CRIMINAL JUSTICE COMMITTEE MEETING

Tuesday, April 4, 2006
10:15 a.m. - 11:00 a.m.
404 House Office Building

MEETING PACKET

Revised

Allan G. Bense
Speaker

Dick Kravitz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time:	Tuesday, April 04, 2006 10:15 am
End Date and Time:	Tuesday, April 04, 2006 11:00 am
Location:	404 HOB
Duration:	0.75 hrs

Consideration of the following bill(s):

HB 471 CS Fish and Wildlife by Troutman
HB 1147 Crimes Against Homeless Persons by Justice
HB 1225 Reckless Driving by Glorioso
HR 1627 Unanimity of Jury Recommendations in Death Penalty Cases by Kyle
HB 7065 Clandestine Laboratory Contamination by Health Care Regulation Committee
HB 7199 Forensic Treatment and Training by Future of Florida's Families Committee

NOTICE FINALIZED on 03/31/2006 15:26 by THOMPSON.SONJA

FLORIDA HOUSE OF REPRESENTATIVES

Allan G. Bense, Speaker

Justice Council
Criminal Justice Committee

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Meeting Agenda
Tuesday, April 4, 2006
10:15 a.m. – 11:00 p.m.
404 House Office Building

I. Opening remarks by Chair Kravitz

II. Roll call

III. Consideration of the following bill(s):

- **HB 471 CS Fish and Wildlife by Troutman**
- **HB 1147 Crimes Against Homeless Persons by Justice**
- **HB 1225 Reckless Driving by Glorioso**

- **HB 1627 Unanimity of Jury Recommendations in Death Penalty Cases by Kyle**

- **HB 7065 Clandestine Laboratory Contamination by Health Care Regulation Committee**

- **HB 7199 Forensic Treatment and Training by Future of Florida's Families Committee**

IV. Closing comments / Meeting adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 471 CS Fish and Wildlife
SPONSOR(S): Troutman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	7 Y, 0 N, w/CS	Winker	Lotspeich
2) Criminal Justice Committee		Ferguson KF	Kramer
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill addresses several issues relating to penalties for violations of statutes and rules of the Fish and Wildlife Conservation Commission (FWCC) and several issues relating to hunting licenses. Specifically the bill:

- Amends s. 370.021, F.S., to provide that the penalties provided therein are limited to violations related to the *commercial* harvesting of marine fish.
- Creates a framework for penalties for violations of *recreational* fish and wildlife statutes and FWCC rules. The bill provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation. Within each violation level, enhanced penalties are provided for repeat violations.
- Creates penalties for violations of statutes and FWCC rules relating to poisonous and venomous reptiles and to the possession of captive wildlife for personal use and exhibition.
- Creates the Wildlife Violators Compact which allows Florida to join 21 other compact member states in recognizing fish and wildlife violations by persons from member states and sharing such information among each member state.
- Authorizes FWCC to establish a "hunter mentoring" program by allowing an individual to defer the hunter safety course requirement for a hunting license for 1 year when the person is hunting under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from the requirement of a hunter safety course.
- Removes the current requirement that the FWCC's hunter safety course consists of no less than 12 hours of instruction, while maintaining the current requirement that the course consists of no more than 16 hours of instruction.
- Acknowledges the creation of a crossbow season permit (during the archery and muzzleloading seasons) and imposes a $5 annual fee for such permit.
- Increases the fee for an annual sportsman's license from $66 to $71 and for an annual gold sportsman's license from $82 to $87.

The bill has an unknown, but minimal, fiscal impact since no data exists on the expected number of persons who might take advantage of the hunter safety certification deferral provisions of the bill.

The bill takes effect on January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill increases the fee for an annual sportsman's license from $66 to $71 and an annual gold sportsman's license from $82 to $87 and imposes a $5 fee for an annual crossbow season permit.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

The Fish and Wildlife Conservation Commission (FWCC) is a constitutionally created agency.[1] As such, it has exclusive regulatory powers with respect to wildlife, freshwater aquatic life, and marine life. The Legislature is limited by the Constitution to enacting laws establishing license fees and penalties for violating FWCC regulations, and enacting laws in aid of the FWCC.

