with possessing or discharging a firearm on school
2144 property in violation of s. 790.115 shall be placed in secure
2145 detention care.

2146 (c) If the juvenile probation officer determines that a
2147 child who is eligible for detention based upon the results of
2148 the risk assessment instrument should be released, the juvenile
2149 probation officer shall contact the state attorney, who may
2150 authorize release. If detention is not authorized, the child may
2151 be released by the juvenile probation officer in accordance with
2152 ss. 985.115 and 985.13 ~~s. 985.211~~.
2153
2154 Under no circumstances shall the juvenile probation officer or
2155 the state attorney or law enforcement officer authorize the
2156 detention of any child in a jail or other facility intended or
2157 used for the detention of adults, without an order of the court.
2158 (2) ~~(5)~~
2159 ~~(b)~~ The arresting law enforcement agency shall complete
2160 and present its investigation of an offense ~~under this~~
2161 ~~subsection~~ to the appropriate state attorney's office within 8
2162 days after placement of the child in secure detention. The
2163 investigation shall include, but is not limited to, police
2164 reports and supplemental police reports, witness statements, and
2165 evidence collection documents. The failure of a law enforcement
2166 agency to complete and present its investigation within 8 days
2167 shall not entitle a juvenile to be released from secure
2168 detention or to a dismissal of any charges.
2169 Section 34. Subsection (2) of section 985.215, Florida
2170 Statutes, is renumbered as section 985.255, Florida Statutes,
2171 and amended to read:
2172 985.255 Detention criteria; detention hearing.--

2173 (1) ~~(2)~~ Subject to s. 985.25(1) ~~the provisions of~~
2174 ~~subsection (1)~~, a child taken into custody and placed into
2175 nonsecure or home detention care or detained in secure detention
2176 care prior to a detention hearing may continue to be detained by
2177 the court if:
2178 (a) The child is alleged to be an escapee from a
2179 residential commitment program, or an absconder from a
2180 nonresidential commitment program, a probation program, or
2181 conditional release supervision, or is alleged to have escaped
2182 while being lawfully transported to or from a residential
2183 commitment program.
2184 (b) The child is wanted in another jurisdiction for an
2185 offense which, if committed by an adult, would be a felony.
2186 (c) The child is charged with a delinquent act or
2187 violation of law and requests in writing through legal counsel
2188 to be detained for protection from an imminent physical threat
2189 to his or her personal safety.
2190 (d) The child is charged with committing an offense of
2191 domestic violence as defined in s. 741.28 and is detained as
2192 provided in subsection (2) ~~s. 985.213(2)(b)3~~.
2193 (e) The child is charged with possession or discharging a
2194 firearm on school property in violation of s. 790.115.
2195 (f) The child is charged with a capital felony, a life
2196 felony, a felony of the first degree, a felony of the second
2197 degree that does not involve a violation of chapter 893, or a
2198 felony of the third degree that is also a crime of violence,
2199 including any such offense involving the use or possession of a
2200 firearm.

2201 (g) The child is charged with any second degree or third
2202 degree felony involving a violation of chapter 893 or any third
2203 degree felony that is not also a crime of violence, and the
2204 child:
2205 1. Has a record of failure to appear at court hearings
2206 after being properly notified in accordance with the Rules of
2207 Juvenile Procedure;
2208 2. Has a record of law violations prior to court hearings;
2209 3. Has already been detained or has been released and is
2210 awaiting final disposition of the case;
2211 4. Has a record of violent conduct resulting in physical
2212 injury to others; or
2213 5. Is found to have been in possession of a firearm.
2214 (h) The child is alleged to have violated the conditions
2215 of the child's probation or conditional release supervision.
2216 However, a child detained under this paragraph may be held only
2217 in a consequence unit as provided in 985.439 ~~s.~~
2218 ~~985.231(1)(a)1.c~~. If a consequence unit is not available, the
2219 child shall be placed on home detention with electronic
2220 monitoring.
2221 (i) The child is detained on a judicial order for failure
2222 to appear and has previously willfully failed to appear, after
2223 proper notice, for an adjudicatory hearing on the same case
2224 regardless of the results of the risk assessment instrument. A
2225 child may be held in secure detention for up to 72 hours in
2226 advance of the next scheduled court hearing pursuant to this
2227 paragraph. The child's failure to keep the clerk of court and
2228 defense counsel informed of a current and valid mailing address

2229 where the child will receive notice to appear at court
2230 proceedings does not provide an adequate ground for excusal of
2231 the child's nonappearance at the hearings.
2232 (j) The child is detained on a judicial order for failure
2233 to appear and has previously willfully failed to appear, after
2234 proper notice, at two or more court hearings of any nature on
2235 the same case regardless of the results of the risk assessment
2236 instrument. A child may be held in secure detention for up to 72
2237 hours in advance of the next scheduled court hearing pursuant to
2238 this paragraph. The child's failure to keep the clerk of court
2239 and defense counsel informed of a current and valid mailing
2240 address where the child will receive notice to appear at court
2241 proceedings does not provide an adequate ground for excusal of
2242 the child's nonappearance at the hearings.
2243 (2) A child who is charged with committing an offense of
2244 domestic violence as defined in s. 741.28 and who does not meet
2245 detention criteria may be held in secure detention if the court
2246 makes specific written findings that:
2247 (a) Respite care for the child is not available.
2248 (b) It is necessary to place the child in secure detention
2249 in order to protect the victim from injury.
2250
2251 The child may not be held in secure detention under this
2252 subsection for more than 48 hours unless ordered by the court.
2253 After 48 hours, the court shall hold a hearing if the state
2254 attorney or victim requests that secure detention be continued.
2255 The child may continue to be held in detention care if the court
2256 makes a specific, written finding that detention care is

2257 necessary to protect the victim from injury. However, the child
2258 may not be held in detention care beyond the time limits set
2259 forth in this section or s. 985.26.
2260 (3)(a) A child who meets any of the ~~these~~ criteria in
2261 subsection (1) and who is ordered to be detained under that
2262 ~~pursuant to this~~ subsection shall be given a hearing within 24
2263 hours after being taken into custody. The purpose of the
2264 detention hearing is to determine the existence of probable
2265 cause that the child has committed the delinquent act or
2266 violation of law that ~~with which~~ he or she is charged with and
2267 the need for continued detention. Unless a child is detained
2268 under paragraph (1)(d) or paragraph (1)(e), the court shall use
2269 ~~utilize~~ the results of the risk assessment performed by the
2270 juvenile probation officer and, based on the criteria in ~~this~~
2271 subsection (1), shall determine the need for continued
2272 detention. A child placed into secure, nonsecure, or home
2273 detention care may continue to be so detained by the court
2274 ~~pursuant to this subsection~~.
2275 (b) If the court orders a placement more restrictive than
2276 indicated by the results of the risk assessment instrument, the
2277 court shall state, in writing, clear and convincing reasons for
2278 such placement.
2279 (c) Except as provided in s. 790.22(8) or in s. 985.27
2280 ~~subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c), or~~
2281 ~~paragraph (10)(d)~~, when a child is placed into secure or
2282 nonsecure detention care, or into a respite home or other
2283 placement pursuant to a court order following a hearing, the
2284 court order must include specific instructions that direct the

2285 release of the child from such placement no later than 5 p.m. on
2286 the last day of the detention period specified in s. 985.26 or
2287 s. 985.27 ~~paragraph (5)(b) or paragraph (5)(c), or subparagraph~~
2288 ~~(10)(a)1.~~, whichever is applicable, unless the requirements of
2289 such applicable provision have been met or an order of
2290 continuance has been granted under s. 985.26(4) ~~pursuant to~~
2291 ~~paragraph (5)(f)~~.
2292 Section 35. Paragraphs (c) and (g) of subsection (5) of
2293 section 985.215, Florida Statutes, are renumbered as subsection
2294 (2) of section 985.26, Florida Statutes, paragraphs (a), (d),
2295 (e), and (f) of subsection (5) of section 985.215, Florida
2296 Statutes, are renumbered, respectively, as subsections (1), (3),
2297 (5), and (4) of section 985.26, Florida Statutes, and subsection
2298 (7) of section 985.215, Florida Statutes, is renumbered as
2299 subsection (6) of section 985.26, Florida Statutes, and amended
2300 to read:
2301 985.26 Length of detention.--
2302 (1) ~~(5)(a)~~ A child may not be placed into or held in
2303 secure, nonsecure, or home detention care for longer than 24
2304 hours unless the court orders such detention care, and the order
2305 includes specific instructions that direct the release of the
2306 child from such detention care, in accordance with 985.255
2307 ~~subsection (2)~~. The order shall be a final order, reviewable by
2308 appeal under ~~pursuant to~~ s. 985.534 ~~985.234~~ and the Florida
2309 Rules of Appellate Procedure. Appeals of such orders shall take
2310 precedence over other appeals and other pending matters.
2311 (2) ~~(c)~~ ~~Except as provided in paragraph (g),~~ A child may
2312 not be held in secure, nonsecure, or home detention care under a

2313 special detention order for more than 21 days unless an
2314 adjudicatory hearing for the case has been commenced in good
2315 faith by the court. However, upon good cause being shown that
2316 the nature of the charge requires additional time for the
2317 prosecution or defense of the case, the court may extend the
2318 length of detention for an additional 9 days if the child is
2319 charged with an offense that would be, if committed by an adult,
2320 a capital felony, a life felony, a felony of the first degree,
2321 or a felony of the second degree involving violence against any
2322 individual.
2323 (3) ~~(d)~~ Except as provided in subsection (2) ~~paragraph (g)~~,
2324 a child may not be held in secure, nonsecure, or home detention
2325 care for more than 15 days following the entry of an order of
2326 adjudication.
2327 (4) ~~(f)~~ The time limits in subsections (2) and (3)
2328 ~~paragraphs (c) and (d)~~ do not include periods of delay resulting
2329 from a continuance granted by the court for cause on motion of
2330 the child or his or her counsel or of the state. Upon the
2331 issuance of an order granting a continuance for cause on a
2332 motion by either the child, the child's counsel, or the state,
2333 the court shall conduct a hearing at the end of each 72-hour
2334 period, excluding Saturdays, Sundays, and legal holidays, to
2335 determine the need for continued detention of the child and the
2336 need for further continuance of proceedings for the child or the
2337 state.
2338 (5) ~~(e)~~ A child who was not in secure detention at the time
2339 of the adjudicatory hearing, but for whom residential commitment
2340 is anticipated or recommended, may be placed under a special

2341 detention order for a period not to exceed 72 hours, excluding
2342 weekends and legal holidays, for the purpose of conducting a
2343 comprehensive evaluation as provided in s. 985.185 ~~985.229(1)~~.
2344 Motions for the issuance of such special detention order may be
2345 made subsequent to a finding of delinquency. Upon said motion,
2346 the court shall conduct a hearing to determine the
2347 appropriateness of such special detention order and shall order
2348 the least restrictive level of detention necessary to complete
2349 the comprehensive evaluation process that is consistent with
2350 public safety. Such special detention order may be extended for
2351 an additional 72 hours upon further order of the court.
2352 ~~(g) Upon good cause being shown that the nature of the~~
2353 ~~charge requires additional time for the prosecution or defense~~
2354 ~~of the case, the court may extend the time limits for detention~~
2355 ~~specified in paragraph (c) an additional 9 days if the child is~~
2356 ~~charged with an offense that would be, if committed by an adult,~~
2357 ~~a capital felony, a life felony, a felony of the first degree,~~
2358 ~~or a felony of the second degree involving violence against any~~
2359 ~~individual.~~
2360 (6) ~~(7)~~ If a child is detained and a petition for
2361 delinquency is filed, the child shall be arraigned in accordance
2362 with the Florida Rules of Juvenile Procedure within 48 hours
2363 after the filing of the petition for delinquency.
2364 Section 36. Subsections (4), (8), (9), and (11) of section
2365 985.215, Florida Statutes, are renumbered, respectively, as
2366 subsections (5), (1), (2), and (3) of section 985.265, Florida
2367 Statutes, and subsection (3) of section 985.213, Florida

2368 Statutes, is renumbered as subsection (4) of section 985.265,
2369 Florida Statutes, and amended to read:
2370 985.265 Detention transfer and release; education; adult
2371 jails.--
2372 (1) ~~(8)~~ If a child is detained under ~~pursuant to~~ this part
2373 ~~section~~, the department ~~of Juvenile Justice~~ may transfer the
2374 child from nonsecure or home detention care to secure detention
2375 care only if significantly changed circumstances warrant such
2376 transfer.
2377 (2) ~~(9)~~ If a child is on release status and not detained
2378 under ~~pursuant to~~ this part ~~section~~, the child may be placed
2379 into secure, nonsecure, or home detention care only pursuant to
2380 a court hearing in which the original risk assessment
2381 instrument, rescored based on newly discovered evidence or
2382 changed circumstances with the results recommending detention,
2383 is introduced into evidence.
2384 (3) ~~(11)~~ (a) When a juvenile sexual offender is placed in
2385 detention, detention staff shall provide appropriate monitoring
2386 and supervision to ensure the safety of other children in the
2387 facility.
2388 (b) When a juvenile sexual offender, under ~~pursuant to~~
2389 this subsection, is released from detention or transferred to
2390 home detention or nonsecure detention, detention staff shall
2391 immediately notify the appropriate law enforcement agency and
2392 school personnel.
2393 (4) ~~(3)~~ (a) While a child who is currently enrolled in
2394 school is in nonsecure or home detention care, the child shall
2395 continue to attend school unless otherwise ordered by the court.

2396 (b) While a child is in secure detention care, the child
2397 shall receive education commensurate with his or her grade level
2398 and educational ability.
2399 (5) ~~(4)~~ The court shall order the delivery of a child to a
2400 jail or other facility intended or used for the detention of
2401 adults:
2402 (a) When the child has been transferred or indicted for
2403 criminal prosecution as an adult under ~~pursuant to this~~ part X,
2404 except that the court may not order or allow a child alleged to
2405 have committed a misdemeanor who is being transferred for
2406 criminal prosecution pursuant to either s. 985.556 ~~985.226~~ or s.
2407 985.557 ~~985.227~~ to be detained or held in a jail or other
2408 facility intended or used for the detention of adults; however,
2409 such child may be held temporarily in a detention facility; or
2410 (b) When a child taken into custody in this state is
2411 wanted by another jurisdiction for prosecution as an adult.
2412
2413 The child shall be housed separately from adult inmates to
2414 prohibit a child from having regular contact with incarcerated
2415 adults, including trustees. "Regular contact" means sight and
2416 sound contact. Separation of children from adults shall permit
2417 no more than haphazard or accidental contact. The receiving jail
2418 or other facility shall contain a separate section for children
2419 and shall have an adequate staff to supervise and monitor the
2420 child's activities at all times. Supervision and monitoring of
2421 children includes physical observation and documented checks by
2422 jail or receiving facility supervisory personnel at intervals
2423 not to exceed 15 minutes. This subsection ~~paragraph~~ does not

2424 prohibit placing two or more children in the same cell. Under no
2425 circumstances shall a child be placed in the same cell with an
2426 adult.
2427 Section 37. Paragraphs (a) through (d) and paragraph (f)
2428 of subsection (10) of section 985.215, Florida Statutes, are
2429 renumbered as section 985.27, Florida Statutes, and amended to
2430 read:
2431 985.27 Postcommitment detention while awaiting
2432 placement.--
2433 (1) ~~(a)1. When a child is committed to the Department of~~
2434 ~~Juvenile Justice awaiting dispositional placement, removal of~~
2435 ~~the child from detention care shall occur within 5 days,~~
2436 ~~excluding Saturdays, Sundays, and legal holidays. Any child held~~
2437 ~~in secure detention during the 5 days must meet detention~~
2438 ~~admission criteria pursuant to this section. If the child is~~
2439 ~~committed to a moderate-risk residential program, the department~~
2440 ~~may seek an order from the court authorizing continued detention~~
2441 ~~for a specific period of time necessary for the appropriate~~
2442 ~~residential placement of the child. However, such continued~~
2443 ~~detention in secure detention care may not exceed 15 days after~~
2444 ~~commitment, excluding Saturdays, Sundays, and legal holidays,~~
2445 ~~and except as otherwise provided in this subsection.~~
2446 ~~2.~~ The court must place all children who are adjudicated
2447 and awaiting placement in a commitment program in detention
2448 care. Children who are in home detention care or nonsecure
2449 detention care may be placed on electronic monitoring.
2450 (a) A child who is awaiting placement in a low-risk
2451 residential program must be removed from detention within 5

2452 days, excluding Saturdays, Sundays, and legal holidays. Any
2453 child held in secure detention during the 5 days must meet
2454 detention admission criteria under this part.
2455 ~~(b)~~ A child who is placed in home detention care,
2456 nonsecure detention care, or home or nonsecure detention care
2457 with electronic monitoring, while awaiting placement in a
2458 minimum-risk or~~,~~ low-risk~~, or moderate-risk~~ program, may be held
2459 in secure detention care for 5 days, if the child violates the
2460 conditions of the home detention care, the nonsecure detention
2461 care, or the electronic monitoring agreement. For any subsequent
2462 violation, the court may impose an additional 5 days in secure
2463 detention care.
2464 (b) A child who is awaiting placement in a moderate-risk
2465 residential program must be removed from detention within 5
2466 days, excluding Saturdays, Sundays, and legal holidays. Any
2467 child held in secure detention during the 5 days must meet
2468 detention admission criteria under this part. The department may
2469 seek an order from the court authorizing continued detention for
2470 a specific period of time necessary for the appropriate
2471 residential placement of the child. However, such continued
2472 detention in secure detention care may not exceed 15 days after
2473 entry of the commitment order, excluding Saturdays, Sundays, and
2474 legal holidays, and except as otherwise provided in this
2475 section. A child who is placed in home detention care, nonsecure
2476 detention care, or home or nonsecure detention care with
2477 electronic monitoring, while awaiting placement in a moderate-
2478 risk program, may be held in secure detention care for 5 days,
2479 if the child violates the conditions of the home detention care,

2480 the nonsecure detention care, or the electronic monitoring
2481 agreement. For any subsequent violation, the court may impose an
2482 additional 5 days in secure detention care.
2483 (c) If the child is committed to a high-risk residential
2484 program, the child must be held in detention care until
2485 placement or commitment is accomplished.
2486 (d) If the child is committed to a maximum-risk
2487 residential program, the child must be held in detention care
2488 until placement or commitment is accomplished.
2489 (2) ~~(f)~~ Regardless of detention status, a child being
2490 transported by the department to a residential commitment
2491 facility of the department may be placed in secure detention
2492 overnight, not to exceed a 24-hour period, for the specific
2493 purpose of ensuring the safe delivery of the child to his or her
2494 residential commitment program, court, appointment, transfer, or
2495 release.
2496 Section 38. Section 985.208, Florida Statutes, is
2497 renumbered as section 985.275, Florida Statutes, and amended to
2498 read:
2499 985.275 ~~985.208~~ Detention of escapee or absconder on
2500 authority of the department.--
2501 (1) If an authorized agent of the department has
2502 reasonable grounds to believe that any delinquent child
2503 committed to the department has escaped from a residential
2504 commitment facility or from being lawfully transported thereto
2505 or therefrom, or has absconded from a nonresidential commitment
2506 facility, the agent may take the child into active custody and
2507 may deliver the child to the facility or, if it is closer, to a

2508 detention center for return to the facility. However, a child
2509 may not be held in detention longer than 24 hours, excluding
2510 Saturdays, Sundays, and legal holidays, unless a special order
2511 so directing is made by the judge after a detention hearing
2512 resulting in a finding that detention is required based on the
2513 criteria in s. 985.255 ~~985.215(2)~~. The order shall state the
2514 reasons for such finding. The reasons shall be reviewable by
2515 appeal or in habeas corpus proceedings in the district court of
2516 appeal.
2517 (2) Any sheriff or other law enforcement officer, upon the
2518 request of the secretary of the department or duly authorized
2519 agent, shall take a child who has escaped from a residential
2520 commitment facility or from being lawfully transported thereto
2521 or therefrom, or has absconded from a nonresidential commitment
2522 facility, into custody and deliver the child to the appropriate
2523 juvenile probation officer.
2524 Section 39. Section 985.218, Florida Statutes, is
2525 renumbered as section 985.318, Florida Statutes.
2526 Section 40. Subsections (1) through (7) and (9) through
2527 (12) of section 985.219, Florida Statutes, are renumbered as
2528 subsections (1) through (11) of section 985.319, Florida
2529 Statutes, and subsection (6) of that section is amended to read:
2530 985.319 ~~985.219~~ Process and service.--
2531 (6) If the petition alleges that the child has committed a
2532 delinquent act or violation of law and the judge deems it
2533 advisable to do so, under ~~pursuant to~~ the criteria of s. 985.255
2534 ~~s. 985.215~~, the judge may, by endorsement upon the summons and
2535 after the entry of an order in which valid reasons are

2536 specified, order the child to be taken into custody immediately,
2537 and in such case the person serving the summons shall
2538 immediately take the child into custody.
2539 Section 41. Section 985.22, Florida Statutes, is
2540 renumbered as section 985.325, Florida Statutes, and amended to
2541 read:
2542 985.325 ~~985.22~~ Threatening or dismissing an employee
2543 prohibited.--
2544 (1) An employer, or the employer's agent, may not dismiss
2545 from employment an employee who is summoned to appear before the
2546 court under s. 985.319 ~~985.219~~ solely because of the nature of
2547 the summons or because the employee complies with the summons.
2548 (2) If an employer, or the employer's agent, threatens an
2549 employee with dismissal, or dismisses an employee, who is
2550 summoned to appear under s. 985.319 ~~985.219~~, the court may hold
2551 the employer in contempt.
2552 Section 42. Sections 985.221, 985.222, and 985.306,
2553 Florida Statutes, are renumbered, respectively, as sections
2554 985.331, 985.335, and 985.345, Florida Statutes.
2555 Section 43. Section 985.228, Florida Statutes, is
2556 renumbered as section 985.35, Florida Statutes, and amended to
2557 read:
2558 985.35 ~~985.228~~ Adjudicatory hearings; withheld
2559 adjudications; orders of adjudication.--
2560 (1) The adjudicatory hearing must be held as soon as
2561 practicable after the petition alleging that a child has
2562 committed a delinquent act or violation of law is filed and in
2563 accordance with the Florida Rules of Juvenile Procedure; but

2564 reasonable delay for the purpose of investigation, discovery, or
2565 procuring counsel or witnesses shall be granted. If the child is
2566 being detained, the time limitations ~~provided for~~ in s.
2567 985.26(2) and (3) ~~985.215(5)(c) and (d)~~ apply.
2568 (2) Adjudicatory hearings shall be conducted without a
2569 jury by the court, applying in delinquency cases the rules of
2570 evidence in use in criminal cases; adjourning the hearings from
2571 time to time as necessary; and conducting a fundamentally fair
2572 hearing in language understandable, to the fullest extent
2573 practicable, to the child before the court.
2574 (a) In a hearing on a petition alleging that a child has
2575 committed a delinquent act or violation of law, the evidence
2576 must establish the findings beyond a reasonable doubt.
2577 (b) The child is entitled to the opportunity to introduce
2578 evidence and otherwise be heard in the child's own behalf and to
2579 cross-examine witnesses.
2580 (c) A child charged with a delinquent act or violation of
2581 law must be afforded all rights against self-incrimination.
2582 Evidence illegally seized or obtained may not be received to
2583 establish the allegations against the child.
2584 (3) If the court finds that the child named in a petition
2585 has not committed a delinquent act or violation of law, it shall
2586 enter an order so finding and dismissing the case.
2587 (4) If the court finds that the child named in the
2588 petition has committed a delinquent act or violation of law, it
2589 may, in its discretion, enter an order stating the facts upon
2590 which its finding is based but withholding adjudication of
2591 delinquency.

2592 (a) Upon withholding adjudication of delinquency, the
2593 court may place ~~and placing~~ the child in a probation program
2594 under the supervision of the department or under the supervision
2595 of any other person or agency specifically authorized and
2596 appointed by the court. The court may, as a condition of the
2597 program, impose as a penalty component restitution in money or
2598 in kind, community service, a curfew, urine monitoring,
2599 revocation or suspension of the driver's license of the child,
2600 or other nonresidential punishment appropriate to the offense,
2601 and may impose as a rehabilitative component a requirement of
2602 participation in substance abuse treatment, or school or other
2603 educational program attendance.
2604 (b) If the child is attending public school and the court
2605 finds that the victim or a sibling of the victim in the case was
2606 assigned to attend or is eligible to attend the same school as
2607 the child, the court order shall include a finding pursuant to
2608 the proceedings described in s. 985.455, regardless of whether
2609 adjudication is withheld ~~985.23(1)(d)~~.
2610 (c) If the court later finds that the child has not
2611 complied with the rules, restrictions, or conditions of the
2612 community-based program, the court may, after a hearing to
2613 establish the lack of compliance, but without further evidence
2614 of the state of delinquency, enter an adjudication of
2615 delinquency and shall thereafter have full authority under this
2616 chapter to deal with the child as adjudicated.
2617 (5) If the court finds that the child named in a petition
2618 has committed a delinquent act or violation of law, but elects
2619 not to proceed under subsection (4), it shall incorporate that

2620 finding in an order of adjudication of delinquency entered in
2621 the case, briefly stating the facts upon which the finding is
2622 made, and the court shall thereafter have full authority under
2623 this chapter to deal with the child as adjudicated.
2624 (6) Except as the term "conviction" is used in chapter
2625 322, and except for use in a subsequent proceeding under this
2626 chapter, an adjudication of delinquency by a court with respect
2627 to any child who has committed a delinquent act or violation of
2628 law shall not be deemed a conviction; nor shall the child be
2629 deemed to have been found guilty or to be a criminal by reason
2630 of that adjudication; nor shall that adjudication operate to
2631 impose upon the child any of the civil disabilities ordinarily
2632 imposed by or resulting from conviction or to disqualify or
2633 prejudice the child in any civil service application or
2634 appointment, with the exception of the use of records of
2635 proceedings under this chapter ~~part~~ as provided in s. 985.045(4)
2636 ~~s. 985.05(4)~~.
2637 (7) Notwithstanding any other provision of law, an
2638 adjudication of delinquency for an offense classified as a
2639 felony shall disqualify a person from lawfully possessing a
2640 firearm until such person reaches 24 years of age.
2641 Section 44. Subsection (3) of section 985.229, Florida
2642 Statutes, is renumbered as subsection (3) of section 985.43,
2643 Florida Statutes, and section 985.43, Florida Statutes, is
2644 created to read:
2645 985.43 Predisposition reports; other evaluations.--
2646 (1) Upon a finding that the child has committed a
2647 delinquent act:

2648 (a) The court may order the department to prepare a
2649 predisposition report regarding the child's eligibility for
2650 disposition other than by adjudication and commitment to the
2651 department or for disposition of adjudication, commitment to the
2652 department, and, if appropriate, assignment of a residential
2653 commitment level. The predisposition report shall be the result
2654 of the multidisciplinary assessment, when such assessment is
2655 needed, and of the classification and placement process, and it
2656 shall indicate and report the child's priority needs,
2657 recommendations as to a classification of risk for the child in
2658 the context of his or her program and supervision needs, and a
2659 plan for treatment that recommends the most appropriate
2660 placement setting to meet the child's needs with the minimum
2661 program security that reasonably ensures public safety. A
2662 predisposition report shall be ordered for any child for whom a
2663 residential commitment disposition is anticipated or recommended
2664 by an officer of the court or by the department.
2665 (b) A comprehensive evaluation for physical health; mental
2666 health; substance abuse; or academic, educational, or vocational
2667 problems shall be ordered for any child for whom a residential
2668 commitment disposition is anticipated or recommended by an
2669 officer of the court or by the department. If a comprehensive
2670 evaluation is ordered, the predisposition report shall include a
2671 summary of the comprehensive evaluation.
2672 (c) A child who was not in secure detention at the time of
2673 the adjudicatory hearing, but for whom residential commitment is
2674 anticipated or recommended, may be placed under a special

2675 detention order, as provided in s. 985.26(5), for the purpose of
2676 conducting a comprehensive evaluation.
2677 (2) The court shall consider the child's entire assessment
2678 and predisposition report and shall review the records of
2679 earlier judicial proceedings prior to making a final disposition
2680 of the case. The court may, by order, require additional
2681 evaluations and studies to be performed by the department, the
2682 county school system, or any social, psychological, or
2683 psychiatric agency of the state. The court shall order the
2684 educational needs assessment completed under s. 985.18(2) to be
2685 included in the assessment and predisposition report.
2686 (3) The predisposition report, together with all other
2687 reports and evaluations used by the department in preparing the
2688 predisposition report, shall be made available to the child, the
2689 child's parents or legal guardian, the child's legal counsel,
2690 and the state attorney upon completion of the report and at a
2691 reasonable time prior to the disposition hearing. The
2692 predisposition report shall be submitted to the court upon
2693 completion of the report but no later than 48 hours prior to the
2694 disposition hearing. The predisposition report shall not be
2695 reviewed by the court without the consent of the child and his
2696 or her legal counsel until the child has been found to have
2697 committed a delinquent act.
2698 Section 45. Section 985.23, Florida Statutes, is
2699 renumbered as section 985.433, Florida Statutes, and amended to
2700 read:
2701 985.433 ~~985.23~~ Disposition hearings in delinquency
2702 cases.--When a child has been found to have committed a

2703 delinquent act, the following procedures shall be applicable to
2704 the disposition of the case:
2705 (1) ~~(7)~~ The court shall notify any victim of the offense,
2706 if such person is known and within the jurisdiction of the
2707 court, of the hearing.
2708 (2) The court ~~and~~ shall notify and summon or subpoena, if
2709 necessary, the parents, legal custodians, or guardians of the
2710 child to attend the disposition hearing if they reside in the
2711 state.
2712
2713 ~~It is the intent of the Legislature that the criteria set forth~~
2714 ~~in subsection (2) are general guidelines to be followed at the~~
2715 ~~discretion of the court and not mandatory requirements of~~
2716 ~~procedure. It is not the intent of the Legislature to provide~~
2717 ~~for the appeal of the disposition made pursuant to this section.~~
2718 (3) ~~(6)~~ The court may receive and consider any other
2719 relevant and material evidence, including other written or oral
2720 reports or statements, in its effort to determine the
2721 appropriate disposition to be made with regard to the child. The
2722 court may rely upon such evidence to the extent of its probative
2723 value, even though such evidence may not be technically
2724 competent in an adjudicatory hearing.
2725 (4) ~~(1)~~ Before the court determines and announces the
2726 disposition to be imposed, it shall:
2727 (a) State clearly, using common terminology, the purpose
2728 of the hearing and the right of persons present as parties to
2729 comment at the appropriate time on the issues before the court. ~~,~~

2730 (b) Discuss with the child his or her compliance with any
2731 home release plan or other plan imposed since the date of the
2732 offense.~~;~~
2733 (c) Discuss with the child his or her feelings about the
2734 offense committed, the harm caused to the victim or others, and
2735 what penalty he or she should be required to pay for such
2736 transgression.~~; and~~
2737 (d) Give all parties, as well as the victim or a
2738 representative of the victim, representatives of the school
2739 system, and the law enforcement officers involved in the case
2740 who are present at the hearing an opportunity to comment on the
2741 issue of disposition and any proposed rehabilitative plan.
2742 Parties to the case shall include the parents, legal custodians,
2743 or guardians of the child; the child's counsel; the state
2744 attorney; and representatives of the department~~; the victim if~~
2745 ~~any, or his or her representative; representatives of the school~~
2746 ~~system; and the law enforcement officers involved in the case.~~
2747 ~~If the child is attending or is eligible to attend public school~~
2748 ~~and the court finds that the victim or a sibling of the victim~~
2749 ~~in the case is attending or may attend the same school as the~~
2750 ~~child, the court shall, on its own motion or upon the request of~~
2751 ~~any party or any parent or legal guardian of the victim,~~
2752 ~~determine whether it is appropriate to enter a no contact order~~
2753 ~~in favor of the victim or a sibling of the victim. If~~
2754 ~~appropriate and acceptable to the victim and the victim's parent~~
2755 ~~or parents or legal guardian, the court may reflect in the~~
2756 ~~written disposition order that the victim or the victim's parent~~
2757 ~~stated in writing or in open court that he or she did not object~~

2758 ~~to the offender being permitted to attend the same school or~~
2759 ~~ride on the same school bus as the victim or a sibling of the~~
2760 ~~victim~~.
2761 (5) At the time of disposition, the court may make
2762 recommendations to the department as to specific treatment
2763 approaches to be employed.
2764 (6) ~~(2)~~ The first determination to be made by the court is
2765 a determination of the suitability or nonsuitability for
2766 adjudication and commitment of the child to the department. This
2767 determination shall include consideration of the recommendations
2768 of the department, which may include a predisposition report.
2769 The predisposition report shall include, whether as part of the
2770 child's multidisciplinary assessment, classification, and
2771 placement process components or separately, evaluation of the
2772 following criteria:
2773 (a) The seriousness of the offense to the community. If
2774 the court determines under chapter 874 that the child was a
2775 member of a criminal street gang at the time of the commission
2776 of the offense~~, which determination shall be made pursuant to~~
2777 ~~chapter 874~~, the seriousness of the offense to the community
2778 shall be given great weight.
2779 (b) Whether the protection of the community requires
2780 adjudication and commitment to the department.
2781 (c) Whether the offense was committed in an aggressive,
2782 violent, premeditated, or willful manner.
2783 (d) Whether the offense was against persons or against
2784 property, greater weight being given to offenses against
2785 persons, especially if personal injury resulted.

2786 (e) The sophistication and maturity of the child.
2787 (f) The record and previous criminal history of the child,
2788 including without limitations:
2789 1. Previous contacts with the department, the former
2790 Department of Health and Rehabilitative Services, the Department
2791 of Children and Family Services, the Department of Corrections,
2792 other law enforcement agencies, and courts.~~,~~
2793 2. Prior periods of probation.~~,~~
2794 3. Prior adjudications of delinquency.~~, and~~
2795 4. Prior commitments to institutions.
2796 (g) The prospects for adequate protection of the public
2797 and the likelihood of reasonable rehabilitation of the child if
2798 committed to a community services program or facility.
2799 (h) The child's educational status, including, but not
2800 limited to, the child's strengths, abilities, and unmet and
2801 special educational needs. The report shall identify appropriate
2802 educational and vocational goals for the child. Examples of
2803 appropriate goals include:
2804 1. Attainment of a high school diploma or its equivalent.
2805 2. Successful completion of literacy course(s).
2806 3. Successful completion of vocational course(s).
2807 4. Successful attendance and completion of the child's
2808 current grade if enrolled in school.
2809 5. Enrollment in an apprenticeship or a similar program.
2810
2811 It is the intent of the Legislature that the criteria set forth
2812 in this subsection are general guidelines to be followed at the
2813 discretion of the court and not mandatory requirements of

2814 procedure. It is not the intent of the Legislature to provide
2815 for the appeal of the disposition made under this section. ~~At~~
2816 ~~the time of disposition, the court may make recommendations to~~
2817 ~~the department as to specific treatment approaches to be~~
2818 ~~employed.~~
2819 (7) ~~(3)(a)~~ If the court determines that the child should be
2820 adjudicated as having committed a delinquent act and should be
2821 committed to the department, such determination shall be in
2822 writing or on the record of the hearing. The determination shall
2823 include a specific finding of the reasons for the decision to
2824 adjudicate and to commit the child to the department, including
2825 any determination that the child was a member of a criminal
2826 street gang.
2827 (a) ~~(b)~~ ~~If the court determines that commitment to the~~
2828 ~~department is appropriate,~~ The juvenile probation officer shall
2829 recommend to the court the most appropriate placement and
2830 treatment plan, specifically identifying the restrictiveness
2831 level most appropriate for the child. If the court has
2832 determined that the child was a member of a criminal street
2833 gang, that determination shall be given great weight in
2834 identifying the most appropriate restrictiveness level for the
2835 child. The court shall consider the department's recommendation
2836 in making its commitment decision.
2837 (b) ~~(c)~~ The court shall commit the child to the department
2838 at the restrictiveness level identified or may order placement
2839 at a different restrictiveness level. The court shall state for
2840 the record the reasons that ~~which~~ establish by a preponderance
2841 of the evidence why the court is disregarding the assessment of

2842 the child and the restrictiveness level recommended by the
2843 department. Any party may appeal the court's findings resulting
2844 in a modified level of restrictiveness under ~~pursuant to~~ this
2845 paragraph.
2846 (c) ~~(d)~~ The court may also require that the child be placed
2847 in a probation program following the child's discharge from
2848 commitment. Community-based sanctions under ~~pursuant to~~
2849 subsection (8) ~~(4)~~ may be imposed by the court at the disposition
2850 hearing or at any time prior to the child's release from
2851 commitment.
2852 ~~(e) The court shall be responsible for the fingerprinting~~
2853 ~~of any child at the disposition hearing if the child has been~~
2854 ~~adjudicated or had adjudication withheld for any felony in the~~
2855 ~~case currently before the court.~~
2856 (8) ~~(4)~~ If the court determines not to adjudicate and
2857 commit to the department, then the court shall determine what
2858 community-based sanctions it will impose in a probation program
2859 for the child. Community-based sanctions may include, but are
2860 not limited to, participation in substance abuse treatment, a
2861 day-treatment probation program, restitution in money or in
2862 kind, a curfew, revocation or suspension of the driver's license
2863 of the child, community service, and appropriate educational
2864 programs as determined by the district school board.
2865 (9) ~~(5)~~ After appropriate sanctions for the offense are
2866 determined, the court shall develop, approve, and order a plan
2867 of probation that ~~which~~ will contain rules, requirements,
2868 conditions, and rehabilitative programs, including the option of
2869 a day-treatment probation program, that ~~which~~ are designed to

2870 encourage responsible and acceptable behavior and to promote
2871 both the rehabilitation of the child and the protection of the
2872 community.
2873 (10) Any disposition order shall be in writing as prepared
2874 by the clerk of court and may thereafter be modified or set
2875 aside by the court.
2876 Section 46. Paragraph (a) of subsection (1) of section
2877 985.231, Florida Statutes, is renumbered as section 985.435,
2878 Florida Statutes, and amended to read:
2879 985.435 Probation and postcommitment probation; community
2880 service.--
2881 (1)~~(a)~~ The court that has jurisdiction over ~~of~~ an
2882 adjudicated delinquent child may, by an order stating the facts
2883 upon which a determination of a sanction and rehabilitative
2884 program was made at the disposition hearing,~~:~~
2885 ~~1.~~ place the child in a probation program or a
2886 postcommitment probation program. Such placement must be under
2887 the supervision of an authorized agent of the department or of
2888 any other person or agency specifically authorized and appointed
2889 by the court, whether in the child's own home, in the home of a
2890 relative of the child, or in some other suitable place under
2891 such reasonable conditions as the court may direct.
2892 (2) A probation program for an adjudicated delinquent
2893 child must include a penalty component such as:
2894 (a) Restitution in money or in kind;~~,~~
2895 (b) Community service;~~,~~
2896 (c) A curfew;~~,~~

2897 (d) Revocation or suspension of the driver's license of
2898 the child;~~,~~ or
2899 (e) Other nonresidential punishment appropriate to the
2900 offense.
2901 (3) A probation program ~~and~~ must also include a
2902 rehabilitative program component such as a requirement of
2903 participation in substance abuse treatment or in school or other
2904 educational program. The nonconsent of the child to treatment in
2905 a substance abuse treatment program in no way precludes the
2906 court from ordering such treatment ~~If the child is attending or~~
2907 ~~is eligible to attend public school and the court finds that the~~
2908 ~~victim or a sibling of the victim in the case is attending or~~
2909 ~~may attend the same school as the child, the court placement~~
2910 ~~order shall include a finding pursuant to the proceedings~~
2911 ~~described in s. 985.23(1)(d)~~. Upon the recommendation of the
2912 department at the time of disposition, or subsequent to
2913 disposition pursuant to the filing of a petition alleging a
2914 violation of the child's conditions of postcommitment probation,
2915 the court may order the child to submit to random testing for
2916 the purpose of detecting and monitoring the use of alcohol or
2917 controlled substances.
2918 (4)~~a.~~ A classification scale for levels of supervision
2919 shall be provided by the department, taking into account the
2920 child's needs and risks relative to probation supervision
2921 requirements to reasonably ensure the public safety. Probation
2922 programs for children shall be supervised by the department or
2923 by any other person or agency specifically authorized by the
2924 court. These programs must include, but are not limited to,

2925 structured or restricted activities as described in this section
2926 and s. 985.439 ~~subparagraph~~, and shall be designed to encourage
2927 the child toward acceptable and functional social behavior.
2928 (5) If supervision or a program of community service is
2929 ordered by the court, the duration of such supervision or
2930 program must be consistent with any treatment and rehabilitation
2931 needs identified for the child and may not exceed the term for
2932 which sentence could be imposed if the child were committed for
2933 the offense, except that the duration of such supervision or
2934 program for an offense that is a misdemeanor of the second
2935 degree, or is equivalent to a misdemeanor of the second degree,
2936 may be for a period not to exceed 6 months. ~~When restitution is~~
2937 ~~ordered by the court, the amount of restitution may not exceed~~
2938 ~~an amount the child and the parent or guardian could reasonably~~
2939 ~~be expected to pay or make. A child who participates in any work~~
2940 ~~program under this part is considered an employee of the state~~
2941 ~~for purposes of liability, unless otherwise provided by law.~~
2942 (6)~~b.~~ The court may conduct judicial review hearings for a
2943 child placed on probation for the purpose of fostering
2944 accountability to the judge and compliance with other
2945 requirements, such as restitution and community service. The
2946 court may allow early termination of probation for a child who
2947 has substantially complied with the terms and conditions of
2948 probation.
2949 ~~c. If the conditions of the probation program or the~~
2950 ~~postcommitment probation program are violated, the department or~~
2951 ~~the state attorney may bring the child before the court on a~~
2952 ~~petition alleging a violation of the program. Any child who~~

2953 ~~violates the conditions of probation or postcommitment probation~~
2954 ~~must be brought before the court if sanctions are sought. A~~
2955 ~~child taken into custody under s. 985.207 for violating the~~
2956 ~~conditions of probation or postcommitment probation shall be~~
2957 ~~held in a consequence unit if such a unit is available. The~~
2958 ~~child shall be afforded a hearing within 24 hours after being~~
2959 ~~taken into custody to determine the existence of probable cause~~
2960 ~~that the child violated the conditions of probation or~~
2961 ~~postcommitment probation. A consequence unit is a secure~~
2962 ~~facility specifically designated by the department for children~~
2963 ~~who are taken into custody under s. 985.207 for violating~~
2964 ~~probation or postcommitment probation, or who have been found by~~
2965 ~~the court to have violated the conditions of probation or~~
2966 ~~postcommitment probation. If the violation involves a new charge~~
2967 ~~of delinquency, the child may be detained under s. 985.215 in a~~
2968 ~~facility other than a consequence unit. If the child is not~~
2969 ~~eligible for detention for the new charge of delinquency, the~~
2970 ~~child may be held in the consequence unit pending a hearing and~~
2971 ~~is subject to the time limitations specified in s. 985.215. If~~
2972 ~~the child denies violating the conditions of probation or~~
2973 ~~postcommitment probation, the court shall appoint counsel to~~
2974 ~~represent the child at the child's request. Upon the child's~~
2975 ~~admission, or if the court finds after a hearing that the child~~
2976 ~~has violated the conditions of probation or postcommitment~~
2977 ~~probation, the court shall enter an order revoking, modifying,~~
2978 ~~or continuing probation or postcommitment probation. In each~~
2979 ~~such case, the court shall enter a new disposition order and, in~~
2980 ~~addition to the sanctions set forth in this paragraph, may~~

2981 ~~impose any sanction the court could have imposed at the original~~
2982 ~~disposition hearing. If the child is found to have violated the~~
2983 ~~conditions of probation or postcommitment probation, the court~~
2984 ~~may:~~
2985 ~~(I) Place the child in a consequence unit in that judicial~~
2986 ~~circuit, if available, for up to 5 days for a first violation,~~
2987 ~~and up to 15 days for a second or subsequent violation.~~
2988 ~~(II) Place the child on home detention with electronic~~
2989 ~~monitoring. However, this sanction may be used only if a~~
2990 ~~residential consequence unit is not available.~~
2991 ~~(III) Modify or continue the child's probation program or~~
2992 ~~postcommitment probation program.~~
2993 ~~(IV) Revoke probation or postcommitment probation and~~
2994 ~~commit the child to the department.~~
2995 ~~d. Notwithstanding s. 743.07 and paragraph (d), and except~~
2996 ~~as provided in s. 985.31, the term of any order placing a child~~
2997 ~~in a probation program must be until the child's 19th birthday~~
2998 ~~unless he or she is released by the court, on the motion of an~~
2999 ~~interested party or on its own motion.~~
3000 ~~2. Commit the child to a licensed child-caring agency~~
3001 ~~willing to receive the child, but the court may not commit the~~
3002 ~~child to a jail or to a facility used primarily as a detention~~
3003 ~~center or facility or shelter.~~
3004 ~~3. Commit the child to the department at a restrictiveness~~
3005 ~~level defined in s. 985.03. Such commitment must be for the~~
3006 ~~purpose of exercising active control over the child, including,~~
3007 ~~but not limited to, custody, care, training, urine monitoring,~~
3008 ~~and treatment of the child and release of the child from~~

3009 ~~residential commitment into the community in a postcommitment~~
3010 ~~nonresidential conditional release program. If the child is~~
3011 ~~eligible to attend public school following commitment and the~~
3012 ~~court finds that the victim or a sibling of the victim in the~~
3013 ~~case is or may be attending the same school as the child, the~~
3014 ~~commitment order shall include a finding pursuant to the~~
3015 ~~proceedings described in s. 985.23(1)(d). If the child is not~~
3016 ~~successful in the conditional release program, the department~~
3017 ~~may use the transfer procedure under s. 985.404. Notwithstanding~~
3018 ~~s. 743.07 and paragraph (d), and except as provided in s.~~
3019 ~~985.31, the term of the commitment must be until the child is~~
3020 ~~discharged by the department or until he or she reaches the age~~
3021 ~~of 21.~~
3022 ~~4. Revoke or suspend the driver's license of the child.~~
3023 ~~5. Require the child and, if the court finds it~~
3024 ~~appropriate, the child's parent or guardian together with the~~
3025 ~~child, to render community service in a public service program.~~
3026 ~~6. As part of the probation program to be implemented by~~
3027 ~~the department, or, in the case of a committed child, as part of~~
3028 ~~the community-based sanctions ordered by the court at the~~
3029 ~~disposition hearing or before the child's release from~~
3030 ~~commitment, order the child to make restitution in money,~~
3031 ~~through a promissory note cosigned by the child's parent or~~
3032 ~~guardian, or in kind for any damage or loss caused by the~~
3033 ~~child's offense in a reasonable amount or manner to be~~
3034 ~~determined by the court. The clerk of the circuit court shall be~~
3035 ~~the receiving and dispensing agent. In such case, the court~~
3036 ~~shall order the child or the child's parent or guardian to pay~~

3037 ~~to the office of the clerk of the circuit court an amount not to~~
3038 ~~exceed the actual cost incurred by the clerk as a result of~~
3039 ~~receiving and dispensing restitution payments. The clerk shall~~
3040 ~~notify the court if restitution is not made, and the court shall~~
3041 ~~take any further action that is necessary against the child or~~
3042 ~~the child's parent or guardian. A finding by the court, after a~~
3043 ~~hearing, that the parent or guardian has made diligent and good~~
3044 ~~faith efforts to prevent the child from engaging in delinquent~~
3045 ~~acts absolves the parent or guardian of liability for~~
3046 ~~restitution under this subparagraph.~~
3047 ~~7. Order the child and, if the court finds it appropriate,~~
3048 ~~the child's parent or guardian together with the child, to~~
3049 ~~participate in a community work project, either as an~~
3050 ~~alternative to monetary restitution or as part of the~~
3051 ~~rehabilitative or probation program.~~
3052 ~~8. Commit the child to the department for placement in a~~
3053 ~~program or facility for serious or habitual juvenile offenders~~
3054 ~~in accordance with s. 985.31. Any commitment of a child to a~~
3055 ~~program or facility for serious or habitual juvenile offenders~~
3056 ~~must be for an indeterminate period of time, but the time may~~
3057 ~~not exceed the maximum term of imprisonment that an adult may~~
3058 ~~serve for the same offense. The court may retain jurisdiction~~
3059 ~~over such child until the child reaches the age of 21,~~
3060 ~~specifically for the purpose of the child completing the~~
3061 ~~program.~~
3062 ~~9. In addition to the sanctions imposed on the child,~~
3063 ~~order the parent or guardian of the child to perform community~~
3064 ~~service if the court finds that the parent or guardian did not~~

3065 ~~make a diligent and good faith effort to prevent the child from~~
3066 ~~engaging in delinquent acts. The court may also order the parent~~
3067 ~~or guardian to make restitution in money or in kind for any~~
3068 ~~damage or loss caused by the child's offense. The court shall~~
3069 ~~determine a reasonable amount or manner of restitution, and~~
3070 ~~payment shall be made to the clerk of the circuit court as~~
3071 ~~provided in subparagraph 6.~~
3072 ~~10. Subject to specific appropriation, commit the juvenile~~
3073 ~~sexual offender to the department for placement in a program or~~
3074 ~~facility for juvenile sexual offenders in accordance with s.~~
3075 ~~985.308. Any commitment of a juvenile sexual offender to a~~
3076 ~~program or facility for juvenile sexual offenders must be for an~~
3077 ~~indeterminate period of time, but the time may not exceed the~~
3078 ~~maximum term of imprisonment that an adult may serve for the~~
3079 ~~same offense. The court may retain jurisdiction over a juvenile~~
3080 ~~sexual offender until the juvenile sexual offender reaches the~~
3081 ~~age of 21, specifically for the purpose of completing the~~
3082 ~~program.~~
3083 Section 47. Section 985.437, Florida Statutes, is created
3084 to read:
3085 985.437 Restitution.--
3086 (1) The court that has jurisdiction over an adjudicated
3087 delinquent child may, by an order stating the facts upon which a
3088 determination of a sanction and rehabilitative program was made
3089 at the disposition hearing, order the child to make restitution
3090 in the manner provided in this section. This order shall be part
3091 of the probation program to be implemented by the department or,
3092 in the case of a committed child, as part of the community-based

3093 sanctions ordered by the court at the disposition hearing or
3094 before the child's release from commitment.
3095 (2) The court may order the child to make restitution in
3096 money, through a promissory note cosigned by the child's parent
3097 or guardian, or in kind for any damage or loss caused by the
3098 child's offense in a reasonable amount or manner to be
3099 determined by the court. When restitution is ordered by the
3100 court, the amount of restitution may not exceed an amount the
3101 child and the parent or guardian could reasonably be expected to
3102 pay or make.
3103 (3) The clerk of the circuit court shall be the receiving
3104 and dispensing agent. In such case, the court shall order the
3105 child or the child's parent or guardian to pay to the office of
3106 the clerk of the circuit court an amount not to exceed the
3107 actual cost incurred by the clerk as a result of receiving and
3108 dispensing restitution payments. The clerk shall notify the
3109 court if restitution is not made, and the court shall take any
3110 further action that is necessary against the child or the
3111 child's parent or guardian.
3112 (4) A finding by the court, after a hearing, that the
3113 parent or guardian has made diligent and good faith efforts to
3114 prevent the child from engaging in delinquent acts absolves the
3115 parent or guardian of liability for restitution under this
3116 section.
3117 (5) The court may retain jurisdiction over a child and the
3118 child's parent or legal guardian whom the court has ordered to
3119 pay restitution until the restitution order is satisfied or
3120 until the court orders otherwise, as provided in s. 985.0301.