Penalties

Currently, penalties for violations of laws and regulations relating to fish and wildlife are found in Chapter 370, F.S., (marine resources) and Chapter 372, F.S., (freshwater fish and wildlife).

Marine Resources

Subsections 370.021(1) and (2), F.S., provide for penalties for violations of statutes and rules of the FWCC relating to the conservation of marine resources. Persons convicted of such violations may be punished for a first conviction by incarceration up to 60 days or by a fine of not less than $100 nor more than $500 or both incarceration and a fine. For a second or subsequent conviction within a 12 month period, incarceration may be up to 6 months and a fine of between $250 and $1,000 may be imposed. Additional penalties may be assessed for major violations of statutes and FWCC rules. Section 370.021, F.S., also provides penalties for violations relating to the use of illegal nets (s. 370.021(3), F.S.), illegal possession of certain finfish in excess of a commercial bag limit (s. 370.021(4), F.S.), and illegally harvesting products by unlicensed sellers and purchasers (ss. 370.021(5) and (6), F.S.).

Freshwater Fish and Wildlife

Currently, s. 372.83, F.S., provides for certain penalties for violations of statutes and FWCC rules relating to freshwater fish and wildlife. Subsection 372.83(1), F.S., provides for the imposition of non-criminal penalties pursuant to s. 372.711, F.S., which provides for civil penalties. Subsection 372.83(2), F.S., provides that certain regulations are punishable as a second degree misdemeanor pursuant to s. 775.082, F.S. Subsection 372.83(3), F.S., provides that the forgery of a hunting license or possession thereof is punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Captive Wildlife

Sections 372.86 and 372.87, F.S., require that persons wanting to keep, possess, or exhibit any poisonous or venomous reptile must obtain a permit or license from the FWCC and pay an annual fee. Section 372.88, F.S., requires exhibitors of poisonous or venomous reptiles to post a bond conditioned that the exhibitor will indemnify and save harmless all persons from injury or damage, and that the exhibitor shall comply with all laws and rules for handling, housing, and exhibiting such animals. The

[1] Section 9, Article IV, Florida Constitution.

provisions of Sections 372.89-92, F.S., also relate to poisonous or venomous reptiles and provide requirements for housing, transportation, inspection, rewards, and organized hunts for poisonous or venomous reptiles.

Sections 372.921 and 372.922, F.S., regulate the exhibition, sale and personal possession of wildlife.

Wildlife Violator Compact

The concept of a wildlife violator compact was first discussed in the early 1980s by several states in the Western Association of Fish and Wildlife Agencies. The compact was modeled after a Drivers License Compact which provided for reciprocity between compact member states to recognize each state's driver's licenses and to share with each state driver's violations and information on suspended and revoked driving licenses. In 1989, three states (Colorado, Nevada, and Oregon) were the first states to become member states of the wildlife violator compact.

The wildlife violator compact is a multi-state approach to the enforcement of hunting and fishing violations. Any suspension of fish and game license privileges resulting from a person's failure to comply with a citation or summons and complaint in a compact member's state will also be enforced by all other states participating in the compact. If a resident of a state that is participating in the compact is convicted of a fish and game violation in one of the member states, each compact state is notified and is required to treat the conviction as if it had occurred in that state for purposes of determining any applicable license restrictions or suspensions.

Currently, there are 21 states participating in the compact: Arizona, California, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

The compact is overseen by a board of administrators, consisting of one representative from the fish and wildlife agency or department of each participating state.

Hunting Licenses

Section 372.561, F.S., requires the FWCC to issue a license to take wild animal life when an applicant provides proof that he or she is eligible for the license. Hunting licenses may be sold by the FWCC or any tax collector in the state or by any subagent (for example, hunting supply stores) authorized by s. 372.574, F.S.