3121 Section 48. Section 985.439, Florida Statutes, is created
3122 to read:
3123 985.439 Violation of probation or postcommitment
3124 probation.--
3125 (1)(a) This section is applicable when the court has
3126 jurisdiction over an adjudicated delinquent child.
3127 (b) If the conditions of the probation program or the
3128 postcommitment probation program are violated, the department or
3129 the state attorney may bring the child before the court on a
3130 petition alleging a violation of the program. Any child who
3131 violates the conditions of probation or postcommitment probation
3132 must be brought before the court if sanctions are sought.
3133 (2) A child taken into custody under s. 985.101 for
3134 violating the conditions of probation or postcommitment
3135 probation shall be held in a consequence unit if such a unit is
3136 available. The child shall be afforded a hearing within 24 hours
3137 after being taken into custody to determine the existence of
3138 probable cause that the child violated the conditions of
3139 probation or postcommitment probation. A consequence unit is a
3140 secure facility specifically designated by the department for
3141 children who are taken into custody under s. 985.101 for
3142 violating probation or postcommitment probation, or who have
3143 been found by the court to have violated the conditions of
3144 probation or postcommitment probation. If the violation involves
3145 a new charge of delinquency, the child may be detained under
3146 part V in a facility other than a consequence unit. If the child
3147 is not eligible for detention for the new charge of delinquency,

3148 the child may be held in the consequence unit pending a hearing
3149 and is subject to the time limitations specified in part V.
3150 (3) If the child denies violating the conditions of
3151 probation or postcommitment probation, the court shall, upon the
3152 child's request, appoint counsel to represent the child.
3153 (4) Upon the child's admission, or if the court finds
3154 after a hearing that the child has violated the conditions of
3155 probation or postcommitment probation, the court shall enter an
3156 order revoking, modifying, or continuing probation or
3157 postcommitment probation. In each such case, the court shall
3158 enter a new disposition order and, in addition to the sanctions
3159 set forth in this section, may impose any sanction the court
3160 could have imposed at the original disposition hearing. If the
3161 child is found to have violated the conditions of probation or
3162 postcommitment probation, the court may:
3163 (a) Place the child in a consequence unit in that judicial
3164 circuit, if available, for up to 5 days for a first violation
3165 and up to 15 days for a second or subsequent violation.
3166 (b) Place the child on home detention with electronic
3167 monitoring. However, this sanction may be used only if a
3168 residential consequence unit is not available.
3169 (c) Modify or continue the child's probation program or
3170 postcommitment probation program.
3171 (d) Revoke probation or postcommitment probation and
3172 commit the child to the department.
3173 (5) Upon the recommendation of the department at the time
3174 of disposition, or subsequent to disposition pursuant to the
3175 filing of a petition alleging a violation of the child's

3176 conditions of postcommitment probation, the court may order the
3177 child to submit to random testing for the purpose of detecting
3178 and monitoring the use of alcohol or controlled substances.
3179 Section 49. Section 985.441, Florida Statutes, is created
3180 to read:
3181 985.441 Commitment.--
3182 (1) The court that has jurisdiction of an adjudicated
3183 delinquent child may, by an order stating the facts upon which a
3184 determination of a sanction and rehabilitative program was made
3185 at the disposition hearing:
3186 (a) Commit the child to a licensed child-caring agency
3187 willing to receive the child; however, the court may not commit
3188 the child to a jail or to a facility used primarily as a
3189 detention center or facility or shelter.
3190 (b) Commit the child to the department at a
3191 restrictiveness level defined in s. 985.03. Such commitment must
3192 be for the purpose of exercising active control over the child,
3193 including, but not limited to, custody, care, training, urine
3194 monitoring, and treatment of the child and release of the child
3195 from residential commitment into the community in a
3196 postcommitment nonresidential conditional release program. If
3197 the child is not successful in the conditional release program,
3198 the department may use the transfer procedure under subsection
3199 (3).
3200 (c) Commit the child to the department for placement in a
3201 program or facility for serious or habitual juvenile offenders
3202 in accordance with s. 985.47.

3203 1. Following a delinquency adjudicatory hearing under s.
3204 985.35 and a delinquency disposition hearing under s. 985.433
3205 that results in a commitment determination, the court shall, on
3206 its own or upon request by the state or the department,
3207 determine whether the protection of the public requires that the
3208 child be placed in a program for serious or habitual juvenile
3209 offenders and whether the particular needs of the child would be
3210 best served by a program for serious or habitual juvenile
3211 offenders as provided in s. 985.47. The determination shall be
3212 made under ss. 985.47(1) and 985.433(7).
3213 2. Any commitment of a child to a program or facility for
3214 serious or habitual juvenile offenders must be for an
3215 indeterminate period of time, but the time may not exceed the
3216 maximum term of imprisonment that an adult may serve for the
3217 same offense.
3218 (d) Commit the child to the department for placement in a
3219 program or facility for juvenile sexual offenders in accordance
3220 with s. 985.48, subject to specific appropriation for such a
3221 program or facility.
3222 1. The child may only be committed for such placement
3223 pursuant to determination that the child is a juvenile sexual
3224 offender under the criteria specified in s. 985.475.
3225 2. Any commitment of a juvenile sexual offender to a
3226 program or facility for juvenile sexual offenders must be for an
3227 indeterminate period of time, but the time may not exceed the
3228 maximum term of imprisonment that an adult may serve for the
3229 same offense.

3230 (2) The nonconsent of the child to commitment or treatment
3231 in a substance abuse treatment program in no way precludes the
3232 court from ordering such commitment or treatment.
3233 (3) The department may transfer a child, when necessary to
3234 appropriately administer the child's commitment, from one
3235 facility or program to another facility or program operated,
3236 contracted, subcontracted, or designated by the department,
3237 including a postcommitment nonresidential conditional release
3238 program. The department shall notify the court that committed
3239 the child to the department and any attorney of record for the
3240 child, in writing, of its intent to transfer the child from a
3241 commitment facility or program to another facility or program of
3242 a higher or lower restrictiveness level. The court that
3243 committed the child may agree to the transfer or may set a
3244 hearing to review the transfer. If the court does not respond
3245 within 10 days after receipt of the notice, the transfer of the
3246 child shall be deemed granted.
3247 Section 50. Section 985.232, Florida Statutes, is
3248 renumbered as section 985.442, Florida Statutes.
3249 Section 51. Paragraph (j) of subsection (1) of section
3250 985.231, Florida Statutes, is renumbered as section 985.445,
3251 Florida Statutes, and amended to read:
3252 985.445 ~~985.231~~ ~~Powers of disposition in delinquency~~ Cases
3253 involving grand theft of a motor vehicle.--
3254 ~~(1)~~
3255 ~~(j)~~ If the offense committed by the child was grand theft
3256 of a motor vehicle, the court:

3257 (1)~~1.~~ Upon a first adjudication for a grand theft of a
3258 motor vehicle, may place the youth in a boot camp, unless the
3259 child is ineligible under ~~pursuant to~~ s. 985.489 ~~985.309~~, and
3260 shall order the youth to complete a minimum of 50 hours of
3261 community service.
3262 (2)~~2.~~ Upon a second adjudication for grand theft of a
3263 motor vehicle which is separate and unrelated to the previous
3264 adjudication, may place the youth in a boot camp, unless the
3265 child is ineligible under ~~pursuant to~~ s. 985.489 ~~985.309~~, and
3266 shall order the youth to complete a minimum of 100 hours of
3267 community service.
3268 (3)~~3.~~ Upon a third adjudication for grand theft of a motor
3269 vehicle which is separate and unrelated to the previous
3270 adjudications, shall place the youth in a boot camp or other
3271 treatment program, unless the child is ineligible under ~~pursuant~~
3272 ~~to~~ s. 985.489 ~~985.309~~, and shall order the youth to complete a
3273 minimum of 250 hours of community service.
3274 Section 52. Paragraph (g) of subsection (1) of section
3275 985.231, Florida Statutes, is renumbered as section 985.45,
3276 Florida Statutes, and amended to read:
3277 985.45 Liability and remuneration for work.--
3278 (1)~~(g)~~ Whenever a child is required by the court to
3279 participate in any work program under this part or whenever a
3280 child volunteers to work in a specified state, county,
3281 municipal, or community service organization supervised work
3282 program or to work for the victim, either as an alternative to
3283 monetary restitution or as a part of the rehabilitative or

3284 probation program, the child is an employee of the state for the
3285 purposes of liability.
3286 (2) In determining the child's average weekly wage unless
3287 otherwise determined by a specific funding program, all
3288 remuneration received from the employer is a gratuity, and the
3289 child is not entitled to any benefits otherwise payable under s.
3290 440.15, regardless of whether the child may be receiving wages
3291 and remuneration from other employment with another employer and
3292 regardless of the child's future wage-earning capacity.
3293 Section 53. Paragraph (d) of subsection (1) of section
3294 985.231, Florida Statutes, is amended and renumbered as
3295 subsection (3) of section 985.455, Florida Statutes, and
3296 paragraph (h) of subsection (1) of section 985.231, Florida
3297 Statutes, is renumbered as subsection (4) of section 985.455,
3298 Florida Statutes, which is created to read:
3299 985.455 Other dispositional issues.--
3300 (1) The court that has jurisdiction over an adjudicated
3301 delinquent child may, by an order stating the facts upon which a
3302 determination of a sanction and rehabilitative program was made
3303 at the disposition hearing:
3304 (a) Require the child and, if the court finds it
3305 appropriate, the child's parent or guardian together with the
3306 child to render community service in a public service program.
3307 (b) Order the child and, if the court finds it
3308 appropriate, the child's parent or guardian together with the
3309 child to participate in a community work project, either as an
3310 alternative to monetary restitution or as part of the
3311 rehabilitative or probation program.

3312 (c) Revoke or suspend the driver's license of the child.
3313 (2) If the child is attending or is eligible to attend
3314 public school and the court finds that the victim or a sibling
3315 of the victim in the case is attending or may attend the same
3316 school as the child, the court shall, on its own motion or upon
3317 the request of any party or any parent or legal guardian of the
3318 victim, determine whether it is appropriate to enter a no
3319 contact order in favor of the victim or a sibling of the victim.
3320 If appropriate and acceptable to the victim and the victim's
3321 parent or parents or legal guardian, the court may reflect in
3322 the written disposition order that the victim or the victim's
3323 parent or parents or legal guardian stated in writing or in open
3324 court that he or she did not object to the offender being
3325 permitted to attend the same school or ride on the same school
3326 bus as the victim or a sibling of the victim. If applicable, the
3327 court placement or commitment order shall include a finding
3328 under this subsection.
3329 ~~(1)~~
3330 (3) ~~(d)~~ Any commitment of a delinquent child to the
3331 department must be for an indeterminate period of time, which
3332 may include periods of temporary release; however, the period of
3333 time may not exceed the maximum term of imprisonment that an
3334 adult may serve for the same offense, except that the duration
3335 of a minimum-risk nonresidential commitment for an offense that
3336 is a misdemeanor of the second degree, or is equivalent to a
3337 misdemeanor of the second degree, may be for a period not to
3338 exceed 6 months. The duration of the child's placement in a
3339 commitment program of any restrictiveness level shall be based

3340 on objective performance-based treatment planning. The child's
3341 treatment plan progress and adjustment-related issues shall be
3342 reported to the court quarterly, unless the court requests
3343 monthly reports. The child's length of stay in a commitment
3344 program may be extended if the child fails to comply with or
3345 participate in treatment activities. The child's length of stay
3346 in the program shall not be extended for purposes of sanction or
3347 punishment. Any temporary release from such program must be
3348 approved by the court. Any child so committed may be discharged
3349 from institutional confinement or a program upon the direction
3350 of the department with the concurrence of the court. The child's
3351 treatment plan progress and adjustment-related issues must be
3352 communicated to the court at the time the department requests
3353 the court to consider releasing the child from the commitment
3354 program. ~~Notwithstanding s. 743.07 and this subsection, and~~
3355 ~~except as provided in ss. 985.201 and 985.31, a child may not be~~
3356 ~~held under a commitment from a court under this section after~~
3357 ~~becoming 21 years of age.~~ The department shall give the court
3358 that committed the child to the department reasonable notice, in
3359 writing, of its desire to discharge the child from a commitment
3360 facility. The court that committed the child may thereafter
3361 accept or reject the request. If the court does not respond
3362 within 10 days after receipt of the notice, the request of the
3363 department shall be deemed granted. This section does not limit
3364 the department's authority to revoke a child's temporary release
3365 status and return the child to a commitment facility for any
3366 violation of the terms and conditions of the temporary release.

3367 (4) ~~(h)~~ The court may, upon motion of the child or upon its
3368 own motion, within 60 days after imposition of a disposition of
3369 commitment, suspend the further execution of the disposition and
3370 place the child in a probation program upon such terms and
3371 conditions as the court may require. The department shall
3372 forward to the court all relevant material on the child's
3373 progress while in custody not later than 3 working days prior to
3374 the hearing on the motion to suspend the disposition.
3375 Section 54. Section 985.316, Florida Statutes, is
3376 renumbered as section 985.46, Florida Statutes, and subsection
3377 (4) of that section is amended to read:
3378 985.46 ~~985.316~~ Conditional release.--
3379 (4) A juvenile under nonresidential commitment placement
3380 will continue to be on commitment status and subject to the
3381 transfer provision under s. 985.441(3) ~~985.404~~.
3382 Section 55. Section 985.313, Florida Statutes, is
3383 renumbered as section 985.465, Florida Statutes, and amended to
3384 read:
3385 985.465 ~~985.313~~ Juvenile correctional facilities or
3386 juvenile prison.--A juvenile correctional facility or juvenile
3387 prison is a physically secure residential commitment program
3388 with a designated length of stay from 18 months to 36 months,
3389 primarily serving children 13 years of age to 19 years of age,
3390 or until the jurisdiction of the court expires. ~~The court may~~
3391 ~~retain jurisdiction over the child until the child reaches the~~
3392 ~~age of 21, specifically for the purpose of the child completing~~
3393 ~~the program.~~ Each child committed to this level must meet one of
3394 the following criteria:

3395 (1) The child ~~youth~~ is at least 13 years of age at the
3396 time of the disposition for the current offense and has been
3397 adjudicated on the current offense for:
3398 (a) Arson;
3399 (b) Sexual battery;
3400 (c) Robbery;
3401 (d) Kidnapping;
3402 (e) Aggravated child abuse;
3403 (f) Aggravated assault;
3404 (g) Aggravated stalking;
3405 (h) Murder;
3406 (i) Manslaughter;
3407 (j) Unlawful throwing, placing, or discharging of a
3408 destructive device or bomb;
3409 (k) Armed burglary;
3410 (l) Aggravated battery;
3411 (m) Carjacking;
3412 (n) Home-invasion robbery;
3413 (o) Burglary with an assault or battery;
3414 (p) Any lewd or lascivious offense committed upon or in
3415 the presence of a person less than 16 years of age; or
3416 (q) Carrying, displaying, using, threatening to use, or
3417 attempting to use a weapon or firearm during the commission of a
3418 felony.
3419 (2) The child ~~youth~~ is at least 13 years of age at the
3420 time of the disposition, the current offense is a felony, and
3421 the child has previously been committed three or more times to a
3422 delinquency commitment program.

3423 (3) The child ~~youth~~ is at least 13 years of age and is
3424 currently committed for a felony offense and transferred from a
3425 moderate-risk or high-risk residential commitment placement.
3426 (4) The child ~~youth~~ is at least 13 years of age at the
3427 time of the disposition for the current offense, the child ~~youth~~
3428 is eligible for prosecution as an adult for the current offense,
3429 and the current offense is ranked at level 7 or higher on the
3430 Criminal Punishment Code offense severity ranking chart pursuant
3431 to s. 921.0022.
3432 Section 56. Subsection (49) of section 985.03, Florida
3433 Statutes, is amended and renumbered as subsection (1) of section
3434 985.47, Florida Statutes, subsections (2), (4), and (5) of
3435 section 985.31, Florida Statutes are amended and renumbered,
3436 respectively, as subsections (9), (11), and (12) of section
3437 985.47, Florida Statutes, paragraphs (e) through (i) and (k) of
3438 subsection (3) of section 985.31, Florida Statutes, are amended
3439 and renumbered, respectively, as subsections (2) through (6) and
3440 (7) of section 985.47, Florida Statutes, subsection (1) of
3441 section 985.31, Florida Statutes, is renumbered as subsection
3442 (8) of section 985.47, Florida Statutes, and paragraphs (a)
3443 through (d) and (j) of subsection (3) of section 985.31, Florida
3444 Statutes, are renumbered, respectively, as paragraphs (a)
3445 through (d) and (e) of subsection (10) of section 985.47,
3446 Florida Statutes, and amended to read:
3447 985.47 ~~985.31~~ Serious or habitual juvenile offender.--
3448 (1) ~~(49)~~ CRITERIA.--A "serious or habitual juvenile
3449 offender," for purposes of commitment to a residential facility
3450 and for purposes of records retention, means a child who has

3451 been found to have committed a delinquent act or a violation of
3452 law, in the case currently before the court, and who meets at
3453 least one of the following criteria:
3454 (a) The child ~~youth~~ is at least 13 years of age at the
3455 time of the disposition for the current offense and has been
3456 adjudicated on the current offense for:
3457 1. Arson;
3458 2. Sexual battery;
3459 3. Robbery;
3460 4. Kidnapping;
3461 5. Aggravated child abuse;
3462 6. Aggravated assault;
3463 7. Aggravated stalking;
3464 8. Murder;
3465 9. Manslaughter;
3466 10. Unlawful throwing, placing, or discharging of a
3467 destructive device or bomb;
3468 11. Armed burglary;
3469 12. Aggravated battery;
3470 13. Any lewd or lascivious offense committed upon or in
3471 the presence of a person less than 16 years of age; or
3472 14. Carrying, displaying, using, threatening, or
3473 attempting to use a weapon or firearm during the commission of a
3474 felony.
3475 (b) The child ~~youth~~ is at least 13 years of age at the
3476 time of the disposition, the current offense is a felony, and
3477 the child has previously been committed at least two times to a
3478 delinquency commitment program.

3479 (c) The child ~~youth~~ is at least 13 years of age and is
3480 currently committed for a felony offense and transferred from a
3481 moderate-risk or high-risk residential commitment placement.
3482 (2) ~~(3)(e)~~ DETERMINATION.--After a child has been
3483 adjudicated delinquent under ~~pursuant to~~ s. 985.35 ~~985.228~~, the
3484 court shall determine whether the child meets the criteria for a
3485 serious or habitual juvenile offender under subsection (1)
3486 ~~pursuant to s. 985.03(49)~~. If the court determines that the
3487 child does not meet such criteria, ss. 985.435, 985.437,
3488 985.439, 985.441, 985.445, 985.45, and 985.455 ~~the provisions of~~
3489 ~~s. 985.231(1)~~ shall apply.
3490 (3) ~~(f)~~ PLACEMENT RECOMMENDATIONS.--After a child has been
3491 transferred for criminal prosecution, a circuit court judge may
3492 direct a juvenile probation officer to consult with designated
3493 staff from an appropriate serious or habitual juvenile offender
3494 program for the purpose of making recommendations to the court
3495 regarding the child's placement in such program.
3496 (4) ~~(g)~~ TIME AND PLACE FOR
3497 RECOMMENDATIONS.--Recommendations as to a child's placement in a
3498 serious or habitual juvenile offender program shall be presented
3499 to the court within 72 hours after the adjudication or
3500 conviction, and may be based on a preliminary screening of the
3501 child at appropriate sites, considering the child's location
3502 while court action is pending, which may include the nearest
3503 regional detention center or facility or jail.
3504 (5) ~~(h)~~ REPORTING RECOMMENDATIONS TO COURT.--Based on the
3505 recommendations of the multidisciplinary assessment, the

3506 juvenile probation officer shall make the following
3507 recommendations to the court:
3508 (a)~~1.~~ For each child who has not been transferred for
3509 criminal prosecution, the juvenile probation officer shall
3510 recommend whether placement in such program is appropriate and
3511 needed.
3512 (b)~~2.~~ For each child who has been transferred for criminal
3513 prosecution, the juvenile probation officer shall recommend
3514 whether the most appropriate placement for the child is a
3515 juvenile justice system program, including a serious or habitual
3516 juvenile offender program or facility, or placement in the adult
3517 correctional system.
3518
3519 If treatment provided by a serious or habitual juvenile offender
3520 program or facility is determined to be appropriate and needed
3521 and placement is available, the juvenile probation officer and
3522 the court shall identify the appropriate serious or habitual
3523 juvenile offender program or facility best suited to the needs
3524 of the child.
3525 (6)~~(i)~~ ACTION ON RECOMMENDATIONS.--The treatment and
3526 placement recommendations shall be submitted to the court for
3527 further action under ~~pursuant to~~ this subsection ~~paragraph~~:
3528 (a)~~1.~~ If it is recommended that placement in a serious or
3529 habitual juvenile offender program or facility is inappropriate,
3530 the court shall make an alternative disposition under ~~pursuant~~
3531 ~~to~~ s. 985.489 ~~985.309~~ or other alternative sentencing as
3532 applicable, using ~~utilizing~~ the recommendation as a guide.

3533 (b) ~~2.~~ If it is recommended that placement in a serious or
3534 habitual juvenile offender program or facility is appropriate,
3535 the court may commit the child to the department for placement
3536 in the restrictiveness level designated for serious or habitual
3537 delinquent children programs.
3538 (7) ~~(k)~~ DURATION OF COMMITMENT.--Any commitment of a child
3539 to the department for placement in a serious or habitual
3540 juvenile offender program or facility shall be for an
3541 indeterminate period of time, but the time shall not exceed the
3542 maximum term of imprisonment that ~~which~~ an adult may serve for
3543 the same offense. ~~Notwithstanding the provisions of ss. 743.07~~
3544 ~~and 985.231(1)(d), a serious or habitual juvenile offender shall~~
3545 ~~not be held under commitment from a court pursuant to this~~
3546 ~~section, s. 985.231, or s. 985.233 after becoming 21 years of~~
3547 ~~age. This provision shall apply only for the purpose of~~
3548 ~~completing the serious or habitual juvenile offender program~~
3549 ~~pursuant to this chapter and shall be used solely for the~~
3550 ~~purpose of treatment.~~
3551 (8) ~~(1)~~ ASSESSMENT AND TREATMENT SERVICES.--Pursuant to ~~the~~
3552 ~~provisions of~~ this chapter and the establishment of appropriate
3553 program guidelines and standards, contractual instruments, which
3554 shall include safeguards of all constitutional rights, shall be
3555 developed as follows:
3556 (a) The department shall provide for:
3557 1. The oversight of implementation of assessment and
3558 treatment approaches.
3559 2. The identification and prequalification of appropriate
3560 individuals or not-for-profit organizations, including minority

3561 individuals or organizations when possible, to provide
3562 assessment and treatment services to serious or habitual
3563 delinquent children.
3564 3. The monitoring and evaluation of assessment and
3565 treatment services for compliance with ~~the provisions of~~ this
3566 chapter and all applicable rules and guidelines pursuant
3567 thereto.
3568 4. The development of an annual report on the performance
3569 of assessment and treatment to be presented to the Governor, the
3570 Attorney General, the President of the Senate, the Speaker of
3571 the House of Representatives, and the Auditor General no later
3572 than January 1 of each year.
3573 (b) Assessment shall generally comprise the first 30 days
3574 of treatment and be provided by the same provider as treatment,
3575 but assessment and treatment services may be provided by
3576 separate providers, where warranted. Providers shall be selected
3577 who have the capacity to assess and treat the unique problems
3578 presented by children with different racial and ethnic
3579 backgrounds. The department shall retain contractual authority
3580 to reject any assessment or treatment provider for lack of
3581 qualification.
3582 (9) ~~(2)~~ SERIOUS OR HABITUAL JUVENILE OFFENDER PROGRAM.--
3583 (a) There is created the serious or habitual juvenile
3584 offender program. The program shall consist of at least 9 months
3585 of intensive secure residential treatment. Conditional release
3586 assessment and services shall be provided in accordance with s.
3587 985.46 ~~985.316~~. The components of the program shall include, but
3588 not be limited to:

3589 1. Diagnostic evaluation services.
3590 2. Appropriate treatment modalities, including substance
3591 abuse intervention, mental health services, and sexual behavior
3592 dysfunction interventions and gang-related behavior
3593 interventions.
3594 3. Prevocational and vocational services.
3595 4. Job training, job placement, and employability-skills
3596 training.
3597 5. Case management services.
3598 6. Educational services, including special education and
3599 pre-GED literacy.
3600 7. Self-sufficiency planning.
3601 8. Independent living skills.
3602 9. Parenting skills.
3603 10. Recreational and leisure time activities.
3604 11. Community involvement opportunities commencing, where
3605 appropriate, with the direct and timely payment of restitution
3606 to the victim.
3607 12. Intensive conditional release supervision.
3608 13. Graduated reentry into the community.
3609 14. A diversity of forms of individual and family
3610 treatment appropriate to and consistent with the child's needs.
3611 15. Consistent and clear consequences for misconduct.
3612 (b) The department is authorized to contract with private
3613 companies to provide some or all of the components indicated in
3614 paragraph (a).
3615 (c) The department shall involve local law enforcement
3616 agencies, the judiciary, school board personnel, the office of

3617 the state attorney, the office of the public defender, and
3618 community service agencies interested in or currently working
3619 with juveniles, in planning and developing this program.
3620 (d) The department is authorized to accept funds or in-
3621 kind contributions from public or private sources to be used for
3622 the purposes of this section.
3623 (10) ~~(3)~~ PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
3624 TREATMENT.--
3625 (a) Assessment and treatment shall be conducted by
3626 treatment professionals with expertise in specific treatment
3627 procedures. These~~, which~~ professionals shall exercise all
3628 professional judgment independently of the department.
3629 (b) Treatment provided to children in designated
3630 facilities shall be suited to the assessed needs of each
3631 individual child and shall be administered safely and humanely,
3632 with respect for human dignity.
3633 (c) The department may promulgate rules for the
3634 implementation and operation of programs and facilities for
3635 serious or habitual juvenile offenders.
3636 (d) Any provider who acts in good faith is immune from
3637 civil or criminal liability for his or her actions in connection
3638 with the assessment, treatment, or transportation of a serious
3639 or habitual juvenile offender under ~~the provisions of~~ this
3640 chapter.
3641 (e) ~~(j)~~ The following provisions shall apply to children in
3642 serious or habitual juvenile offender programs and facilities:

3643 1. A child shall begin participation in the conditional
3644 release component of the program based upon a determination made
3645 by the treatment provider and approved by the department.
3646 2. A child shall begin participation in the community
3647 supervision component of conditional release based upon a
3648 determination made by the treatment provider and approved by the
3649 department. The treatment provider shall give written notice of
3650 the determination to the circuit court having jurisdiction over
3651 the child. If the court does not respond with a written
3652 objection within 10 days, the child shall begin the conditional
3653 release component.
3654 3. A child shall be discharged from the program based upon
3655 a determination made by the treatment provider with the approval
3656 of the department.
3657 4. In situations where the department does not agree with
3658 the decision of the treatment provider, a reassessment shall be
3659 performed, and the department shall use ~~utilize~~ the reassessment
3660 determination to resolve the disagreement and make a final
3661 decision.
3662 (11) ~~(4)~~ ASSESSMENTS, TESTING, RECORDS, AND INFORMATION.--
3663 (a) Pursuant to ~~the provisions of~~ this section, the
3664 department shall implement the comprehensive assessment
3665 instrument for the treatment needs of serious or habitual
3666 juvenile offenders and for the assessment, which assessment
3667 shall include the criteria under subsection (1) ~~s. 985.03(49)~~
3668 and shall also include, but not be limited to, evaluation of the
3669 child's:
3670 1. Amenability to treatment.

3671 2. Proclivity toward violence.
3672 3. Tendency toward gang involvement.
3673 4. Substance abuse or addiction and the level thereof.
3674 5. History of being a victim of child abuse or sexual
3675 abuse, or indication of sexual behavior dysfunction.
3676 6. Number and type of previous adjudications, findings of
3677 guilt, and convictions.
3678 7. Potential for rehabilitation.
3679 (b) The department shall contract with multiple
3680 individuals or not-for-profit organizations to perform the
3681 assessments and treatment, and shall ensure that the staff of
3682 each provider is ~~are~~ appropriately trained.
3683 (c) Assessment and treatment providers shall have a
3684 written procedure developed, in consultation with licensed
3685 treatment professionals, establishing conditions under which a
3686 child's blood and urine samples will be tested for substance
3687 abuse indications. ~~It is not unlawful for~~ The person receiving
3688 the test results may ~~to~~ divulge the test results to the relevant
3689 facility staff and department personnel; ~~.~~ however, such
3690 information is exempt from ~~the provisions of~~ ss. 119.01 and
3691 119.07(1) and s. 24(a), Art. I of the State Constitution.
3692 (d) Serologic blood test and urinalysis results obtained
3693 under ~~pursuant to~~ paragraph (c) are confidential, except that
3694 they may be shared with employees or officers of the department,
3695 the court, and any assessment or treatment provider and
3696 designated facility treating the child. No person to whom the
3697 results of a test have been disclosed under this section may

3698 disclose the test results to another person not authorized under
3699 this section.
3700 (e) The results of any serologic blood or urine test on a
3701 serious or habitual juvenile offender shall become a part of
3702 that child's medical file. Upon transfer of the child to any
3703 other designated treatment facility, such file shall be
3704 transferred in an envelope marked confidential. The results of
3705 any test designed to identify the human immunodeficiency virus,
3706 or its antigen or antibody, shall be accessible only to persons
3707 designated by rule of the department. The provisions of such
3708 rule shall be consistent with the guidelines established by the
3709 Centers for Disease Control and Prevention.
3710 (f) A record of the assessment and treatment of each
3711 serious or habitual juvenile offender shall be maintained by the
3712 provider, which shall include data pertaining to the child's
3713 treatment and such other information as may be required under
3714 rules of the department. Unless waived by express and informed
3715 consent by the child or the guardian or, if the child is
3716 deceased, by the child's personal representative or by the
3717 person who stands next in line of intestate succession, the
3718 privileged and confidential status of the clinical assessment
3719 and treatment record shall not be lost by either authorized or
3720 unauthorized disclosure to any person, organization, or agency.
3721 (g) The assessment and treatment record shall not be a
3722 public record, and no part of it shall be released, except that:
3723 1. The record shall be released to such persons and
3724 agencies as are designated by the child or the guardian.

3725 2. The record shall be released to persons authorized by
3726 order of court, excluding matters privileged by other provisions
3727 of law.
3728 3. The record or any part thereof shall be disclosed to a
3729 qualified researcher, as defined by rule; a staff member of the
3730 designated treatment facility; or an employee of the department
3731 when the administrator of the facility or the Secretary of
3732 Juvenile Justice deems it necessary for treatment of the child,
3733 maintenance of adequate records, compilation of treatment data,
3734 or evaluation of programs.
3735 4. Information from the assessment and treatment record
3736 may be used for statistical and research purposes if the
3737 information is abstracted in such a way as to protect the
3738 identity of individuals.
3739 (h) Notwithstanding other provisions of this section, the
3740 department may request, receive, and provide assessment and
3741 treatment information to facilitate treatment, rehabilitation,
3742 and continuity of care of any serious or habitual juvenile
3743 offender from any of the following:
3744 1. The Social Security Administration and the United
3745 States Department of Veterans Affairs.
3746 2. Law enforcement agencies, state attorneys, defense
3747 attorneys, and judges in regard to the child's status.
3748 3. Personnel in any facility in which the child may be
3749 placed.
3750 4. Community agencies and others expected to provide
3751 services to the child upon his or her return to the community.

3752 (i) Any law enforcement agency, designated treatment
3753 facility, governmental or community agency, or other entity that
3754 receives information under ~~pursuant to~~ this section shall
3755 maintain such information as a nonpublic record as otherwise
3756 provided herein.
3757 (j) Any agency, not-for-profit organization, or treatment
3758 professional who acts in good faith in releasing information
3759 under ~~pursuant to~~ this subsection shall not be subject to civil
3760 or criminal liability for such release.
3761 (k) Assessment and treatment records are confidential as
3762 described in this paragraph and exempt from ~~the provisions of~~ s.
3763 119.07(1) and s. 24(a), Art. I of the State Constitution.
3764 1. The department shall have full access to the assessment
3765 and treatment records to ensure coordination of services to the
3766 child.
3767 2. The principles of confidentiality of records ~~as~~
3768 provided in s. 985.04 ~~shall~~ apply to the assessment and
3769 treatment records of serious or habitual juvenile offenders.
3770 (l) For purposes of effective administration, accurate
3771 tracking and recordkeeping, and optimal treatment decisions,
3772 each assessment and treatment provider shall maintain a central
3773 identification file on the serious or habitual juvenile
3774 offenders it treats.
3775 (m) The file of each serious or habitual juvenile offender
3776 shall contain, but is not limited to, pertinent children-in-
3777 need-of-services and delinquency record information maintained
3778 by the department; pertinent school records information on
3779 behavior, attendance, and achievement; and pertinent information

3780 on delinquency or children in need of services maintained by law
3781 enforcement agencies and the state attorney.
3782 (n) All providers under this section shall, as part of
3783 their contractual duties, collect, maintain, and report to the
3784 department all information necessary to comply with mandatory
3785 reporting pursuant to the promulgation of rules by the
3786 department for the implementation of serious or habitual
3787 juvenile offender programs and the monitoring and evaluation
3788 thereof.
3789 (o) The department is responsible for the development and
3790 maintenance of a statewide automated tracking system for serious
3791 or habitual juvenile offenders.
3792 (12) ~~(5)~~ DESIGNATED TREATMENT FACILITIES.--
3793 (a) Designated facilities shall be sited and constructed
3794 by the department, directly or by contract, pursuant to
3795 departmental rules, to ensure that facility design is compatible
3796 with treatment. The department is authorized to contract for the
3797 construction of the facilities and may also lease facilities.
3798 The number of beds per facility shall not exceed 25. An
3799 assessment of need for additional facilities shall be conducted
3800 prior to the siting or construction of more than one facility in
3801 any judicial circuit.
3802 (b) Designated facilities for serious or habitual juvenile
3803 offenders shall be separate and secure facilities established
3804 under the authority of the department for the treatment of such
3805 children.
3806 (c) Security for designated facilities for serious or
3807 habitual juvenile offenders shall be determined by the

3808 department. The department is authorized to contract for the
3809 provision of security.
3810 (d) With respect to the treatment of serious or habitual
3811 juvenile offenders under this section, designated facilities
3812 shall be immune from liability for civil damages except in
3813 instances when the failure to act in good faith results in
3814 serious injury or death, in which case liability shall be
3815 governed by s. 768.28.
3816 (e) Minimum standards and requirements for designated
3817 treatment facilities shall be contractually prescribed under
3818 ~~pursuant to~~ subsection (8) ~~(1)~~.
3819 Section 57. Subsection (32) of section 985.03, Florida
3820 Statutes, is amended and renumbered as subsection (1) of section
3821 985.475, Florida Statutes, and subsection (3) of section
3822 985.231, Florida Statutes, is amended and renumbered as
3823 subsection (2) of section 985.475, Florida Statutes, to read:
3824 985.475 Juvenile sexual offenders.--
3825 (1) ~~(32)~~ CRITERIA.--A "juvenile sexual offender" means:
3826 (a) A juvenile who has been found by the court under s.
3827 985.35 ~~985.228~~ to have committed a violation of chapter 794,
3828 chapter 796, chapter 800, s. 827.071, or s. 847.0133;
3829 (b) A juvenile found to have committed any felony
3830 violation of law or delinquent act involving juvenile sexual
3831 abuse. "Juvenile sexual abuse" means any sexual behavior that
3832 ~~which~~ occurs without consent, without equality, or as a result
3833 of coercion. For purposes of this subsection, the following
3834 definitions apply:

3835 1. "Coercion" means the exploitation of authority, use of
3836 bribes, threats of force, or intimidation to gain cooperation or
3837 compliance.
3838 2. "Equality" means two participants operating with the
3839 same level of power in a relationship, neither being controlled
3840 nor coerced by the other.
3841 3. "Consent" means an agreement including all of the
3842 following:
3843 a. Understanding what is proposed based on age, maturity,
3844 developmental level, functioning, and experience.
3845 b. Knowledge of societal standards for what is being
3846 proposed.
3847 c. Awareness of potential consequences and alternatives.
3848 d. Assumption that agreement or disagreement will be
3849 accepted equally.
3850 e. Voluntary decision.
3851 f. Mental competence.
3852
3853 Juvenile sexual offender behavior ranges from noncontact sexual
3854 behavior such as making obscene phone calls, exhibitionism,
3855 voyeurism, and the showing or taking of lewd photographs to
3856 varying degrees of direct sexual contact, such as frottage,
3857 fondling, digital penetration, rape, fellatio, sodomy, and
3858 various other sexually aggressive acts.
3859 (2) ~~(3)~~ Following a delinquency adjudicatory hearing under
3860 s. 985.35 ~~985.228~~, the court may on its own or upon request by
3861 the state or the department and subject to specific
3862 appropriation, determine whether a juvenile sexual offender

3863 placement is required for the protection of the public and what
3864 would be the best approach to address the treatment needs of the
3865 juvenile sexual offender. When the court determines that a
3866 juvenile has no history of a recent comprehensive assessment
3867 focused on sexually deviant behavior, the court may, subject to
3868 specific appropriation, order the department to conduct or
3869 arrange for an examination to determine whether the juvenile
3870 sexual offender is amenable to community-based treatment.
3871 (a) The report of the examination shall include, at a
3872 minimum, the following:
3873 1. The juvenile sexual offender's account of the incident
3874 and the official report of the investigation.
3875 2. The juvenile sexual offender's offense history.
3876 3. A multidisciplinary assessment of the sexually deviant
3877 behaviors, including an assessment by a certified psychologist,
3878 therapist, or psychiatrist.
3879 4. An assessment of the juvenile sexual offender's family,
3880 social, educational, and employment situation. The report shall
3881 set forth the sources of the evaluator's information.
3882 (b) The report shall assess the juvenile sexual offender's
3883 amenability to treatment and relative risk to the victim and the
3884 community.
3885 (c) The department shall provide a proposed plan to the
3886 court that shall include, at a minimum:
3887 1. The frequency and type of contact between the offender
3888 and therapist.
3889 2. The specific issues and behaviors to be addressed in
3890 the treatment and description of planned treatment methods.

3891 3. Monitoring plans, including any requirements regarding
3892 living conditions, school attendance and participation,
3893 lifestyle, and monitoring by family members, legal guardians, or
3894 others.
3895 4. Anticipated length of treatment.
3896 5. Recommended crime-related prohibitions and curfew.
3897 6. Reasonable restrictions on the contact between the
3898 juvenile sexual offender and either the victim or alleged
3899 victim.
3900 (d) After receipt of the report on the proposed plan of
3901 treatment, the court shall consider whether the community and
3902 the offender will benefit from use of juvenile sexual offender
3903 community-based treatment alternative disposition and consider
3904 the opinion of the victim or the victim's family as to whether
3905 the offender should receive a community-based treatment
3906 alternative disposition under this subsection.
3907 (e) If the court determines that this juvenile sexual
3908 offender community-based treatment alternative is appropriate,
3909 the court may place the offender on community supervision for up
3910 to 3 years. As a condition of community treatment and
3911 supervision, the court may order the offender to:
3912 1. Undergo available outpatient juvenile sexual offender
3913 treatment for up to 3 years. A program or provider may not be
3914 used for such treatment unless it has an appropriate program
3915 designed for sexual offender treatment. The department shall not
3916 change the treatment provider without first notifying the state
3917 attorney's office.

3918 2. Remain within described geographical boundaries and
3919 notify the court or the department counselor prior to any change
3920 in the offender's address, educational program, or employment.
3921 3. Comply with all requirements of the treatment plan.
3922 (f) The juvenile sexual offender treatment provider shall
3923 submit quarterly reports on the respondent's progress in
3924 treatment to the court and the parties to the proceedings. The
3925 juvenile sexual offender reports shall reference the treatment
3926 plan and include, at a minimum, the following:
3927 1. Dates of attendance.
3928 2. The juvenile sexual offender's compliance with the
3929 requirements of treatment.
3930 3. A description of the treatment activities.
3931 4. The sexual offender's relative progress in treatment.
3932 5. The offender's family support of the treatment
3933 objectives.
3934 6. Any other material specified by the court at the time
3935 of the disposition.
3936 (g) At the disposition hearing, the court may set case
3937 review hearings as the court considers appropriate.
3938 (h) If the juvenile sexual offender violates any condition
3939 of the disposition or the court finds that the juvenile sexual
3940 offender is failing to make satisfactory progress in treatment,
3941 the court may revoke the community-based treatment alternative
3942 and order commitment to the department under s. 985.441 ~~pursuant~~
3943 ~~to subsection (1)~~.
3944 (i) If the court determines that the juvenile sexual
3945 offender is not amenable to community-based treatment, the court

3946 shall proceed with a juvenile sexual offender disposition
3947 hearing under s. 985.441 ~~pursuant to subsection (1)~~.
3948 Section 58. Section 985.308, Florida Statutes, is
3949 renumbered as section 985.48, Florida Statutes.
3950 Section 59. Subsection (7) of section 985.03, Florida
3951 Statutes, is amended and renumbered as subsection (1) of section
3952 985.483, Florida Statutes, subsections (2), (4), and (5) of
3953 section 985.311, Florida Statutes, are amended and renumbered,
3954 respectively, as subsections (9), (11), and (12) of section
3955 985.483, Florida Statutes, paragraphs (e) through (i) and (k) of
3956 subsection (3) of section 985.311, Florida Statutes, are amended
3957 and renumbered, respectively, as subsections (2) through (6) and
3958 (7) of section 985.483, Florida Statutes, subsection (1) of
3959 section 985.311, Florida Statutes, is renumbered as subsection
3960 (8) of section 985.483, Florida Statutes, and paragraphs (a)
3961 through (d) and (j) of subsection (3) of section 985.311,
3962 Florida Statutes, are renumbered as paragraphs (a) through (d)
3963 and (e) of subsection (10) of section 985.483, Florida Statutes,
3964 and amended to read:
3965 985.483 ~~985.311~~ Intensive residential treatment program
3966 for offenders less than 13 years of age.--
3967 (1) ~~(7)~~ CRITERIA.--A "child eligible for an intensive
3968 residential treatment program for offenders less than 13 years
3969 of age" means a child who has been found to have committed a
3970 delinquent act or a violation of law in the case currently
3971 before the court and who meets at least one of the following
3972 criteria:

3973 (a) The child is less than 13 years of age at the time of
3974 the disposition for the current offense and has been adjudicated
3975 on the current offense for:
3976 1. Arson;
3977 2. Sexual battery;
3978 3. Robbery;
3979 4. Kidnapping;
3980 5. Aggravated child abuse;
3981 6. Aggravated assault;
3982 7. Aggravated stalking;
3983 8. Murder;
3984 9. Manslaughter;
3985 10. Unlawful throwing, placing, or discharging of a
3986 destructive device or bomb;
3987 11. Armed burglary;
3988 12. Aggravated battery;
3989 13. Any lewd or lascivious offense committed upon or in
3990 the presence of a person less than 16 years of age; or
3991 14. Carrying, displaying, using, threatening, or
3992 attempting to use a weapon or firearm during the commission of a
3993 felony.
3994 (b) The child is less than 13 years of age at the time of
3995 the disposition, the current offense is a felony, and the child
3996 has previously been committed at least once to a delinquency
3997 commitment program.
3998 (c) The child is less than 13 years of age and is
3999 currently committed for a felony offense and transferred from a
4000 moderate-risk or high-risk residential commitment placement.

4001 (2)~~(3)(e)~~ DETERMINATION.--After a child has been
4002 adjudicated delinquent under ~~pursuant to~~ s. 985.35~~985.228~~(5),
4003 the court shall determine whether the child is eligible for an
4004 intensive residential treatment program for offenders less than
4005 13 years of age under subsection (1) ~~pursuant to s. 985.03(7)~~.
4006 If the court determines that the child does not meet the
4007 criteria, ss. 985.435, 985.437, 985.439, 985.441, 985.445,
4008 985.45, and 985.455 ~~the provisions of s. 985.231(1)~~ shall apply.
4009 (3)~~(f)~~ PLACEMENT RECOMMENDATIONS.--After a child has been
4010 transferred for criminal prosecution, a circuit court judge may
4011 direct a juvenile probation officer to consult with designated
4012 staff from an appropriate intensive residential treatment
4013 program for offenders less than 13 years of age for the purpose
4014 of making recommendations to the court regarding the child's
4015 placement in such program.
4016 (4)~~(3)(g)~~ TIME AND PLACE FOR
4017 RECOMMENDATIONS.--Recommendations as to a child's placement in
4018 an intensive residential treatment program for offenders less
4019 than 13 years of age may be based on a preliminary screening of
4020 the child at appropriate sites, considering the child's location
4021 while court action is pending, which may include the nearest
4022 regional detention center or facility or jail.
4023 (5)~~(3)(h)~~ REPORTING RECOMMENDATIONS.--Based on the
4024 recommendations of the multidisciplinary assessment, the
4025 juvenile probation officer shall make the following
4026 recommendations to the court:
4027 (a)~~1.~~ For each child who has not been transferred for
4028 criminal prosecution, the juvenile probation officer shall

4029 recommend whether placement in such program is appropriate and
4030 needed.
4031 (b) ~~2.~~ For each child who has been transferred for criminal
4032 prosecution, the juvenile probation officer shall recommend
4033 whether the most appropriate placement for the child is a
4034 juvenile justice system program, including a child who is
4035 eligible for an intensive residential treatment program for
4036 offenders less than 13 years of age, or placement in the adult
4037 correctional system.
4038
4039 If treatment provided by an intensive residential treatment
4040 program for offenders less than 13 years of age is determined to
4041 be appropriate and needed and placement is available, the
4042 juvenile probation officer and the court shall identify the
4043 appropriate intensive residential treatment program for
4044 offenders less than 13 years of age best suited to the needs of
4045 the child.
4046 (6) ~~(3)(i)~~ ACTION ON RECOMMENDATIONS.--The treatment and
4047 placement recommendations shall be submitted to the court for
4048 further action under ~~pursuant to~~ this subsection ~~paragraph~~:
4049 (a) ~~1.~~ If it is recommended that placement in an intensive
4050 residential treatment program for offenders less than 13 years
4051 of age is inappropriate, the court shall make an alternative
4052 disposition under ~~pursuant to~~ s. 985.489 ~~985.309~~ or other
4053 alternative sentencing as applicable, using ~~utilizing~~ the
4054 recommendation as a guide.
4055 (b) ~~2.~~ If it is recommended that placement in an intensive
4056 residential treatment program for offenders less than 13 years

4057 of age is appropriate, the court may commit the child to the
4058 department for placement in the restrictiveness level designated
4059 for intensive residential treatment program for offenders less
4060 than 13 years of age.
4061 (7) ~~(3)(k)~~ DURATION OF COMMITMENT.--Any commitment of a
4062 child to the department for placement in an intensive
4063 residential treatment program for offenders less than 13 years
4064 of age shall be for an indeterminate period of time, but the
4065 time shall not exceed the maximum term of imprisonment that
4066 ~~which~~ an adult may serve for the same offense. Any child who has
4067 not completed the residential portion of the intensive
4068 residential treatment program for offenders less than 13 years
4069 of age by his or her fourteenth birthday may be transferred to
4070 another program for committed delinquent offenders.
4071 (8) ~~(1)~~ ASSESSMENT AND TREATMENT SERVICES.--Pursuant to ~~the~~
4072 ~~provisions of~~ this chapter and the establishment of appropriate
4073 program guidelines and standards, contractual instruments, which
4074 shall include safeguards of all constitutional rights, shall be
4075 developed for intensive residential treatment programs for
4076 offenders less than 13 years of age as follows:
4077 (a) The department shall provide for:
4078 1. The oversight of implementation of assessment and
4079 treatment approaches.
4080 2. The identification and prequalification of appropriate
4081 individuals or not-for-profit organizations, including minority
4082 individuals or organizations when possible, to provide
4083 assessment and treatment services to intensive offenders less
4084 than 13 years of age.

4085 3. The monitoring and evaluation of assessment and
4086 treatment services for compliance with ~~the provisions of~~ this
4087 chapter and all applicable rules and guidelines pursuant
4088 thereto.
4089 4. The development of an annual report on the performance
4090 of assessment and treatment to be presented to the Governor, the
4091 Attorney General, the President of the Senate, the Speaker of
4092 the House of Representatives, the Auditor General, and the
4093 Office of Program Policy Analysis and Government Accountability
4094 no later than January 1 of each year.
4095 (b) Assessment shall generally comprise the first 30 days
4096 of treatment and be provided by the same provider as treatment,
4097 but assessment and treatment services may be provided by
4098 separate providers~~,~~ where warranted. Providers shall be selected
4099 who have the capacity to assess and treat the unique problems
4100 presented by children with different racial and ethnic
4101 backgrounds. The department shall retain contractual authority
4102 to reject any assessment or treatment provider for lack of
4103 qualification.
4104 (9) ~~(2)~~ INTENSIVE RESIDENTIAL TREATMENT PROGRAM FOR
4105 OFFENDERS UNDER AGE ~~LESS THAN~~ 13 ~~YEARS OF AGE~~.--
4106 (a) There is created the intensive residential treatment
4107 program for offenders less than 13 years of age. The program
4108 shall consist of at least 9 months of intensive secure
4109 residential treatment. Conditional release assessment and
4110 services shall be provided in accordance with s. 985.46 ~~985.316~~.
4111 The components of the program shall include, but not be limited
4112 to:

4113 1. Diagnostic evaluation services.
4114 2. Appropriate treatment modalities, including substance
4115 abuse intervention, mental health services, and sexual behavior
4116 dysfunction interventions and gang-related behavior
4117 interventions.
4118 3. Life skills.
4119 4. Values clarification.
4120 5. Case management services.
4121 6. Educational services, including special and remedial
4122 education.
4123 7. Recreational and leisure time activities.
4124 8. Community involvement opportunities commencing, where
4125 appropriate, with the direct and timely payment of restitution
4126 to the victim.
4127 9. Intensive conditional release supervision.
4128 10. Graduated reentry into the community.
4129 11. A diversity of forms of individual and family
4130 treatment appropriate to and consistent with the child's needs.
4131 12. Consistent and clear consequences for misconduct.
4132 (b) The department is authorized to contract with private
4133 companies to provide some or all of the components indicated in
4134 paragraph (a).
4135 (c) The department shall involve local law enforcement
4136 agencies, the judiciary, school board personnel, the office of
4137 the state attorney, the office of the public defender, and
4138 community service agencies interested in or currently working
4139 with juveniles, in planning and developing this program.

4140 (d) The department is authorized to accept funds or in-
4141 kind contributions from public or private sources to be used for
4142 the purposes of this section.
4143 (e) The department shall establish quality assurance
4144 standards to ensure the quality and substance of mental health
4145 services provided to children with mental, nervous, or emotional
4146 disorders who may be committed to intensive residential
4147 treatment programs. The quality assurance standards shall
4148 address the possession of credentials by the mental health
4149 service providers.
4150 (10) ~~(3)~~ PRINCIPLES AND RECOMMENDATIONS OF ASSESSMENT AND
4151 TREATMENT.--
4152 (a) Assessment and treatment shall be conducted by
4153 treatment professionals with expertise in specific treatment
4154 procedures. These~~, which~~ professionals shall exercise all
4155 professional judgment independently of the department.
4156 (b) Treatment provided to children in designated
4157 facilities shall be suited to the assessed needs of each
4158 individual child and shall be administered safely and humanely,
4159 with respect for human dignity.
4160 (c) The department may promulgate rules for the
4161 implementation and operation of programs and facilities for
4162 children who are eligible for an intensive residential treatment
4163 program for offenders less than 13 years of age. The department
4164 must involve the following groups in the promulgation of rules
4165 for services for this population: local law enforcement
4166 agencies, the judiciary, school board personnel, the office of
4167 the state attorney, the office of the public defender, and

4168 community service agencies interested in or currently working
4169 with juveniles. When promulgating these rules, the department
4170 must consider program principles, components, standards,
4171 procedures for intake, diagnostic and assessment activities,
4172 treatment modalities, and case management.
4173 (d) Any provider who acts in good faith is immune from
4174 civil or criminal liability for his or her actions in connection
4175 with the assessment, treatment, or transportation of an
4176 intensive offender less than 13 years of age under ~~the~~
4177 ~~provisions of~~ this chapter.
4178 (e) ~~(j)~~ The following provisions shall apply to children in
4179 an intensive residential treatment program for offenders less
4180 than 13 years of age:
4181 1. A child shall begin participation in the conditional
4182 release component of the program based upon a determination made
4183 by the treatment provider and approved by the department.
4184 2. A child shall begin participation in the community
4185 supervision component of conditional release based upon a
4186 determination made by the treatment provider and approved by the
4187 department. The treatment provider shall give written notice of
4188 the determination to the circuit court having jurisdiction over
4189 the child. If the court does not respond with a written
4190 objection within 10 days, the child shall begin the conditional
4191 release component.
4192 3. A child shall be discharged from the program based upon
4193 a determination made by the treatment provider with the approval
4194 of the department.

4195 4. In situations where the department does not agree with
4196 the decision of the treatment provider, a reassessment shall be
4197 performed, and the department shall use ~~utilize~~ the reassessment
4198 determination to resolve the disagreement and make a final
4199 decision.
4200 (11) ~~(4)~~ ASSESSMENTS, TESTING, RECORDS, AND INFORMATION.--
4201 (a) Under ~~Pursuant to the provisions of~~ this section, the
4202 department shall implement the comprehensive assessment
4203 instrument for the treatment needs of children who are eligible
4204 for an intensive residential treatment program for offenders
4205 less than 13 years of age and for the assessment, which
4206 assessment shall include the criteria under subsection (1) ~~s.~~
4207 ~~985.03(7)~~ and shall also include, but not be limited to,
4208 evaluation of the child's:
4209 1. Amenability to treatment.
4210 2. Proclivity toward violence.
4211 3. Tendency toward gang involvement.
4212 4. Substance abuse or addiction and the level thereof.
4213 5. History of being a victim of child abuse or sexual
4214 abuse, or indication of sexual behavior dysfunction.
4215 6. Number and type of previous adjudications, findings of
4216 guilt, and convictions.
4217 7. Potential for rehabilitation.
4218 (b) The department shall contract with multiple
4219 individuals or not-for-profit organizations to perform the
4220 assessments and treatment, and shall ensure that the staff of
4221 each provider is ~~are~~ appropriately trained.

4222 (c) Assessment and treatment providers shall have a
4223 written procedure developed, in consultation with licensed
4224 treatment professionals, establishing conditions under which a
4225 child's blood and urine samples will be tested for substance
4226 abuse indications. ~~It is not unlawful for~~ The person receiving
4227 the test results may ~~to~~ divulge the test results to the relevant
4228 facility staff and department personnel; ~~.~~ however, such
4229 information is exempt from ~~the provisions of~~ ss. 119.01 and
4230 119.07(1) and s. 24(a), Art. I of the State Constitution.
4231 (d) Serologic blood test and urinalysis results obtained
4232 under ~~pursuant to~~ paragraph (c) are confidential, except that
4233 they may be shared with employees or officers of the department,
4234 the court, and any assessment or treatment provider and
4235 designated facility treating the child. No person to whom the
4236 results of a test have been disclosed under this section may
4237 disclose the test results to another person not authorized under
4238 this section.
4239 (e) The results of any serologic blood or urine test on a
4240 child who is eligible for an intensive residential treatment
4241 program for offenders less than 13 years of age shall become a
4242 part of that child's permanent medical file. Upon transfer of
4243 the child to any other designated treatment facility, such file
4244 shall be transferred in an envelope marked confidential. The
4245 results of any test designed to identify the human
4246 immunodeficiency virus, or its antigen or antibody, shall be
4247 accessible only to persons authorized ~~designated~~ by rule of the
4248 department. The provisions of such rule shall be consistent with

4249 the guidelines established by the Centers for Disease Control
4250 and Prevention.
4251 (f) A record of the assessment and treatment of each child
4252 who is eligible for an intensive residential treatment program
4253 for offenders less than 13 years of age shall be maintained by
4254 the provider, which shall include data pertaining to the child's
4255 treatment and such other information as may be required under
4256 rules of the department. Unless waived by express and informed
4257 consent by the child or the guardian or, if the child is
4258 deceased, by the child's personal representative or by the
4259 person who stands next in line of intestate succession, the
4260 privileged and confidential status of the clinical assessment
4261 and treatment record shall not be lost by either authorized or
4262 unauthorized disclosure to any person, organization, or agency.
4263 (g) The assessment and treatment record shall not be a
4264 public record, and no part of it shall be released, except that:
4265 1. The record shall be released to such persons and
4266 agencies as are designated by the child or the guardian.
4267 2. The record shall be released to persons authorized by
4268 order of court, excluding matters privileged by other provisions
4269 of law.
4270 3. The record or any part thereof shall be disclosed to a
4271 qualified researcher, as defined by rule; a staff member of the
4272 designated treatment facility; or an employee of the department
4273 when the administrator of the facility or the Secretary of
4274 Juvenile Justice deems it necessary for treatment of the child,
4275 maintenance of adequate records, compilation of treatment data,
4276 or evaluation of programs.

4277 4. Information from the assessment and treatment record
4278 may be used for statistical and research purposes if the
4279 information is abstracted in such a way as to protect the
4280 identity of individuals.
4281 (h) Notwithstanding other provisions of this section, the
4282 department may request, receive, and provide assessment and
4283 treatment information to facilitate treatment, rehabilitation,
4284 and continuity of care of any child who is eligible for an
4285 intensive residential treatment program for offenders less than
4286 13 years of age from any of the following:
4287 1. The Social Security Administration and the United
4288 States Department of Veterans Affairs.
4289 2. Law enforcement agencies, state attorneys, defense
4290 attorneys, and judges in regard to the child's status.
4291 3. Personnel in any facility in which the child may be
4292 placed.
4293 4. Community agencies and others expected to provide
4294 services to the child upon his or her return to the community.
4295 (i) Any law enforcement agency, designated treatment
4296 facility, governmental or community agency, or other entity that
4297 receives information under ~~pursuant to~~ this section shall
4298 maintain such information as a nonpublic record as otherwise
4299 provided herein.
4300 (j) Any agency, not-for-profit organization, or treatment
4301 professional who acts in good faith in releasing information
4302 under ~~pursuant to~~ this subsection shall not be subject to civil
4303 or criminal liability for such release.

4304 (k) Assessment and treatment records are confidential as
4305 described in this paragraph and exempt from ~~the provisions of~~ s.
4306 119.07(1) and s. 24(a), Art. I of the State Constitution.
4307 1. The department shall have full access to the assessment
4308 and treatment records to ensure coordination of services to the
4309 child.
4310 2. The principles of confidentiality of records as
4311 provided in s. 985.045 ~~985.05~~ shall apply to the assessment and
4312 treatment records of children who are eligible for an intensive
4313 residential treatment program for offenders less than 13 years
4314 of age.
4315 (l) For purposes of effective administration, accurate
4316 tracking and recordkeeping, and optimal treatment decisions,
4317 each assessment and treatment provider shall maintain a central
4318 identification file on each child it treats in the intensive
4319 residential treatment program for offenders less than 13 years
4320 of age.
4321 (m) The file of each child treated in the intensive
4322 residential treatment program for offenders less than 13 years
4323 of age shall contain, but is not limited to, pertinent children-
4324 in-need-of-services and delinquency record information
4325 maintained by the department; pertinent school records
4326 information on behavior, attendance, and achievement; and
4327 pertinent information on delinquency or children in need of
4328 services maintained by law enforcement agencies and the state
4329 attorney.
4330 (n) All providers under this section shall, as part of
4331 their contractual duties, collect, maintain, and report to the

4332 department all information necessary to comply with mandatory
4333 reporting pursuant to the promulgation of rules by the
4334 department for the implementation of intensive residential
4335 treatment programs for offenders less than 13 years of age and
4336 the monitoring and evaluation thereof.
4337 (o) The department is responsible for the development and
4338 maintenance of a statewide automated tracking system for
4339 children who are treated in an intensive residential treatment
4340 program for offenders less than 13 years of age.
4341 (12) ~~(5)~~ DESIGNATED TREATMENT FACILITIES.--
4342 (a) Designated facilities shall be sited and constructed
4343 by the department, directly or by contract, pursuant to
4344 departmental rules, to ensure that facility design is compatible
4345 with treatment. The department is authorized to contract for the
4346 construction of the facilities and may also lease facilities.
4347 The number of beds per facility shall not exceed 25. An
4348 assessment of need for additional facilities shall be conducted
4349 prior to the siting or construction of more than one facility in
4350 any judicial circuit.
4351 (b) Designated facilities for an intensive residential
4352 treatment program for offenders less than 13 years of age shall
4353 be separate and secure facilities established under the
4354 authority of the department for the treatment of such children.
4355 (c) Security for designated facilities for children who
4356 are eligible for an intensive residential treatment program for
4357 offenders less than 13 years of age shall be determined by the
4358 department. The department is authorized to contract for the
4359 provision of security.

4360 (d) With respect to the treatment of children who are
4361 eligible for an intensive residential treatment program for
4362 offenders less than 13 years of age under this section,
4363 designated facilities shall be immune from liability for civil
4364 damages except in instances when the failure to act in good
4365 faith results in serious injury or death, in which case
4366 liability shall be governed by s. 768.28.
4367 (e) Minimum standards and requirements for designated
4368 treatment facilities shall be contractually prescribed under
4369 ~~pursuant to~~ subsection (8)~~(1)~~.
4370 Section 60. Section 985.312, Florida Statutes, is
4371 renumbered as section 985.486, Florida Statutes, and amended to
4372 read:
4373 985.486 ~~985.312~~ Intensive residential treatment programs
4374 for offenders less than 13 years of age; prerequisite for
4375 commitment.--No child who is eligible for commitment to an
4376 intensive residential treatment program for offenders less than
4377 13 years of age as established in s. 985.483(1) ~~985.03(7)~~, may
4378 be committed to any intensive residential treatment program for
4379 offenders less than 13 years of age as established in s. 985.483
4380 ~~985.311~~, unless such program has been established by the
4381 department through existing resources or specific appropriation,
4382 for such program.
4383 Section 61. Section 985.309, Florida Statutes, is
4384 renumbered as section 985.489, Florida Statutes, and subsection
4385 (6) of that section is amended to read:
4386 985.489 ~~985.309~~ Boot camp for children.--

4387 (6) A boot camp operated by the department, a county, or a
4388 municipality must provide for the following minimum periods of
4389 participation:
4390 (a) A participant in a low-risk residential program must
4391 spend at least 2 months in the boot camp component of the
4392 program. Conditional release assessment and services shall be
4393 provided in accordance with s. 985.46 ~~985.316~~.
4394 (b) A participant in a moderate-risk residential program
4395 must spend at least 4 months in the boot camp component of the
4396 program. Conditional release assessment and services shall be
4397 provided in accordance with s. 985.46 ~~985.316~~.
4398
4399 This subsection does not preclude the operation of a program
4400 that requires the participants to spend more than 4 months in
4401 the boot camp component of the program or that requires the
4402 participants to complete two sequential programs of 4 months
4403 each in the boot camp component of the program.
4404 Section 62. Section 985.314, Florida Statutes, is
4405 renumbered as section 985.494, Florida Statutes, and amended to
4406 read:
4407 985.494 ~~985.314~~ Commitment programs for juvenile felony
4408 offenders.--
4409 (1) Notwithstanding any other law and regardless of the
4410 child's age, a child who is adjudicated delinquent, or for whom
4411 adjudication is withheld, for an act that would be a felony if
4412 committed by an adult, shall be committed to:

4413 (a) A boot camp program under s. 985.489 ~~985.309~~ if the
4414 child has participated in an early delinquency intervention
4415 program as provided in s. 985.61 ~~985.305~~.
4416 (b) A program for serious or habitual juvenile offenders
4417 under s. 985.47 ~~985.31~~ or an intensive residential treatment
4418 program for offenders less than 13 years of age under s. 985.483
4419 ~~985.311~~, if the child has participated in an early delinquency
4420 intervention program and has completed a boot camp program.
4421 (c) A maximum-risk residential program, if the child has
4422 participated in an early delinquency intervention program, has
4423 completed a boot camp program, and has completed a program for
4424 serious or habitual juvenile offenders or an intensive
4425 residential treatment program for offenders less than 13 years
4426 of age. The commitment of a child to a maximum-risk residential
4427 program must be for an indeterminate period, but may not exceed
4428 the maximum term of imprisonment that an adult may serve for the
4429 same offense.
4430 (2) In committing a child to the appropriate program, the
4431 court may consider an equivalent program of similar intensity as
4432 being comparable to a program required under subsection (1).
4433 Section 63. Section 985.511, Florida Statutes, is created
4434 to read:
4435 985.511 Costs of representation.--The responsibilities of
4436 the parents or legal guardian of the child to pay costs
4437 associated with the representation of the child are prescribed
4438 under s. 985.033.
4439 Section 64. Section 985.204, Florida Statutes, is
4440 renumbered as section 985.512, Florida Statutes.

4441 Section 65. Paragraph (e) of subsection (1) of section
4442 985.231, Florida Statutes, is amended and renumbered as
4443 subsection (2) of section 985.513, Florida Statutes, which is
4444 created to read:
4445 985.513 Powers of the court over parent or guardian at
4446 disposition.--
4447 (1) The court that has jurisdiction over an adjudicated
4448 delinquent child may, by an order stating the facts upon which a
4449 determination of a sanction and rehabilitative program was made
4450 at the disposition hearing:
4451 (a) Order the child's parent or guardian together with the
4452 child to render community service in a public service program or
4453 to participate in a community work project. In addition to the
4454 sanctions imposed on the child, the court may order the child's
4455 parent or guardian to perform community service if the court
4456 finds that the parent or guardian did not make a diligent and
4457 good faith effort to prevent the child from engaging in
4458 delinquent acts.
4459 (b) Order the parent or guardian to make restitution in
4460 money or in kind for any damage or loss caused by the child's
4461 offense. The court may also require the child's parent or legal
4462 guardian to be responsible for any restitution ordered against
4463 the child, as provided under s. 985.437. The court shall
4464 determine a reasonable amount or manner of restitution, and
4465 payment shall be made to the clerk of the circuit court as
4466 provided in s. 985.437. The court may retain jurisdiction, as
4467 provided under s. 985.0301, over the child and the child's
4468 parent or legal guardian whom the court has ordered to pay

4469 restitution until the restitution order is satisfied or the
4470 court orders otherwise.
4471 ~~(1)~~
4472 (2) ~~(e)~~ Notwithstanding whether adjudication is imposed or
4473 withheld ~~In carrying out the provisions of this part~~, the court
4474 may order the natural parents or legal custodian or guardian of
4475 a child who is found to have committed a delinquent act to
4476 participate in family counseling and other professional
4477 counseling activities deemed necessary for the rehabilitation of
4478 the child or to enhance their ability to provide the child with
4479 adequate support, guidance, and supervision. The court may also
4480 order that the parent, custodian, or guardian support the child
4481 and participate with the child in fulfilling a court-imposed
4482 sanction. In addition, the court may use its contempt powers to
4483 enforce a court-imposed sanction.
4484 Section 66. Section 985.514, Florida Statutes, is created
4485 to read:
4486 985.514 Responsibility for cost of care; fees.--
4487 (1) When any child is placed into secure or home detention
4488 care or into other placement for the purpose of being supervised
4489 by the department pursuant to a court order following a
4490 detention hearing, the court shall order the child's parents to
4491 pay fees to the department as provided in s. 985.039.
4492 (2) When any child is found by the court to have committed
4493 a delinquent act and is placed on probation, regardless of
4494 adjudication, under the supervision of or in the temporary legal
4495 custody of the department, the court shall order the child's
4496 parents to pay fees to the department as provided in s. 985.039.

4497 (3) When the court under s. 985.565 orders any child
4498 prosecuted as an adult to be supervised by or committed to the
4499 department for treatment in any of the department's programs for
4500 children, the court shall order the child's parents to pay fees
4501 as provided in s. 985.039.
4502 Section 67. Section 985.234, Florida Statutes, is
4503 renumbered as section 985.534, Florida Statutes, and subsection
4504 (1) of that section is amended to read:
4505 985.534 ~~985.234~~ Appeal.--
4506 (1) An appeal from an order of the court affecting a party
4507 to a case involving a child under ~~pursuant to~~ this chapter ~~part~~
4508 may be taken to the appropriate district court of appeal within
4509 the time and in the manner prescribed by s. 924.051 and the
4510 Florida Rules of Appellate Procedure by:
4511 (a) Any child, and any parent or legal guardian or
4512 custodian of any child.
4513 (b) The state, which may appeal from:
4514 1. An order dismissing a petition or any section thereof;
4515 2. An order granting a new adjudicatory hearing;
4516 3. An order arresting judgment;
4517 4. A ruling on a question of law when the child is
4518 adjudicated delinquent and appeals from the judgment;
4519 5. The disposition, on the ground that it is illegal;
4520 6. A judgment discharging a child on habeas corpus;
4521 7. An order adjudicating a child insane under the Florida
4522 Rules of Juvenile Procedure; and

4523 8. All other preadjudicatory hearings, except that the
4524 state may not take more than one appeal under this subsection in
4525 any case.
4526
4527 In the case of an appeal by the state, the notice of appeal
4528 shall be filed by the appropriate state attorney or his or her
4529 authorized assistant under ~~pursuant to the provisions of~~ s.
4530 27.18. Such an appeal shall embody all assignments of error in
4531 each preadjudicatory hearing order that the state seeks to have
4532 reviewed. The state shall pay all costs of the appeal except for
4533 the child's attorney's fee.
4534 Section 68. Sections 985.235 and 985.236, Florida
4535 Statutes, are renumbered, respectively, as sections 985.535 and
4536 985.536, Florida Statutes.
4537 Section 69. Section 985.226, Florida Statutes, is
4538 renumbered as section 985.556, Florida Statutes, and amended to
4539 read:
4540 985.556 ~~985.226~~ Waiver of juvenile court jurisdiction;
4541 hearing ~~Criteria for waiver of juvenile court jurisdiction;~~
4542 ~~hearing on motion to transfer for prosecution as an adult~~.--
4543 (1) VOLUNTARY WAIVER.--The court shall transfer and
4544 certify a child's criminal case for trial as an adult if the
4545 child is alleged to have committed a violation of law and, prior
4546 to the commencement of an adjudicatory hearing, the child,
4547 joined by a parent or, in the absence of a parent, by the
4548 guardian or guardian ad litem, demands in writing to be tried as
4549 an adult. Once a child has been transferred for criminal
4550 prosecution pursuant to a voluntary waiver hearing and has been

4551 found to have committed the presenting offense or a lesser
4552 included offense, the child shall be handled thereafter in every
4553 respect as an adult for any subsequent violation of state law,
4554 unless the court imposes juvenile sanctions under s. 985.565
4555 ~~985.233~~(4)(b).
4556 (2) INVOLUNTARY DISCRETIONARY WAIVER.--
4557 ~~(a) Discretionary waiver.--~~Except as provided in
4558 subsection (3) ~~paragraph (b)~~, the state attorney may file a
4559 motion requesting the court to transfer the child for criminal
4560 prosecution if the child was 14 years of age or older at the
4561 time the alleged delinquent act or violation of law was
4562 committed.
4563 (3) INVOLUNTARY MANDATORY WAIVER.--
4564 ~~(b) Mandatory waiver.--~~
4565 (a)~~1.~~ If the child was 14 years of age or older, and if
4566 the child has been previously adjudicated delinquent for an act
4567 classified as a felony, which adjudication was for the
4568 commission of, attempt to commit, or conspiracy to commit
4569 murder, sexual battery, armed or strong-armed robbery,
4570 carjacking, home-invasion robbery, aggravated battery,
4571 aggravated assault, or burglary with an assault or battery, and
4572 the child is currently charged with a second or subsequent
4573 violent crime against a person; or
4574 (b)~~2.~~ If the child was 14 years of age or older at the
4575 time of commission of a fourth or subsequent alleged felony
4576 offense and the child was previously adjudicated delinquent or
4577 had adjudication withheld for or was found to have committed, or
4578 to have attempted or conspired to commit, three offenses that

4579 are felony offenses if committed by an adult, and one or more of
4580 such felony offenses involved the use or possession of a firearm
4581 or violence against a person;
4582
4583 the state attorney shall request the court to transfer and
4584 certify the child for prosecution as an adult or shall provide
4585 written reasons to the court for not making such request, or
4586 proceed under ~~pursuant to~~ s. 985.557 ~~985.227~~(1). Upon the state
4587 attorney's request, the court shall either enter an order
4588 transferring the case and certifying the case for trial as if
4589 the child were an adult or provide written reasons for not
4590 issuing such an order.
4591 (4) ~~(3)~~ WAIVER HEARING.--
4592 (a) Within 7 days, excluding Saturdays, Sundays, and legal
4593 holidays, after the date a petition alleging that a child has
4594 committed a delinquent act or violation of law has been filed,
4595 or later with the approval of the court, but before an
4596 adjudicatory hearing and after considering the recommendation of
4597 the juvenile probation officer, the state attorney may file a
4598 motion requesting the court to transfer the child for criminal
4599 prosecution.
4600 (b) After the filing of the motion of the state attorney,
4601 summonses must be issued and served in conformity with s.
4602 985.319 ~~985.219~~. A copy of the motion and a copy of the
4603 delinquency petition, if not already served, must be attached to
4604 each summons.
4605 (c) The court shall conduct a hearing on all transfer
4606 request motions for the purpose of determining whether a child

4607 should be transferred. In making its determination, the court
4608 shall consider:
4609 1. The seriousness of the alleged offense to the community
4610 and whether the protection of the community is best served by
4611 transferring the child for adult sanctions.
4612 2. Whether the alleged offense was committed in an
4613 aggressive, violent, premeditated, or willful manner.
4614 3. Whether the alleged offense was against persons or
4615 against property, greater weight being given to offenses against
4616 persons, especially if personal injury resulted.
4617 4. The probable cause as found in the report, affidavit,
4618 or complaint.
4619 5. The desirability of trial and disposition of the entire
4620 offense in one court when the child's associates in the alleged
4621 crime are adults or children who are to be tried as adults.
4622 6. The sophistication and maturity of the child.
4623 7. The record and previous history of the child,
4624 including:
4625 a. Previous contacts with the department, the Department
4626 of Corrections, the former Department of Health and
4627 Rehabilitative Services, the Department of Children and Family
4628 Services, other law enforcement agencies, and courts;
4629 b. Prior periods of probation;
4630 c. Prior adjudications that the child committed a
4631 delinquent act or violation of law, greater weight being given
4632 if the child has previously been found by a court to have
4633 committed a delinquent act or violation of law involving an
4634 offense classified as a felony or has twice previously been

4635 found to have committed a delinquent act or violation of law
4636 involving an offense classified as a misdemeanor; and
4637 d. Prior commitments to institutions.
4638 8. The prospects for adequate protection of the public and
4639 the likelihood of reasonable rehabilitation of the child, if the
4640 child is found to have committed the alleged offense, by the use
4641 of procedures, services, and facilities currently available to
4642 the court.
4643 (d) Prior to a hearing on the transfer request motion by
4644 the state attorney, a study and report to the court relevant to
4645 the factors in paragraph (c) must be made in writing by an
4646 authorized agent of the department. The child and the child's
4647 parents or legal guardians and counsel and the state attorney
4648 shall have the right to examine these reports and to question
4649 the parties responsible for them at the hearing.
4650 (e) Any decision to transfer a child for criminal
4651 prosecution must be in writing and include consideration of, and
4652 findings of fact with respect to, all criteria in paragraph (c).
4653 The court shall render an order including a specific finding of
4654 fact and the reasons for a decision to impose adult sanctions.
4655 The order shall be reviewable on appeal under s. 985.534 ~~985.234~~
4656 and the Florida Rules of Appellate Procedure.
4657 (5) ~~(4)~~ EFFECT OF ORDER WAIVING JURISDICTION.--
4658 (a) Once a child has been transferred for criminal
4659 prosecution pursuant to an involuntary waiver hearing and has
4660 been found to have committed the presenting offense or a lesser
4661 included offense, the child shall thereafter be handled in every
4662 respect as an adult for any subsequent violation of state law,

4663 unless the court imposes juvenile sanctions under s. 985.565
4664 ~~985.233~~.
4665 (b) When a child is transferred for criminal prosecution
4666 as an adult, the court shall immediately transfer and certify to
4667 the adult circuit court all felony cases pertaining to the
4668 child, for prosecution of the child as an adult, which have not
4669 yet resulted in a plea of guilty or nolo contendere or in which
4670 a finding of guilt has not been made. If the child is acquitted
4671 of all charged offenses or lesser included offenses contained in
4672 the original case transferred to adult court, all felony cases
4673 that were transferred to adult court under ~~pursuant to~~ this
4674 paragraph shall be subject to the same penalties such cases were
4675 subject to before being transferred to adult court.
4676 Section 70. Section 985.227, Florida Statutes, is
4677 renumbered as section 985.557, Florida Statutes, and amended to
4678 read:
4679 985.557 ~~985.227~~ ~~Prosecution of juveniles as adults by the~~
4680 Direct filing of an information ~~in the criminal division of the~~
4681 ~~circuit court~~; discretionary and ~~criteria;~~ mandatory criteria.--
4682 (1) DISCRETIONARY DIRECT FILE~~; CRITERIA~~.--
4683 (a) With respect to any child who was 14 or 15 years of
4684 age at the time the alleged offense was committed, the state
4685 attorney may file an information when in the state attorney's
4686 judgment and discretion the public interest requires that adult
4687 sanctions be considered or imposed and when the offense charged
4688 is for the commission of, attempt to commit, or conspiracy to
4689 commit:
4690 1. Arson;

4691 2. Sexual battery;
4692 3. Robbery;
4693 4. Kidnapping;
4694 5. Aggravated child abuse;
4695 6. Aggravated assault;
4696 7. Aggravated stalking;
4697 8. Murder;
4698 9. Manslaughter;
4699 10. Unlawful throwing, placing, or discharging of a
4700 destructive device or bomb;
4701 11. Armed burglary in violation of s. 810.02(2)(b) or
4702 specified burglary of a dwelling or structure in violation of s.
4703 810.02(2)(c), or burglary with an assault or battery in
4704 violation of s. 810.02(2)(a);
4705 12. Aggravated battery;
4706 13. Any lewd or lascivious offense committed upon or in
4707 the presence of a person less than 16 years of age;
4708 14. Carrying, displaying, using, threatening, or
4709 attempting to use a weapon or firearm during the commission of a
4710 felony;
4711 15. Grand theft in violation of s. 812.014(2)(a);
4712 16. Possessing or discharging any weapon or firearm on
4713 school property in violation of s. 790.115;
4714 17. Home invasion robbery;
4715 18. Carjacking; or
4716 19. Grand theft of a motor vehicle in violation of s.
4717 812.014(2)(c)6. or grand theft of a motor vehicle valued at
4718 $20,000 or more in violation of s. 812.014(2)(b) if the child

4719 has a previous adjudication for grand theft of a motor vehicle
4720 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).
4721 (b) With respect to any child who was 16 or 17 years of
4722 age at the time the alleged offense was committed, the state
4723 attorney may file an information when in the state attorney's
4724 judgment and discretion the public interest requires that adult
4725 sanctions be considered or imposed. However, the state attorney
4726 may not file an information on a child charged with a
4727 misdemeanor, unless the child has had at least two previous
4728 adjudications or adjudications withheld for delinquent acts, one
4729 of which involved an offense classified as a felony under state
4730 law.
4731 (2) MANDATORY DIRECT FILE.--
4732 (a) With respect to any child who was 16 or 17 years of
4733 age at the time the alleged offense was committed, the state
4734 attorney shall file an information if the child has been
4735 previously adjudicated delinquent for an act classified as a
4736 felony, which adjudication was for the commission of, attempt to
4737 commit, or conspiracy to commit murder, sexual battery, armed or
4738 strong-armed robbery, carjacking, home-invasion robbery,
4739 aggravated battery, or aggravated assault, and the child is
4740 currently charged with a second or subsequent violent crime
4741 against a person.
4742 (b) With respect to any child 16 or 17 years of age at the
4743 time an offense classified as a forcible felony, as defined in
4744 s. 776.08, was committed, the state attorney shall file an
4745 information if the child has previously been adjudicated
4746 delinquent or had adjudication withheld for three acts

4747 classified as felonies each of which occurred at least 45 days
4748 apart from each other. This paragraph does not apply when the
4749 state attorney has good cause to believe that exceptional
4750 circumstances exist which preclude the just prosecution of the
4751 juvenile in adult court.
4752 (c) The state attorney must file an information if a
4753 child, regardless of the child's age at the time the alleged
4754 offense was committed, is alleged to have committed an act that
4755 would be a violation of law if the child were an adult, that
4756 involves stealing a motor vehicle, including, but not limited
4757 to, a violation of s. 812.133, relating to carjacking, or s.
4758 812.014(2)(c)6., relating to grand theft of a motor vehicle, and
4759 while the child was in possession of the stolen motor vehicle
4760 the child caused serious bodily injury to or the death of a
4761 person who was not involved in the underlying offense. For
4762 purposes of this section, the driver and all willing passengers
4763 in the stolen motor vehicle at the time such serious bodily
4764 injury or death is inflicted shall also be subject to mandatory
4765 transfer to adult court. "Stolen motor vehicle," for the
4766 purposes of this section, means a motor vehicle that has been
4767 the subject of any criminal wrongful taking. For purposes of
4768 this section, "willing passengers" means all willing passengers
4769 who have participated in the underlying offense.
4770 (d)1. With respect to any child who was 16 or 17 years of
4771 age at the time the alleged offense was committed, the state
4772 attorney shall file an information if the child has been charged
4773 with committing or attempting to commit an offense listed in s.

4774 775.087(2)(a)1.a.-q., and, during the commission of or attempt
4775 to commit the offense, the child:
4776 a. Actually possessed a firearm or destructive device, as
4777 those terms are defined in s. 790.001.
4778 b. Discharged a firearm or destructive device, as
4779 described in s. 775.087(2)(a)2.
4780 c. Discharged a firearm or destructive device, as
4781 described in s. 775.087(2)(a)3., and, as a result of the
4782 discharge, death or great bodily harm was inflicted upon any
4783 person.
4784 2. Upon transfer, any child who is:
4785 a. Charged under ~~pursuant to~~ sub-subparagraph 1.a. and who
4786 has been previously adjudicated or had adjudication withheld for
4787 a forcible felony offense or any offense involving a firearm, or
4788 who has been previously placed in a residential commitment
4789 program, shall be subject to sentencing under s. 775.087(2)(a),
4790 notwithstanding s. 985.565 ~~985.233~~.
4791 b. Charged under ~~pursuant to~~ sub-subparagraph 1.b. or sub-
4792 subparagraph 1.c., shall be subject to sentencing under s.
4793 775.087(2)(a), notwithstanding s. 985.565 ~~985.233~~.
4794 3. Upon transfer, any child who is charged under ~~pursuant~~
4795 ~~to~~ this paragraph, but who does not meet the requirements
4796 specified in subparagraph 2., shall be sentenced under ~~pursuant~~
4797 ~~to~~ s. 985.565 ~~985.233~~; however, if the court imposes a juvenile
4798 sanction, the court must commit the child to a high-risk or
4799 maximum-risk juvenile facility.
4800 4. This paragraph shall not apply if the state attorney
4801 has good cause to believe that exceptional circumstances exist

4802 that ~~which~~ preclude the just prosecution of the child in adult
4803 court.
4804 5. The Department of Corrections shall make every
4805 reasonable effort to ensure that any child 16 or 17 years of age
4806 who is convicted and sentenced under this paragraph be
4807 completely separated such that there is no physical contact with
4808 adult offenders in the facility, to the extent that it is
4809 consistent with chapter 958.
4810 (3) EFFECT OF DIRECT FILE.--
4811 (a) Once a child has been transferred for criminal
4812 prosecution pursuant to an information and has been found to
4813 have committed the presenting offense or a lesser included
4814 offense, the child shall be handled thereafter in every respect
4815 as if an adult for any subsequent violation of state law, unless
4816 the court imposes juvenile sanctions under s. 985.565 ~~985.233~~.
4817 (b) When a child is transferred for criminal prosecution
4818 as an adult, the court shall immediately transfer and certify to
4819 the adult circuit court all felony cases pertaining to the
4820 child, for prosecution of the child as an adult, which have not
4821 yet resulted in a plea of guilty or nolo contendere or in which
4822 a finding of guilt has not been made. If a child is acquitted of
4823 all charged offenses or lesser included offenses contained in
4824 the original case transferred to adult court, all felony cases
4825 that were transferred to adult court as a result of this
4826 paragraph shall be subject to the same penalties to which such
4827 cases would have been subject before being transferred to adult
4828 court.

4829 (c) When a child has been transferred for criminal
4830 prosecution as an adult and has been found to have committed a
4831 violation of state law, the disposition of the case may be made
4832 under s. 985.565 ~~985.233~~ and may include the enforcement of any
4833 restitution ordered in any juvenile proceeding.
4834 (4) DIRECT-FILE POLICIES AND GUIDELINES.--Each state
4835 attorney shall develop written policies and guidelines to govern
4836 determinations for filing an information on a juvenile, to be
4837 submitted to the Executive Office of the Governor, the President
4838 of the Senate, and the Speaker of the House of Representatives
4839 not later than January 1 of each year.
4840 (5) An information filed pursuant to this section may
4841 include all charges that are based on the same act, criminal
4842 episode, or transaction as the primary offenses.
4843 Section 71. Section 985.225, Florida Statutes, is
4844 renumbered as section 985.56, Florida Statutes, and amended to
4845 read:
4846 985.56 ~~985.225~~ Indictment of a juvenile.--
4847 (1) A child of any age who is charged with a violation of
4848 state law punishable by death or by life imprisonment is subject
4849 to the jurisdiction of the court as set forth in s. 985.0301(2)
4850 ~~985.219(8)~~ unless and until an indictment on the charge is
4851 returned by the grand jury. When such indictment is returned,
4852 the petition for delinquency, if any, must be dismissed and the
4853 child must be tried and handled in every respect as an adult:
4854 (a) On the offense punishable by death or by life
4855 imprisonment; and

4856 (b) On all other felonies or misdemeanors charged in the
4857 indictment which are based on the same act or transaction as the
4858 offense punishable by death or by life imprisonment or on one or
4859 more acts or transactions connected with the offense punishable
4860 by death or by life imprisonment.
4861 (2) An adjudicatory hearing may not be held until 21 days
4862 after the child is taken into custody and charged with having
4863 committed an offense punishable by death or by life
4864 imprisonment, unless the state attorney advises the court in
4865 writing that he or she does not intend to present the case to
4866 the grand jury, or has presented the case to the grand jury and
4867 the grand jury has not returned an indictment. If the court
4868 receives such a notice from the state attorney, or if the grand
4869 jury fails to act within the 21-day period, the court may
4870 proceed as otherwise authorized under this part.
4871 (3) If the child is found to have committed the offense
4872 punishable by death or by life imprisonment, the child shall be
4873 sentenced as an adult. If the juvenile is not found to have
4874 committed the indictable offense but is found to have committed
4875 a lesser included offense or any other offense for which he or
4876 she was indicted as a part of the criminal episode, the court
4877 may sentence under ~~pursuant to~~ s. 985.565 ~~985.233~~.
4878 (4)(a) Once a child has been indicted pursuant to this
4879 section ~~subsection~~ and has been found to have committed any
4880 offense for which he or she was indicted as a part of the
4881 criminal episode, the child shall be handled thereafter in every
4882 respect as if an adult for any subsequent violation of state

4883 law, unless the court imposes juvenile sanctions under s.
4884 985.565 ~~985.233~~.
4885 (b) When a child has been indicted pursuant to this
4886 section, ~~subsection~~ the court shall immediately transfer and
4887 certify to the adult circuit court all felony cases pertaining
4888 to the child, for prosecution of the child as an adult, which
4889 have not yet resulted in a plea of guilty or nolo contendere or
4890 in which a finding of guilt has not been made. If the child is
4891 acquitted of all charged offenses or lesser included offenses
4892 contained in the indictment case, all felony cases that were
4893 transferred to adult court pursuant to this paragraph shall be
4894 subject to the same penalties such cases were subject to before
4895 being transferred to adult court.
4896 Section 72. Subsections (1) through (4) of section
4897 985.233, Florida Statutes, are renumbered, respectively, as
4898 subsections (1) through (3) and paragraphs (c) and (d) of
4899 subsection (4) of section 985.565, Florida Statutes, and
4900 paragraphs (a), (b), (c), (e), and (f) of subsection (4) of
4901 section 985.233, Florida Statutes, are amended and renumbered,
4902 respectively, as paragraphs (a), (b), and (e) of subsection (4)
4903 of section 985.565, Florida Statutes, to read:
4904 985.565 ~~985.233~~ Sentencing powers; procedures;
4905 alternatives for juveniles prosecuted as adults.--
4906 (4) SENTENCING ALTERNATIVES.--
4907 (a) ~~Sentencing to~~ Adult sanctions.--
4908 1. Cases prosecuted on indictment.--If the child is found
4909 to have committed the offense punishable by death or life
4910 imprisonment, the child shall be sentenced as an adult. If the

4911 juvenile is not found to have committed the indictable offense
4912 but is found to have committed a lesser included offense or any
4913 other offense for which he or she was indicted as a part of the
4914 criminal episode, the court may sentence as follows:
4915 a. As an adult;
4916 b. Under ~~Pursuant to~~ chapter 958; or
4917 c. As a juvenile under ~~pursuant to~~ this section.
4918 2. Other cases.--If a child who has been transferred for
4919 criminal prosecution pursuant to information or waiver of
4920 juvenile court jurisdiction is found to have committed a
4921 violation of state law or a lesser included offense for which he
4922 or she was charged as a part of the criminal episode, the court
4923 may sentence as follows:
4924 a. As an adult;
4925 b. Under ~~Pursuant to~~ chapter 958; or
4926 c. As a juvenile under ~~pursuant to~~ this section.
4927 3. Notwithstanding any other provision to the contrary, if
4928 the state attorney is required to file a motion to transfer and
4929 certify the juvenile for prosecution as an adult under ~~pursuant~~
4930 ~~to~~ s. 985.556(3) ~~985.226(2)(b)~~ and that motion is granted, or if
4931 the state attorney is required to file an information under
4932 ~~pursuant to~~ s. 985.557 ~~985.227~~(2)(a) or (b), the court must
4933 impose adult sanctions.
4934 4. Any sentence imposing adult sanctions is presumed
4935 appropriate, and the court is not required to set forth specific
4936 findings or enumerate the criteria in this subsection as any
4937 basis for its decision to impose adult sanctions.

4938 5. When a child has been transferred for criminal
4939 prosecution as an adult and has been found to have committed a
4940 violation of state law, the disposition of the case may include
4941 the enforcement of any restitution ordered in any juvenile
4942 proceeding.
4943 (b) ~~Sentencing to~~ Juvenile sanctions.--For juveniles
4944 transferred to adult court but who do not qualify for such
4945 transfer under ~~pursuant to~~ s. 985.556(3) ~~985.226(2)(b)~~ or s.
4946 985.557 ~~985.227~~(2)(a) or (b), the court may impose juvenile
4947 sanctions under this paragraph. If juvenile sentences are
4948 imposed, the court shall, under ~~pursuant to~~ this paragraph,
4949 adjudge the child to have committed a delinquent act.
4950 Adjudication of delinquency shall not be deemed a conviction,
4951 nor shall it operate to impose any of the civil disabilities
4952 ordinarily resulting from a conviction. The court shall impose
4953 an adult sanction or a juvenile sanction and may not sentence
4954 the child to a combination of adult and juvenile punishments. An
4955 adult sanction or a juvenile sanction may include enforcement of
4956 an order of restitution or probation previously ordered in any
4957 juvenile proceeding. However, if the court imposes a juvenile
4958 sanction and the department determines that the sanction is
4959 unsuitable for the child, the department shall return custody of
4960 the child to the sentencing court for further proceedings,
4961 including the imposition of adult sanctions. Upon adjudicating a
4962 child delinquent under subsection (1), the court may:
4963 1. Place the child in a probation program under the
4964 supervision of the department for an indeterminate period of

4965 time until the child reaches the age of 19 years or sooner if
4966 discharged by order of the court.
4967 2. Commit the child to the department for treatment in an
4968 appropriate program for children for an indeterminate period of
4969 time until the child is 21 or sooner if discharged by the
4970 department. The department shall notify the court of its intent
4971 to discharge no later than 14 days prior to discharge. Failure
4972 of the court to timely respond to the department's notice shall
4973 be considered approval for discharge.
4974 3. Order disposition under ss. 985.435, 985.437, 985.439,
4975 985.441, 985.445, 985.45, and 985.455 ~~pursuant to s. 985.231~~ as
4976 an alternative to youthful offender or adult sentencing if the
4977 court determines not to impose youthful offender or adult
4978 sanctions.
4979 (c) ~~Imposition of~~ Adult sanctions upon failure of juvenile
4980 sanctions.--If a child proves not to be suitable to a commitment
4981 program, in a juvenile probation program, or treatment program
4982 under ~~the provisions of~~ paragraph (b), the department shall
4983 provide the sentencing court with a written report outlining the
4984 basis for its objections to the juvenile sanction and shall
4985 simultaneously provide a copy of the report to the state
4986 attorney and the defense counsel. The department shall schedule
4987 a hearing within 30 days. Upon hearing, the court may revoke the
4988 previous adjudication, impose an adjudication of guilt, and
4989 impose any sentence which it may lawfully impose, giving credit
4990 for all time spent by the child in the department. The court may
4991 also classify the child as a youthful offender under ~~pursuant to~~
4992 s. 958.04, if appropriate. For purposes of this paragraph, a

4993 child may be found not suitable to a commitment program,
4994 community control program, or treatment program under ~~the~~
4995 ~~provisions of~~ paragraph (b) if the child commits a new violation
4996 of law while under juvenile sanctions, if the child commits any
4997 other violation of the conditions of juvenile sanctions, or if
4998 the child's actions are otherwise determined by the court to
4999 demonstrate a failure of juvenile sanctions.
5000 (d) ~~(e)~~ Further proceedings heard in adult court.--When a
5001 child is sentenced to juvenile sanctions, further proceedings
5002 involving those sanctions shall continue to be heard in the
5003 adult court.
5004 (e) ~~(f)~~ School attendance.--If the child is attending or is
5005 eligible to attend public school and the court finds that the
5006 victim or a sibling of the victim in the case is attending or
5007 may attend the same school as the child, the court placement
5008 order shall include a finding pursuant to the proceeding
5009 described in s. 985.455(2), regardless of whether adjudication
5010 is withheld ~~985.23(1)(d)~~.
5011
5012 It is the intent of the Legislature that the criteria and
5013 guidelines in this subsection are mandatory and that a
5014 determination of disposition under this subsection is subject to
5015 the right of the child to appellate review under s. 985.534
5016 ~~985.234~~.
5017 Section 73. Section 985.417, Florida Statutes, is
5018 renumbered as section 985.57, Florida Statutes.
5019 Section 74. Subsections (1) through (3) and (6) through
5020 (11) of section 985.404, Florida Statutes, are renumbered as

5021 subsections (1) through (3) and (5) through (10) of section
5022 985.601, Florida Statutes, and subsections (4), (5), and (9) of
5023 that section are amended to read:
5024 985.601 ~~985.404~~ Administering the juvenile justice
5025 continuum.--
5026 ~~(4) The department may transfer a child, when necessary to~~
5027 ~~appropriately administer the child's commitment, from one~~
5028 ~~facility or program to another facility or program operated,~~
5029 ~~contracted, subcontracted, or designated by the department,~~
5030 ~~including a postcommitment nonresidential conditional release~~
5031 ~~program. The department shall notify the court that committed~~
5032 ~~the child to the department and any attorney of record, in~~
5033 ~~writing, of its intent to transfer the child from a commitment~~
5034 ~~facility or program to another facility or program of a higher~~
5035 ~~or lower restrictiveness level. The court that committed the~~
5036 ~~child may agree to the transfer or may set a hearing to review~~
5037 ~~the transfer. If the court does not respond within 10 days after~~
5038 ~~receipt of the notice, the transfer of the child shall be deemed~~
5039 ~~granted.~~
5040 (4) ~~(5)~~ The department shall maintain continuing
5041 cooperation with the Department of Education, the Department of
5042 Children and Family Services, the Agency for Workforce
5043 Innovation ~~Department of Labor and Employment Security~~, and the
5044 Department of Corrections for the purpose of participating in
5045 agreements with respect to dropout prevention and the reduction
5046 of suspensions, expulsions, and truancy; increased access to and
5047 participation in GED, vocational, and alternative education
5048 programs; and employment training and placement assistance. The

5049 cooperative agreements between the departments shall include an
5050 interdepartmental plan to cooperate in accomplishing the
5051 reduction of inappropriate transfers of children into the adult
5052 criminal justice and correctional systems.
5053 (8) ~~(9)~~ The department shall ensure that personnel
5054 responsible for the care, supervision, and individualized
5055 treatment of children are appropriately apprised of the
5056 requirements of this chapter ~~part~~ and trained in the specialized
5057 areas required to comply with standards established by rule.
5058 Section 75. Section 985.4043, Florida Statutes, is
5059 renumbered as section 985.6015, Florida Statutes, and subsection
5060 (1) of that section is amended to read:
5061 985.6015 ~~985.4043~~ Shared County/State Juvenile Detention
5062 Trust Fund.--
5063 (1) The Shared County/State Juvenile Detention Trust Fund
5064 is created within the department ~~of Juvenile Justice~~.
5065 Section 76. Section 985.3045, Florida Statutes, is
5066 renumbered as section 985.605, Florida Statutes, and subsections
5067 (2) and (3) of that section are amended to read:
5068 985.605 ~~985.3045~~ Prevention service program; monitoring;
5069 ~~report;~~ uniform performance measures.--
5070 ~~(2) No later than January 31, 2001, the prevention service~~
5071 ~~program shall submit a report to the Governor, the Speaker of~~
5072 ~~the House, and the President of the Senate concerning the~~
5073 ~~implementation of a statewide multiagency plan to coordinate the~~
5074 ~~efforts of all state-funded programs, grants, appropriations, or~~
5075 ~~activities that are designed to prevent juvenile crime,~~
5076 ~~delinquency, gang membership, or status offense behaviors and~~

5077 ~~all state-funded programs, grants, appropriations, or activities~~
5078 ~~that are designed to prevent a child from becoming a "child in~~
5079 ~~need of services," as defined in chapter 984. The report shall~~
5080 ~~include a proposal for a statewide coordinated multiagency~~
5081 ~~juvenile delinquency prevention policy. In preparing the report,~~
5082 ~~the department shall coordinate with and receive input from each~~
5083 ~~state agency or entity that receives or uses state~~
5084 ~~appropriations to fund programs, grants, appropriations, or~~
5085 ~~activities that are designed to prevent juvenile crime,~~
5086 ~~delinquency, gang membership, status offense, or that are~~
5087 ~~designed to prevent a child from becoming a "child in need of~~
5088 ~~services," as defined in chapter 984. The report shall identify~~
5089 ~~whether legislation will be needed to effect a statewide plan to~~
5090 ~~coordinate the efforts of all state-funded programs, grants,~~
5091 ~~appropriations, or activities that are designed to prevent~~
5092 ~~juvenile crime, delinquency, gang membership, or status offense~~
5093 ~~behaviors and all state-funded programs, grants, appropriations,~~
5094 ~~or activities that are designed to prevent a child from becoming~~
5095 ~~a "child in need of services," as defined in chapter 984. The~~
5096 ~~report shall consider the potential impact of requiring such~~
5097 ~~state-funded efforts to target at least one of the following~~
5098 ~~strategies designed to prevent youth from entering or reentering~~
5099 ~~the juvenile justice system and track the associated outcome~~
5100 ~~data:~~
5101 ~~(a) Encouraging youth to attend school, which may include~~
5102 ~~special assistance and tutoring to address deficiencies in~~
5103 ~~academic performance; outcome data to reveal the number of days~~
5104 ~~youth attended school while participating in the program.~~

5105 ~~(b) Engaging youth in productive and wholesome activities~~
5106 ~~during nonschool hours that build positive character or instill~~
5107 ~~positive values, or that enhance educational experiences;~~
5108 ~~outcome data to reveal the number of youth who are arrested~~
5109 ~~during nonschool hours while participating in the program.~~
5110 ~~(c) Encouraging youth to avoid the use of violence;~~
5111 ~~outcome data to reveal the number of youth who are arrested for~~
5112 ~~crimes involving violence while participating in the program.~~
5113 ~~(d) Assisting youth to acquire skills needed to find~~
5114 ~~meaningful employment, which may include assistance in finding a~~
5115 ~~suitable employer for the youth; outcome data to reveal the~~
5116 ~~number of youth who obtain and maintain employment for at least~~
5117 ~~180 days.~~
5118
5119 ~~The department is encouraged to identify additional strategies~~
5120 ~~which may be relevant to preventing youth from becoming children~~
5121 ~~in need of services and to preventing juvenile crime,~~
5122 ~~delinquency, gang membership and status offense behaviors. The~~
5123 ~~report shall consider the feasibility of developing uniform~~
5124 ~~performance measures and methodology for collecting such outcome~~
5125 ~~data to be utilized by all state-funded programs, grants,~~
5126 ~~appropriations, or activities that are designed to prevent~~
5127 ~~juvenile crime, delinquency, gang membership, or status offense~~
5128 ~~behaviors and all state-funded programs, grants, appropriations,~~
5129 ~~or activities that are designed to prevent a child from becoming~~
5130 ~~a "child in need of services," as defined in chapter 984. The~~
5131 ~~prevention service program is encouraged to identify other~~
5132 ~~issues that may be of critical importance to preventing a child~~

5133 ~~from becoming a child in need of services, as defined in chapter~~
5134 ~~984, or to preventing juvenile crime, delinquency, gang~~
5135 ~~membership, or status offense behaviors.~~
5136 (2) ~~(3)~~ The department shall expend funds related to the
5137 prevention of juvenile delinquency in a manner consistent with
5138 the policies expressed in ss. 984.02 and 985.02. The department
5139 shall expend said funds in a manner that maximizes public
5140 accountability and ensures the documentation of outcomes.
5141 (a) All entities that receive or use state moneys to fund
5142 juvenile delinquency prevention services through contracts or
5143 grants with the department shall design the programs providing
5144 such services to further one or more of the following
5145 strategies: ~~specified in paragraphs (2)(a)-(d).~~
5146 1. Encouraging youth to attend school, which may include
5147 special assistance and tutoring to address deficiencies in
5148 academic performance and collecting outcome data to reveal the
5149 number of days youth attended school while participating in the
5150 program.
5151 2. Engaging youth in productive and wholesome activities
5152 during nonschool hours that build positive character, instill
5153 positive values, or enhance educational experiences and
5154 collecting outcome data to reveal the number of youths who are
5155 arrested during nonschool hours while participating in the
5156 program.
5157 3. Encouraging youth to avoid the use of violence and
5158 collecting outcome data to reveal the number of youths who are
5159 arrested for crimes involving violence while participating in
5160 the program.

5161 4. Assisting youth to acquire skills needed to find
5162 meaningful employment, which may include assistance in finding a
5163 suitable employer for the youth and collecting outcome data to
5164 reveal the number of youths who obtain and maintain employment
5165 for at least 180 days.
5166 (b) The department shall develop an outcome measure for
5167 each program strategy specified in paragraph (a) ~~paragraphs~~
5168 ~~(2)(a)-(d)~~ that logically relates to the risk factor addressed
5169 by the strategy.
5170 (c) All entities that receive or use state moneys to fund
5171 the juvenile delinquency prevention services through contracts
5172 or grants with the department shall, as a condition of receipt
5173 of state funds, provide the department with personal demographic
5174 information concerning all participants in the service
5175 sufficient to allow the department to verify criminal or
5176 delinquent history information, school attendance or academic
5177 information, employment information, or other requested
5178 performance information.
5179 Section 77. Section 985.3046, Florida Statutes, is
5180 renumbered as section 985.606, Florida Statutes, and amended to
5181 read:
5182 985.606 ~~985.3046~~ ~~Agencies and entities providing~~
5183 Prevention services providers; ~~collection of~~ performance data
5184 collection; reporting ~~requirements~~.--Each state agency or entity
5185 that receives or uses state appropriations to fund programs,
5186 grants, appropriations, or activities that are designed to
5187 prevent juvenile crime, delinquency, gang membership, status
5188 offense, or that are designed to prevent a child from becoming a

5189 "child in need of services," as defined in chapter 984, shall
5190 collect data relative to the performance of such activities and
5191 shall provide said data to the Governor, the President of the
5192 Senate, and the Speaker of the House no later than January 31st
5193 of each year for the preceding fiscal year~~, beginning in 2002~~.
5194 ~~Further, each state agency or entity that receives or uses state~~
5195 ~~appropriations to fund programs, grants, appropriations, or~~
5196 ~~activities that are designed to prevent juvenile crime,~~
5197 ~~delinquency, gang membership, status offense, or that are~~
5198 ~~designed to prevent a child from becoming a "child in need of~~
5199 ~~services," as defined in chapter 984, shall cooperate with the~~
5200 ~~Department of Juvenile Justice with~~ ~~regard to the report~~
5201 ~~described in s. 985.3045(2).~~
5202 Section 78. Section 985.305, Florida Statutes, is
5203 renumbered as section 985.61, Florida Statutes.
5204 Section 79. Section 985.2066, Florida Statutes, is
5205 renumbered as section 985.614, Florida Statutes, and amended to
5206 read:
5207 985.614 ~~985.2066~~ Children locked out of the home;
5208 interagency cooperation.--The department ~~of Juvenile Justice~~ and
5209 the Department of Children and Family Services shall encourage
5210 interagency cooperation within each circuit and shall develop
5211 comprehensive agreements between the staff and providers for
5212 each department in order to coordinate the services provided to
5213 children who are locked out of the home and the families of
5214 those children.

5215 Section 80. Section 985.315, Florida Statutes, is
5216 renumbered as section 985.618, Florida Statutes, and paragraph
5217 (b) of subsection (4) of that section is amended to read:
5218 985.618 ~~985.315~~ Educational and career-related programs.--
5219 (4)
5220 (b) Evaluations of juvenile educational and career-related
5221 programs shall be conducted according to the following
5222 guidelines:
5223 1. Systematic evaluations and quality assurance monitoring
5224 shall be implemented, in accordance with s. 985.632 ~~985.412~~(1),
5225 (2), and (5), to determine whether the programs are related to
5226 successful postrelease adjustments.
5227 2. Operations and policies of the programs shall be
5228 reevaluated to determine if they are consistent with their
5229 primary objectives.
5230 Section 81. Section 985.3155, Florida Statutes, is
5231 renumbered as section 985.622, Florida Statutes.
5232 Section 82. Section 985.317, Florida Statutes, is
5233 renumbered as section 985.625, Florida Statutes, and subsection
5234 (3) of that section is amended to read:
5235 985.625 ~~985.317~~ Literacy programs for juvenile
5236 offenders.--
5237 (3) INITIAL ASSESSMENT.--When an offender is admitted to a
5238 residential commitment facility, the department or a provider
5239 under contract with the department shall immediately assess
5240 whether the offender has achieved a sixth-grade or higher
5241 reading and writing level. An assessment may be conducted at a
5242 juvenile assessment center as provided in s. 985.135 ~~985.209~~ as

5243 a part of the intake process. If the department or a provider
5244 determines that an offender has not achieved a sixth-grade or
5245 higher reading and writing level, the offender shall participate
5246 in a program if the offender meets the criteria for
5247 participation.
5248 Section 83. Section 985.419, Florida Statutes, is
5249 renumbered as section 985.629, Florida Statutes.
5250 Section 84. Section 985.412, Florida Statutes, is
5251 renumbered as section 985.632, Florida Statutes.
5252 Section 85. Section 985.42, Florida Statutes, is
5253 renumbered as section 985.636, Florida Statutes.
5254 Section 86. Section 985.405, Florida Statutes, is
5255 renumbered as section 985.64, Florida Statutes, and that section
5256 is amended to read:
5257 985.64 ~~985.405~~ Rulemaking ~~Rules for implementation~~.--The
5258 department ~~of Juvenile Justice~~ shall adopt rules pursuant to ss.
5259 120.536(1) and 120.54 to implement the provisions of this
5260 chapter. Such rules may not conflict with the Florida Rules of
5261 Juvenile Procedure. All rules and policies must conform to
5262 accepted standards of care and treatment.
5263 Section 87. Subsection (2) of section 985.01, Florida
5264 Statutes, is renumbered as subsection (1) of section 985.644,
5265 Florida Statutes, and subsections (1) through (5) of section
5266 985.407, Florida Statutes, are renumbered as subsections (2)
5267 through (6) of section 985.644, Florida Statutes.
5268 Section 88. Section 985.408, Florida Statutes, is
5269 renumbered as section 985.648, Florida Statutes, and amended to
5270 read:

5271 985.648 ~~985.408~~ Consultants.--The department may hire
5272 consultants to advise and confer with the judges of the circuit
5273 courts upon request of any such court and for the purpose of
5274 advising the department on programs, facilities, institutions,
5275 care, supervision, and all other services and treatment for
5276 children committed to the department's care under ~~pursuant to~~
5277 this chapter ~~part~~.
5278 Section 89. Section 985.409, Florida Statutes, is
5279 renumbered as section 985.652, Florida Statutes.
5280 Section 90. Section 985.406, Florida Statutes, is
5281 renumbered as section 985.66, Florida Statutes, and paragraph
5282 (a) of subsection (3) of that section is amended to read:
5283 985.66 ~~985.406~~ Juvenile justice training academies
5284 ~~established~~; Juvenile Justice Standards and Training Commission
5285 ~~created~~; Juvenile Justice Training Trust Fund ~~created~~.--
5286 (3) JUVENILE JUSTICE TRAINING PROGRAM.--The commission
5287 shall establish a certifiable program for juvenile justice
5288 training pursuant to this section, and all department ~~of~~
5289 ~~Juvenile Justice~~ program staff and providers who deliver direct
5290 care services pursuant to contract with the department shall be
5291 required to participate in and successfully complete the
5292 commission-approved program of training pertinent to their areas
5293 of responsibility. Judges, state attorneys, and public
5294 defenders, law enforcement officers, and school district
5295 personnel may participate in such training program. For the
5296 juvenile justice program staff, the commission shall, based on a
5297 job-task analysis:

5298 (a) Design, implement, maintain, evaluate, and revise a
5299 basic training program, including a competency-based
5300 examination, for the purpose of providing minimum employment
5301 training qualifications for all juvenile justice personnel. All
5302 program staff of the department ~~of Juvenile Justice~~ and
5303 providers who deliver direct-care services who are hired after
5304 October 1, 1999, must meet the following minimum requirements:
5305 1. Be at least 19 years of age.
5306 2. Be a high school graduate or its equivalent as
5307 determined by the commission.
5308 3. Not have been convicted of any felony or a misdemeanor
5309 involving perjury or a false statement, or have received a
5310 dishonorable discharge from any of the Armed Forces of the
5311 United States. Any person who, after September 30, 1999, pleads
5312 guilty or nolo contendere to or is found guilty of any felony or
5313 a misdemeanor involving perjury or false statement is not
5314 eligible for employment, notwithstanding suspension of sentence
5315 or withholding of adjudication. Notwithstanding this
5316 subparagraph, any person who pled ~~pleads~~ nolo contendere to a
5317 misdemeanor involving a false statement before October 1, 1999,
5318 and who has had such record of that plea sealed or expunged is
5319 not ineligible for employment for that reason.
5320 4. Abide by all the provisions of s. 985.644(1) ~~985.01(2)~~
5321 regarding fingerprinting and background investigations and other
5322 screening requirements for personnel.
5323 5. Execute and submit to the department an affidavit-of-
5324 application form, adopted by the department, attesting to his or
5325 her compliance with subparagraphs 1.-4. The affidavit must be

5326 executed under oath and constitutes an official statement under
5327 s. 837.06. The affidavit must include conspicuous language that
5328 the intentional false execution of the affidavit constitutes a
5329 misdemeanor of the second degree. The employing agency shall
5330 retain the affidavit.
5331 Section 91. Section 985.4135, Florida Statutes, is
5332 renumbered as section 985.664, Florida Statutes, and subsection
5333 (5) of that section is amended to read:
5334 985.664 ~~985.4135~~ Juvenile justice circuit boards and
5335 juvenile justice county councils.--
5336 (5) Juvenile justice circuit boards and county councils
5337 shall advise and assist the department in the evaluation and
5338 award of prevention and early intervention grant programs,
5339 including the Community Juvenile Justice Partnership Grant
5340 program established in s. 985.676 ~~985.415~~ and proceeds from the
5341 Invest in Children license plate annual use fees.
5342 Section 92. Sections 985.416 and 985.4145, Florida
5343 Statutes, are renumbered, respectively, as sections 985.668 and
5344 985.672, Florida Statutes.
5345 Section 93. Section 985.415, Florida Statutes, is
5346 renumbered as section 985.676, Florida Statutes, and paragraph
5347 (a) of subsection (1) and paragraphs (a) and (e) of subsection
5348 (2) of that section are amended to read:
5349 985.676 ~~985.415~~ Community juvenile justice partnership
5350 grants.--
5351 (1) GRANTS; CRITERIA.--
5352 (a) In order to encourage the development of county and
5353 circuit juvenile justice plans and the development and

5354 implementation of county and circuit interagency agreements
5355 under ~~pursuant to~~ s. 985.664 ~~985.4135~~, the community juvenile
5356 justice partnership grant program is established, and shall be
5357 administered by the department ~~of Juvenile Justice~~.
5358 (2) GRANT APPLICATION PROCEDURES.--
5359 (a) Each entity wishing to apply for an annual community
5360 juvenile justice partnership grant, which may be renewed for a
5361 maximum of 2 additional years for the same provision of
5362 services, shall submit a grant proposal for funding or continued
5363 funding to the department. The department shall establish the
5364 grant application procedures. In order to be considered for
5365 funding, the grant proposal shall include the following
5366 assurances and information:
5367 1. A letter from the chair of the juvenile justice circuit
5368 board confirming that the grant application has been reviewed
5369 and found to support one or more purposes or goals of the
5370 juvenile justice plan as developed by the board.
5371 2. A rationale and description of the program and the
5372 services to be provided, including goals and objectives.
5373 3. A method for identification of the juveniles most
5374 likely to be involved in the juvenile justice system who will be
5375 the focus of the program.
5376 4. Provisions for the participation of parents and
5377 guardians in the program.
5378 5. Coordination with other community-based and social
5379 service prevention efforts, including, but not limited to, drug
5380 and alcohol abuse prevention and dropout prevention programs,
5381 that serve the target population or neighborhood.

5382 6. An evaluation component to measure the effectiveness of
5383 the program in accordance with ~~the provisions of~~ s. 985.632
5384 ~~985.412~~.
5385 7. A program budget, including the amount and sources of
5386 local cash and in-kind resources committed to the budget. The
5387 proposal must establish to the satisfaction of the department
5388 that the entity will make a cash or in-kind contribution to the
5389 program of a value that is at least equal to 20 percent of the
5390 amount of the grant.
5391 8. The necessary program staff.
5392 (e) Each entity that is awarded a grant as provided for in
5393 this section shall submit an annual evaluation report to the
5394 department, the circuit juvenile justice manager, the juvenile
5395 justice circuit board, and the juvenile justice county council,
5396 by a date subsequent to the end of the contract period
5397 established by the department, documenting the extent to which
5398 the program objectives have been met, the effect of the program
5399 on the juvenile arrest rate, and any other information required
5400 by the department. The department shall coordinate and
5401 incorporate all such annual evaluation reports with ~~the~~
5402 ~~provisions of~~ s. 985.632 ~~985.412~~. Each entity is also subject to
5403 a financial audit and a performance audit.
5404 Section 94. Section 985.41, Florida Statutes, is
5405 renumbered as section 985.682, Florida Statutes, and subsection
5406 (1) of that section is amended to read:
5407 985.682 ~~985.41~~ Siting of facilities; study; criteria.--
5408 (1) The department is directed to conduct or contract for
5409 a statewide comprehensive study to determine current and future

5410 needs for all types of facilities for children committed to the
5411 custody, care, or supervision of the department under ~~pursuant~~
5412 ~~to~~ this chapter ~~part~~.
5413 Section 95. Section 985.2155, Florida Statutes, is
5414 renumbered as section 985.686, Florida Statutes.
5415 Section 96. Section 985.411, Florida Statutes, is
5416 renumbered as section 985.688, Florida Statutes, and paragraph
5417 (b) of subsection (10) of that section is amended to read:
5418 985.688 ~~985.411~~ Administering county and municipal
5419 delinquency programs and facilities.--
5420 (10)
5421 (b) The department may institute proceedings against a
5422 county or municipality to terminate the operation of a facility
5423 when any of the following conditions exist:
5424 1. The facility fails to take preventive or corrective
5425 measures in accordance with any order of the department.
5426 2. The facility fails to abide by any final order of the
5427 department once it has become effective and binding.
5428 3. The facility commits any violation of this section
5429 constituting an emergency requiring immediate action as provided
5430 in this chapter.
5431 4. The facility has willfully and knowingly refused to
5432 comply with the screening requirement for personnel under
5433 ~~pursuant to~~ s. 985.644(1) ~~985.01~~ or has refused to dismiss
5434 personnel found to be in noncompliance with the requirements for
5435 good moral character.

5436 Section 97. Sections 985.4075, 985.4041, and 985.4042,
5437 Florida Statutes, are renumbered, respectively, as sections
5438 985.69, 985.692, and 985.694, Florida Statutes.
5439 Section 98. Sections 985.4045 and 985.4046, Florida
5440 Statutes, are renumbered, respectively, as sections 985.701 and
5441 985.711, Florida Statutes.
5442 Section 99. Section 985.3141, Florida Statutes, is
5443 renumbered as section 985.721, Florida Statutes, and subsection
5444 (2) of that section is amended to read:
5445 985.721 ~~985.3141~~ Escapes from secure detention or
5446 residential commitment facility.--An escape from:
5447 (2) Any residential commitment facility described in s.
5448 985.03(44) ~~(46)~~, maintained for the custody, treatment,
5449 punishment, or rehabilitation of children found to have
5450 committed delinquent acts or violations of law; or
5451
5452 constitutes escape within the intent and meaning of s. 944.40
5453 and is a felony of the third degree, punishable as provided in
5454 s. 775.082, s. 775.083, or s. 775.084.
5455 Section 100. Section 985.2065, Florida Statutes, is
5456 renumbered as section 985.731, Florida Statutes, and paragraph
5457 (a) of subsection (1) of that section is amended to read:
5458 985.731 ~~985.2065~~ Sheltering unmarried minors; aiding
5459 unmarried minor runaways; violations.--
5460 (1)(a) A person who is not an authorized agent of the
5461 department ~~of Juvenile Justice~~ or the Department of Children and
5462 Family Services may not knowingly shelter an unmarried minor for
5463 more than 24 hours without the consent of the minor's parent or

5464 guardian or without notifying a law enforcement officer of the
5465 minor's name and the fact that the minor is being provided
5466 shelter.
5467 Section 101. Sections 985.501, 985.502, 985.503, 985.504,
5468 985.505, 985.506, and 985.507, Florida Statutes, are renumbered,
5469 respectively, as sections 985.801, 985.802, 985.803, 985.804,
5470 985.805, 985.806, and 985.807, Florida Statutes.
5471 Section 102. Section 985.5025, Florida Statutes, is
5472 renumbered as section 985.8025, Florida Statutes, and subsection
5473 (1) of that section is amended to read:
5474 985.8025 ~~985.5025~~ State Council for Interstate Juvenile
5475 Offender Supervision.--
5476 (1) Pursuant to Article IX of the Interstate Compact for
5477 Juveniles in s. 985.802 ~~985.502~~, the State Council for
5478 Interstate Juvenile Offender Supervision is created. The purpose
5479 of the council is to oversee state participation in the
5480 activities of the Interstate Commission for Juveniles.
5481 Section 103. Subsection (6) of section 985.215, Florida
5482 Statutes, paragraphs (b), (c), (f), and (i) of subsection (1)
5483 and subsection (2) of section 985.231, Florida Statutes, and
5484 paragraph (d) of subsection (4) of section 985.233, Florida
5485 Statutes, are repealed.
5486 Section 104. Subsection (11) of section 29.004, Florida
5487 Statutes, is amended to read:
5488 29.004 State courts system.--For purposes of implementing
5489 s. 14, Art. V of the State Constitution, the elements of the
5490 state courts system to be provided from state revenues
5491 appropriated by general law are as follows:

5492 (11) Mediation and arbitration, limited to trial court
5493 referral of a pending judicial case to a mediator or a court-
5494 related mediation program, or to an arbitrator or a court-
5495 related arbitration program, for the limited purpose of
5496 encouraging and assisting the litigants in partially or
5497 completely settling the case prior to adjudication on the merits
5498 by the court. This does not include citizen dispute settlement
5499 centers under s. 44.201 and community arbitration programs under
5500 s. 985.16 ~~985.304~~.
5501 Section 105. Paragraph (b) of subsection (3) of section
5502 29.008, Florida Statutes, is amended to read:
5503 29.008 County funding of court-related functions.--
5504 (3) The following shall be considered a local requirement
5505 pursuant to subparagraph (2)(a)1.:
5506 (b) Alternative sanctions coordinators pursuant to ss.
5507 984.09 and 985.037 ~~985.216~~.
5508 Section 106. Subsection (17) of section 253.025, Florida
5509 Statutes, is amended to read:
5510 253.025 Acquisition of state lands for purposes other than
5511 preservation, conservation, and recreation.--
5512 (17) Pursuant to s. 985.682 ~~985.41~~, the Department of
5513 Juvenile Justice is responsible for obtaining appraisals and
5514 entering into option agreements and agreements for the purchase
5515 of state juvenile justice facility sites. An option agreement or
5516 agreement for purchase is not binding upon the state until it is
5517 approved by the Board of Trustees of the Internal Improvement
5518 Trust Fund. The provisions of paragraphs (6)(b), (c), and (d)
5519 and (7)(b), (c), and (d) apply to all appraisals, offers, and

5520 counteroffers of the Department of Juvenile Justice for state
5521 juvenile justice facility sites.
5522 Section 107. Subsection (1) of section 318.21, Florida
5523 Statutes, is amended to read:
5524 318.21 Disposition of civil penalties by county
5525 courts.--All civil penalties received by a county court pursuant
5526 to the provisions of this chapter shall be distributed and paid
5527 monthly as follows:
5528 (1) One dollar from every civil penalty shall be remitted
5529 to the Department of Revenue for deposit into the Child Welfare
5530 Training Trust Fund for child welfare training purposes pursuant
5531 to s. 402.40. One dollar from every civil penalty shall be
5532 remitted to the Department of Revenue for deposit into the
5533 Juvenile Justice Training Trust Fund for juvenile justice
5534 purposes pursuant to s. 985.66 ~~985.406~~.
5535 Section 108. Subsection (3) of section 397.334, Florida
5536 Statutes, is amended to read:
5537 397.334 Treatment-based drug court programs.--
5538 (3) Treatment-based drug court programs may include
5539 pretrial intervention programs as provided in ss. 948.08,
5540 948.16, and 985.345 ~~985.306~~.
5541 Section 109. Subsection (3) of section 400.953, Florida
5542 Statutes, is amended to read:
5543 400.953 Background screening of home medical equipment
5544 provider personnel.--The agency shall require employment
5545 screening as provided in chapter 435, using the level 1
5546 standards for screening set forth in that chapter, for home
5547 medical equipment provider personnel.

5548 (3) Proof of compliance with the screening requirements of
5549 s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305,
5550 s. 402.313, s. 409.175, s. 464.008, or s. 985.644 ~~985.407~~ or
5551 this part must be accepted in lieu of the requirements of this
5552 section if the person has been continuously employed in the same
5553 type of occupation for which he or she is seeking employment
5554 without a breach in service that exceeds 180 days, the proof of
5555 compliance is not more than 2 years old, and the person has been
5556 screened by the Department of Law Enforcement. An employer or
5557 contractor shall directly provide proof of compliance to another
5558 employer or contractor, and a potential employer or contractor
5559 may not accept any proof of compliance directly from the person
5560 requiring screening. Proof of compliance with the screening
5561 requirements of this section shall be provided, upon request, to
5562 the person screened by the home medical equipment provider.
5563 Section 110. Paragraph (d) of subsection (1) of section
5564 419.001, Florida Statutes, is amended to read:
5565 419.001 Site selection of community residential homes.--
5566 (1) For the purposes of this section, the following
5567 definitions shall apply:
5568 (d) "Resident" means any of the following: a frail elder
5569 as defined in s. 400.618; a physically disabled or handicapped
5570 person as defined in s. 760.22(7)(a); a developmentally disabled
5571 person as defined in s. 393.063; a nondangerous mentally ill
5572 person as defined in s. 394.455(18); or a child as defined in s.
5573 39.01(14), s. 984.03(9) or (12), or s. 985.03~~(8)~~.
5574 Section 111. Paragraphs (tt) and (uu) of subsection (2) of
5575 section 435.04, Florida Statutes, are amended to read:

5576 435.04 Level 2 screening standards.--
5577 (2) The security background investigations under this
5578 section must ensure that no persons subject to the provisions of
5579 this section have been found guilty of, regardless of
5580 adjudication, or entered a plea of nolo contendere or guilty to,
5581 any offense prohibited under any of the following provisions of
5582 the Florida Statutes or under any similar statute of another
5583 jurisdiction:
5584 (tt) Section 985.701 ~~985.4045~~, relating to sexual
5585 misconduct in juvenile justice programs.
5586 (uu) Section 985.711 ~~985.4046~~, relating to contraband
5587 introduced into detention facilities.
5588 Section 112. Subsection (4) of section 790.115, Florida
5589 Statutes, is amended to read:
5590 790.115 Possessing or discharging weapons or firearms at a
5591 school-sponsored event or on school property prohibited;
5592 penalties; exceptions.--
5593 (4) Notwithstanding s. 985.24 ~~985.213~~, s. 985.245 ~~985.214~~,
5594 or s. 985.25(1) ~~985.215(1)~~, any minor under 18 years of age who
5595 is charged under this section with possessing or discharging a
5596 firearm on school property shall be detained in secure
5597 detention, unless the state attorney authorizes the release of
5598 the minor, and shall be given a probable cause hearing within 24
5599 hours after being taken into custody. At the hearing, the court
5600 may order that the minor continue to be held in secure detention
5601 for a period of 21 days, during which time the minor shall
5602 receive medical, psychiatric, psychological, or substance abuse

5603 examinations pursuant to s. 985.18 ~~985.224~~, and a written report
5604 shall be completed.
5605 Section 113. Subsections (8) and (9) of section 790.22,
5606 Florida Statutes, are amended to read:
5607 790.22 Use of BB guns, air or gas-operated guns, or
5608 electric weapons or devices by minor under 16; limitation;
5609 possession of firearms by minor under 18 prohibited;
5610 penalties.--
5611 (8) Notwithstanding s. 985.24 ~~985.213~~ or s. 985.25(1)
5612 ~~985.215(1)~~, if a minor under 18 years of age is charged with an
5613 offense that involves the use or possession of a firearm, as
5614 defined in s. 790.001, including a violation of subsection (3),
5615 or is charged for any offense during the commission of which the
5616 minor possessed a firearm, the minor shall be detained in secure
5617 detention, unless the state attorney authorizes the release of
5618 the minor, and shall be given a hearing within 24 hours after
5619 being taken into custody. At the hearing, the court may order
5620 that the minor continue to be held in secure detention in
5621 accordance with the applicable time periods specified in s.
5622 985.26(1)-(5) ~~985.215(5)~~, if the court finds that the minor
5623 meets the criteria specified in s. 985.255 ~~985.215(2)~~, or if the
5624 court finds by clear and convincing evidence that the minor is a
5625 clear and present danger to himself or herself or the community.
5626 The Department of Juvenile Justice shall prepare a form for all
5627 minors charged under this subsection that states the period of
5628 detention and the relevant demographic information, including,
5629 but not limited to, the sex, age, and race of the minor; whether
5630 or not the minor was represented by private counsel or a public

5631 defender; the current offense; and the minor's complete prior
5632 record, including any pending cases. The form shall be provided
5633 to the judge to be considered when determining whether the minor
5634 should be continued in secure detention under this subsection.
5635 An order placing a minor in secure detention because the minor
5636 is a clear and present danger to himself or herself or the
5637 community must be in writing, must specify the need for
5638 detention and the benefits derived by the minor or the community
5639 by placing the minor in secure detention, and must include a
5640 copy of the form provided by the department. The Department of
5641 Juvenile Justice must send the form, including a copy of any
5642 order, without client-identifying information, to the Office of
5643 Economic and Demographic Research.
5644 (9) Notwithstanding s. 985.245 ~~985.214~~, if the minor is
5645 found to have committed an offense that involves the use or
5646 possession of a firearm, as defined in s. 790.001, other than a
5647 violation of subsection (3), or an offense during the commission
5648 of which the minor possessed a firearm, and the minor is not
5649 committed to a residential commitment program of the Department
5650 of Juvenile Justice, in addition to any other punishment
5651 provided by law, the court shall order:
5652 (a) For a first offense, that the minor shall serve a
5653 minimum period of detention of 15 days in a secure detention
5654 facility; and
5655 1. Perform 100 hours of community service; and may
5656 2. Be placed on community control or in a nonresidential
5657 commitment program.

5658 (b) For a second or subsequent offense, that the minor
5659 shall serve a mandatory period of detention of at least 21 days
5660 in a secure detention facility; and
5661 1. Perform not less than 100 nor more than 250 hours of
5662 community service; and may
5663 2. Be placed on community control or in a nonresidential
5664 commitment program.
5665
5666 The minor shall not receive credit for time served before
5667 adjudication. For the purposes of this subsection, community
5668 service shall be performed, if possible, in a manner involving a
5669 hospital emergency room or other medical environment that deals
5670 on a regular basis with trauma patients and gunshot wounds.
5671 Section 114. Paragraph (c) of subsection (3) of section
5672 921.0022, Florida Statutes, is amended to read:
5673 921.0022 Criminal Punishment Code; offense severity
5674 ranking chart.--
5675 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(c) LEVEL 3
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066(3)(d)-(f)	3rd	Unlawfully obtaining or using confidential crash reports.

5679	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
5680	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
5681	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
5682	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
5683	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
5684	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
5685	327.35(2)(b)	3rd	Felony BUI.
5686	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent

			titles or bills of sale of vessels.
5687	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
5688	370.12(1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
5689	370.12(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
5690	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
5691	400.903(3)	3rd	Operating a clinic without a license or filing false license application or other required

			information.
5692	440.105(3)(b)	3rd	Receipt of fee or consideration without approval by judge of compensation claims.
5693	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
5694	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
5695	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
5696	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
5697	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
5698	697.08	3rd	Equity skimming.
5699	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.

5700	796.05(1)	3rd	Live on earnings of a prostitute.
5701	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
5702	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
5703	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
5704	812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
5705	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
5706	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
5707	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less

			than $20,000.
5708			
	817.233	3rd	Burning to defraud insurer.
5709			
	817.234(8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5710			
	817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
5711			
	817.236	3rd	Filing a false motor vehicle insurance application.
5712			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
5713			
	817.413(2)	3rd	Sale of used goods as new.
5714			
	817.505(4)	3rd	Patient brokering.
5715			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5716			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud

			or possessing a counterfeit payment instrument.
5717	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
5718	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
5719	843.19	3rd	Injure, disable, or kill police dog or horse.
5720	860.15(3)	3rd	Overcharging for repairs and parts.
5721	870.01(2)	3rd	Riot; inciting or encouraging.
5722	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
5723	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

			(2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
5724	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
5725	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
5726	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
5727	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
5728	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
5729	893.13(7)(a)11.	3rd	Furnish false or fraudulent

			material information on any document or record required by chapter 893.
5730			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
5731			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
5732			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
5733			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the

		practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721 ~~985.3141~~	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 115. Subsection (1) of section 938.10, Florida Statutes, is amended to read:

938.10 Additional court cost imposed in cases of certain crimes against minors.--

(1) If a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of s. 784.085, chapter 787, chapter 794, s. 796.03, s. 800.04, chapter 827, s. 847.0145, or s. 985.701 ~~985.4045~~, the court shall impose a court cost of $101 against the offender in addition to any other cost or penalty required by law.

5750 Section 116. Subsection (9) of section 943.053, Florida
5751 Statutes, is amended to read:
5752 943.053 Dissemination of criminal justice information;
5753 fees.--
5754 (9) Notwithstanding the provisions of s. 943.0525 and any
5755 user agreements adopted pursuant thereto, and notwithstanding
5756 the confidentiality of sealed records as provided for in s.
5757 943.059, the Department of Juvenile Justice or any other state
5758 or local criminal justice agency may provide copies of the
5759 Florida criminal history records for juvenile offenders
5760 currently or formerly detained or housed in a contracted
5761 juvenile assessment center or detention facility or serviced in
5762 a contracted treatment program and for employees or other
5763 individuals who will have access to these facilities, only to
5764 the entity under direct contract with the Department of Juvenile
5765 Justice to operate these facilities or programs pursuant to the
5766 provisions of s. 985.688 ~~985.411~~. The criminal justice agency
5767 providing such data may assess a charge for the Florida criminal
5768 history records pursuant to the provisions of chapter 119.
5769 Sealed records received by the private entity under this section
5770 remain confidential and exempt from the provisions of s.
5771 119.07(1). Information provided under this section shall be used
5772 only for the criminal justice purpose for which it was requested
5773 and may not be further disseminated.
5774 Section 117. Subsection (1) of section 943.0582, Florida
5775 Statutes, is amended to read:
5776 943.0582 Prearrest, postarrest, or teen court diversion
5777 program expunction.--

5778 (1) Notwithstanding any law dealing generally with the
5779 preservation and destruction of public records, the department
5780 may provide, by rule adopted pursuant to chapter 120, for the
5781 expunction of any nonjudicial record of the arrest of a minor
5782 who has successfully completed a prearrest or postarrest
5783 diversion program for minors as authorized by s. 985.125
5784 ~~985.3065~~.
5785 Section 118. Paragraph (a) of subsection (4) of section
5786 943.0585, Florida Statutes, is amended to read:
5787 943.0585 Court-ordered expunction of criminal history
5788 records.--The courts of this state have jurisdiction over their
5789 own procedures, including the maintenance, expunction, and
5790 correction of judicial records containing criminal history
5791 information to the extent such procedures are not inconsistent
5792 with the conditions, responsibilities, and duties established by
5793 this section. Any court of competent jurisdiction may order a
5794 criminal justice agency to expunge the criminal history record
5795 of a minor or an adult who complies with the requirements of
5796 this section. The court shall not order a criminal justice
5797 agency to expunge a criminal history record until the person
5798 seeking to expunge a criminal history record has applied for and
5799 received a certificate of eligibility for expunction pursuant to
5800 subsection (2). A criminal history record that relates to a
5801 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5802 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5803 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5804 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5805 expunged, without regard to whether adjudication was withheld,

5806 if the defendant was found guilty of or pled guilty or nolo
5807 contendere to the offense, or if the defendant, as a minor, was
5808 found to have committed, or pled guilty or nolo contendere to
5809 committing, the offense as a delinquent act. The court may only
5810 order expunction of a criminal history record pertaining to one
5811 arrest or one incident of alleged criminal activity, except as
5812 provided in this section. The court may, at its sole discretion,
5813 order the expunction of a criminal history record pertaining to
5814 more than one arrest if the additional arrests directly relate
5815 to the original arrest. If the court intends to order the
5816 expunction of records pertaining to such additional arrests,
5817 such intent must be specified in the order. A criminal justice
5818 agency may not expunge any record pertaining to such additional
5819 arrests if the order to expunge does not articulate the
5820 intention of the court to expunge a record pertaining to more
5821 than one arrest. This section does not prevent the court from
5822 ordering the expunction of only a portion of a criminal history
5823 record pertaining to one arrest or one incident of alleged
5824 criminal activity. Notwithstanding any law to the contrary, a
5825 criminal justice agency may comply with laws, court orders, and
5826 official requests of other jurisdictions relating to expunction,
5827 correction, or confidential handling of criminal history records
5828 or information derived therefrom. This section does not confer
5829 any right to the expunction of any criminal history record, and
5830 any request for expunction of a criminal history record may be
5831 denied at the sole discretion of the court.
5832 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5833 criminal history record of a minor or an adult which is ordered

5834 expunged by a court of competent jurisdiction pursuant to this
5835 section must be physically destroyed or obliterated by any
5836 criminal justice agency having custody of such record; except
5837 that any criminal history record in the custody of the
5838 department must be retained in all cases. A criminal history
5839 record ordered expunged that is retained by the department is
5840 confidential and exempt from the provisions of s. 119.07(1) and
5841 s. 24(a), Art. I of the State Constitution and not available to
5842 any person or entity except upon order of a court of competent
5843 jurisdiction. A criminal justice agency may retain a notation
5844 indicating compliance with an order to expunge.
5845 (a) The person who is the subject of a criminal history
5846 record that is expunged under this section or under other
5847 provisions of law, including former s. 893.14, former s. 901.33,
5848 and former s. 943.058, may lawfully deny or fail to acknowledge
5849 the arrests covered by the expunged record, except when the
5850 subject of the record:
5851 1. Is a candidate for employment with a criminal justice
5852 agency;
5853 2. Is a defendant in a criminal prosecution;
5854 3. Concurrently or subsequently petitions for relief under
5855 this section or s. 943.059;
5856 4. Is a candidate for admission to The Florida Bar;
5857 5. Is seeking to be employed or licensed by or to contract
5858 with the Department of Children and Family Services or the
5859 Department of Juvenile Justice or to be employed or used by such
5860 contractor or licensee in a sensitive position having direct
5861 contact with children, the developmentally disabled, the aged,

5862 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5863 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5864 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
5865 985.644 ~~985.407~~, or chapter 400; or
5866 6. Is seeking to be employed or licensed by the Department
5867 of Education, any district school board, any university
5868 laboratory school, any charter school, any private or parochial
5869 school, or any local governmental entity that licenses child
5870 care facilities.
5871 Section 119. Paragraph (a) of subsection (4) of section
5872 943.059, Florida Statutes, is amended to read:
5873 943.059 Court-ordered sealing of criminal history
5874 records.--The courts of this state shall continue to have
5875 jurisdiction over their own procedures, including the
5876 maintenance, sealing, and correction of judicial records
5877 containing criminal history information to the extent such
5878 procedures are not inconsistent with the conditions,
5879 responsibilities, and duties established by this section. Any
5880 court of competent jurisdiction may order a criminal justice
5881 agency to seal the criminal history record of a minor or an
5882 adult who complies with the requirements of this section. The
5883 court shall not order a criminal justice agency to seal a
5884 criminal history record until the person seeking to seal a
5885 criminal history record has applied for and received a
5886 certificate of eligibility for sealing pursuant to subsection
5887 (2). A criminal history record that relates to a violation of s.
5888 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5889 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.

5890 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
5891 a violation enumerated in s. 907.041 may not be sealed, without
5892 regard to whether adjudication was withheld, if the defendant
5893 was found guilty of or pled guilty or nolo contendere to the
5894 offense, or if the defendant, as a minor, was found to have
5895 committed or pled guilty or nolo contendere to committing the
5896 offense as a delinquent act. The court may only order sealing of
5897 a criminal history record pertaining to one arrest or one
5898 incident of alleged criminal activity, except as provided in
5899 this section. The court may, at its sole discretion, order the
5900 sealing of a criminal history record pertaining to more than one
5901 arrest if the additional arrests directly relate to the original
5902 arrest. If the court intends to order the sealing of records
5903 pertaining to such additional arrests, such intent must be
5904 specified in the order. A criminal justice agency may not seal
5905 any record pertaining to such additional arrests if the order to
5906 seal does not articulate the intention of the court to seal
5907 records pertaining to more than one arrest. This section does
5908 not prevent the court from ordering the sealing of only a
5909 portion of a criminal history record pertaining to one arrest or
5910 one incident of alleged criminal activity. Notwithstanding any
5911 law to the contrary, a criminal justice agency may comply with
5912 laws, court orders, and official requests of other jurisdictions
5913 relating to sealing, correction, or confidential handling of
5914 criminal history records or information derived therefrom. This
5915 section does not confer any right to the sealing of any criminal
5916 history record, and any request for sealing a criminal history
5917 record may be denied at the sole discretion of the court.

5918 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
5919 history record of a minor or an adult which is ordered sealed by
5920 a court of competent jurisdiction pursuant to this section is
5921 confidential and exempt from the provisions of s. 119.07(1) and
5922 s. 24(a), Art. I of the State Constitution and is available only
5923 to the person who is the subject of the record, to the subject's
5924 attorney, to criminal justice agencies for their respective
5925 criminal justice purposes, or to those entities set forth in
5926 subparagraphs (a)1., 4., 5., and 6. for their respective
5927 licensing and employment purposes.
5928 (a) The subject of a criminal history record sealed under
5929 this section or under other provisions of law, including former
5930 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
5931 deny or fail to acknowledge the arrests covered by the sealed
5932 record, except when the subject of the record:
5933 1. Is a candidate for employment with a criminal justice
5934 agency;
5935 2. Is a defendant in a criminal prosecution;
5936 3. Concurrently or subsequently petitions for relief under
5937 this section or s. 943.0585;
5938 4. Is a candidate for admission to The Florida Bar;
5939 5. Is seeking to be employed or licensed by or to contract
5940 with the Department of Children and Family Services or the
5941 Department of Juvenile Justice or to be employed or used by such
5942 contractor or licensee in a sensitive position having direct
5943 contact with children, the developmentally disabled, the aged,
5944 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5945 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

5946 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
5947 (13), s. 985.644 ~~985.407~~, or chapter 400; or
5948 6. Is seeking to be employed or licensed by the Department
5949 of Education, any district school board, any university
5950 laboratory school, any charter school, any private or parochial
5951 school, or any local governmental entity that licenses child
5952 care facilities.
5953 Section 120. Subsection (2) of section 948.51, Florida
5954 Statutes, is amended to read:
5955 948.51 Community corrections assistance to counties or
5956 county consortiums.--
5957 (2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.--A
5958 county, or a consortium of two or more counties, may contract
5959 with the Department of Corrections for community corrections
5960 funds as provided in this section. In order to enter into a
5961 community corrections partnership contract, a county or county
5962 consortium must have a public safety coordinating council
5963 established under s. 951.26 and must designate a county officer
5964 or agency to be responsible for administering community
5965 corrections funds received from the state. The public safety
5966 coordinating council shall prepare, develop, and implement a
5967 comprehensive public safety plan for the county, or the
5968 geographic area represented by the county consortium, and shall
5969 submit an annual report to the Department of Corrections
5970 concerning the status of the program. In preparing the
5971 comprehensive public safety plan, the public safety coordinating
5972 council shall cooperate with the juvenile justice circuit board
5973 and the juvenile justice county council, established under s.

5974 985.664 ~~985.4135~~, in order to include programs and services for
5975 juveniles in the plan. To be eligible for community corrections
5976 funds under the contract, the initial public safety plan must be
5977 approved by the governing board of the county, or the governing
5978 board of each county within the consortium, and the Secretary of
5979 Corrections based on the requirements of this section. If one or
5980 more other counties develop a unified public safety plan, the
5981 public safety coordinating council shall submit a single
5982 application to the department for funding. Continued contract
5983 funding shall be pursuant to subsection (5). The plan for a
5984 county or county consortium must cover at least a 5-year period
5985 and must include:
5986 (a) A description of programs offered for the job
5987 placement and treatment of offenders in the community.
5988 (b) A specification of community-based intermediate
5989 sentencing options to be offered and the types and number of
5990 offenders to be included in each program.
5991 (c) Specific goals and objectives for reducing the
5992 projected percentage of commitments to the state prison system
5993 of persons with low total sentencing scores pursuant to the
5994 Criminal Punishment Code.
5995 (d) Specific evidence of the population status of all
5996 programs which are part of the plan, which evidence establishes
5997 that such programs do not include offenders who otherwise would
5998 have been on a less intensive form of community supervision.
5999 (e) The assessment of population status by the public
6000 safety coordinating council of all correctional facilities owned

6001 or contracted for by the county or by each county within the
6002 consortium.
6003 (f) The assessment of bed space that is available for
6004 substance abuse intervention and treatment programs and the
6005 assessment of offenders in need of treatment who are committed
6006 to each correctional facility owned or contracted for by the
6007 county or by each county within the consortium.
6008 (g) A description of program costs and sources of funds
6009 for each community corrections program, including community
6010 corrections funds, loans, state assistance, and other financial
6011 assistance.
6012 Section 121. Section 958.046, Florida Statutes, is amended
6013 to read:
6014 958.046 Placement in county-operated boot camp programs
6015 for youthful offenders.--In counties where there are county-
6016 operated youthful offender boot camp programs, other than boot
6017 camps described in s. 958.04 or s. 985.489 ~~985.309~~, the court
6018 may sentence a youthful offender to such a boot camp. In county-
6019 operated youthful offender boot camp programs, juvenile
6020 offenders shall not be commingled with youthful offenders.
6021 Section 122. Paragraphs (b) and (j) of subsection (1) of
6022 section 960.001, Florida Statutes, are amended to read:
6023 960.001 Guidelines for fair treatment of victims and
6024 witnesses in the criminal justice and juvenile justice
6025 systems.--
6026 (1) The Department of Legal Affairs, the state attorneys,
6027 the Department of Corrections, the Department of Juvenile
6028 Justice, the Parole Commission, the State Courts Administrator

6029 and circuit court administrators, the Department of Law
6030 Enforcement, and every sheriff's department, police department,
6031 or other law enforcement agency as defined in s. 943.10(4) shall
6032 develop and implement guidelines for the use of their respective
6033 agencies, which guidelines are consistent with the purposes of
6034 this act and s. 16(b), Art. I of the State Constitution and are
6035 designed to implement the provisions of s. 16(b), Art. I of the
6036 State Constitution and to achieve the following objectives:
6037 (b) Information for purposes of notifying victim or
6038 appropriate next of kin of victim or other designated contact of
6039 victim.--In the case of a homicide, pursuant to chapter 782; or
6040 a sexual offense, pursuant to chapter 794; or an attempted
6041 murder or sexual offense, pursuant to chapter 777; or stalking,
6042 pursuant to s. 784.048; or domestic violence, pursuant to s.
6043 25.385:
6044 1. The arresting law enforcement officer or personnel of
6045 an organization that provides assistance to a victim or to the
6046 appropriate next of kin of the victim or other designated
6047 contact must request that the victim or appropriate next of kin
6048 of the victim or other designated contact complete a victim
6049 notification card. However, the victim or appropriate next of
6050 kin of the victim or other designated contact may choose not to
6051 complete the victim notification card.
6052 2. Unless the victim or the appropriate next of kin of the
6053 victim or other designated contact waives the option to complete
6054 the victim notification card, a copy of the victim notification
6055 card must be filed with the incident report or warrant in the
6056 sheriff's office of the jurisdiction in which the incident

6057 report or warrant originated. The notification card shall, at a
6058 minimum, consist of:
6059 a. The name, address, and phone number of the victim; or
6060 b. The name, address, and phone number of the appropriate
6061 next of kin of the victim; or
6062 c. The name, address, and phone number of a designated
6063 contact other than the victim or appropriate next of kin of the
6064 victim; and
6065 d. Any relevant identification or case numbers assigned to
6066 the case.
6067 3. The chief administrator, or a person designated by the
6068 chief administrator, of a county jail, municipal jail, juvenile
6069 detention facility, or residential commitment facility shall
6070 make a reasonable attempt to notify the alleged victim or
6071 appropriate next of kin of the alleged victim or other
6072 designated contact within 4 hours following the release of the
6073 defendant on bail or, in the case of a juvenile offender, upon
6074 the release from residential detention or commitment. If the
6075 chief administrator, or designee, is unable to contact the
6076 alleged victim or appropriate next of kin of the alleged victim
6077 or other designated contact by telephone, the chief
6078 administrator, or designee, must send to the alleged victim or
6079 appropriate next of kin of the alleged victim or other
6080 designated contact a written notification of the defendant's
6081 release.
6082 4. Unless otherwise requested by the victim or the
6083 appropriate next of kin of the victim or other designated
6084 contact, the information contained on the victim notification

6085 card must be sent by the chief administrator, or designee, of
6086 the appropriate facility to the subsequent correctional or
6087 residential commitment facility following the sentencing and
6088 incarceration of the defendant, and unless otherwise requested
6089 by the victim or the appropriate next of kin of the victim or
6090 other designated contact, he or she must be notified of the
6091 release of the defendant from incarceration as provided by law.
6092 5. If the defendant was arrested pursuant to a warrant
6093 issued or taken into custody pursuant to s. 985.101 ~~985.207~~ in a
6094 jurisdiction other than the jurisdiction in which the defendant
6095 is being released, and the alleged victim or appropriate next of
6096 kin of the alleged victim or other designated contact does not
6097 waive the option for notification of release, the chief
6098 correctional officer or chief administrator of the facility
6099 releasing the defendant shall make a reasonable attempt to
6100 immediately notify the chief correctional officer of the
6101 jurisdiction in which the warrant was issued or the juvenile was
6102 taken into custody pursuant to s. 985.101 ~~985.207~~, and the chief
6103 correctional officer of that jurisdiction shall make a
6104 reasonable attempt to notify the alleged victim or appropriate
6105 next of kin of the alleged victim or other designated contact,
6106 as provided in this paragraph, that the defendant has been or
6107 will be released.
6108 (j) Notification of right to request restitution.--Law
6109 enforcement agencies and the state attorney shall inform the
6110 victim of the victim's right to request and receive restitution
6111 pursuant to s. 775.089 or s. 985.437 ~~985.231(1)(a)1.~~, and of the
6112 victim's rights of enforcement under ss. 775.089(6) and 985.0301

6113 ~~985.201~~ in the event an offender does not comply with a
6114 restitution order. The state attorney shall seek the assistance
6115 of the victim in the documentation of the victim's losses for
6116 the purpose of requesting and receiving restitution. In
6117 addition, the state attorney shall inform the victim if and when
6118 restitution is ordered. If an order of restitution is converted
6119 to a civil lien or civil judgment against the defendant, the
6120 clerks shall make available at their office, as well as on their
6121 website, information provided by the Secretary of State, the
6122 court, or The Florida Bar on enforcing the civil lien or
6123 judgment.
6124 Section 123. Subsection (48) of section 984.03, Florida
6125 Statutes, is amended to read:
6126 984.03 Definitions.--When used in this chapter, the term:
6127 (48) "Serious or habitual juvenile offender program" means
6128 the program established in s. 985.47 ~~985.31~~.
6129 Section 124. Section 984.05, Florida Statutes, is amended
6130 to read:
6131 984.05 Rules relating to habitual truants; adoption by
6132 State Board of Education and Department of Juvenile
6133 Justice.--The Department of Juvenile Justice and the State Board
6134 of Education shall work together on the development of, and
6135 shall adopt, rules as necessary for the implementation of ss.
6136 984.03(27), 985.03(25) ~~(26)~~, and 1003.27.
6137 Section 125. Paragraph (b) of subsection (4) of section
6138 984.09, Florida Statutes, is amended to read:
6139 984.09 Punishment for contempt of court; alternative
6140 sanctions.--

6141 (4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE
6142 PROCESS.--
6143 (b) If a child is charged with indirect contempt of court,
6144 the court must hold a hearing within 24 hours to determine
6145 whether the child committed indirect contempt of a valid court
6146 order. At the hearing, the following due process rights must be
6147 provided to the child:
6148 1. Right to a copy of the order to show cause alleging
6149 facts supporting the contempt charge.
6150 2. Right to an explanation of the nature and the
6151 consequences of the proceedings.
6152 3. Right to legal counsel and the right to have legal
6153 counsel appointed by the court if the juvenile is indigent,
6154 pursuant to s. 985.033 ~~985.203~~.
6155 4. Right to confront witnesses.
6156 5. Right to present witnesses.
6157 6. Right to have a transcript or record of the proceeding.
6158 7. Right to appeal to an appropriate court.
6159
6160 The child's parent or guardian may address the court regarding
6161 the due process rights of the child. The court shall review the
6162 placement of the child every 72 hours to determine whether it is
6163 appropriate for the child to remain in the facility.
6164 Section 126. Subsections (2) and (6) of section 984.226,
6165 Florida Statutes, are amended to read:
6166 984.226 Physically secure setting.--
6167 (2) When a petition is filed alleging that a child is a
6168 child in need of services, the child must be represented by

6169 counsel at each court appearance unless the record in that
6170 proceeding affirmatively demonstrates by clear and convincing
6171 evidence that the child knowingly and intelligently waived the
6172 right to counsel after being fully advised by the court of the
6173 nature of the proceedings and the dispositional alternatives
6174 available to the court under this section. If the court decides
6175 to appoint counsel for the child and if the child is indigent,
6176 the court shall appoint an attorney to represent the child as
6177 provided under s. 985.033 ~~985.203~~. Nothing precludes the court
6178 from requesting reimbursement of attorney's fees and costs from
6179 the nonindigent parent or legal guardian.
6180 (6) Prior to being ordered to a physically secure setting,
6181 the child must be afforded all rights of due process required
6182 under s. 985.037 ~~985.216~~. While in the physically secure
6183 setting, the child shall receive appropriate assessment,
6184 treatment, and educational services that are designed to
6185 eliminate or reduce the child's truant, ungovernable, or runaway
6186 behavior. The child and family shall be provided with family
6187 counseling and other support services necessary for
6188 reunification.
6189 Section 127. Subsection (22) of section 1003.52, Florida
6190 Statutes, is amended to read:
6191 1003.52 Educational services in Department of Juvenile
6192 Justice programs.--
6193 (22) The Department of Juvenile Justice and the Department
6194 of Education, in consultation with Workforce Florida, Inc., the
6195 statewide Workforce Development Youth Council, district school
6196 boards, community colleges, providers, and others, shall jointly

6197 develop a multiagency plan for career education which describes
6198 the funding, curriculum, transfer of credits, goals, and outcome
6199 measures for career education programming in juvenile commitment
6200 facilities, pursuant to s. 985.622 ~~985.3155~~. The plan must be
6201 reviewed annually.
6202 Section 128. Subsection (2) of section 1006.08, Florida
6203 Statutes, is amended to read:
6204 1006.08 District school superintendent duties relating to
6205 student discipline and school safety.--
6206 (2) Notwithstanding the provisions of s. 985.04(7) ~~(4)~~ or
6207 any other provision of law to the contrary, the court shall,
6208 within 48 hours of the finding, notify the appropriate district
6209 school superintendent of the name and address of any student
6210 found to have committed a delinquent act, or who has had
6211 adjudication of a delinquent act withheld which, if committed by
6212 an adult, would be a felony, or the name and address of any
6213 student found guilty of a felony. Notification shall include the
6214 specific delinquent act found to have been committed or for
6215 which adjudication was withheld, or the specific felony for
6216 which the student was found guilty.
6217 Section 129. Paragraph (a) of subsection (5) of section
6218 1006.13, Florida Statutes, is amended to read:
6219 1006.13 Policy of zero tolerance for crime and
6220 victimization.--
6221 (5)(a) Notwithstanding any provision of law prohibiting
6222 the disclosure of the identity of a minor, whenever any student
6223 who is attending public school is adjudicated guilty of or
6224 delinquent for, or is found to have committed, regardless of

6225 whether adjudication is withheld, or pleads guilty or nolo
6226 contendere to, a felony violation of:
6227 1. Chapter 782, relating to homicide;
6228 2. Chapter 784, relating to assault, battery, and culpable
6229 negligence;
6230 3. Chapter 787, relating to kidnapping, false
6231 imprisonment, luring or enticing a child, and custody offenses;
6232 4. Chapter 794, relating to sexual battery;
6233 5. Chapter 800, relating to lewdness and indecent
6234 exposure;
6235 6. Chapter 827, relating to abuse of children;
6236 7. Section 812.13, relating to robbery;
6237 8. Section 812.131, relating to robbery by sudden
6238 snatching;
6239 9. Section 812.133, relating to carjacking; or
6240 10. Section 812.135, relating to home-invasion robbery,
6241
6242 and, before or at the time of such adjudication, withholding of
6243 adjudication, or plea, the offender was attending a school
6244 attended by the victim or a sibling of the victim of the
6245 offense, the Department of Juvenile Justice shall notify the
6246 appropriate district school board of the adjudication or plea,
6247 the requirements of this paragraph, and whether the offender is
6248 prohibited from attending that school or riding on a school bus
6249 whenever the victim or a sibling of the victim is attending the
6250 same school or riding on the same school bus, except as provided
6251 pursuant to a written disposition order under s. 985.455(2)
6252 ~~985.23(1)(d)~~. Upon receipt of such notice, the district school

6253 board shall take appropriate action to effectuate the provisions
6254 of paragraph (b).
6255 Section 130. Subsection (1) of section 1012.797, Florida
6256 Statutes, is amended to read:
6257 1012.797 Notification of district school superintendent of
6258 certain charges against or convictions of employees.--
6259 (1) Notwithstanding the provisions of s. 985.04(7) ~~(4)~~ or
6260 any other provision of law to the contrary, a law enforcement
6261 agency shall, within 48 hours, notify the appropriate district
6262 school superintendent of the name and address of any employee of
6263 the school district who is charged with a felony or with a
6264 misdemeanor involving the abuse of a minor child or the sale or
6265 possession of a controlled substance. The notification shall
6266 include the specific charge for which the employee of the school
6267 district was arrested. Such notification shall include other
6268 education providers such as the Florida School for the Deaf and
6269 the Blind, university lab schools, and private elementary and
6270 secondary schools.
6271 Section 131. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 CS PCB JU 06-04 Land Trusts
SPONSOR(S): Judiciary Committee and Simmons
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
1) Civil Justice Committee	5 Y, 0 N	Shaddock	Bond
2) Finance & Tax Committee	7 Y, 0 N, w/CS	Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

The essential purpose of a land trust is to provide a flexible method for the acquisition, financing, and disposition of real property. The land trust is a modified form of conventional trust agreement that is limited to an arrangement where the trustee holds title to the real property; however, all the active managerial and administrative powers are reserved to the beneficiaries.

The bill codifies existing practice and case law in the area of land trusts. It revises the current statute relating to land trusts by providing definitions of the terms "beneficial interest," "beneficiary," "land trust," "holders of the power of direction," and "trustee." It removes an obsolete provision referring to claims arising out of dower or curtesy. It creates provisions relating to land trust beneficiaries, successor trustees, and land trustees as creditors. Finally, it provides that the provisions of the bill are intended to clarify the existing law relating to land trusts and that the bill applies to all land trusts, whether the land trust was created before, on, or after the effective date of the bill.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Land Trusts in General

The essential purpose of a land trust is to provide a flexible and practical method for the acquisition, financing, and disposition of real estate. Illinois appears to have been the first state to recognize the land trust, and for that reason, the land trust is often referred to as the "Illinois Land Trust."[1] The land trust is a modified form of a conventional trust agreement; however, it is limited to an arrangement where the trustee holds title to the real property but all the active managerial and administrative powers are reserved to the beneficiaries. In a land trust, the trustee receives the legal title to the real property, but the usual attributes of real estate fee ownership are retained by the beneficiary. The beneficiary retains only a personal property interest.

The land trust has been equated to the Massachusetts business trust from which the land trust undoubtedly evolved.[2] However, unlike a Massachusetts business trust, a land trust is generally viewed as a vehicle for holding title to real property rather than as an operating business entity. The land trust is created through the use of two instruments: 1) a deed in trust, where the real property is conveyed to the trustee, and 2) a trust agreement under which the trustee acts. Land trusts have been found to have several advantages:

- Interests in land trusts cannot be partitioned, and transferring beneficial interests is relatively easy.
- Interests of beneficiaries cannot be disclosed without a court order.
- Judgments against the beneficiaries do not affect legal title of the real property.
- The beneficial interest in the land trust is personal property. Since it is personal property, non-residents of Florida can avoid ancillary administration.
- The death of a beneficiary does not terminate the trust, and testamentary dispositions can be made in the trust agreement.

The trustee to a land trust is the party designated in the trust agreement to hold legal and equitable title to the land trust property. The beneficiary is the party designated in the trust agreement as having the power to direct the trustee with regard to the trust property, as well as, the control of the management, operation, rental and sale of the trust property and the right to the earnings and proceeds of the trust property. The power of direction is the right to control the trustee's disposition of title to the real property and the execution of trust documents.

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[1] *Hart v. Seymour*, 147 Ill. 598 (Ill. 1893).
[2] *Schumann-Henk v. Folson*, 159 N.E. 250 (Ill. 1927).

Situations Where a Land Trust May Be Beneficial

A land trust may be useful in situations where multiple owners hold title to real property. In such cases, the potential exists for judgments, divorce, death, bankruptcy or incompetency of a single beneficiary to cloud the title to all or a part of the real property. The use of the land trust prevents the possibility of clouds on the title in these situations.

Where real estate projects are spread across multiple investors, the use of a land trust can reduce delays where signatures must be obtained from remote locations and can facilitate the many conveyances necessary in subdivisions and condominiums.

A key feature of the land trust is that interests of beneficiaries may not be disclosed without a court order. There are situations where purchasers of real estate may wish not to publicize their ownership of that real property. The land trust permits such individuals to keep their names from the public record.

Judgments against the beneficiaries do not affect the legal title to the real property held in a land trust. The title to the real property held in a land trust can be conveyed free and clear of any judgment liens against a beneficiary. Judgments can, however, be enforced against an individual's beneficial interest in a land trust.

The beneficial interest in the land trust is personal property. Non-residents of Florida, by placing title to their real estate in a land trust, may be able to avoid ancillary probate administration in the event of death.

Use of the land trust as a vehicle for holding title to real property permits the preservation of tax benefits under the Internal Revenue Code. All of the tax advantages of individual ownership may be retained when a land trust is properly used to hold title to real property. The deduction for expenses flows directly through the beneficial owners, assuming that all of the criteria to prevent the land trust from becoming an entity taxable as a corporation are met.

Land Trusts in Florida

In Florida, land trusts are presently a creature of statute rather than case law. In 1963, the Florida Legislature created s. 689.071, F.S., which statutorily recognized the Florida Land Trust. Section 689.071(1), F.S., provides that the land trustee receives legal and equitable title to the real property. The deed must be recorded and must give to the trustee full power and authority either to protect, conserve and to sell or to lease, or to encumber or otherwise to manage and dispose of the real property described in the deed. The trustee can only deal with the property within the power and authority granted in the recorded deed.

Section 689.071(2), F.S., states that any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases from a trustee holding title to real property in trust under a recorded trust deed that meets the requirements of s. 689.071, F.S., does not have to inquire into the identification or status of any named or unnamed beneficiary, their heirs or assigns or to the authority of the trustee to act within the powers granted in the recorded deed, nor is there any requirement to inquire into the provisions of an unrecorded trust document whether such document is referenced in the deed or not.

Section 689.071(3), F.S., provides that all persons dealing with the trustee under any recorded instrument that has been prepared in accordance with the section takes free and clear of the claims of all named or unnamed beneficiaries of the trust and of any unrecorded declarations or agreements collateral to the trust, whether they are referred to in the agreement or not. This subsection further

provides that anyone claiming under the beneficiaries, including claims arising out of any dower[3] or curtesy[4] interest of the spouse of a beneficiary, does not have a claim against the grantee if all of the provisions of this section have been met.[5]

Section 689.071(4), F.S., states that in all cases where the recorded instrument contains a provision declaring the interest of the beneficiary to be personal property only, that provision shall be controlling for all purposes where such determination becomes an issue under the laws or in the courts of Florida. This provision makes it possible for a beneficiary to convey his or her interest in the real property by assignment of beneficial interest rather than by the execution and recording of a deed.

Courts have held that the statutory land trust is not an ordinary inter vivos trust that is administered under Florida's trust administration laws in ch. 737, F.S.[6] Florida courts have held that a grantee from a land trustee need not look beyond the trustee's deed in trust to determine his or her powers.[7] Courts have held that s. 689.071, F.S., is a codification of land trust case law and is an adoption of the Illinois land trust.[8]

Statute of Uses

In the Middle Ages, the features of feudal tenure, primogeniture and forfeiture often resulted in transfers of land to others for the benefit of the grantor. The Statute of Uses, adopted at the time of Henry VIII, was created in order to have these transfers become complete transfers in fee. The result of the execution of a trust under the Statute of Uses was to vest the holder of the "use" with the actual legal estate. However, in spite of the enactment of the Statute of Uses, English courts found that it was inapplicable to active trusts and the concept of trusts remains part of present day law. The Statute of Uses continues as part of the common law of the United States. Florida's Statute of Uses is codified in s, 689.09, F.S.

Homestead Exemption

Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property. In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership.[9]

The beneficiary of a passive trust or active trust has equitable title to real property if he is entitled to the use and occupancy of the property under the terms of the trust, and thus is eligible for the homestead exemption.[10] However, the homestead tax exemption may not be based upon residence of a beneficiary under a trust instrument which vests no present possessory right in such beneficiary.[11]

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[3] "Dower" is a common law concept that entitles a widow to a life-estate in a third of any real property of her deceased husband for her support and the support of her children, if any. BLACK'S LAW DICTIONARY (8th ed. 1999).
[4] "Curtesy" is a common law concept that entitles a widower to a life-estate in any real property of his deceased wife for his support, assuming that a child was born alive to the couple. BLACK'S LAW DICTIONARY (8th ed. 1999).
[5] Section 732.111, F.S., created in 1974 by s. 1 of ch. 74-106, L.O.F., abolished dower and curtesy in Florida.
[6] *Taylor v. Richmond's New Approach Association, Inc.*, 351 So.2d 1094 (Fla. 2d DCA 1977).
[7] *Gramer v. Roman*, 174 So.2d 443 (Fla. 1965).
[8] *Ferraro v. Parker*, 229 So.2d 621 (Fla. 2d DCA 1969).
[9] Fla. Const. art. VII, s. 4(c)(3).
[10] Fla Admin Code Rule 12D-7.011.
[11] Id.

Effect of Proposed Changes

The bill amends s. 689.071, F.S., to codify existing practice and case law in the area of land trusts as follows:

SHORT TITLE - renames the section the "Florida Land Trust Act."

DEFINITIONS - provides definitions of the terms "beneficial interest," "beneficiary," "land trust," "holders of the power of direction," and "trustee."

BENEFICIARY CLAIMS - removes a provision that refers to claims arising out of dower or curtesy.

LAND TRUST BENEFICIARIES - creates provisions relating to land trust beneficiaries to provide that:

- Beneficiaries are not liable, solely by reason of being a beneficiary, for a debt, obligation, or liability of the land trust.
- Beneficiaries acting under a land trust agreement are not liable to the trustee or to any other beneficiary for good-faith reliance on the provisions of the trust agreement.
- Chapter 679, F.S., relating to secured transactions under the Uniform Commercial Code applies to the perfection of any security interest in a beneficial interest in a land trust and that the perfection of a security interest in a beneficial interest in a land trust does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.
- A beneficiary's duties and liabilities may be expanded or restricted in a trust agreement or a beneficiary agreement.
- Any subsequent document appearing of record in which a beneficiary transfers or encumbers the beneficial interest in the trust does not diminish or impair the authority of the trustee under the terms of the recorded instrument and that parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.
- An unrecorded trust agreement underlying a recorded instrument may provide that one or more persons or entities have the power to direct the trustee to convey, execute a mortgage, distribute proceeds of sale or financing, and execute documents incidental to the land trust.
- The power of direction, unless provided otherwise in the land trust agreement, is conferred upon the holders of the power of direction for the use and benefit of all of the beneficiaries.
- In the absence of a provision in the land trust agreement to the contrary, the power of direction must be in accordance with the percentage of individual ownership.
- In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all beneficiaries, unless it is otherwise provided in the land trust agreement.
- The beneficial interest is indefeasible[12] and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest.

[12] "That which cannot be defeated, revoked, or made void." BLACK'S LAW DICTIONARY (8th ed. 1999).

- A trust relating to real estate does not fail, and any use relating to real estate may not be defeated, because beneficiaries are not specified by name in the recorded deed of conveyance to the trustee or because duties are not imposed upon the trustee.

- The power conferred by any recorded deed of conveyance on a trustee to sell, lease, encumber, or otherwise dispose of property is effective and a person dealing with the trustee is not required to inquire any further into the right of the trustee to act or as to the disposition of any proceeds.

- The principal residence of a beneficiary shall be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust, provided that the requirements of Chapter 196, F.S. are met.

SUCCESSOR TRUSTEE - creates provisions relating to a successor trustee to provide that:

- The provisions of s. 737.309, F.S., regarding the resignation of a trustee, do not apply to the appointment of a successor trustee of a land trust.

- If both the recorded instrument and the unrecorded land trust agreement are silent as to the appointment of a successor trustee, then one or more persons or entities having the power of direction of the land trust may appoint a successor or successors by filing a declaration of appointment of a successor trustee. Such a declaration must be signed, acknowledged, and must contain the legal description of the trust property; the name and address of the former trustee; the name and address of the successor trustee; and a statement that the successor trustee has been appointed by one or more persons or entities having the power of direction of the land trust, together with an acceptance of appointment by the successor trustee.

- If the recorded instrument is silent as to the appointment of a successor trustee but an unrecorded land trust agreement provides for the appointment of a successor trustee, then upon the appointment of a successor trustee pursuant to the terms of the unrecorded land trust agreement, the successor trustee shall file a declaration of appointment of a successor trustee.

- If the appointment of the successor trustee is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

- If the recorded instrument provides for the appointment of a successor trustee and a successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of a successor trustee are required under this section.

- Each successor land trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor land trustee, except that the successor land trustee is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with the successor trustee pursuant to a declaration is not obligated to inquire into or ascertain the authority of the successor trustee to act within and exercise the powers granted under the recorded instruments or any unrecorded declarations or agreements.

- A land trust agreement may provide that the trustee, when directed to do so by the beneficiaries of the land trust or their legal representatives, may convey the trust property directly to another trustee on behalf of the beneficiaries or others named by the beneficiaries.

TRUSTEE AS CREDITOR - creates provisions relating to a land trustee as a creditor to provide that:

- If a debt is secured by a security interest in a beneficial interest in a land trust or by a mortgage on land trust property, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person or entity, and the creditor may extend credit, obtain such security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

- A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it may not be deemed evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries, for a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

RETROACTIVTY – section 3 of the bill provides that it is intended to clarify the existing law relating to land trusts and that the bill applies to all land trusts, whether the land trust was created before, on, or after the effective date of the bill, which is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 689.071, F.S., relating to land trusts.

Section 2 amends s. 201.02, F.S., relating to tax on deeds to correct a cross-reference.

Section 3 provides that the act is intended to clarify existing law and applies to all land trusts, whether created before, on, or after October 1, 2006.

Section 4 provides that the bill becomes effective on October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any significant economic impact on the private sector. It is intended to clarify and codify existing law relating to land trusts. In that vein, it may provide consistency and predictability to this area of law and benefit those who use and administer land trusts.

D. FISCAL COMMENTS:

None.

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:

Retroactivity

Unless the Legislature states otherwise, legislation is presumed to operate prospectively only, especially when retrospective operation would impair existing rights.[13] Common law provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[14] Courts have used a weighing process to decide whether to sustain the retroactive application of a statute that has three considerations: the strength of the public interest served by the statute, the extent to which the right affected is abrogated, and the nature of the right affected.[15] It does not appear that the provisions of this bill will affect any vested substantive rights since it is intended to clarify and codify existing law relating to land trusts and is remedial in nature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

An amendment was adopted to this PCB in the Judiciary Committee on March 8, 2006. The amendment added the word "written" in the definition of "land trust." This analysis is drawn to the amended PCB.

On April 11, 2006, the Committee on Finance and Tax adopted one amendment to this bill. The purpose of the amendment was to clarify that property owned by a land trust must meet the requirements of Chapter 196, F.S., in order to qualify for a Homestead Exemption.

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[13] *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

[14] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998); *Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981); and *Village of El Portal v. City of Miami Shores*, 362 So. 2d 275, 277 (Fla. 1978), citing *McCord v. Smith*, 43 So. 2d 704, 708-709 (Fla. 1949).

[15] Supra *Knowles* at 1158.

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to land trusts; amending s. 689.071, F.S.;
7 providing a short title; providing definitions; revising
8 provisions relating to land trust transfers of real
9 property and vesting of ownership in a trustee; deleting a
10 requirement that a trustee be qualified to act as a
11 fiduciary; deleting obsolete references to "dower" and
12 "curtesy"; specifying rights, liabilities, and duties of
13 land trust beneficiaries; providing that the principal
14 residence of a beneficiary which is held in a land trust
15 is entitled to the homestead tax exemption under certain
16 circumstances; providing for the appointment of successor
17 trustees; providing requirements for declarations of
18 appointment; providing that a trustee of a land trust may
19 be a creditor of the trust or of a trust beneficiary;
20 amending s. 201.02, F.S.; conforming a cross-reference;
21 providing application; providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 689.071, Florida Statutes, is amended
26 to read:
27 689.071 Florida Land Trust Act ~~trusts transferring~~
28 ~~interests in real estate; ownership vests in trustee~~.--
29 (1) SHORT TITLE.--This section may be cited as the
30 "Florida Land Trust Act."
31 (2) DEFINITIONS.--As used in this section, the term:
32 (a) "Beneficial interest" means any interest, vested or
33 contingent and regardless of how small or minimal such interest
34 may be, in a land trust which is held by a beneficiary.
35 (b) "Beneficiary" means any person or entity having a
36 beneficial interest in a land trust. A trustee may be a
37 beneficiary of the land trust for which such trustee serves as
38 trustee.
39 (c) "Holder of the power of direction" means any person or
40 entity having the authority to direct the trustee to convey
41 property or interests, execute a mortgage, distribute proceeds
42 of a sale or financing, and execute documents incidental to the
43 administration of a land trust.
44 (d) "Land trust" is not the creation of an entity, but
45 means any express written agreement or arrangement by which a
46 use, confidence, or trust is declared of any land, or of any
47 charge upon land, for the use or benefit of any beneficiary,
48 under which the title to real property, both legal and
49 equitable, is held by a trustee, subject only to the execution
50 of the trust, which may be enforced by the beneficiaries.

51 (e) "Trustee" means the person or entity designated in a
52 trust instrument to hold legal and equitable title to property
53 of a land trust.
54 (3) ~~(1)~~ OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
55 deed, mortgage, lease assignment, or other instrument heretofore
56 or hereafter made, hereinafter referred to as "the recorded
57 instrument," transferring any interest in real property in this
58 state, including, but not limited to, a leasehold or mortgagee
59 interest, to any person or any~~,~~ corporation, bank, trust
60 company, or other entity duly formed under the laws of its state
61 of qualification ~~qualified to act as a fiduciary in this state~~,
62 in which recorded instrument the person, corporation, bank,
63 trust company, or other entity is designated "trustee," or "as
64 trustee," without therein naming the beneficiaries of such
65 trust, whether or not reference is made in the recorded
66 instrument to any separate collateral unrecorded declarations or
67 agreements, is effective to vest, and is hereby declared to have
68 vested, in such trustee full rights of ownership over the real
69 property or interest therein, with full power and authority as
70 granted and provided in the recorded instrument to deal in and
71 with the property or interest therein or any part thereof;
72 provided, the recorded instrument confers on the trustee the
73 power and authority either to protect, conserve and to sell, or
74 to lease, or to encumber, or otherwise to manage and dispose of
75 the real property described in the recorded instrument.
76 (4) ~~(2)~~ NO DUTY TO INQUIRE.--Any grantee, mortgagee,
77 lessee, transferee, assignee, or person obtaining satisfactions
78 or releases or otherwise in any way dealing with the trustee

79 with respect to the real property or any interest in such
80 property ~~properties~~ held in trust under the recorded instrument,
81 as hereinabove provided for, is not obligated to inquire into
82 the identification or status of any named or unnamed
83 beneficiaries, or their heirs or assigns to whom a trustee may
84 be accountable under the terms of the recorded instrument, or
85 under any unrecorded separate declarations or agreements
86 collateral to the recorded instrument, whether or not such
87 declarations or agreements are referred to therein; or to
88 inquire into or ascertain the authority of such trustee to act
89 within and exercise the powers granted under the recorded
90 instrument; or to inquire into the adequacy or disposition of
91 any consideration, if any is paid or delivered to such trustee
92 in connection with any interest so acquired from such trustee;
93 or to inquire into any of the provisions of any such unrecorded
94 declarations or agreements.
95 (5) ~~(3)~~ BENEFICIARY CLAIMS.--All persons dealing with the
96 trustee under the recorded instrument as hereinabove provided
97 take any interest transferred by the trustee thereunder, within
98 the power and authority as granted and provided therein, free
99 and clear of the claims of all the named or unnamed
100 beneficiaries of such trust, and of any unrecorded declarations
101 or agreements collateral thereto whether referred to in the
102 recorded instrument or not, and of anyone claiming by, through,
103 or under such beneficiaries. However, this section does not
104 prevent ~~including, and without limiting the foregoing to, any~~
105 ~~claim arising out of any dower or curtesy interest of the spouse~~
106 ~~of any beneficiary thereof; provided, nothing herein contained~~

107 ~~prevents~~ a beneficiary of any such unrecorded collateral
108 declarations or agreements from enforcing the terms thereof
109 against the trustee.
110 (6) ~~(4)~~ PERSONAL PROPERTY.--In all cases in which the
111 recorded instrument, as hereinabove provided, contains a
112 provision defining and declaring the interests of beneficiaries
113 thereunder to be personal property only, such provision shall be
114 controlling for all purposes when such determination becomes an
115 issue under the laws or in the courts of this state.
116 (7) ~~(5)~~ TRUSTEE LIABILITY.--In addition to any other
117 limitation on personal liability existing pursuant to statute or
118 otherwise, the provisions of s. 737.306 apply to the trustee of
119 a land trust created pursuant to this section.
120 (8) LAND TRUST BENEFICIARIES.--
121 (a) Except as provided in this section, the beneficiaries
122 of a land trust are not liable, solely by being a beneficiary,
123 under a judgment, decree, or order of court or in any other
124 manner for a debt, obligation, or liability of the land trust.
125 (b) Any beneficiary acting under the trust agreement of a
126 land trust is not liable to the land trust's trustee or to any
127 other beneficiary for the beneficiary's good faith reliance on
128 the provisions of the trust agreement.
129 (c) Chapter 679 applies to the perfection of any security
130 interest in a beneficial interest in a land trust. The
131 perfection of a security interest in a beneficial interest in a
132 land trust does not impair or diminish the authority of the
133 trustee under the recorded instrument, and parties dealing with

134 the trustee are not required to inquire into the terms of the
135 unrecorded trust agreement.
136 (d) A beneficiary's duties and liabilities may be expanded
137 or restricted in a trust agreement or beneficiary agreement.
138 (e) Any subsequent document appearing of record in which a
139 beneficiary of a trust transfers or encumbers the beneficial
140 interest in the trust does not diminish or impair the authority
141 of the trustee under the terms of the recorded instrument.
142 Parties dealing with the trustee are not required to inquire
143 into the terms of the unrecorded trust agreement.
144 (f) An unrecorded trust agreement giving rise to a
145 recorded instrument for a land trust may provide that one or
146 more persons or entities have the power to direct the trustee to
147 convey property or interests, execute a mortgage, distribute
148 proceeds of a sale or financing, and execute documents
149 incidental to administration of the land trust. The power of
150 direction, unless provided otherwise in the land trust
151 agreement, is conferred upon the holders of the power for the
152 use and benefit of all holders of any beneficial interest in the
153 land trust. In the absence of a provision in the land trust
154 agreement to the contrary, the power of direction shall be in
155 accordance with the percentage of individual ownership. In
156 exercising the power of direction, the holders of the power of
157 direction are presumed to act in a fiduciary capacity for the
158 benefit of all holders of any beneficial interest in the trust,
159 unless otherwise provided in the land trust agreement. A
160 beneficial interest is indefeasible, and the power of direction
161 may not be exercised so as to alter, amend, revoke, terminate,

162 defeat, or otherwise affect or change the enjoyment of any
163 beneficial interest.
164 (g) A trust relating to real estate does not fail, and any
165 use relating to real estate may not be defeated, because
166 beneficiaries are not specified by name in the recorded deed of
167 conveyance to the trustee or because duties are not imposed upon
168 the trustee. The power conferred by any recorded deed of
169 conveyance on a trustee to sell, lease, encumber, or otherwise
170 dispose of property described in the deed is effective, and a
171 person dealing with the trustee is not required to inquire any
172 further into the right of the trustee to act or the disposition
173 of any proceeds.
174 (h) The principal residence of a beneficiary shall be
175 entitled to the homestead tax exemption even if the homestead is
176 held by a trustee in a land trust, provided the beneficiary
177 qualifies for the homestead exemption under chapter 196.
178 (9) SUCCESSOR TRUSTEE.--
179 (a) The provisions of s. 737.309 relating to the
180 resignation of a trustee do not apply to the appointment of a
181 successor trustee under this section.
182 (b) If the recorded instrument and the unrecorded land
183 trust agreement are silent as to the appointment of a successor
184 trustee in the event of the death, incapacity, resignation, or
185 termination due to dissolution of a land trustee or if a land
186 trustee is unable to serve as trustee, one or more persons or
187 entities having the power of direction of the land trust
188 agreement may appoint a successor trustee or trustees of the
189 land trust by filing a declaration of appointment of a successor

190 trustee or trustees in the office of the recorder of deeds in
191 the county in which the trust property is located. The
192 declaration must be signed by a beneficiary or beneficiaries of
193 the trust and by each successor trustee, must be acknowledged in
194 the manner provided for acknowledgment of deeds, and must
195 contain:
196 1. The legal description of the trust property.
197 2. The name and address of the former trustee.
198 3. The name and address of each successor trustee.
199 4. A statement that each successor trustee has been
200 appointed by one or more persons or entities having the power of
201 direction of the land trust, together with an acceptance of
202 appointment by each successor trustee.
203 (c) If the recorded instrument is silent as to the
204 appointment of a successor trustee or trustees but an unrecorded
205 land trust agreement provides for the appointment of a successor
206 trustee or trustees in the event of the death, incapacity,
207 resignation, or termination due to dissolution of the land
208 trustee, upon the appointment of any successor trustee pursuant
209 to the terms of the unrecorded land trust agreement, each
210 successor trustee shall file a declaration of appointment of a
211 successor trustee in the office of the recorder of deeds in the
212 county in which the trust property is located. The declaration
213 must be signed by both the former trustee and each successor
214 trustee, must be acknowledged in the manner provided for
215 acknowledgment of deeds, and must contain:
216 1. The legal description of the trust property.
217 2. The name and address of the former trustee.

218 3. The name and address of the successor trustee.
219 4. A statement of resignation by the former trustee and a
220 statement of acceptance of appointment by each successor
221 trustee.
222 5. A statement that each successor trustee was duly
223 appointed under the terms of the unrecorded land trust
224 agreement.
225
226 If the appointment of any successor trustee is due to the death
227 or incapacity of the former trustee, the declaration need not be
228 signed by the former trustee and a copy of the death certificate
229 or a statement that the former trustee is incapacitated or
230 unable to serve must be attached to or included in the
231 declaration, as applicable.
232 (d) If the recorded instrument provides for the
233 appointment of any successor trustee and any successor trustee
234 is appointed in accordance with the recorded instrument, no
235 additional declarations of appointment of any successor trustee
236 are required under this section.
237 (e) Each successor land trustee appointed is fully vested
238 with all the estate, properties, rights, powers, trusts, duties,
239 and obligations of the predecessor land trustee, except that any
240 successor land trustee is not under any duty to inquire into the
241 acts or omissions of a predecessor trustee and is not liable for
242 any act or failure to act of a predecessor trustee. A person
243 dealing with any successor trustee pursuant to a declaration
244 filed under this section is not obligated to inquire into or
245 ascertain the authority of the successor trustee to act within

246 or exercise the powers granted under the recorded instruments or
247 any unrecorded declarations or agreements.
248 (f) A land trust agreement may provide that the trustee,
249 when directed to do so by the beneficiaries of the land trust or
250 legal representatives of the beneficiaries, may convey the trust
251 property directly to another trustee on behalf of the
252 beneficiaries or others named by the beneficiaries.
253 (10) TRUSTEE AS CREDITOR.--
254 (a) If a debt is secured by a security interest in a
255 beneficial interest in a land trust or by a mortgage on land
256 trust property, the validity or enforceability of the debt,
257 security interest, or mortgage and the rights, remedies, powers,
258 and duties of the creditor with respect to the debt or the
259 security are not affected by the fact that the creditor and the
260 trustee are the same person or entity, and the creditor may
261 extend credit, obtain any necessary security interest or
262 mortgage, and acquire and deal with the property comprising the
263 security as though the creditor were not the trustee.
264 (b) A trustee of a land trust does not breach a fiduciary
265 duty to the beneficiaries, and it is not evidence of a breach of
266 any fiduciary duty owed by the trustee to the beneficiaries for
267 a trustee to be or become a secured or unsecured creditor of the
268 land trust, the beneficiary of the land trust, or a third party
269 whose debt to such creditor is guaranteed by a beneficiary of
270 the land trust.
271 (11) ~~(6)~~ REMEDIAL ACT.--This act is remedial in nature and
272 shall be given a liberal interpretation to effectuate the intent
273 and purposes hereinabove expressed.

274 (12) ~~(7)~~ EXCLUSION.--This act does not apply to any deed,
275 mortgage, or other instrument to which s. 689.07 applies.
276 Section 2. Subsection (4) of section 201.02, Florida
277 Statutes, is amended to read:
278 201.02 Tax on deeds and other instruments relating to real
279 property or interests in real property.--
280 (4) The tax imposed by subsection (1) shall also be
281 payable upon documents which convey or transfer, pursuant to s.
282 689.071, any beneficial interest in lands, tenements, or other
283 real property, or any interest therein, even though such
284 interest may be designated as personal property, notwithstanding
285 the provisions of s. 689.071(6) ~~(4)~~. The tax shall be paid upon
286 execution of any such document.
287 Section 3. This act is intended to clarify existing law
288 and applies to all land trusts whether created before, on, or
289 after October 1, 2006.
290 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7117 CS PCB CRJU 06-03 Sexual Predators and Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	8 Y, 0 N	Kramer	Kramer
1) Education Appropriations Committee	16 Y, 1 N, w/CS	Eggers	Hamon
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. The bill had an effective date of September 1, 2005. Section 21 of the act amended section 1012.465, F.S. to require noninstructional contractual personnel who are permitted access on school grounds when students are present to meet level 2 screening requirements. After the legislative session, school districts and businesses contracting with school districts expressed concerns with this provision of the bill.

Currently, a sexual predator or a sexual offender is required to obtain a driver's license or identification card as a part of the registration process. The bill requires that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have markings on the front of the card indicating the section of statute under which they are registered. The bill provides that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings are not displayed or have been altered. A violation of this provision will be a third degree felony.

Under the bill, noninstructional school district employees who have direct unsupervised contact with students or access to school funds and other individuals who are authorized by the school district to perform services that involve direct unsupervised contact with students or access to school funds will be required to submit to a fingerprint based state and national criminal history check.

The bill requires a contractor to certify to the school district that individuals who have access to school grounds for business or employment purposes (other than individuals required to undergo a national and state criminal history check) are not on the National Sex Offender Public Registry. The bill provides that a sexual predator or sexual offender is not permitted to be on school grounds for business or employment purposes. The bill requires a person on school grounds for business or employment purposes to carry his or her driver's license or identification card and present it upon request.

The bill contains a $30,000 appropriation from the Highway Safety Operating Trust Fund to the Department of Highway Safety and Motor Vehicles (DHSMV) for the 2006-2007 fiscal year for computer programming costs related to the act.

Except where otherwise provided, the bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may limit the number of individuals who are required to undergo a state and national criminal history check. The bill will require contractors to provide certification to school districts that their contract workers are not on the National Sex Offender Public Registry.

Safeguard individual liberty/Promote personal responsibility: The bill will require sexual predators and sexual offenders to have a marking on their driver's license or identification card indicating the section of statute under which they are registered.

B. EFFECT OF PROPOSED CHANGES:

Background

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Additionally, section 21 of the act amended section 1012.465, F.S. Prior to this bill, this section had required noninstructional school district employees or contractual personnel who had direct contract with students or had access to or control of school funds to meet level 2 screening requirements as described in s. 1012.32, F.S.[1] The bill expanded this requirement to contractual personnel who are permitted access on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

A level 2 screening includes a statewide criminal records check through the Florida Department of Law Enforcement (FDLE) and a national criminal records check through the Federal Bureau of Investigation (FBI).[2] Section 435.04, F.S. provides that the background screenings required by the section must ensure that no persons subject to the screening have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any of a list of enumerated offenses. Section 1012.32, F.S., provides persons "found through fingerprint processing to have been convicted of a crime involving *moral turpitude* shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students."

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the national check. FDLE sends the results of the state and national check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

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[1] Additionally, section 943.04351, F.S .requires that "a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement".

[2] See ss. 1012.465(2) and 435.04, F.S.

After the legislative session, school districts and businesses that contract with school districts expressed difficulties in implementing the criminal history screening provisions of the bill. The most common complaints can be characterized as follows:

- Many contractors work in multiple school districts throughout the state and have been required to undergo a separate criminal history check for each school district. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.
- Contractors claimed that some school districts have charged processing fees for a criminal history screening that are cost prohibitive, particularly if a business has many employees who conduct business in multiple school districts.
- School districts and contractors expressed confusion as to who should be considered contractual personnel and what should be considered school grounds.
- Because there is no statutory definition of the term "moral turpitude", interpretation is left to the school districts. Contractors have claimed that this results in inconsistency – based on different interpretations of the phrase, a contractor could be permitted to work in one school district and barred from working in another. Further, contractors have complained that they have been barred from working in a school district for what they consider minor criminal offenses or offenses that were committed many years ago.
- Contractors who are required to undergo level 2 checks for their other employment have complained that school districts have required them to undergo an additional screening to be permitted on school grounds when students are present.

FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

Sexual Predator Registration: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
    a. kidnapping or false imprisonment[3] where the victim is a minor and the defendant is not the victim's parent;
    b. sexual battery;[4]
    c. lewd or lascivious offenses;[5]
    d. selling, buying, or transfer of custody of a minor for child pornography;[6] or
    e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
    a. kidnapping, false imprisonment or luring or enticing a child[7] where the victim is a minor and the defendant is not the victim's parent,
    b. sexual battery;[8]

[3] s. 787.01, F.S. or s. 787.02, F.S.,
[4] See chapter 794. F.S.
[5] s. 800.04, F.S.
[6] s. 847.0145, F.S.
[7] s. 787.025, F.S.

c. procuring a person under the age of 18 for prostitution;[9]
d. lewd or lascivious offenses;
e. lewd or lascivious battery on an elderly person;[10]
f. promoting sexual performance by a child;[11]
g. selling, buying, or transfer of custody of a minor for child pornography; or
h. a violation of a similar law of another jurisdiction.[12]

If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an FDLE office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the DHSMV and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator or sexual offender must report in person every six months to the sheriff's office in the county in which he or she resides to reregister. The sexual predator or sexual offender is required to report to the sheriff's office during the month of his of his or her birthday and during the sixth month following his or her birth month.[13]

A sexual predator's failure to comply with registration requirements is a third degree felony.[14] A sexual predator who has been convicted of one of the enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.[15]

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. Specifically, a sexual offender is a

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[8] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[9] s. 796.03, F.S.
[10] s. 825.1025(2)(b), F.S.
[11] s. 827.071, F.S.
[12] Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]
[13] s. 775.21(8), F.S.
[14] s. 775.21(10), F.S.
[15] S. 775.21(10)(b), F.S.

person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

a. kidnapping, false imprisonment or luring or enticing a child[16] where the victim is a minor and the defendant is not the victim's parent;
b. sexual battery;[17]
c. procuring a person under the age of 18 for prostitution;[18]
d. lewd or lascivious offenses;
e. lewd or lascivious battery on an elderly person;[19]
f. promoting sexual performance by a child;[20]
g. selling, buying, or transfer of custody of a minor for child pornography;
h. selling or showing obscenity to a minor;[21]
i. using a computer to solicit sexual conduct of or with a minor;[22]
j. transmitting child pornography;[23]
k. transmitting material harmful to minors;[24]
l. violating of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

The United States Department of Justice has recently developed the "National Sex Offender Public Registry" - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual's name.[25] According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

Provisions of HB 7117

Driver's license/identification card: The bill amends s. 322.141, F.S., effective August 1, 2006, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have on the front of the card the following:

- For a person designated as a sexual predator under s. 775.21, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S. or s. 944.607, the marking "943.0435, F.S."

Currently, sexual predators and sexual offenders are required to report in person each year during the month of the sexual predator's birthday and during the sixth month following the sexual predator or sexual offenders birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The bill requires a sexual predator or sexual offender to report to the DHSMV to obtain a marked driver's license or identification card during the month of their reregistration unless he or she previously secured such a marked driver's license or identification card. In order to ensure that this provision is implemented between July 1, 2006 (the effective date of the bill) and January 1, 2007, a sexual predator or sexual offender who is required to reregister during July 2006 or January 2007 will be required to report during August 2006 to receive their marked driver's license or identification card.

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[16] s. 787.025, F.S.
[17] Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.
[18] s. 796.03, F.S.
[19] s. 825.1025(2)(b), F.S.
[20] s. 827.071, F.S.
[21] s. 847.0133, F.S.
[22] s. 847.0135, F.S.
[23] s. 847.0137, F.S.
[24] s. 847.0138, F.S.
[25] http://www.nsopr.gov/

The bill amends s. 322.212, F.S., to provide that on or after January 2007, it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141, F.S., are not displayed or have been altered. A violation of this provision will be a third degree felony.

The bill amends the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3), F.S.

Background screening: As discussed above, the Jessica Lunsford Act, s. 1012.465, F.S., added the requirement that noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present be required to meet level 2 background screening. The bill amends this section to provide that the following individuals must meet level 2 screening requirements as described in s. 435.04, F.S.:

1. Noninstructional school district employees who have direct unsupervised contact with students or who have control of school funds.
2. Other individuals who are authorized by the school district to perform services for compensation and that involve access to or control of school funds.
3. Other individuals who are authorized by the school district to perform services for compensation that involve direct, unsupervised contact with students. This requirement does not apply to any individual who, by law due to the nature of his or her occupation or business, is required to submit to a state and national criminal history check for licensing or other purposes, if such license or other certificate is current and in good standing and the individual submits proof of good standing to the district.

The bill requires FDLE to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts through a secure website or other electronic means. For any required checks during the 5 year period subsequent to the initial check or recheck, the individual must inform the district school board requiring the check that he or she has already completed a current records check and that district must, without charge to the individual, check the individual's history using the shared system.

The bill creates s. 1012.4561, F.S., to provide that a "contract worker" who is a sexual predator or sexual offender or who appears on the National Sex Offender Public Registry maintained by the United State Department of Justice may not be on school grounds. The term "contract worker" is defined as a contractor or any individual who has access to school grounds[26] for *business or employment purposes* of a contractor for compensation when students are present, other than a individual referred to in ss. 1012.56 or 1012.465(1), F.S.[27] A contract worker who is present on school grounds in violation of this provision commits a first degree misdemeanor.

The bill provides that before allowing a contract worker to have access to school grounds, a contractor[28] must provide the school district with certification that the contractor has:

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[26] The term "school grounds" is defined by the bill as follows:

"School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, together with the school district land on which the buildings are located. The term "school grounds" does not include:

1. Any other facilities or locations where school classes or activities may be located or take place;
2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school or contiguous school district land during any time period in which students are not permitted access; or
3. Any building described in this paragraph during any period in which it is used solely as an adult, career or technical center under part IV of chapter 1004.

[27] Individuals described in section 1012.56 and s. 1012.465(1) are required to meet level 2 screening standards.

[28] The bill defines the term "contractor" as follows:

"Contractor" means a person who is engaged by the school district to provide goods or services for compensation that do not involve direct, unsupervised contact with students and who employs contract workers or subcontracts with a person who

1. For an individual who holds a state driver's license or identification card, examined the contractor's worker's license or identification card and confirmed that it does not have the markings required by s. 322.141(3), F.S.
2. Checked and confirmed that the individual is not on the National Sex Offender Public Registry.

The contractor will be required to make its records supporting the certification available for inspection at the request of the school district. A person who knowingly and willfully violates this section and who holds a professional license under chapter 455 or 465 commits an act constituting grounds for discipline.

Each contract worker who has been issued a state driver's license or identification card must possess the card at all times while working on school grounds and must show the card to any school district employee upon request. Each contract worker who has not been issued or does not have in his or her possession a state driver's license or identification card will be required to submit to a check against the National Sex Offender Public Registry upon request of any school district employee.

Each contract worker must inform the contractor within 48 hours if arrested for an offense for which a conviction could lead to the person being designated a sexual predator or subject to registration as a sexual offender. A person who willfully fails to comply with this provision commits a first degree misdemeanor.

The bill provides that the newly created s. 1012.4561, F.S., does not apply to law enforcement officers, as defined in s. 943.10, F.S., assigned by their employing agencies to work on school grounds as part of their official duties or first responder personnel responding to a request for assistance. For this purpose, the term "first responder personnel" includes law enforcement officers, as defined in s. 943.10, F.S., emergency medical technicians, paramedics, and firefighters.

The bill provides that no provision of the newly created s. 1012.4561, F.S., shall give rise to any private civil liability, nor will the section be construed to create a private cause of action for monetary damages.

The bill amends s. 1012.32, F.S., relating to required background screening of instructional and noninstructional school district personnel and other persons authorized by the school district to perform services for compensation, to conform this section to the changes made to other sections in chapter 1012. Section 1012.32, F.S., will set forth that the background screening will be initiated by filing with the district school board a complete set of fingerprints taken by an individual authorized to take fingerprints on behalf of an authorized law enforcement agency, a private service provider, or the school or school district. As under current law, the section will also provide for the retention of fingerprints by FDLE for the purposes of comparison against arrest fingerprint cards and will authorize the district school board to submit the fingerprints to FDLE for submission to the FBI for national rescreening.

The bill amends s. 1002.33(12), F.S., relating to charter school employees and members of the governing board of the charter school, and s. 1003.63(7), F.S., relating to employees of deregulated public schools to clarify that these individuals must undergo screening as required under s. 1012.32, F.S. Section 1012.56, F.S., relating to educator certification, is also amended to remove provisions that will now be contained in s. 1012.32, F.S.

The bill has an effective date of July 1, 2006 except as otherwise provided in the act.

C. SECTION DIRECTORY:

Section 1. Amends s. 322.141, F.S., to require markings on driver's licenses or identification cards of sexual predators and sexual offenders.

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employs contract workers to provide such goods or services. "Contractor" also means an individual who is engaged by a school district to provide such goods or services for compensation."

Section 2. Amends s. 322.212, F.S., to make it unlawful for person to have in his or her possession driver's license or identification card without required markings.

Section 3. Amends s. 775.21, F.S., to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 4. Amends s. 943.0435, F.S., to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 5. Amends s. 944.607, F.S., to require that driver's license or identification card comply with the requirements of s. 322.141(3), F.S.

Section 6. Amends s. 1002.33, F.S., to clarify background screening of charter school employees.

Section 7. Amends s. 1003.63, F.S., to clarify fingerprinting requirements of deregulated public schools.

Section 8. Amends s. 1012.32, F.S., to clarify background screening of employees of school districts.

Section 9. Amends s. 1012.465, F.S., to specify individuals required to meet level 2 screening requirements.

Section 10. Creates s. 1012.4561, F.S., relating to individuals permitted access to school grounds for business or employment purposes when students are present.

Section 11. Amends s. 1012.56, F.S., to specify background screening of teachers.

Section 12. Provides an appropriation.

Section 13. Provides effective date of July 1, 2006 except as otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill contains a $30,000 appropriation from the Highway Safety Operating Trust Fund to the DHSMV for the 2006-2007 fiscal year for computer programming costs related to the act. Any other costs associated with printing driver's licenses and identification cards with the appropriate markings may be absorbed within existing resources by the DHSMV.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may limit the number of individuals who are required to undergo the state and national criminal history screening required under the Jessica Lunsford Act.

D. FISCAL COMMENTS:

Currently, the combined fee for the background check is $47 - $23 to the FDLE and $24 to the FBI. In addition, a school district may charge an administrative fee for processing the information. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject background screening.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes a school board to adopt rules to implement the provisions of the newly created s. 1012.4561, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Education Appropriations Committee adopted a strike-all amendment which:

- Provided for the staggered implementation of the requirement that sexual predators and sexual offenders obtain drivers licenses or identification cards containing identifying markings.
- Included reference to sexual offender statute, s. 944.607, F.S., in section relating to markings on drivers licenses.
- Amended s. 1012.465, F.S., to refer to level 2 screening standards in s. 435.04, F.S., rather than "moral turpitude" standard contained in s. 1012.32, F.S.
- Modified definitions.
- Provided a $30,000 appropriation to the Department of Highway Safety and Motor Vehicles.
- Amended cross references.

CHAMBER ACTION

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1 The Education Appropriations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to sexual predators and offenders;
7 amending s. 322.141, F.S.; requiring distinctive markings
8 for driver's licenses and identification cards issued to
9 persons who are designated as sexual predators or subject
10 to registration as sexual offenders; providing procedures
11 for offenders to obtain such licenses or identification
12 cards; providing for initial issuance; providing for
13 future repeal of a specified provision; amending s.
14 322.212, F.S.; prohibiting the alteration of sexual
15 predator or sexual offender markings on driver's licenses
16 or identification cards; providing criminal penalties;
17 amending s. 775.21, F.S.; requiring sexual predators to
18 obtain a distinctive driver's license or identification
19 card; amending s. 943.0435, F.S.; requiring sexual
20 offenders to obtain a distinctive driver's license or
21 identification card; amending s. 944.607, F.S.; requiring
22 specified offenders who are under the supervision of the
23 Department of Corrections but are not incarcerated to

24 obtain a distinctive driver's license or identification
25 card; amending ss. 1002.33 and 1003.63, F.S.; revising
26 cross-references; amending s. 1012.32, F.S.; revising
27 provisions relating to background screening of school
28 district personnel; revising provisions relating to
29 fingerprints; providing procedures for periodic
30 rescreening of certain personnel; amending s. 1012.465,
31 F.S.; revising provisions relating to background
32 screenings of certain noninstructional school district
33 employees and other specified individuals; revising
34 provisions relating to periodic rescreening of certain
35 persons; creating s. 1012.4561, F.S.; providing
36 definitions; prohibiting contract workers who are
37 designated as sexual predators, subject to registration as
38 a sexual offenders, or who appear on the National Sex
39 Offender Public Registry from being present on school
40 grounds; providing criminal penalties; requiring contract
41 workers working on school grounds to be subject to a check
42 of Florida driver's licenses or identification cards for
43 the purposes of ascertaining their sexual offender and
44 sexual predator status and checked against the National
45 Sex Offender Public Registry; providing duties for certain
46 contract workers; providing penalties; requiring certain
47 individuals to report certain offenses; providing
48 penalties; providing exceptions; providing that no
49 provision of the section shall give rise to private civil
50 liability or create a private cause of action for monetary
51 damages; providing rulemaking authority to school boards;

52 amending s. 1012.56, F.S.; revising provisions relating to
53 background screening for educator certification; revising
54 provisions relating to periodic rescreening of such
55 persons; providing an appropriation; providing effective
56 dates.
57
58 Be It Enacted by the Legislature of the State of Florida:
59
60 Section 1. Effective August 1, 2006, subsection (3) is
61 added to section 322.141, Florida Statutes, to read:
62 322.141 Color or markings of certain licenses or
63 identification cards; procedures for sexual offenders and
64 predators to obtain marked licenses or identification cards.--
65 (3) All licenses for the operation of motor vehicles or
66 identification cards originally issued or reissued by the
67 department to persons who are designated as sexual predators
68 under s. 775.21 or subject to registration as sexual offenders
69 under s. 943.0435 or s. 944.607 shall have on the front of the
70 license or identification card the following:
71 (a) For a person designated as a sexual predator under s.
72 775.21, the marking "775.21, F.S."
73 (b) For a person subject to registration as a sexual
74 offender under s. 943.0435 or s. 944.607, the marking "943.0435,
75 F.S."
76 (c) Each sexual predator under s. 775.21 or sexual
77 offender under s. 943.0435 or s. 944.607 shall report to the
78 department during the month of his or her reregistration
79 requirement pursuant to s. 775.21(8), s. 943.0435(14), or s.

80 944.607(13) to obtain a marked driver's license or
81 identification card as required under this subsection unless he
82 or she previously secured such a marked driver's license or
83 identification card.
84 (d) Notwithstanding paragraph (c), sexual predators under
85 s. 775.21 and sexual offenders under s. 943.0435 or s. 944.607
86 whose birth month is January or July must report during the
87 month of August 2006, to the sheriff's office in the county in
88 which they reside or, if they have no permanent or temporary
89 residence, the county in which they are located, to receive
90 their marked driver's license or identification card as required
91 by s. 322.141(3). This paragraph expires January 1, 2007.
92 Section 2. Paragraph (c) is added to subsection (5) of
93 section 322.212, Florida Statutes, to read:
94 322.212 Unauthorized possession of, and other unlawful
95 acts in relation to, driver's license or identification card.--
96 (5)
97 (c) It is unlawful for any person on or after January 1,
98 2007, to knowingly have in his or her possession a driver's
99 license or identification card upon which the sexual predator or
100 sexual offender markings required by s. 322.141(3) are not
101 displayed or have been altered.
102 Section 3. Paragraph (f) of subsection (6) of section
103 775.21, Florida Statutes, is amended to read:
104 775.21 The Florida Sexual Predators Act.--
105 (6) REGISTRATION.--
106 (f) Within 48 hours after the registration required under
107 paragraph (a) or paragraph (e), a sexual predator who is not

108 incarcerated and who resides in the community, including a
109 sexual predator under the supervision of the Department of
110 Corrections, shall register in person at a driver's license
111 office of the Department of Highway Safety and Motor Vehicles
112 and shall present proof of registration. At the driver's license
113 office the sexual predator shall:
114 1. If otherwise qualified, secure a Florida driver's
115 license, renew a Florida driver's license, or secure an
116 identification card. The sexual predator shall identify himself
117 or herself as a sexual predator who is required to comply with
118 this section, provide his or her place of permanent or temporary
119 residence, including a rural route address and a post office
120 box, and submit to the taking of a photograph for use in issuing
121 a driver's license, renewed license, or identification card, and
122 for use by the department in maintaining current records of
123 sexual predators. A post office box shall not be provided in
124 lieu of a physical residential address. If the sexual predator's
125 place of residence is a motor vehicle, trailer, mobile home, or
126 manufactured home, as defined in chapter 320, the sexual
127 predator shall also provide to the Department of Highway Safety
128 and Motor Vehicles the vehicle identification number; the
129 license tag number; the registration number; and a description,
130 including color scheme, of the motor vehicle, trailer, mobile
131 home, or manufactured home. If a sexual predator's place of
132 residence is a vessel, live-aboard vessel, or houseboat, as
133 defined in chapter 327, the sexual predator shall also provide
134 to the Department of Highway Safety and Motor Vehicles the hull
135 identification number; the manufacturer's serial number; the

136 name of the vessel, live-aboard vessel, or houseboat; the
137 registration number; and a description, including color scheme,
138 of the vessel, live-aboard vessel, or houseboat.
139 2. Pay the costs assessed by the Department of Highway
140 Safety and Motor Vehicles for issuing or renewing a driver's
141 license or identification card as required by this section. The
142 driver's license or identification card issued shall comply with
143 s. 322.141(3).
144 3. Provide, upon request, any additional information
145 necessary to confirm the identity of the sexual predator,
146 including a set of fingerprints.
147
148 The sheriff shall promptly provide to the department the
149 information received from the sexual predator.
150 Section 4. Subsection (3) of section 943.0435, Florida
151 Statutes, is amended to read:
152 943.0435 Sexual offenders required to register with the
153 department; penalty.--
154 (3) Within 48 hours after the report required under
155 subsection (2), a sexual offender shall report in person at a
156 driver's license office of the Department of Highway Safety and
157 Motor Vehicles, unless a driver's license or identification card
158 that complies with the requirements of s. 322.141(3) was
159 previously secured or updated under s. 944.607. At the driver's
160 license office the sexual offender shall:
161 (a) If otherwise qualified, secure a Florida driver's
162 license, renew a Florida driver's license, or secure an
163 identification card. The sexual offender shall identify himself

164 or herself as a sexual offender who is required to comply with
165 this section and shall provide proof that the sexual offender
166 reported as required in subsection (2). The sexual offender
167 shall provide any of the information specified in subsection
168 (2), if requested. The sexual offender shall submit to the
169 taking of a photograph for use in issuing a driver's license,
170 renewed license, or identification card, and for use by the
171 department in maintaining current records of sexual offenders.
172 (b) Pay the costs assessed by the Department of Highway
173 Safety and Motor Vehicles for issuing or renewing a driver's
174 license or identification card as required by this section. The
175 driver's license or identification card issued shall comply with
176 s. 322.141(3).
177 (c) Provide, upon request, any additional information
178 necessary to confirm the identity of the sexual offender,
179 including a set of fingerprints.
180 Section 5. Subsection (9) of section 944.607, Florida
181 Statutes, is amended to read:
182 944.607 Notification to Department of Law Enforcement of
183 information on sexual offenders.--
184 (9) A sexual offender, as described in this section, who
185 is under the supervision of the Department of Corrections but
186 who is not incarcerated shall, in addition to the registration
187 requirements provided in subsection (4), register and obtain a
188 distinctive driver's license or identification card in the
189 manner provided in s. 943.0435(3), (4), and (5), unless the
190 sexual offender is a sexual predator, in which case he or she
191 shall register and obtain a distinctive driver's license or

192 identification card as required under s. 775.21. A sexual
193 offender who fails to comply with the requirements of s.
194 943.0435 is subject to the penalties provided in s. 943.0435(9).
195 Section 6. Paragraph (g) of subsection (12) of section
196 1002.33, Florida Statutes, is amended to read:
197 1002.33 Charter schools.--
198 (12) EMPLOYEES OF CHARTER SCHOOLS.--
199 (g) A charter school shall employ or contract with
200 employees who have undergone background screening as required
201 under ~~provided in~~ s. 1012.32. Members of the governing board of
202 the charter school shall also undergo background screening in a
203 manner similar to that required under ~~provided in~~ s. 1012.32.
204 Section 7. Paragraph (c) of subsection (7) of section
205 1003.63, Florida Statutes, is amended to read:
206 1003.63 Deregulated public schools pilot program.--
207 (7) EXEMPTION FROM STATUTES.--
208 (c) A deregulated public school shall employ or contract
209 with employees who have been fingerprinted as required under
210 ~~provided in~~ s. 1012.32.
211 Section 8. Section 1012.32, Florida Statutes, is amended
212 to read:
213 1012.32 Qualifications of personnel; background screening
214 requirement.--
215 (1) To be eligible for appointment in any position in any
216 district school system, a person shall be of good moral
217 character; shall have attained the age of 18 years, if he or she
218 is to be employed in an instructional capacity; and shall, when
219 required by law, hold a certificate or license issued under

220 rules of the State Board of Education or the Department of
221 Children and Family Services, except when employed pursuant to
222 s. 1012.55 or under the emergency provisions of s. 1012.24.
223 Previous residence in this state shall not be required in any
224 school of the state as a prerequisite for any person holding a
225 valid Florida certificate or license to serve in an
226 instructional capacity.
227 (2)(a) Background screening is required of instructional
228 and noninstructional personnel who are hired or contracted to
229 fill positions in any district school system and of other
230 persons authorized by the school district to perform services
231 for compensation as follows:
232 1. ~~(a)~~ Instructional and noninstructional personnel who are
233 hired or contracted to fill positions ~~requiring direct contact~~
234 ~~with students~~ in any district school system or university lab
235 school shall, upon employment or engagement to provide services,
236 undergo background screening ~~as required~~ under s. 1012.465 or s.
237 1012.56, whichever is applicable.
238 2. ~~(b)~~ Instructional and noninstructional personnel who are
239 hired or contracted to fill positions in any charter school and
240 members of the governing board of any charter school, in
241 compliance with s. 1002.33(12)(g), shall, upon employment,
242 engagement of services, or appointment, undergo background
243 screening ~~as required~~ under s. 1012.465 or s. 1012.56, whichever
244 is applicable~~, by filing with the district school board for the~~
245 ~~school district in which the charter school is located a~~
246 ~~complete set of fingerprints taken by an authorized law~~

247 ~~enforcement agency or an employee of the school or school~~
248 ~~district who is trained to take fingerprints~~.
249 3.~~(c)~~ Instructional and noninstructional personnel who are
250 hired or contracted to fill positions ~~requiring direct contact~~
251 ~~with students~~ in an alternative school that operates under
252 contract with a district school system shall, upon employment or
253 engagement to provide services, undergo background screening ~~as~~
254 ~~required~~ under s. 1012.465 or s. 1012.56, whichever is
255 applicable~~, by filing with the district school board for the~~
256 ~~school district to which the alternative school is under~~
257 ~~contract a complete set of fingerprints taken by an authorized~~
258 ~~law enforcement agency or an employee of the school or school~~
259 ~~district who is trained to take fingerprints~~.
260 4.~~(d)~~ Student teachers, persons participating in a field
261 experience pursuant to s. 1004.04(6) or s. 1004.85, and persons
262 participating in a short-term experience as a teacher assistant
263 pursuant to s. 1004.04(10) in any district school system, lab
264 school, or charter school shall, upon engagement to provide
265 services, undergo background screening ~~as required~~ under s.
266 1012.56.
267 (b)1. Background screening shall be initiated by filing
268 with the district school board for the school district in which
269 the school, charter school, or lab school is located or to which
270 the alternative school is under contract a complete set of
271 fingerprints taken by an individual authorized to take
272 fingerprints on behalf of an authorized law enforcement agency,
273 a private service provider, or the school or school district.

274 2. Fingerprints required for a background screening shall
275 be submitted to the Department of Law Enforcement for state
276 processing and to the Federal Bureau of Investigation for
277 national ~~federal~~ processing. The Department of Law Enforcement
278 shall invoice the department for the fingerprints submitted each
279 month. The school districts shall screen background results to
280 determine if an applicant meets licensure or employment
281 requirements. ~~Persons subject to this subsection found through~~
282 ~~fingerprint processing to have been convicted of a crime~~
283 ~~involving moral turpitude shall not be employed, engaged to~~
284 ~~provide services, or serve in any position requiring direct~~
285 ~~contact with students. Probationary persons subject to this~~
286 ~~subsection terminated because of their criminal record have the~~
287 ~~right to appeal such decisions.~~
288 3. The cost of the background screening may be borne by
289 the district school board, the charter school, the employee, the
290 contractor, or a person subject to this subsection.
291 (c) Persons subject to this subsection found through
292 fingerprint processing to have been convicted of a crime
293 involving moral turpitude shall not be employed, engaged to
294 provide services, or serve in any position requiring direct
295 contact with students. Probationary persons subject to this
296 subsection terminated because of their criminal record have the
297 right to appeal such decisions.
298 (3)(a) ~~Beginning July 1, 2004,~~ All fingerprints submitted
299 to the Department of Law Enforcement as required by subsection
300 (2) shall be retained by the Department of Law Enforcement in a
301 manner provided by rule and entered in the statewide automated

302 fingerprint identification system authorized by s. 943.05(2)(b).
303 Such fingerprints shall thereafter be available for all purposes
304 and uses authorized for arrest fingerprint cards entered in the
305 statewide automated fingerprint identification system pursuant
306 to s. 943.051.
307 (b) ~~Beginning December 15, 2004,~~ The Department of Law
308 Enforcement shall search all arrest fingerprint cards received
309 under s. 943.051 against the fingerprints retained in the
310 statewide automated fingerprint identification system under
311 paragraph (a). Any arrest record that is identified with the
312 retained fingerprints of a person subject to the background
313 screening under this section shall be reported to the employing
314 or contracting school district or the school district with which
315 the person is affiliated. Each school district is required to
316 participate in this search process by payment of an annual fee
317 to the Department of Law Enforcement and by informing the
318 Department of Law Enforcement of any change in the affiliation,
319 employment, or contractual status or place of affiliation,
320 employment, or contracting of individuals ~~its instructional and~~
321 ~~noninstructional personnel~~ whose fingerprints are retained under
322 paragraph (a). The Department of Law Enforcement shall adopt a
323 rule setting the amount of the annual fee to be imposed upon
324 each school district for performing these searches and
325 establishing the procedures for the retention of ~~instructional~~
326 ~~and noninstructional personnel~~ fingerprints and the
327 dissemination of search results. The fee may be borne by the
328 district school board, the contractor, or the person
329 fingerprinted.

330 (c) Personnel whose fingerprints are not retained by the
331 Department of Law Enforcement under paragraphs (a) and (b) are
332 required to be refingerprinted and must meet the applicable
333 ~~level 2~~ screening standards ~~requirements as described in this~~
334 ~~section~~ upon reemployment or reengagement to provide services in
335 order to comply with the requirements of this subsection.
336 (4) For each person subject to background screening under
337 this section who is required by law to be rescreened
338 periodically, the district school board shall request the
339 Department of Law Enforcement to forward the person's
340 fingerprints for rescreening purposes to the Federal Bureau of
341 Investigation for national processing. If the person's
342 fingerprints were not retained by the Department of Law
343 Enforcement after the initial screening, the person must file a
344 complete set of fingerprints. Upon submission of fingerprints
345 for this purpose, the district school board shall request the
346 Department of Law Enforcement to forward the fingerprints to the
347 Federal Bureau of Investigation for national processing, and the
348 fingerprints shall be retained by the Department of Law
349 Enforcement under paragraphs (3)(a) and (b). The cost of the
350 rescreening may be borne by the district school board, the
351 charter school, the employee, the contractor, or any other
352 person subject to rescreening as specified in this subsection.
353 Section 9. Section 1012.465, Florida Statutes, is amended
354 to read:
355 1012.465 Background screening requirements for certain
356 noninstructional school district employees and other specified
357 individuals ~~contractors~~.--

358 (1) For purposes of s. 1012.32, the following individuals
359 ~~Noninstructional school district employees or contractual~~
360 ~~personnel who are permitted access on school grounds when~~
361 ~~students are present, who have direct contact with students or~~
362 ~~who have access to or control of school funds~~ must meet the
363 level 2 screening standards in s. 435.04: ~~requirements as~~
364 ~~described in s. 1012.32.~~
365 (a) Noninstructional school district employees who have
366 direct, unsupervised contact with students or who have access to
367 or control of school funds.
368 (b) Other individuals who are authorized by the school
369 district to perform services for compensation and that involve
370 access to or control of school funds.
371 (c) Other individuals who are authorized by the school
372 district to perform services for compensation that involve
373 direct, unsupervised contact with students. This paragraph does
374 not apply to any individual who, by law due to the nature of his
375 or her occupation or business, is required to submit to a state
376 and national criminal history check for licensing or other
377 purposes, if such license or other certificate is current and in
378 good standing and the individual submits proof of good standing
379 to the school district. ~~Contractual personnel shall include any~~
380 ~~vendor, individual, or entity under contract with the school~~
381 ~~board.~~
382 (2) The Department of Law Enforcement shall implement a
383 system that allows for criminal history record information
384 provided under paragraph (1)(c) to a school district to be

385 shared with other school districts through a secure website or
386 other electronic means.
387 (3) An individual subject to paragraph (1)(c) shall inform
388 a school district if he or she has had a criminal history check
389 in another school district within the last 5 years. If he or she
390 has had such a check, the school district shall verify the
391 results of the contractor's criminal history check using the
392 shared system implemented under paragraph (2). The school
393 district shall not charge the individual a fee for verifying the
394 results of his or her criminal history check.
395 (4)(a)~~(2)~~ In accordance with s. 1012.32(4), every 5 years
396 following employment or entry into a contract in a capacity
397 described in subsection (1), each person who is so employed or
398 under contract with the school district must meet the level 2
399 screening standards of s. 435.04 ~~requirements as described in s.~~
400 ~~1012.32, at which time the school district shall request the~~
401 ~~Department of Law Enforcement to forward the fingerprints to the~~
402 ~~Federal Bureau of Investigation for the level 2 screening. If,~~
403 ~~for any reason following employment or entry into a contract in~~
404 ~~a capacity described in subsection (1), the fingerprints of a~~
405 ~~person who is so employed or under contract with the school~~
406 ~~district are not retained by the Department of Law Enforcement~~
407 ~~under s. 1012.32(3)(a) and (b), the person must file a complete~~
408 ~~set of fingerprints with the district school superintendent of~~
409 ~~the employing or contracting school district. Upon submission of~~
410 ~~fingerprints for this purpose, the school district shall request~~
411 ~~the Department of Law Enforcement to forward the fingerprints to~~
412 ~~the Federal Bureau of Investigation for the level 2 screening,~~

413 ~~and the fingerprints shall be retained by the Department of Law~~
414 ~~Enforcement under s. 1012.32(3)(a) and (b). The cost of the~~
415 ~~state and federal criminal history check required by level 2~~
416 ~~screening may be borne by the district school board, the~~
417 ~~contractor, or the person fingerprinted~~.
418 (b) Under penalty of perjury, each person who is employed
419 or under contract in a capacity described in subsection (1) must
420 agree to inform his or her employer or the party with whom he or
421 she is under contract within 48 hours if convicted of any
422 disqualifying offense while he or she is employed or under
423 contract in that capacity.
424 (5) ~~(3)~~ If it is found that a person who is employed or
425 under contract in a capacity described in subsection (1) does
426 not meet the level 2 screening standards of s. 435.04
427 ~~requirements~~, the person shall be immediately suspended from
428 working in that capacity and shall remain suspended until final
429 resolution of any appeals.
430 Section 10. Section 1012.4561, Florida Statutes, is
431 created to read:
432 1012.4561 Contractors and contract workers having access
433 to school grounds when students are present; exclusions.--
434 (1) As used in this section, the term:
435 (a) "Contractor" means a person who is engaged by the
436 school district to provide goods or services for compensation
437 that do not involve direct, unsupervised contact with students
438 and who employs contract workers or subcontracts with a person
439 who employs contract workers to provide such goods or services.

440 "Contractor" also means an individual who is engaged by a school
441 district to provide such goods or services for compensation.
442 (b) "Contract worker" means a contractor or any
443 individual, other than an individual described in s. 1012.465(1)
444 or s. 1012.56, who has access to school grounds for business or
445 employment purposes of a contractor for compensation when
446 students are present.
447 (c) "School grounds" means the buildings and grounds of
448 any public prekindergarten, kindergarten, elementary school,
449 middle school, junior high school, high school, or secondary
450 school, together with the school district land on which the
451 buildings are located. The term "school grounds" does not
452 include:
453 1. Any other facility or location where school classes or
454 activities may be located or take place;
455 2. Any buildings or grounds described in this paragraph
456 during any time period in which students are not permitted
457 access; or
458 3. Any building described in this paragraph during any
459 period in which it is used as an adult, career, or technical
460 center under part IV of chapter 1004.
461 (2) A contract worker who is designated as a sexual
462 predator under s. 775.21, who is subject to registration as a
463 sexual offender under s. 943.0435, or who appears on the
464 National Sex Offender Public Registry maintained by the United
465 States Department of Justice may not be on school grounds. A
466 contract worker who is present on school grounds in violation of
467 this subsection commits a misdemeanor of the first degree,

468 punishable as provided in s. 775.082 or s. 775.083.
469 (3)(a) Before allowing a contract worker to have access to
470 school grounds, a contractor must provide the school district
471 with certification that the contractor has:
472 1. For an individual who holds a Florida driver's license
473 or identification card, examined the contract worker's license
474 or identification card and confirmed that it does not have the
475 markings required by s. 322.141(3). The requirements of this
476 subparagraph do not apply to certifications made before January
477 1, 2007.
478 2. Checked and confirmed that the individual is not on the
479 National Sex Offender Public Registry.
480
481 The contractor shall make its records supporting the
482 certification available for inspection at the request of a
483 school district employee.
484 (b)1. Each contract worker who has been issued a Florida
485 driver's license or identification card shall possess the card
486 at all times while working on school grounds and shall show it
487 to any school district employee upon request.
488 2. Each contract worker who has not been issued or does
489 not have in his or her possession a Florida driver's license or
490 identification card shall submit to a check against the National
491 Sex Offender Public Registry upon the request of any school
492 district employee.
493 (c) Any person who knowingly and willfully violates this
494 subsection and who holds a professional license under chapter
495 455 commits an act constituting grounds for discipline as

496 described in s. 455.227(1)(a). Any person who knowingly and
497 willfully violates this subsection and who holds a professional
498 license under chapter 456 commits an act constituting grounds
499 for discipline as described in s. 456.072(1)(a).
500 (d) An contract worker must inform the contractor within
501 48 hours if he or she is arrested for an offense for which a
502 conviction could lead to the person being designated as a sexual
503 predator under s. 775.21 or subject to registration as a sexual
504 offender under s. 943.0435. A person who willfully fails to
505 comply with this paragraph commits a misdemeanor of the first
506 degree, punishable as provided in s. 775.082 or s. 775.083.
507 (4) This section does not apply to law enforcement
508 officers, as defined in s. 943.10, assigned by their employing
509 agencies to work on school grounds as part of their official
510 duties or first responder personnel responding to a request for
511 assistance. For purposes of this subsection, the term "first
512 responder personnel" includes law enforcement officers, as
513 defined in s. 943.10, emergency medical technicians, paramedics,
514 and firefighters.
515 (5) This section may not give rise to any private civil
516 liability nor be construed to create a private cause of action
517 for monetary damages.
518 (6) A school board may adopt rules under ss. 120.536(1)
519 and 120.54 to implement the provisions of this section.
520 Section 11. Subsection (9) of section 1012.56, Florida
521 Statutes, is amended to read:
522 1012.56 Educator certification requirements.--

523 (9) BACKGROUND SCREENING REQUIRED, INITIALLY AND
524 PERIODICALLY.--
525 (a) For purposes of s. 1012.32, each person who seeks
526 certification under this chapter must meet the level 2 screening
527 standards of s. 435.04 ~~requirements as described in s. 1012.32~~
528 unless a level 2 screening has been conducted by a district
529 school board or the Department of Education within 12 months
530 before the date the person initially obtains certification under
531 this chapter, the results of which are submitted to the district
532 school board or to the Department of Education.
533 (b)1. A person may not receive a certificate under this
534 chapter until the level 2 screening under s. 435.04 has been
535 completed and the results have been submitted to the Department
536 of Education or to the district school superintendent of the
537 school district that employs the person.
538 2. In accordance with s. 1012.32(4), every 5 years after
539 obtaining initial certification, each person who is required to
540 be certified under this chapter must meet the level 2 screening
541 standards of s. 435.04 ~~requirements as described in s. 1012.32,~~
542 ~~at which time the school district shall request the Department~~
543 ~~of Law Enforcement to forward the fingerprints to the Federal~~
544 ~~Bureau of Investigation for the level 2 screening. If, for any~~
545 ~~reason after obtaining initial certification, the fingerprints~~
546 ~~of a person who is required to be certified under this chapter~~
547 ~~are not retained by the Department of Law Enforcement under s.~~
548 ~~1012.32(3)(a) and (b), the person must file a complete set of~~
549 ~~fingerprints with the district school superintendent of the~~
550 ~~employing school district. Upon submission of fingerprints for~~

551 ~~this purpose, the school district shall request the Department~~
552 ~~of Law Enforcement to forward the fingerprints to the Federal~~
553 ~~Bureau of Investigation for the level 2 screening, and the~~
554 ~~fingerprints shall be retained by the Department of Law~~
555 ~~Enforcement under s. 1012.32(3)(a) and (b). The cost of the~~
556 ~~state and federal criminal history check required by level 2~~
557 ~~screening may be borne by the district school board or the~~
558 ~~employee~~.
559 3. Under penalty of perjury, each person who is certified
560 under this chapter must agree to inform his or her employer
561 within 48 hours if convicted of any disqualifying offense while
562 he or she is employed in a position for which such certification
563 is required.
564 (c) If it is found under s. 1012.796 that a person who is
565 employed in a position requiring certification under this
566 chapter does not meet the level 2 screening standards of s.
567 435.04 ~~requirements~~, the person's certification shall be
568 immediately revoked or suspended and he or she shall be
569 immediately suspended from the position requiring certification.
570 Section 12. The sum of $30,000 is appropriated from the
571 Highway Safety Operating Trust Fund to the Department of Highway
572 Safety and Motor Vehicles for the 2006-2007 fiscal year for
573 computer programming costs related to this act.
574 Section 13. Except as otherwise expressly provided in this
575 act, this act shall take effect July 1, 2006.

HB 7187

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7187 PCB CRJU 06-08 Sexual Offenders
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	6 Y, 0 N	Kramer	Kramer
1) Criminal Justice Appropriations Committee	5 Y, 0 N	Sneed	DeBeaugrine
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill refines certain provisions of the Jessica Lunsford Act (JLA), which the Legislature approved in 2005. Some of the amendments to the JLA are the result of findings and recommendations of the Jessica Lunsford Task Force, which was created by the JLA.

[Note: This bill does not relate to background screening requirements of contractual school personnel. That is the subject of HB 7117.] This bill:

- Ranks in the offense severity ranking chart of the Criminal Punishment Code several offenses involving non-compliance with sexual offender and sexual predator requirements, which were not ranked in the JLA.
- Requires that the names or identifying information of certain applicants for governmental appointment or employment who work or volunteer in places where children regularly congregate be checked against the new National Sex Offender Public Registry.
- Provides that the Legislature intended a provision of the JLA requiring electronic monitoring of designated sexual offenders and sexual offenders who are on probation or community control following the revocation of probation or community control to only apply if the probation or community control for any *felony* offense is revoked.
- Provides that the Legislature intended a provision requiring electronic monitoring of certain sex offenders on probation and community control to only apply to those sex offenders on probation or community control whose *felony* offense was committed on or after September 1, 2005.
- Expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

The Criminal Justice Impact Conference has not yet met to provide an official estimate of the prison bed impact of this bill. However, a preliminary estimate of the prison bed impact provided by the Legislature's Office of Economic and Demographic Research is that the bill is not likely to have a significant prison bed impact.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

The bill clarifies that certain provisions of the Jessica Lunsford Act apply only to felony offenses – not to misdemeanor offenses.

Promote personal responsibility: The bill increases the penalty for certain offenses relating to failing to comply with the requirements of sexual predator or sexual offender registration.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predator/Offender Registration: There are more than 5,500 sexual predators and more than 30,000 sexual offenders in the state registry which is maintained by the Florida Department of Law Enforcement. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender is required to comply with a number of statutory requirements.[1] Failure to comply with these requirements is a third or second degree felony, depending on the offense.

The United States Department of Justice has recently developed the "National Sex Offender Public Registry" - a website that can be used to search the sexual offender registries of all participating states at the same time by entering an individual's name.[2] According to the website, by the end of 2006, the registries of all 50 states and the District of Columbia will be searchable in this manner.

Jessica Lunsford Act: During the 2005 session, HB 1877, known as the Jessica Lunsford Act or the "JLA", passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12.

Offense ranking chart: The JLA ranked several offenses relating to compliance with sexual predator and sexual offender registration requirements in level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty

[1] See ss. 775.21, 943.0435 and 944.607, F.S.
[2] http://www.nsopr.gov/

years, for a second degree felony is fifteen years and for a third degree felony is five years per s. 775.082, F.S.

A Level 7 offense, absent other factors such as prior record or victim injury, results in a lowest permissible sentence of 21 months in state prison.

The following offenses were not ranked by the Jessica Lunsford Act:

- Section 775.21(6)(g)3., F.S. Sexual predator vacating permanent residence; failure to comply with reporting requirements (second degree felony).
- Section 775.21(6)(i), F.S. Sexual predator intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).
- Section 775.21(6)(j), F.S. Sexual predator remains in state after indicating intent to leave; failure to comply with reporting requirements (second degree felony).
- Section 943.0435(7), F.S. Sexual offender intending to establish residence in another state; failure to comply with reporting requirements (third degree felony).

Because these offenses were not given a specific ranking in the offense severity ranking chart they were subject to s. 921.0023, F.S., a "default" provision which ranks offenses not ranked in the chart. Pursuant to s. 921.0023, F.S., the third degree felony offenses previously described defaulted to a Level 1 ranking and the second degree felony offenses previously described defaulted to a Level 4 ranking. The effect of these defaults is that, unlike the offenses ranked in the JLA, which score a lowest permissible sentence of imprisonment by virtue of their ranking, the defaulted offenses, which are comparable in seriousness to the offenses ranked by the JLA, will generally not score a lowest permissible sentence of imprisonment.

This bill ranks these offenses in Level 7 of the Offense Severity Ranking Chart.

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires certain inmates that are nearing the end of their sentence to be released under close supervision.[3] Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one of a list of offenses[4] including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.[5] The Department of Corrections supervises the offender while on conditional release.

Section 12 of the Jessica Lunsford Act created s. 947.1405(10), F.S., to provide that, effective for a conditional releasee whose crime was committed on or after September 1, 2005, in violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older or for a conditional releasee who is designated as a sexual predator pursuant to s. 775.21, F.S., in addition to any other provision of this section, the Florida Parole Commission must order electronic monitoring for the duration of the conditional releasee's supervision.

The Jessica Lunsford Task Force,[6] which was created by the JLA, and which was required by the JLA to examine the collection and dissemination of offender information within the criminal justice system and

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[3]. s. 947.1405(2), F.S

[4] The relevant offenses are listed in categories 1, 2, 3 and 4 of Rule 3.701 of the Florida Rules of Criminal Procedure. Included in these categories are the offenses of murder, DUI and BUI manslaughter, sexual battery, lewd or lascivious offenses, incest, sexual misconduct by a psychotherapist, robbery, carjacking, home invasion robbery, aggravated assault, aggravated battery, aggravated stalking and resisting an officer with violence

[5] The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

[6] The task force was composed of the members of the Criminal and Juvenile Justice Information Systems Council.

community, released its findings and recommendations on February 6, 2006.[7] The task force noted that while Section 12 of the JLA included sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.) as offenses requiring electronic monitoring if "the activity involved a victim who was 15 years of age or younger and the offender is 18 years of age or older," these are not offenses subject to conditional release supervision under the law. The task force recommended amending s. 947.1405(2), F.S. to list sexual performance, selling or buying of minors, and some other serious offenses in the eligibility criteria for conditional release.

This bill expands the list of qualifying offenses under the conditional release statute to include sexual performance by a child and selling or buying of minors. As a result, the Parole Commission will have the authority to order electronic monitoring of these releasees as required by the JLA.

Electronic monitoring/supervision: Section 17 of the JLA created s. 948.063, F.S. which provided that if probation or community control is revoked by the court and the offender is designated as a sexual offender or sexual predator for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court is required to order electronic monitoring as a condition of the subsequent term of probation or community control.

Questions have been raised as to whether the Legislature intended to apply the amendment to s. 948.063, F.S., to misdemeanors. In its "Finding #5, the Jessica Lunsford Task Force found that "[c]onfusion exists as to whether this [Section 17 of the JLA] includes persons who commit a misdemeanor offense and are placed on county probation or if it only applies to probation at the state level."

The bill amends s. 948.063, F.S., to provide that this section applies specifically to revocations of probation or community control for any *felony* offense. It also clarifies what is meant by a "designated sexual offender" by adding the language "pursuant to s. 943.0435, F.S. or s. 944.607, F.S.," which are the sections of the Florida Statutes relevant to registration requirements for sexual offenders.

Section 20 of the Jessica Lunsford Act created s. 948.30(3), F.S., to provide that, effective for a probationer or community controllee whose *crime* was committed on or after September 1, 2005, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision if the probationer or community controllee:

- Is placed on probation or community control for a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;
- Is designated a sexual predator pursuant to s. 775.21; or
- Has previously been convicted of a violation of ch. 794, F.S., s. 800.04(4), (5), or (6), F.S., s. 827.071, F.S., or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

Similar to Section 17 of the JLA, questions have been raised as whether the Legislature intended this electronic monitoring requirement to apply to misdemeanors. This bill revises s. 948.30(3), F.S., by replacing the word "crime" with the words "felony offense" to clarify this section applies to probationers or community controllees who have committed certain *felony* offenses.

Registry check prior to appointment or employment by governmental entity: Section 943.04351, F.S. requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or

[7] All discussion in this analysis of the task force and its findings and recommendations is from *Jessica Lunsford Task Force*, Criminal and Juvenile Justice Information Systems Council (February 6, 2005).

other place where children regularly congregate, to search that person's name against FDLE's sexual offender registry. This bill requires the state agency or governmental subdivision to also check the person's name against the registration information regarding sex offenders maintained by the FBI in the National Sex Offender Public Registry.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S., to rank in the offense severity ranking chart of the Criminal Punishment Code, several offenses relating to failure by a sexual predator or sexual offender to comply with certain reporting requirements.

Section 2. Amends s. 943.04351, F.S., to require a search of the National Sex Offender Public Registry in certain circumstances.

Section 3. Amends s. 948.063, F.S., to require that court order electronic monitoring upon revocation of probation or community control for a felony offense in certain circumstances.

Section 4. Amends s. 948.30, F.S., to require that the court order electronic monitoring as a condition of supervision in certain felony cases.

Section 5. Amends s. 947.1405, F.S. to expand the eligibility criteria for the conditional release program.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference has not yet met to provide an official estimate of the prison bed impact of this bill. However, a preliminary estimate of the prison bed impact provided by the Legislature's Office of Economic and Demographic Research is that the bill is not likely to have a significant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill clarifies that the requirement of electronic monitoring does not apply to a person on misdemeanor probation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to criminal justice; amending s. 921.0022,
3 F.S.; ranking in the offense severity ranking chart of the
4 Criminal Punishment Code several offenses relating to
5 failure by a sexual predator or sexual offender to comply
6 with certain reporting requirements; amending s.
7 943.04351, F.S.; requiring a search of the National Sex
8 Offender Public Registry before a person may work or
9 volunteer at a place where children regularly congregate;
10 amending s. 948.063, F.S.; requiring that the court order
11 electronic monitoring as a condition of probation or
12 community control following a violation of probation or
13 community control by certain offenders who are designated
14 as sexual offenders or sexual predators; amending s.
15 948.30, F.S.; requiring that the court order mandatory
16 electronic monitoring as a condition of probation or
17 community control supervision for certain sex offenders
18 whose crimes involved young children; amending s.
19 947.1405, F.S.; expanding the eligibility criteria for the
20 conditional release program; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Paragraph (g) of subsection (3) of section
25 921.0022, Florida Statutes, is amended to read:
26 921.0022 Criminal Punishment Code; offense severity
27 ranking chart.--
28 (3) OFFENSE SEVERITY RANKING CHART

	Florida Statute	Felony Degree	Description
29			(g) LEVEL 7
30	316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
31	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
32	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
33	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
34	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
35	409.920(2)	3rd	Medicaid provider fraud.

36	456.065(2)	3rd	Practicing a health care profession without a license.
37	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
38	458.327(1)	3rd	Practicing medicine without a license.
39	459.013(1)	3rd	Practicing osteopathic medicine without a license.
40	460.411(1)	3rd	Practicing chiropractic medicine without a license.
41	461.012(1)	3rd	Practicing podiatric medicine without a license.
42	462.17	3rd	Practicing naturopathy without a license.
43	463.015(1)	3rd	Practicing optometry without a license.
44	464.016(1)	3rd	Practicing nursing without a license.
45	465.015(2)	3rd	Practicing pharmacy without a

			license.
46	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
47	467.201	3rd	Practicing midwifery without a license.
48	468.366	3rd	Delivering respiratory care services without a license.
49	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
50	483.901(9)	3rd	Practicing medical physics without a license.
51	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
52	484.053	3rd	Dispensing hearing aids without a license.
53	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
54			

	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.
55	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
56	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
57	775.21(6)(g)3.	2nd	Sexual predator remaining at permanent residence after reporting intent to vacate; failure to comply with reporting requirements.
58	775.21(6)(i)	3rd	Sexual predator intending to establish residence in another state; failure to comply with reporting requirements.
59	775.21(6)(j)	2nd	Sexual predator; remains in state after indicating intent to leave; failure to comply with reporting

			requirements.
60	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
61	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
62	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
63	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
64	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
65	782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner

			(vehicular homicide).
66	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
67	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
68	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
69	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
70	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
71	784.048(7)	3rd	Aggravated stalking; violation of court order.
72	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
73	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
74	784.08(2)(a)	1st	Aggravated battery on a person 65

			years of age or older.
75	784.081(1)	1st	Aggravated battery on specified official or employee.
76	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
77	784.083(1)	1st	Aggravated battery on code inspector.
78	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
79	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
80	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
81	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
82	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

83	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
84	796.03	2nd	Procuring any person under 16 years for prostitution.
85	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
86	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
87	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
88	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
89	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
90	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.

91	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
92	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
93	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
94	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
95	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
96	812.131(2)(a)	2nd	Robbery by sudden snatching.
97	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
98	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.

99	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
100	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
101	817.2341(2)(b)& (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
102	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
103	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
104	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
105			

	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
106	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
107	838.015	2nd	Bribery.
108	838.016	2nd	Unlawful compensation or reward for official behavior.
109	838.021(3)(a)	2nd	Unlawful harm to a public servant.
110	838.22	2nd	Bid tampering.
111	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
112	872.06	2nd	Abuse of a dead human body.
113	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or

			state, county, or municipal park or publicly owned recreational facility or community center.
114	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
115	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
116	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
117	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
118	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
119			

	893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
120	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
121	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
122	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
123	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
124	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
125	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
126	896.101(5)(a)	3rd	Money laundering, financial

			transactions exceeding $300 but less than $20,000.
127	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
128	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
129	943.0435(7)	3rd	Sexual offender intending to establish residence in another state; failure to comply with reporting requirements.
130	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
131	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
132	943.0435(13)	3rd	Failure to report or providing

		false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 2. Section 943.04351, Florida Statutes, is amended to read:

943.04351 Search of registration information regarding sexual predators and sexual offenders required prior to

143 appointment or employment.--A state agency or governmental
144 subdivision, prior to making any decision to appoint or employ a
145 person to work, whether for compensation or as a volunteer, at
146 any park, playground, day care center, or other place where
147 children regularly congregate, must conduct a search of that
148 person's name or other identifying information against the
149 registration information regarding sexual predators and sexual
150 offenders maintained by the Department of Law Enforcement under
151 s. 943.043 and against the registration information regarding
152 sex offenders maintained by the Federal Bureau of Investigation
153 in the National Sex Offender Public Registry. The agency or
154 governmental subdivision may conduct the search using the
155 Internet site maintained by the Department of Law Enforcement.
156 This section does not apply to those positions or appointments
157 within a state agency or governmental subdivision for which a
158 state and national criminal history background check is
159 conducted.
160 Section 3. Section 948.063, Florida Statutes, is amended
161 to read:
162 948.063 Violations of probation or community control by
163 designated sexual offenders and sexual predators.--If probation
164 or community control for any felony offense is revoked by the
165 court pursuant to s. 948.06(2)(e) and the offender is designated
166 as a sexual offender pursuant to s. 943.0435 or s. 944.607 or as
167 a sexual predator pursuant to s. 775.21 for unlawful sexual
168 activity involving a victim 15 years of age or younger and the
169 offender is 18 years of age or older, and if the court imposes a
170 subsequent term of supervision following the revocation of

171 probation or community control, the court must order electronic
172 monitoring as a condition of the subsequent term of probation or
173 community control.
174 Section 4. Subsection (3) of section 948.30, Florida
175 Statutes, is amended to read:
176 948.30 Additional terms and conditions of probation or
177 community control for certain sex offenses.--Conditions imposed
178 pursuant to this section do not require oral pronouncement at
179 the time of sentencing and shall be considered standard
180 conditions of probation or community control for offenders
181 specified in this section.
182 (3) Effective for a probationer or community controllee
183 whose felony offense ~~crime~~ was committed on or after September
184 1, 2005, and who:
185 (a) Is placed on probation or community control for a
186 violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,
187 or s. 847.0145 and the unlawful sexual activity involved a
188 victim 15 years of age or younger and the offender is 18 years
189 of age or older;
190 (b) Is designated as a sexual predator pursuant to s.
191 775.21; or
192 (c) Has previously been convicted of a violation of
193 chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s.
194 847.0145 and the unlawful sexual activity involved a victim 15
195 years of age or younger and the offender is 18 years of age or
196 older,
197
198 the court must order, in addition to any other provision of this

199 section, mandatory electronic monitoring as a condition of the
200 probation or community control supervision.
201 Section 5. Subsection (2) of section 947.1405, Florida
202 Statutes, is amended to read:
203 947.1405 Conditional release program.--
204 (2) Any inmate who:
205 (a) Is convicted of a crime committed on or after October
206 1, 1988, and before January 1, 1994, and any inmate who is
207 convicted of a crime committed on or after January 1, 1994,
208 which crime is or was contained in category 1, category 2,
209 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
210 Rules of Criminal Procedure (1993), <u>or is convicted of any</u>
211 <u>offense under the following statutory provisions committed on or</u>
212 <u>after July 1, 2006:</u>
213 <u>1. Sexual performance by a child under s. 827.071; or</u>
214 <u>2. Selling or buying of minors under s. 847.0145,</u>
215
216 and who has served at least one prior felony commitment at a
217 state or federal correctional institution;
218 (b) Is sentenced as a habitual or violent habitual
219 offender or a violent career criminal pursuant to s. 775.084; or
220 (c) Is found to be a sexual predator under s. 775.21 or
221 former s. 775.23,
222
223 shall, upon reaching the tentative release date or provisional
224 release date, whichever is earlier, as established by the
225 Department of Corrections, be released under supervision subject
226 to specified terms and conditions, including payment of the cost

227 of supervision pursuant to s. 948.09. Such supervision shall be
228 applicable to all sentences within the overall term of sentences
229 if an inmate's overall term of sentences includes one or more
230 sentences that are eligible for conditional release supervision
231 as provided herein. Effective July 1, 1994, and applicable for
232 offenses committed on or after that date, the commission may
233 require, as a condition of conditional release, that the
234 releasee make payment of the debt due and owing to a county or
235 municipal detention facility under s. 951.032 for medical care,
236 treatment, hospitalization, or transportation received by the
237 releasee while in that detention facility. The commission, in
238 determining whether to order such repayment and the amount of
239 such repayment, shall consider the amount of the debt, whether
240 there was any fault of the institution for the medical expenses
241 incurred, the financial resources of the releasee, the present
242 and potential future financial needs and earning ability of the
243 releasee, and dependents, and other appropriate factors. If any
244 inmate placed on conditional release supervision is also subject
245 to probation or community control, resulting from a probationary
246 or community control split sentence within the overall term of
247 sentences, the Department of Corrections shall supervise such
248 person according to the conditions imposed by the court and the
249 commission shall defer to such supervision. If the court
250 revokes probation or community control and resentences the
251 offender to a term of incarceration, such revocation also
252 constitutes a sufficient basis for the revocation of the
253 conditional release supervision on any nonprobationary or
254 noncommunity control sentence without further hearing by the

255 commission. If any such supervision on any nonprobationary or
256 noncommunity control sentence is revoked, such revocation may
257 result in a forfeiture of all gain-time, and the commission may
258 revoke the resulting deferred conditional release supervision or
259 take other action it considers appropriate. If the term of
260 conditional release supervision exceeds that of the probation or
261 community control, then, upon expiration of the probation or
262 community control, authority for the supervision shall revert to
263 the commission and the supervision shall be subject to the
264 conditions imposed by the commission. A panel of no fewer than
265 two commissioners shall establish the terms and conditions of
266 any such release. If the offense was a controlled substance
267 violation, the conditions shall include a requirement that the
268 offender submit to random substance abuse testing intermittently
269 throughout the term of conditional release supervision, upon the
270 direction of the correctional probation officer as defined in s.
271 943.10(3). The commission shall also determine whether the terms
272 and conditions of such release have been violated and whether
273 such violation warrants revocation of the conditional release.
274 Section 6. This act shall take effect July 1, 2006.

Justice Council

Thursday, April 20, 2006
2:45 PM – 4:45 PM
404 House Office Building

Amendment(s)

Allan G. Bense
Speaker

Bruce Kyle
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense **(AMENDED 4/18/2006 4:38:09PM)**

Amended(1)

Justice Council

Start Date and Time:	Thursday, April 20, 2006 02:45 pm
End Date and Time:	Thursday, April 20, 2006 04:45 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 297 CS Driving and Boating Under the Influence by Harrell
HB 325 CS Commission on Capital Cases by Gelber
HB 335 CS Juvenile Justice by Culp
HB 367 CS Accessories to a Crime by Carroll
HB 391 CS Community Associations by Domino
HB 469 CS Human Trafficking by Gannon
HB 595 CS Community Behavioral Health Agencies by Cannon
HB 651 Secondhand Dealers by Kottkamp
HB 763 Luring or Enticing a Child by Ambler
HB 841 CS Supersedeas Bond by Attkisson
HB 957 CS (IF RECEIVED) -- Community Associations by Anderson
HB 1169 Vehicular Accidents Involving Death or Personal Injuries by Galvano
HB 1271 CS (IF RECEIVED) -- Division of Alcoholic Beverages and Tobacco by Cannon
HB 7029 Juvenile Justice by Juvenile Justice Committee
HB 7099 CS Land Trusts by Judiciary Committee
HB 7117 CS Sexual Predators and Offenders by Criminal Justice Committee, Kravitz
HB 7187 Criminal Justice by Criminal Justice Committee

By request of the Chair, all members are asked to have amendments to bills on the agenda filed by 5 p.m., Wednesday, April 19, 2006.

NOTICE FINALIZED on 04/18/2006 16:38 by COCHRAN.MARGARET

Bill No. 325

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Justice Council
2 Representative(s) Kyle offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (2), subsection (3) of section
7 27.704, Florida Statutes, are amended to read:
8 27.704 Appointment of assistants and other staff.--Each
9 capital collateral regional counsel may:
10 (2) Until July 1, 2006, contract with private counsel who
11 are members in good standing of The Florida Bar or with public
12 defenders for the purpose of providing prompt and cost-effective
13 representation for individuals who are sentenced to death in
14 this state. A private counsel or public defender under contract
15 with the regional counsel must have at least 3 years' experience
16 in the practice of criminal law, and, prior to the contract,
17 must have participated in at least five felony jury trials, five
18 felony appeals, or five capital postconviction evidentiary
19 hearings or any combination of at least five of such
20 proceedings. Contract private counsel may not be appointed
21 after July 1, 2006. All costs incurred by contract private
22 counsel shall be reviewed by the Department of Financial

23 Services and approved by the trial court under the terms and
24 conditions set forth in s. 27.711.
25 ~~(3) Appoint pro bono assistant counsel, who must be~~
26 ~~members in good standing of The Florida Bar, and who shall serve~~
27 ~~without compensation at the discretion of the capital collateral~~
28 ~~regional counsel.~~
29 Section 2. Paragraph (d) is added to subsection (2) of
30 section 27.709, Florida Statutes, to read:
31 27.709 Commission on Capital Cases.--
32 (2)
33 (d) The commission may sponsor programs of continuing
34 legal education which are devoted specifically to capital cases.
35 Section 3. Section 27.710, Florida Statutes, is amended to
36 read:
37 27.710 Registry of attorneys applying to represent persons
38 in postconviction capital collateral proceedings; certification
39 of minimum requirements; appointment by trial court.--
40 (2)(a) To be eligible for court appointment as counsel in
41 postconviction capital collateral proceedings, an attorney must
42 certify on an application provided by the executive director
43 that he or she is a member in good standing of The Florida Bar.
44 (4)(a) Each private attorney who is appointed by the court
45 to represent a capital defendant must enter into a contract with
46 the Chief Financial Officer. If the appointed attorney fails to
47 execute the contract within 30 days after the date the contract
48 is mailed to the attorney, the executive director of the
49 Commission on Capital Cases shall notify the trial court, which
50 may impose a fine or remove the attorney from the case. If the
51 appointed attorney fails to execute the contract within 45 days
52 after the date the contract is mailed to the attorney, the
53 executive director shall remove the attorney from the registry.

54 The Chief Financial Officer shall develop the form of the
55 contract, function as contract manager, and enforce performance
56 of the terms and conditions of the contract. By signing such
57 contract, the attorney certifies that he or she intends to
58 continue the representation under the terms and conditions set
59 forth in the contract until the sentence is reversed, reduced,
60 or carried out or until released by order of the trial court. In
61 no event shall an attorney receive any funds from the State
62 Treasury without executing the contract required by this
63 paragraph.
64 (b) Each private attorney appointed by a court to
65 represent a capital defendant shall submit a report each quarter
66 to the commission in the format designated by the commission. If
67 the attorney does not submit the report within 30 days after the
68 end of the quarter, the executive director shall notify the
69 court, which may impose a fine or remove the attorney from the
70 case. If the attorney fails to submit the report within 45 days
71 after the end of the quarter, the executive director shall
72 remove the attorney from the registry list.
73 (c) Any appointed attorney removed from the registry may,
74 at the discretion of the court, continue to represent any
75 clients that the attorney has been appointed to represent as of
76 the date of removal. If the court allows an attorney who has
77 been removed from the registry to continue to represent
78 previously appointed capital defendants, the court shall take
79 all necessary actions to ensure compliance with the requirements
80 of this subsection. An attorney who has been removed from the
81 registry is prohibited from accepting appointment to represent
82 any new capital defendants unless the attorney is placed back on
83 the registry as provided in paragraph (d).

84 (d) After certifying to the executive director that he or
85 she will act in accordance with the provisions of this
86 subsection, an attorney removed from the registry may, after 60
87 days, reapply for the registry as provided in subsection (2). An
88 attorney may reapply for the registry no more than two times
89 under the provisions of this paragraph for failure to adhere to
90 the requirements of this subsection.
91 (5)(a) Upon the motion of the capital collateral regional
92 counsel to withdraw under ~~pursuant to~~ s. 924.056(1)(a); or
93 (b) Upon notification by the state attorney or the
94 Attorney General that:
95 1. Thirty days have elapsed since appointment of the
96 capital collateral regional counsel and no entry of appearance
97 has been filed under ~~pursuant to~~ s. 924.056; or
98 2. A person under sentence of death who was previously
99 represented by private counsel is currently unrepresented in a
100 postconviction capital collateral proceeding,
101
102 the executive director shall immediately notify the trial court
103 that imposed the sentence of death that the court must
104 immediately appoint an attorney, selected from the current
105 registry, to represent the ~~such~~ person in collateral actions
106 challenging the legality of the judgment and sentence in the
107 appropriate state and federal courts. If the attorney appointed
108 to represent a person under a sentence of death does not wish to
109 continue representing the person in federal proceedings, the
110 attorney must make reasonable efforts to assist the person in
111 finding an attorney who meets the federal criteria to represent
112 the person in any federal proceedings. The appointed attorney
113 shall not receive any attorney fee payments as provided in s.
114 27.711 until the appointed attorney certifies that a successor

115 attorney is representing the client in federal court and that
116 all documents and files have been delivered to the successor
117 attorney. The court shall have the authority to strike a notice
118 of appearance filed by a Capital Collateral Regional Counsel, if
119 the court finds the notice was not filed in good faith and may
120 so notify the executive director that the client is no longer
121 represented by the Office of Capital Collateral Regional
122 Counsel. In making an assignment, the court shall give priority
123 to attorneys whose experience and abilities in criminal law,
124 especially in capital proceedings, are known by the court to be
125 commensurate with the responsibility of representing a person
126 sentenced to death. The trial court must issue an order of
127 appointment which contains specific findings that the appointed
128 counsel meets the statutory requirements and has the high
129 ethical standards necessary to represent a person sentenced to
130 death.
131 (6) More than one attorney may not be appointed and
132 compensated at any one time under s. 27.711 to represent a
133 person in postconviction capital collateral proceedings.
134 However, an attorney appointed under this section may designate
135 another attorney to assist him or her if the designated attorney
136 meets the qualifications of this section.
137 Section 4. Subsections (3), (4), (7), and (9) of section
138 27.711, Florida Statutes, are amended, and subsection (15) is
139 added to that section, to read:
140 27.711 Terms and conditions of appointment of attorneys as
141 counsel in postconviction capital collateral proceedings.--
142 (3) (a) An attorney appointed to represent a capital
143 defendant is entitled to payment of the fees set forth in this
144 section only upon full performance by the attorney of the duties
145 specified in this section and approval of payment by the trial

146 court, and the submission of a payment request by the attorney,
147 subject to the availability of sufficient funding specifically
148 appropriated for this purpose. An attorney may not be
149 compensated under this section for work performed by the
150 attorney before July 1, 2003, while employed by the northern
151 regional office of the capital collateral counsel. The Chief
152 Financial Officer shall notify the executive director and the
153 court if it appears that sufficient funding has not been
154 specifically appropriated for this purpose to pay any fees which
155 may be incurred. The attorney shall maintain appropriate
156 documentation, including a current and detailed hourly
157 accounting of time spent representing the capital defendant. The
158 fee and payment schedule in this section is the exclusive means
159 of compensating a court-appointed attorney who represents a
160 capital defendant. When appropriate, a court-appointed attorney
161 must seek further compensation from the Federal Government, as
162 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
163 corpus litigation in the federal courts.
164 (4) Upon approval by the trial court, an attorney
165 appointed to represent a capital defendant under s. 27.710 is
166 entitled to payment of the following fees by the Chief Financial
167 Officer:
168 (a) Regardless of the stage of postconviction capital
169 collateral proceedings, the attorney is entitled to $100 per
170 hour, up to a maximum of $2,500, after accepting appointment and
171 filing a notice of appearance.
172 (b) The attorney is entitled to $100 per hour, up to a
173 maximum of $20,000, after timely filing in the trial court the
174 capital defendant's complete original motion for postconviction
175 relief under the Florida Rules of Criminal Procedure. The motion
176 must raise all issues to be addressed by the trial court.

177 However, an attorney is entitled to fees under this paragraph if
178 the court schedules a hearing on a matter that makes the filing
179 of the original motion for postconviction relief unnecessary or
180 if the court otherwise disposes of the case.

181 (c) The attorney is entitled to $100 per hour, up to a
182 maximum of $20,000, after the final hearing on ~~trial court~~
183 ~~issues a final order granting or denying~~ the capital defendant's
184 motion for postconviction relief.

185 (d) The attorney is entitled to $100 per hour, up to a
186 maximum of $20,000, after timely filing in the Supreme Court the
187 capital defendant's brief or briefs that address the trial
188 court's final order granting or denying the capital defendant's
189 motion for postconviction relief and the state petition for writ
190 of habeas corpus.

191 (e) The attorney is entitled to $100 per hour, up to a
192 maximum of $10,000, after the trial court issues an order,
193 following ~~pursuant to~~ a remand from the Supreme Court, which
194 directs the trial court to hold further proceedings on the
195 capital defendant's motion for postconviction relief.

196 (f) The attorney is entitled to $100 per hour, up to a
197 maximum of $4,000, after the appeal of the trial court's denial
198 of the capital defendant's motion for postconviction relief and
199 the capital defendant's state petition for writ of habeas corpus
200 become final in the Supreme Court.

201 (g) At the conclusion of the capital defendant's
202 postconviction capital collateral proceedings in state court,
203 the attorney is entitled to $100 per hour, up to a maximum of
204 $2,500, for the preparation of the initial federal pleading
205 ~~after filing a petition for writ of certiorari in the Supreme~~
206 ~~Court of the United States~~.

207 (h) If, at any time, a death warrant is issued, the
208 attorney is entitled to $100 per hour, up to a maximum of
209 $5,000. This payment shall be full compensation for attorney's
210 fees and costs for representing the capital defendant throughout
211 the proceedings before the state courts of Florida.
212
213 The hours billed by a contracting attorney under this subsection
214 may include time devoted to representation of the defendant by
215 another attorney who is qualified under s. 27.710 and who has
216 been designated by the contracting attorney to assist him or
217 her.
218 (7) Each registry ~~An~~ attorney who is representing at least
219 one capital defendant ~~actively representing a capital defendant~~
220 is entitled to a maximum of $500 per fiscal year for tuition and
221 expenses for continuing legal education that pertains to the
222 representation of capital defendants, regardless of the total
223 number of capital defendants the attorney is representing. Upon
224 approval by the trial court, the attorney is entitled to payment
225 by the Chief Financial Officer for expenses for such tuition and
226 continuing legal education.
227 (9) An attorney may not represent more than seven inmates
228 ~~five defendants~~ in capital postconviction litigation at any one
229 time.
230 (15)(a) Whenever the appointed counsel requests fees or
231 costs in excess of the limitations provided in this section, the
232 court must hold an evidentiary hearing. At the hearing the
233 attorney requesting excess fees or costs and the contract
234 manager shall appear at the hearing. Fees or costs in excess of
235 the schedule provided in this section may be ordered if at the
236 hearing, the attorney requesting the excess fees or costs proves

237 by clear and convincing evidence that the following
238 circumstances apply:
239 1. Before entering into the contract the attorney conducted
240 a reasonable and competent review of the case to understand the
241 nature of the record, facts and issues involved, the general
242 complexity of the individual case, and was aware of recent
243 developments in caselaw which may be relevant to the case and;
244 2. That the request for excess fees is based upon a
245 substantial change in circumstances that could not, with the
246 exercise of due diligence, have been reasonably foreseen at the
247 time the contract was signed by a competent attorney with
248 commensurate experience in the representation of defendants in
249 postconviction capital collateral proceedings; and
250 3. That the excess fees or costs were incurred during the
251 good faith pursuit of meritorious and timely filed claims; and
252 4. That in comparison to other death penalty cases, the
253 case that is the subject of the request is extraordinary and
254 unusual; and
255 5. That the attorney has complied with all procedural
256 requirements for the filing of all motions, has not alleged
257 "neglect" as a basis to file a petition under Florida Rule of
258 Criminal Procedure 3.850 or 3.851 after the one year time
259 limitation, and has otherwise complied with all requirements for
260 registry attorneys under s. 27.710 and s. 27.711.
261 (b) In determining whether an attorney requesting excess
262 fees or costs has satisfied the requirements of paragraph (a)
263 the court shall consider all the facts and circumstances
264 including the frequency of past requests of the attorney to seek
265 excess fees and the overall quality of the factual and legal
266 issues raised by the attorney on behalf of the defendant.

267 (c) If the court determines that the attorney requesting
268 excess fees or costs has satisfied the requirements of paragraph
269 (a), and that the failure to order excess fees would result in
270 compensation that is confiscatory of the attorney's time, energy
271 and talent, the court may order excess fees or costs at a rate
272 of $100 per hour beyond the limits provided in subsections
273 (4),(5), and (6) as appropriate. The court's order awarding
274 excess fees or cost shall be supported by written findings as to
275 the establishment of all requirements under this subsection.
276
277 Section 5. This act shall take effect July 1, 2006.
278
279 ========== T I T L E A M E N D M E N T ==========
280 Remove the entire title and insert:
281 A bill to be entitled
282 An act relating to the capital collateral representation;
283 amending s. 27.704, F.S.; removing contracting authority
284 from the capital collateral regional counsels; amending s.
285 27.709, F.S.; authorizing the Commission on Capital Cases
286 to sponsor continuing legal education programs devoted
287 specifically to capital cases; amending s. 27.710, F.S.;
288 specifying criteria that a private attorney must be a
289 member in good standing with the Florida Bar to eligible
290 to be appointed as counsel in a postconviction capital
291 collateral proceeding; providing that an attorney may be
292 fined or removed from the capital collateral registry if
293 the attorney does not execute the required contract;
294 directing the executive director of the commission to
295 remove an attorney from the registry if the attorney fails
296 to timely file an executed contract; requiring a private
297 attorney appointed by a court to represent a capital

298 defendant to submit a report each quarter to the
299 commission; requiring the executive director to notify the
300 trial court and remove an attorney from the registry if
301 the attorney does not submit the report within a specified
302 time; authorizing the commission to return a removed
303 attorney to the registry; requiring that an attorney make
304 reasonable efforts to assist the person under a sentence
305 of death in finding an attorney under certain
306 circumstances; amending s. 27.711, F.S.; requiring that
307 certain costs incurred during pro bono representation of a
308 capital defendant be paid to the attorney; providing that
309 an attorney who is listed on the registry and representing
310 at least one capital defendant is entitled to tuition and
311 expenses for continuing legal education courses; providing
312 that an attorney may represent no more than seven inmates
313 in capital postconviction cases at any one time;
314 establishing requirements for the awarding of fees and
315 cost in excess of the statutory limits, requiring written;
316 providing an effective date.
317

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 391 CS**

COUNCIL/COMMITTEE ACTION

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

---

1 Council/Committee hearing bill: Justice Council
2 Representative Domino offered the following:
3
4 **Amendment**
5 Remove line 196 and insert:
6 amendments described in subparagraph (a)1. and 2. and 5 years
7 from the
8

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 391 CS**

2

COUNCIL/COMMITTEE ACTION

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

---

1 Council/Committee hearing bill: Justice Council

2 Representative Domino offered the following:

3

4 **Amendment**

5 Remove line 402 and insert:

6 than that required by law, if the fee does not exceed $150 plus

7

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Justice Council
2 Representative Gannon offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 787.06, Florida Statutes, is amended to
7 read:
8 787.06 Human trafficking.--
9 (1)(a) The Legislature finds that human trafficking is a
10 form of modern-day slavery. Victims of human trafficking are
11 young children, teenagers, and adults. Thousands of victims are
12 trafficked annually across international borders worldwide. Many
13 of these victims are trafficked into this state. The Legislature
14 finds that victims of human trafficking are subjected to force,
15 fraud, or coercion for the purpose of sexual exploitation or
16 forced labor.
17 (b) The Legislature finds that while many victims of human
18 trafficking are forced to work in prostitution or the sexual
19 entertainment industry, trafficking also occurs in forms of
20 labor exploitation, such as domestic servitude, restaurant work,
21 janitorial work, sweatshop factory work, and migrant
22 agricultural work.

23 (c) The Legislature finds that traffickers use various
24 techniques to instill fear in victims and to keep them enslaved.
25 Some traffickers keep their victims under lock and key. However,
26 the most frequently used practices are less obvious techniques
27 that include isolating victims from the public and family
28 members; confiscating passports, visas, or other identification
29 documents; using or threatening to use violence toward victims
30 or their families; telling victims that they will be imprisoned
31 or deported for immigration violations if they contact
32 authorities; and controlling the victims' funds by holding the
33 money ostensibly for safekeeping.
34 (d) It is the intent of the Legislature that the
35 perpetrators of human trafficking be penalized for their illegal
36 conduct and that the victims of trafficking be protected and
37 assisted by this state and its agencies. In furtherance of this
38 policy, it is the intent of the Legislature that the state
39 Supreme Court, The Florida Bar, and relevant state agencies
40 prepare and implement training programs in order that judges,
41 attorneys, law enforcement personnel, investigators, and others
42 are able to identify traffickers and victims of human
43 trafficking and direct victims to appropriate agencies for
44 assistance. It is the intent of the Legislature that the
45 Department of Children and Family Services and other state
46 agencies cooperate with other state and federal agencies to
47 ensure that victims of human trafficking can access social
48 services and benefits to alleviate their plight.
49 (2) ~~(1)~~ As used in this section, the term:
50 (a) "Financial harm" includes extortionate extension of
51 credit, loan sharking as defined in s. 687.071, or employment
52 contracts that violate the statute of frauds as provided in s.
53 725.01.

54 (b) "Forced labor or services" means labor or services
55 obtained from a person by:
56 1. Using or threatening to use physical force against that
57 person or another person; ~~or~~
58 2. Restraining, isolating, or confining or threatening to
59 restrain, isolate, or confine that person or another person
60 without lawful authority and against her or his will;~~.~~
61 3. Using lending or other credit methods to establish a
62 debt by that person or another person when labor or services are
63 pledged as a security for the debt, if the value of the labor or
64 services as reasonably assessed is not applied toward the
65 liquidation of the debt, the length and nature of the labor, or
66 services are not respectively limited and defined;
67 4. Destroying, concealing, removing, confiscating,
68 withholding, or possessing any actual or purported passport,
69 visa, or other immigration document, or any other actual or
70 purported government identification document, of that person or
71 another person;
72 5. Causing or threatening to cause financial harm to any
73 person; or
74 6. Fraud or coercion.
75 (c) ~~(b)~~ "Human trafficking" means transporting, soliciting,
76 recruiting, harboring, providing, or obtaining another person
77 for transport.
78 (d) "Maintain," when used in relation to labor services,
79 means to secure continued performance thereof, regardless of any
80 initial agreement on the part of the victim to perform such type
81 service.
82 (3) ~~(2)~~ Any person who knowingly:

83 (a) Engages, or attempts to engage, in human trafficking
84 with the intent or knowledge that the trafficked person will be
85 subjected to ~~engage in~~ forced labor or services; or
86 (b) Benefits financially by receiving anything of value
87 from participation in a venture that has subjected a person to
88 forced labor or services;
89
90 commits a felony of the second degree, punishable as provided in
91 s. 775.082, s. 775.083, or s. 775.084.
92 (4) The Florida Court Educational Council shall establish
93 standards of instruction for circuit court judges and county
94 court judges who hear cases involving victims of human
95 trafficking and shall provide for periodic and timely
96 instruction.
97 (5) The Criminal Justice Standards and Training Commission
98 shall establish standards for basic and advanced training
99 programs for law enforcement officers in the subjects of
100 investigating and preventing human trafficking crimes. After
101 January 1, 2007, every basic skills course required for law
102 enforcement officers to obtain initial certification must
103 include training on human trafficking crime prevention and
104 investigation.
105 (6) Each state attorney shall develop standards of
106 instruction for prosecutors to receive training on the
107 investigation and prosecution of human trafficking crimes and
108 shall provide for periodic and timely instruction.
109 Section 2. Subsection (1) of section 772.102, Florida
110 Statutes, is amended to read:
111 772.102 Definitions.--As used in this chapter, the term:

112 (1) "Criminal activity" means to commit, to attempt to
113 commit, to conspire to commit, or to solicit, coerce, or
114 intimidate another person to commit:
115 (a) Any crime that ~~which~~ is chargeable by indictment or
116 information under the following provisions:
117 1. Section 210.18, relating to evasion of payment of
118 cigarette taxes.
119 2. Section 414.39, relating to public assistance fraud.
120 3. Section 440.105 or s. 440.106, relating to workers'
121 compensation.
122 4. Part IV of chapter 501, relating to telemarketing.
123 5. Chapter 517, relating to securities transactions.
124 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
125 to dogracing and horseracing.
126 7. Chapter 550, relating to jai alai frontons.
127 8. Chapter 552, relating to the manufacture, distribution,
128 and use of explosives.
129 9. Chapter 562, relating to beverage law enforcement.
130 10. Section 624.401, relating to transacting insurance
131 without a certificate of authority, s. 624.437(4)(c)1., relating
132 to operating an unauthorized multiple-employer welfare
133 arrangement, or s. 626.902(1)(b), relating to representing or
134 aiding an unauthorized insurer.
135 11. Chapter 687, relating to interest and usurious
136 practices.
137 12. Section 721.08, s. 721.09, or s. 721.13, relating to
138 real estate timeshare plans.
139 13. Chapter 782, relating to homicide.
140 14. Chapter 784, relating to assault and battery.
141 15. Chapter 787, relating to kidnapping or human
142 trafficking.

143 16. Chapter 790, relating to weapons and firearms.
144 17. Section 796.03, s. 796.04, s. 796.045, s. 796.05, or
145 s. 796.07, relating to prostitution.
146 18. Chapter 806, relating to arson.
147 19. Section 810.02(2)(c), relating to specified burglary
148 of a dwelling or structure.
149 20. Chapter 812, relating to theft, robbery, and related
150 crimes.
151 21. Chapter 815, relating to computer-related crimes.
152 22. Chapter 817, relating to fraudulent practices, false
153 pretenses, fraud generally, and credit card crimes.
154 23. Section 827.071, relating to commercial sexual
155 exploitation of children.
156 24. Chapter 831, relating to forgery and counterfeiting.
157 25. Chapter 832, relating to issuance of worthless checks
158 and drafts.
159 26. Section 836.05, relating to extortion.
160 27. Chapter 837, relating to perjury.
161 28. Chapter 838, relating to bribery and misuse of public
162 office.
163 29. Chapter 843, relating to obstruction of justice.
164 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
165 s. 847.07, relating to obscene literature and profanity.
166 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
167 849.25, relating to gambling.
168 32. Chapter 893, relating to drug abuse prevention and
169 control.
170 33. Section 914.22 or s. 914.23, relating to witnesses,
171 victims, or informants.
172 34. Section 918.12 or s. 918.13, relating to tampering
173 with jurors and evidence.

174 (b) Any conduct which is subject to indictment or
175 information as a criminal offense and listed in 18 U.S.C. s.
176 1961(1) (A), (B), (C), or (D).
177 Section 3. Section 772.104, Florida Statutes, is amended
178 to read:
179 772.104 Civil cause of action.--
180 (1) Any person who proves by clear and convincing evidence
181 that he or she has been injured by reason of any violation of
182 the provisions of s. 772.103 shall have a cause of action for
183 threefold the actual damages sustained and, in any such action,
184 is entitled to minimum damages in the amount of $200, and
185 reasonable attorney's fees and court costs in the trial and
186 appellate courts.
187 (2) As an alternative to recovery under subsection (1),
188 any person who proves by clear and convincing evidence that he
189 or she has been injured by reason of any violation of the
190 provisions of s. 772.103 due to sex trafficking or human
191 trafficking shall have a cause of action for threefold the
192 amount gained from the sex trafficking or human trafficking and
193 in any such action is entitled to minimum damages in the amount
194 of $200 and reasonable attorney's fees and court costs in the
195 trial and appellate courts.
196 (3) In no event shall punitive damages be awarded under
197 this section. The defendant shall be entitled to recover
198 reasonable attorney's fees and court costs in the trial and
199 appellate courts upon a finding that the claimant raised a claim
200 which was without substantial fact or legal support. In awarding
201 attorney's fees and costs under this section, the court shall
202 not consider the ability of the opposing party to pay such fees
203 and costs. Nothing under this section shall be interpreted as

204 limiting any right to recover attorney's fees or costs provided
205 under other provisions of law.
206 Section 4. Subsection (1) of section 895.02, Florida
207 Statutes, as amended by section 3 of chapter 2005-362, Laws of
208 Florida, is amended to read:
209 895.02 Definitions.--As used in ss. 895.01-895.08, the
210 term:
211 (1) "Racketeering activity" means to commit, to attempt to
212 commit, to conspire to commit, or to solicit, coerce, or
213 intimidate another person to commit:
214 (a) Any crime that ~~which~~ is chargeable by indictment or
215 information under the following provisions of the Florida
216 Statutes:
217 1. Section 210.18, relating to evasion of payment of
218 cigarette taxes.
219 2. Section 403.727(3)(b), relating to environmental
220 control.
221 3. Section 409.920 or s. 409.9201, relating to Medicaid
222 fraud.
223 4. Section 414.39, relating to public assistance fraud.
224 5. Section 440.105 or s. 440.106, relating to workers'
225 compensation.
226 6. Section 443.071(4), relating to creation of a
227 fictitious employer scheme to commit unemployment compensation
228 fraud.
229 7. Section 465.0161, relating to distribution of medicinal
230 drugs without a permit as an Internet pharmacy.
231 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
232 499.0691, relating to crimes involving contraband and
233 adulterated drugs.
234 9. Part IV of chapter 501, relating to telemarketing.

235 10. Chapter 517, relating to sale of securities and
236 investor protection.
237 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
238 to dogracing and horseracing.
239 12. Chapter 550, relating to jai alai frontons.
240 13. Section 551.109, relating to slot machine gaming.
241 14. Chapter 552, relating to the manufacture,
242 distribution, and use of explosives.
243 15. Chapter 560, relating to money transmitters, if the
244 violation is punishable as a felony.
245 16. Chapter 562, relating to beverage law enforcement.
246 17. Section 624.401, relating to transacting insurance
247 without a certificate of authority, s. 624.437(4)(c)1., relating
248 to operating an unauthorized multiple-employer welfare
249 arrangement, or s. 626.902(1)(b), relating to representing or
250 aiding an unauthorized insurer.
251 18. Section 655.50, relating to reports of currency
252 transactions, when such violation is punishable as a felony.
253 19. Chapter 687, relating to interest and usurious
254 practices.
255 20. Section 721.08, s. 721.09, or s. 721.13, relating to
256 real estate timeshare plans.
257 21. Chapter 782, relating to homicide.
258 22. Chapter 784, relating to assault and battery.
259 23. Chapter 787, relating to kidnapping <u>or human</u>
260 <u>trafficking</u>.
261 24. Chapter 790, relating to weapons and firearms.
262 25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
263 796.05, or s. 796.07, relating to prostitution and sex
264 trafficking.
265 26. Chapter 806, relating to arson.

266 27. Section 810.02(2)(c), relating to specified burglary
267 of a dwelling or structure.
268 28. Chapter 812, relating to theft, robbery, and related
269 crimes.
270 29. Chapter 815, relating to computer-related crimes.
271 30. Chapter 817, relating to fraudulent practices, false
272 pretenses, fraud generally, and credit card crimes.
273 31. Chapter 825, relating to abuse, neglect, or
274 exploitation of an elderly person or disabled adult.
275 32. Section 827.071, relating to commercial sexual
276 exploitation of children.
277 33. Chapter 831, relating to forgery and counterfeiting.
278 34. Chapter 832, relating to issuance of worthless checks
279 and drafts.
280 35. Section 836.05, relating to extortion.
281 36. Chapter 837, relating to perjury.
282 37. Chapter 838, relating to bribery and misuse of public
283 office.
284 38. Chapter 843, relating to obstruction of justice.
285 39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
286 s. 847.07, relating to obscene literature and profanity.
287 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
288 849.25, relating to gambling.
289 41. Chapter 874, relating to criminal street gangs.
290 42. Chapter 893, relating to drug abuse prevention and
291 control.
292 43. Chapter 896, relating to offenses related to financial
293 transactions.
294 44. Sections 914.22 and 914.23, relating to tampering with
295 a witness, victim, or informant, and retaliation against a
296 witness, victim, or informant.

297 45. Sections 918.12 and 918.13, relating to tampering with
298 jurors and evidence.
299 (b) Any conduct defined as "racketeering activity" under
300 18 U.S.C. s. 1961(1).
301 Section 5. Paragraph (a) of subsection (1) of section
302 16.56, Florida Statutes, is, for the purpose of incorporating
303 the amendment made by this act to section 895.02, Florida
304 Statutes, in a reference thereto, reenacted and amended and
305 subsection (2) of that section is amended to read:
306 16.56 Office of Statewide Prosecution.--
307 (1) There is created in the Department of Legal Affairs an
308 Office of Statewide Prosecution. The office shall be a separate
309 "budget entity" as that term is defined in chapter 216. The
310 office may:
311 (a) Investigate and prosecute the offenses of:
312 1. Bribery, burglary, criminal usury, extortion, gambling,
313 kidnapping, larceny, murder, prostitution, perjury, robbery,
314 carjacking, and home-invasion robbery;
315 2. Any crime involving narcotic or other dangerous drugs;
316 3. Any violation of the provisions of the Florida RICO
317 (Racketeer Influenced and Corrupt Organization) Act, including
318 any offense listed in the definition of racketeering activity in
319 s. 895.02(1)(a), providing such listed offense is investigated
320 in connection with a violation of s. 895.03 and is charged in a
321 separate count of an information or indictment containing a
322 count charging a violation of s. 895.03, the prosecution of
323 which listed offense may continue independently if the
324 prosecution of the violation of s. 895.03 is terminated for any
325 reason;
326 4. Any violation of the provisions of the Florida Anti-
327 Fencing Act;

328 5. Any violation of the provisions of the Florida
329 Antitrust Act of 1980, as amended;
330 6. Any crime involving, or resulting in, fraud or deceit
331 upon any person;
332 7. Any violation of s. 847.0135, relating to computer
333 pornography and child exploitation prevention, or any offense
334 related to a violation of s. 847.0135;
335 8. Any violation of the provisions of chapter 815;
336 9. Any criminal violation of part I of chapter 499;
337 10. Any violation of the provisions of the Florida Motor
338 Fuel Tax Relief Act of 2004;
339 11. Any criminal violation of s. 409.920 or s. 409.9201;
340 ~~or~~
341 12. Any crime involving voter registration, voting, or
342 candidate or issue petition activities; <u>or</u>
343 <u>13. Any criminal violation of s. 787.06 or any offense</u>
344 <u>involving or related to a violation of s .787.06;</u>
345
346 or any attempt, solicitation, or conspiracy to commit any of the
347 crimes specifically enumerated above. The office shall have such
348 power only when any such offense is occurring, or has occurred,
349 in two or more judicial circuits as part of a related
350 transaction, or when any such offense is connected with an
351 organized criminal conspiracy affecting two or more judicial
352 circuits.
353 (2) The Attorney General shall appoint a statewide
354 prosecutor from not less than three persons nominated by the
355 judicial nominating commission for the Supreme Court. The
356 statewide prosecutor shall be in charge of the Office of
357 Statewide Prosecution for a term of 4 years to run concurrently
358 with the term of the appointing official. The statewide

359 prosecutor shall be an elector of the state, shall have been a
360 member of The Florida Bar for the preceding 5 years, and shall
361 devote full time to the duties of statewide prosecutor and not
362 engage in the private practice of law. The Attorney General may
363 remove the statewide prosecutor prior to the end of his or her
364 term. A vacancy in the position of statewide prosecutor shall be
365 filled within 60 days. During the period of any vacancy, the
366 Attorney General shall exercise all the powers and perform all
367 the duties of the statewide prosecutor. A person appointed
368 statewide prosecutor is prohibited from qualifying as a
369 candidate for election ~~running for or accepting appointment~~ to
370 any state office for a period of 2 years following vacation of
371 office. The statewide prosecutor shall on March 1 of each year
372 report in writing to the Governor and the Attorney General on
373 the activities of the office for the preceding year and on the
374 goals and objectives for the next year.
375 Section 6. For the purpose of incorporating the amendment
376 made by this act to section 895.02, Florida Statutes, in a
377 reference thereto, paragraph (g) of subsection (3) of section
378 655.50, Florida Statutes, is reenacted to read:
379 655.50 Florida Control of Money Laundering in Financial
380 Institutions Act; reports of transactions involving currency or
381 monetary instruments; when required; purpose; definitions;
382 penalties.--
383 (3) As used in this section, the term:
384 (g) "Specified unlawful activity" means any "racketeering
385 activity" as defined in s. 895.02.
386 Section 7. For the purpose of incorporating the amendment
387 made by this act to section 895.02, Florida Statutes, in a
388 reference thereto, paragraph (g) of subsection (2) of section
389 896.101, Florida Statutes, is reenacted to read:

390 896.101 Florida Money Laundering Act; definitions;
391 penalties; injunctions; seizure warrants; immunity.--
392 (2) As used in this section, the term:
393 (g) "Specified unlawful activity" means any "racketeering
394 activity" as defined in s. 895.02.
395 Section 8. For the purpose of incorporating the amendment
396 made by this act to section 895.02, Florida Statutes, in a
397 reference thereto, section 905.34, Florida Statutes, is
398 reenacted to read:
399 905.34 Powers and duties; law applicable.--The
400 jurisdiction of a statewide grand jury impaneled under this
401 chapter shall extend throughout the state. The subject matter
402 jurisdiction of the statewide grand jury shall be limited to the
403 offenses of:
404 (1) Bribery, burglary, carjacking, home-invasion robbery,
405 criminal usury, extortion, gambling, kidnapping, larceny,
406 murder, prostitution, perjury, and robbery;
407 (2) Crimes involving narcotic or other dangerous drugs;
408 (3) Any violation of the provisions of the Florida RICO
409 (Racketeer Influenced and Corrupt Organization) Act, including
410 any offense listed in the definition of racketeering activity in
411 s. 895.02(1)(a), providing such listed offense is investigated
412 in connection with a violation of s. 895.03 and is charged in a
413 separate count of an information or indictment containing a
414 count charging a violation of s. 895.03, the prosecution of
415 which listed offense may continue independently if the
416 prosecution of the violation of s. 895.03 is terminated for any
417 reason;
418 (4) Any violation of the provisions of the Florida Anti-
419 Fencing Act;

420 (5) Any violation of the provisions of the Florida
421 Antitrust Act of 1980, as amended;
422 (6) Any violation of the provisions of chapter 815;
423 (7) Any crime involving, or resulting in, fraud or deceit
424 upon any person;
425 (8) Any violation of s. 847.0135, s. 847.0137, or s.
426 847.0138 relating to computer pornography and child exploitation
427 prevention, or any offense related to a violation of s.
428 847.0135, s. 847.0137, or s. 847.0138;
429 (9) Any criminal violation of part I of chapter 499; or
430 (10) Any criminal violation of s. 409.920 or s. 409.9201;
431
432 or any attempt, solicitation, or conspiracy to commit any
433 violation of the crimes specifically enumerated above, when any
434 such offense is occurring, or has occurred, in two or more
435 judicial circuits as part of a related transaction or when any
436 such offense is connected with an organized criminal conspiracy
437 affecting two or more judicial circuits. The statewide grand
438 jury may return indictments and presentments irrespective of the
439 county or judicial circuit where the offense is committed or
440 triable. If an indictment is returned, it shall be certified and
441 transferred for trial to the county where the offense was
442 committed. The powers and duties of, and law applicable to,
443 county grand juries shall apply to a statewide grand jury except
444 when such powers, duties, and law are inconsistent with the
445 provisions of ss. 905.31-905.40.
446 Section 9. This act shall take effect October 1, 2006.
447
448 ========== T I T L E A M E N D M E N T ==========
449 Remove the entire title and insert:
450 A bill to be entitled

451 An act relating to prosecution of human trafficking;
452 amending s. 787.06, F.S.; providing legislative findings
453 and intent; defining the term "financial harm"; redefining
454 the term "forced labor or services" to include
455 circumstances involving the use of fraud or coercion
456 against a person, the use of certain debt practices, and
457 the destruction, concealing, or withholding of a person's
458 identification documents; providing for attempted human
459 trafficking to be an equal crime to human trafficking;
460 prohibiting knowingly benefiting financially or receiving
461 anything of value from human trafficking when the
462 trafficked person engages in forced labor or services;
463 providing criminal penalties; requiring the Florida Court
464 Educational Council to develop specified instructional
465 standards for certain judges concerning human trafficking;
466 requiring the Criminal Justice Standards and Training
467 Commission to establish specified standards concerning
468 human trafficking; requiring basic skills courses for law
469 enforcement officers to include training on human
470 trafficking prevention and investigation; requiring state
471 attorneys to develop standards of instruction for
472 prosecutors concerning human trafficking crimes; amending
473 s. 772.102, F.S.; expanding the definition of the term
474 "criminal activity" to include the offense of human
475 trafficking and the offense of sex trafficking for
476 purposes of seeking civil remedies for criminal offenses;
477 amending s. 772.104, F.S.; revising a civil cause of
478 action relating to injuries by reason of criminal
479 activity; providing for alternative damages for violations
480 relating to sex trafficking and human trafficking;
481 amending s. 895.02, F.S.; redefining the term

482 "racketeering activity" to include the offense of human
483 trafficking for purposes of the Florida RICO Act;
484 reenacting and amending s. 16.56, F.S.; adding prosecution
485 of human trafficking and related crimes to subject matter
486 jurisdiction of a statewide prosecutor; reenacting ss.
487 16.56(1), 655.50(3)(g), 896.101(2)(g), and 905.34, F.S.,
488 the definition of "specified unlawful activity" in a law
489 prohibiting money laundering in financial institutions and
490 in the Florida Money Laundering Act, and the subject
491 matter jurisdiction of a statewide grand jury, to
492 incorporate the amendments made to s. 895.02, F.S., in
493 references thereto; providing an effective date.

Bill No. **HB 763**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Justice Council
2 Representative(s) Ambler offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 787.025, Florida Statutes, is amended
7 to read:
8 787.025 Luring or enticing a child.--
9 (1) As used in this section, the term:
10 (a) "Structure" means a building of any kind, either
11 temporary or permanent, which has a roof over it, together with
12 the curtilage thereof.
13 (b) "Dwelling" means a building or conveyance of any kind,
14 either temporary or permanent, mobile or immobile, which has a
15 roof over it and is designed to be occupied by people lodging
16 together therein at night, together with the curtilage thereof.
17 (c) "Conveyance" means any motor vehicle, ship, vessel,
18 railroad car, trailer, aircraft, or sleeping car.
19 (d) "Convicted" means a determination of guilt which is
20 the result of a trial or the entry of a plea of guilty or nolo
21 contendere, regardless of whether adjudication is withheld.

22 (2)(a) A person 18 years of age or older who intentionally
23 lures or entices, or attempts to lure or entice, a child under
24 the age of 12 into a structure, dwelling, or conveyance for
25 other than a lawful purpose commits a misdemeanor of the first
26 degree, punishable as provided in s. 775.082 or s. 775.083.
27 (b) A person 18 years of age or older who, having been
28 previously convicted of a violation of paragraph (a),
29 intentionally lures or entices, or attempts to lure or entice, a
30 child under the age of 12 into a structure, dwelling, or
31 conveyance for other than a lawful purpose commits a felony of
32 the third degree, punishable as provided in s. 775.082, s.
33 775.083, or s. 775.084.
34 (c) A person 18 years of age or older ~~over the age of 18~~
35 who, having been previously convicted of a violation of chapter
36 794 or s. 800.04, or a violation of a similar law of another
37 jurisdiction, intentionally lures or entices, or attempts to
38 lure or entice, a child under the age of 12 into a structure,
39 dwelling, or conveyance for other than a lawful purpose commits
40 a felony of the third degree, punishable as provided in s.
41 775.082, s. 775.083, or s. 775.084.
42 ~~(b) For purposes of this section, the luring or enticing,~~
43 ~~or attempted luring or enticing, of a child under the age of 12~~
44 ~~into a structure, dwelling, or conveyance without the consent of~~
45 ~~the child's parent or legal guardian shall be prima facie~~
46 ~~evidence of other than a lawful purpose.~~
47 (3) It is an affirmative defense to a prosecution under
48 this section that:
49 (a) The person reasonably believed that his or her action
50 was necessary to prevent the child from being seriously injured.

51 (b) The person lured or enticed, or attempted to lure or
52 entice, the child under the age of 12 into a structure,
53 dwelling, or conveyance for a lawful purpose.
54 (c) The person's actions were reasonable under the
55 circumstances and the defendant did not have any intent to harm
56 the health, safety, or welfare of the child.
57 Section 2. Subsections (4) and (10) of section 775.21,
58 Florida Statutes, are amended to read:
59 775.21 The Florida Sexual Predators Act.--
60 (4) SEXUAL PREDATOR CRITERIA.--
61 (a) For a current offense committed on or after October 1,
62 1993, upon conviction, an offender shall be designated as a
63 "sexual predator" under subsection (5), and subject to
64 registration under subsection (6) and community and public
65 notification under subsection (7) if:
66 1. The felony is:
67 a. A capital, life, or first-degree felony violation, or
68 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
69 is a minor and the defendant is not the victim's parent, or of
70 chapter 794, s. 800.04, or s. 847.0145, or a violation of a
71 similar law of another jurisdiction; or
72 b. Any felony violation, or any attempt thereof, of s.
73 787.01, s. 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the
74 victim is a minor and the defendant is not the victim's parent;
75 chapter 794, excluding ss. 794.011(10) and 794.0235; s. 796.03;
76 s. 800.04; s. 825.1025(2)(b); s. 827.071; or s. 847.0145; or a
77 violation of a similar law of another jurisdiction, and the
78 offender has previously been convicted of or found to have
79 committed, or has pled nolo contendere or guilty to, regardless
80 of adjudication, any violation of s. 787.01, s. 787.02, or s.

81 787.025(2)(c) ~~s. 787.025~~, where the victim is a minor and the
82 defendant is not the victim's parent; s. 794.011(2), (3), (4),
83 (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 825.1025; s.
84 827.071; s. 847.0133; s. 847.0135; or s. 847.0145, or a
85 violation of a similar law of another jurisdiction;
86 2. The offender has not received a pardon for any felony
87 or similar law of another jurisdiction that is necessary for the
88 operation of this paragraph; and
89 3. A conviction of a felony or similar law of another
90 jurisdiction necessary to the operation of this paragraph has
91 not been set aside in any postconviction proceeding.
92 (b) In order to be counted as a prior felony for purposes
93 of this subsection, the felony must have resulted in a
94 conviction sentenced separately, or an adjudication of
95 delinquency entered separately, prior to the current offense and
96 sentenced or adjudicated separately from any other felony
97 conviction that is to be counted as a prior felony.
98 (c) If an offender has been registered as a sexual
99 predator by the Department of Corrections, the department, or
100 any other law enforcement agency and if:
101 1. The court did not, for whatever reason, make a written
102 finding at the time of sentencing that the offender was a sexual
103 predator; or
104 2. The offender was administratively registered as a
105 sexual predator because the Department of Corrections, the
106 department, or any other law enforcement agency obtained
107 information that indicated that the offender met the criteria
108 for designation as a sexual predator based on a violation of a
109 similar law in another jurisdiction,
110

111 the department shall remove that offender from the department's
112 list of sexual predators and, for an offender described under
113 subparagraph 1., shall notify the state attorney who prosecuted
114 the offense that met the criteria for administrative designation
115 as a sexual predator, and, for an offender described under this
116 subparagraph, shall notify the state attorney of the county
117 where the offender establishes or maintains a permanent or
118 temporary residence. The state attorney shall bring the matter
119 to the court's attention in order to establish that the offender
120 meets the criteria for designation as a sexual predator. If the
121 court makes a written finding that the offender is a sexual
122 predator, the offender must be designated as a sexual predator,
123 must register or be registered as a sexual predator with the
124 department as provided in subsection (6), and is subject to the
125 community and public notification as provided in subsection (7).
126 If the court does not make a written finding that the offender
127 is a sexual predator, the offender may not be designated as a
128 sexual predator with respect to that offense and is not required
129 to register or be registered as a sexual predator with the
130 department.
131 (d) An offender who has been determined to be a sexually
132 violent predator pursuant to a civil commitment proceeding under
133 chapter 394 shall be designated as a "sexual predator" under
134 subsection (5) and subject to registration under subsection (6)
135 and community and public notification under subsection (7).
136 (10) PENALTIES.--
137 (a) Except as otherwise specifically provided, a sexual
138 predator who fails to register; who fails, after registration,
139 to maintain, acquire, or renew a driver's license or
140 identification card; who fails to provide required location

141 information or change-of-name information; who fails to make a
142 required report in connection with vacating a permanent
143 residence; who fails to reregister as required; who fails to
144 respond to any address verification correspondence from the
145 department within 3 weeks of the date of the correspondence; or
146 who otherwise fails, by act or omission, to comply with the
147 requirements of this section, commits a felony of the third
148 degree, punishable as provided in s. 775.082, s. 775.083, or s.
149 775.084.
150 (b) A sexual predator who has been convicted of or found
151 to have committed, or has pled nolo contendere or guilty to,
152 regardless of adjudication, any violation, or attempted
153 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c) ~~s.~~
154 ~~787.025~~, where the victim is a minor and the defendant is not
155 the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s.
156 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s.
157 847.0145, or a violation of a similar law of another
158 jurisdiction, when the victim of the offense was a minor, and
159 who works, whether for compensation or as a volunteer, at any
160 business, school, day care center, park, playground, or other
161 place where children regularly congregate, commits a felony of
162 the third degree, punishable as provided in s. 775.082, s.
163 775.083, or s. 775.084.
164 (c) Any person who misuses public records information
165 relating to a sexual predator, as defined in this section, or a
166 sexual offender, as defined in s. 943.0435 or s. 944.607, to
167 secure a payment from such a predator or offender; who knowingly
168 distributes or publishes false information relating to such a
169 predator or offender which the person misrepresents as being
170 public records information; or who materially alters public

171 records information with the intent to misrepresent the
172 information, including documents, summaries of public records
173 information provided by law enforcement agencies, or public
174 records information displayed by law enforcement agencies on
175 websites or provided through other means of communication,
176 commits a misdemeanor of the first degree, punishable as
177 provided in s. 775.082 or s. 775.083.
178 (d) A sexual predator who commits any act or omission in
179 violation of this section may be prosecuted for the act or
180 omission in the county in which the act or omission was
181 committed, the county of the last registered address of the
182 sexual predator, or the county in which the conviction occurred
183 for the offense or offenses that meet the criteria for
184 designating a person as a sexual predator. In addition, a sexual
185 predator may be prosecuted for any such act or omission in the
186 county in which he or she was designated a sexual predator.
187 (e) An arrest on charges of failure to register, the
188 service of an information or a complaint for a violation of this
189 section, or an arraignment on charges for a violation of this
190 section constitutes actual notice of the duty to register when
191 the predator has been provided and advised of his or her
192 statutory obligation to register under subsection (6). A sexual
193 predator's failure to immediately register as required by this
194 section following such arrest, service, or arraignment
195 constitutes grounds for a subsequent charge of failure to
196 register. A sexual predator charged with the crime of failure to
197 register who asserts, or intends to assert, a lack of notice of
198 the duty to register as a defense to a charge of failure to
199 register shall immediately register as required by this section.
200 A sexual predator who is charged with a subsequent failure to

201 register may not assert the defense of a lack of notice of the
202 duty to register.
203 (f) Registration following such arrest, service, or
204 arraignment is not a defense and does not relieve the sexual
205 predator of criminal liability for the failure to register.
206 (g) Any person who has reason to believe that a sexual
207 predator is not complying, or has not complied, with the
208 requirements of this section and who, with the intent to assist
209 the sexual predator in eluding a law enforcement agency that is
210 seeking to find the sexual predator to question the sexual
211 predator about, or to arrest the sexual predator for, his or her
212 noncompliance with the requirements of this section:
213 1. Withholds information from, or does not notify, the law
214 enforcement agency about the sexual predator's noncompliance
215 with the requirements of this section, and, if known, the
216 whereabouts of the sexual predator;
217 2. Harbors, or attempts to harbor, or assists another
218 person in harboring or attempting to harbor, the sexual
219 predator;
220 3. Conceals or attempts to conceal, or assists another
221 person in concealing or attempting to conceal, the sexual
222 predator; or
223 4. Provides information to the law enforcement agency
224 regarding the sexual predator which the person knows to be false
225 information,
226
227 commits a felony of the third degree, punishable as provided in
228 s. 775.082, s. 775.083, or s. 775.084. This paragraph does not
229 apply if the sexual predator is incarcerated in or is in the

230 custody of a state correctional facility, a private correctional
231 facility, a local jail, or a federal correctional facility.
232 Section 3. Subsection (2) of section 794.0115, Florida
233 Statutes, is amended to read:
234 794.0115 Dangerous sexual felony offender; mandatory
235 sentencing.--
236 (2) Any person who is convicted of a violation of s.
237 787.025(2)(c) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or (8);
238 s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3),
239 or (4); or s. 847.0145; or of any similar offense under a former
240 designation, which offense the person committed when he or she
241 was 18 years of age or older, and the person:
242 (a) Caused serious personal injury to the victim as a
243 result of the commission of the offense;
244 (b) Used or threatened to use a deadly weapon during the
245 commission of the offense;
246 (c) Victimized more than one person during the course of
247 the criminal episode applicable to the offense;
248 (d) Committed the offense while under the jurisdiction of
249 a court for a felony offense under the laws of this state, for
250 an offense that is a felony in another jurisdiction, or for an
251 offense that would be a felony if that offense were committed in
252 this state; or
253 (e) Has previously been convicted of a violation of s.
254 787.025(2)(c) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or (8);
255 s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3),
256 or (4); s. 847.0145; of any offense under a former statutory
257 designation which is similar in elements to an offense described
258 in this paragraph; or of any offense that is a felony in another
259 jurisdiction, or would be a felony if that offense were

260 committed in this state, and which is similar in elements to an
261 offense described in this paragraph,
262
263 is a dangerous sexual felony offender, who must be sentenced to
264 a mandatory minimum term of 25 years imprisonment up to, and
265 including, life imprisonment.
266 Section 4. Paragraph (a) of subsection (1) of section
267 943.0435, Florida Statutes, is amended to read:
268 943.0435 Sexual offenders required to register with the
269 department; penalty.--
270 (1) As used in this section, the term:
271 (a) "Sexual offender" means a person who:
272 1. Has been convicted of committing, or attempting,
273 soliciting, or conspiring to commit, any of the criminal
274 offenses proscribed in the following statutes in this state or
275 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
276 or s. 787.025(2)(c) ~~s. 787.025~~, where the victim is a minor and
277 the defendant is not the victim's parent; chapter 794, excluding
278 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s. 825.1025;
279 s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s. 847.0138;
280 s. 847.0145; or any similar offense committed in this state
281 which has been redesignated from a former statute number to one
282 of those listed in this subparagraph; and
283 2. Has been released on or after October 1, 1997, from the
284 sanction imposed for any conviction of an offense described in
285 subparagraph 1. For purposes of subparagraph 1., a sanction
286 imposed in this state or in any other jurisdiction includes, but
287 is not limited to, a fine, probation, community control, parole,
288 conditional release, control release, or incarceration in a

289 state prison, federal prison, private correctional facility, or
290 local detention facility; or
291 3. Establishes or maintains a residence in this state and
292 who has not been designated as a sexual predator by a court of
293 this state but who has been designated as a sexual predator, as
294 a sexually violent predator, or by another sexual offender
295 designation in another state or jurisdiction and was, as a
296 result of such designation, subjected to registration or
297 community or public notification, or both, or would be if the
298 person were a resident of that state or jurisdiction; or
299 4. Establishes or maintains a residence in this state who
300 is in the custody or control of, or under the supervision of,
301 any other state or jurisdiction as a result of a conviction for
302 committing, or attempting, soliciting, or conspiring to commit,
303 any of the criminal offenses proscribed in the following
304 statutes or similar offense in another jurisdiction: s. 787.01,
305 s. 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the victim is a
306 minor and the defendant is not the victim's parent; chapter 794,
307 excluding ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.
308 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137; s.
309 847.0138; s. 847.0145; or any similar offense committed in this
310 state which has been redesignated from a former statute number
311 to one of those listed in this subparagraph.
312 Section 5. Paragraph (b) of subsection (1) of section
313 944.606, Florida Statutes, is amended to read:
314 944.606 Sexual offenders; notification upon release.--
315 (1) As used in this section:
316 (b) "Sexual offender" means a person who has been
317 convicted of committing, or attempting, soliciting, or
318 conspiring to commit, any of the criminal offenses proscribed in

319 the following statutes in this state or similar offenses in
320 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c)
321 ~~s. 787.025~~, where the victim is a minor and the defendant is not
322 the victim's parent; chapter 794, excluding ss. 794.011(10) and
323 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
324 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
325 any similar offense committed in this state which has been
326 redesignated from a former statute number to one of those listed
327 in this subsection, when the department has received verified
328 information regarding such conviction; an offender's
329 computerized criminal history record is not, in and of itself,
330 verified information.
331 Section 6. Paragraph (a) of subsection (1) of section
332 944.607, Florida Statutes, is amended to read:
333 944.607 Notification to Department of Law Enforcement of
334 information on sexual offenders.--
335 (1) As used in this section, the term:
336 (a) "Sexual offender" means a person who is in the custody
337 or control of, or under the supervision of, the department or is
338 in the custody of a private correctional facility:
339 1. On or after October 1, 1997, as a result of a
340 conviction for committing, or attempting, soliciting, or
341 conspiring to commit, any of the criminal offenses proscribed in
342 the following statutes in this state or similar offenses in
343 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c)
344 ~~s. 787.025~~, where the victim is a minor and the defendant is not
345 the victim's parent; chapter 794, excluding ss. 794.011(10) and
346 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s.
347 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s. 847.0145; or
348 any similar offense committed in this state which has been

349 redesignated from a former statute number to one of those listed
350 in this paragraph; or
351 2. Who establishes or maintains a residence in this state
352 and who has not been designated as a sexual predator by a court
353 of this state but who has been designated as a sexual predator,
354 as a sexually violent predator, or by another sexual offender
355 designation in another state or jurisdiction and was, as a
356 result of such designation, subjected to registration or
357 community or public notification, or both, or would be if the
358 person were a resident of that state or jurisdiction.
359 Section 7. Subsection (1) of section 948.32, Florida
360 Statutes, is amended to read:
361 948.32 Requirements of law enforcement agency upon arrest
362 of persons for certain sex offenses.--
363 (1) When any state or local law enforcement agency
364 investigates or arrests a person for committing, or attempting,
365 soliciting, or conspiring to commit, a violation of s.
366 787.025(2)(c) ~~s. 787.025~~, chapter 794, s. 796.03, s. 800.04, s.
367 827.071, s. 847.0133, s. 847.0135, or s. 847.0145, the law
368 enforcement agency shall contact the Department of Corrections
369 to verify whether the person under investigation or under arrest
370 is on probation, community control, parole, conditional release,
371 or control release.
372 Section 8. Subsection (8) of section 901.15, Florida
373 Statutes, is amended to read:
374 901.15 When arrest by officer without warrant is lawful.--
375 A law enforcement officer may arrest a person without a warrant
376 when:
377 (8) There is probable cause to believe that the person has
378 committed child abuse, as defined in s. 827.03, or has violated

379 s. 787.025, relating to luring or enticing a child for unlawful
380 purposes. The decision to arrest does ~~shall~~ not require consent
381 of the victim or consideration of the relationship of the
382 parties. It is the public policy of this state to protect abused
383 children by strongly encouraging the arrest and prosecution of
384 persons who commit child abuse. A law enforcement officer who
385 acts in good faith and exercises due care in making an arrest
386 under this subsection is immune from civil liability that
387 otherwise might result by reason of his or her action.
388 Section 9. This act shall take effect July 1, 2006.
389
390 ========== T I T L E A M E N D M E N T ==========
391 Remove entire title and insert:
392 An act relating to luring or enticing a child; amending s.
393 787.025, F.S.; defining the term "convicted"; providing that a
394 person 18 years of age or older who intentionally lures or
395 entices, or attempts to lure or entice, a child under the age of
396 12 into a structure, dwelling, or conveyance for other than a
397 lawful purpose commits a misdemeanor of the first degree;
398 providing criminal penalties; providing that a person who has
399 previously been convicted of this offense and who intentionally
400 lures or entices, or attempts to lure or entice, a child under
401 the age of 12 into a structure, dwelling, or conveyance for
402 other than a lawful purpose commits a felony of the third
403 degree; providing criminal penalties; deleting a presumption
404 regarding what constitutes other than a lawful purpose; amending
405 ss. 775.21, 794.0115, 943.0435, 944.606, 944.607, and 948.32,
406 F.S.; conforming cross-references; amending s. 901.15, F.S.;
407 authorizing a law enforcement officer to arrest a person without
408 a warrant if there is probable cause to believe that the person

409 is intentionally luring or enticing, or attempting to lure or
410 entice, a child under the age of 12 into a structure, dwelling,
411 or conveyance for other than a lawful purpose; providing an
412 effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 0841 CS**

COUNCIL/COMMITTEE ACTION

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

---

1 Council/Committee hearing bill: Justice Council
2 Representative(s) Simmons offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 27-32 and insert:
6 (2) Notwithstanding subsection (1), if an
7
8 ========== T I T L E A M E N D M E N T ==========
9 Remove line(s) 9-10 and insert:
10 judgment; providing an exception to limits

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 841 CS**

2

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Justice Council
2 Representative(s) Kyle offered the following:
3
4 **Amendment**
5 Remove line(s) 27 - 31 and insert:
6
7 (2) If an appellant is an individual or is an
8 independently owned and operated business with 300 or fewer
9 full-time employees, the supersedeas bond, at the election of
10 the appellant, may not exceed 5 percent of the appellant's net
11 assets or $5 million in the aggregate.
12
13

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841amendment1

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 841 CS**

3

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Justice Council
2 Representative(s) Kyle offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 37 - 40 and insert:
6
7 judgment, then in addition to the rights and liability set forth
8 in s. 607.06401 and s. 607.0834, a court may enter orders
9 necessary to protect the appellee, including reasonable but
10 narrowly tailored discovery under Florida Rule of Civil
11 Procedure 1.280, or order the appellant to post a supersedeas
12 bond in an amount up to and including the total amount of the
13 judgment.
14
15
16

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841amendment2

Justice Council

Thursday, April 20, 2006
2:45 PM – 4:45 PM
404 House Office Building

Addendum

Amendment Packet

Allan G. Bense
Speaker

Bruce Kyle
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2(for drafter's use only)

Bill No. **HB 297**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Justice Council
2 Representative(s) Kravitz offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line 173 and line 287 and insert:
6 of 1 year and 1 day of incarceration followed by a period of
7 probation

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297 Kravitz 02