FWCC reported that in FY 2000-2001, there were 178,069 hunting licenses purchased in Florida. The number of Florida hunting licenses purchased since then has declined to 157,299 in FY 2004-2005. The number of hunting licenses purchased in Florida does not represent the number of persons (residents and non-residents) who are actually hunting, since Florida law exempts a number of persons from the hunting licenses requirement. In 2001, the U.S. Fish and Wildlife Service conducted a national survey of hunting, fishing and wildlife-associated recreation activities and estimated that Florida had 226,000 hunters.

Section 372.57, F.S., provides that an annual sportsman's license costs $66, except for persons age 64 and older the fee is $12. This license allows a person to take game and freshwater fish. An annual gold sportsman's license costs $82 and allows a person to take freshwater fish, saltwater fish, and game.

Exemptions from Requiring Hunting Licenses

Section 372.562, F.S., provides certain residents of Florida an exemption from paying a fee for a hunting license. Any resident who is certified or determined to be totally or permanently disabled for purposes of workers' compensation under chapter 440, F.S., under the provisions of the Railroad Retirement Board, by the U.S. Department of Veterans Affairs, or under the provisions of the U.S.

Social Security Administration, is eligible for a hunting license at no cost. A hunting license obtained under this fee exemption after January 1, 1997, expires after 5 years and must be reissued, upon request, every 5 years. A person qualifying for this exemption under the Social Security Administration must renew the license every 2 years.

Section 372.562(2), F.S., provides that the following persons are exempt from having a hunting license:

- Any child under age 16;
- Any person hunting on his or her homestead property or the homestead property of the person's spouse or minor child;
- Any resident who is a member of the United State Armed Forces and not stationed in this state, when home on leave for 30 days or less; or
- Any resident age 65 or older.

Hunting licenses are non-transferable and must be in the personal possession of the person while taking or attempting to take wild animal life.

Hunter Safety Course

Section 372.5717, F.S., addresses the requirement for a hunter safety course as a condition for obtaining a hunting license and provides that:

- Persons born after June 1, 1975, may not be issued a hunting license without first successfully completing a hunter safety course and having in their possession a hunter safety certification card.
- The FWCC institute and coordinate a statewide hunter safety course to be offered in every county. The course must consist of no less than 12 hours and no more than 16 hours of instruction, including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.
- The FWCC issue a permanent hunter safety certification card to each person who successfully completes the hunter safety course. FWCC must also maintain records of each person issued a certification card and provide procedures for persons to seek a replacement card.
- A hunter safety certification card issued by any other state or Canadian province which shows that the person has successfully completed a hunter safety course approved by the FWCC, shall be an acceptable substitute for the hunter safety certification card issued by the FWCC.
- Persons not exempt from having a hunting license, have in their personal possession while hunting or purchasing a hunting license, proof of compliance with the hunter safety course requirements, including possessing the hunter safety certification card.
- A non-criminal penalty may be imposed on persons who violate the provisions and requirements of the hunter safety course requirements.
- The FWCC develop a voluntary hunter safety course statewide for youth 5 to 15 years of age. This course is not a substitute for the required hunter safety course described above.

The FWCC offers the state's hunter safety course through two general methods. One method is an in-class 12-hour course with the successful completion of a test, and a 3-hour experience at a firing range. The second option is either a CD or internet course for persons who wish to take advantage of this option. Persons can register on-line to take the hunter safety course, take on-line quizzes, and then are required to take a 4-hour classroom test and a 3-hour firing range experience.

International Hunter Education Association

The International Hunter Education Association (IHEA) is a national organization which is affiliated with the International Association of Fish and Wildlife Agencies and which represents the interests of 69

states, provincial, and federal hunter education coordinators, and 70, 000 hunter education instructors who teach hunter safety, ethics, and conservation courses to hunters.

The goals of the IHEA are to:

- Serve as the primary resource for information on hunter education;
- Promote hunter education by providing opportunities for the exchange of experiences;
- Promote hunter education by fostering cooperative efforts between government, organized groups, and industry;
- Uphold the image of hunting as a legitimate tool of wildlife management;
- Promote programs which prevent hunting accidents;
- Cultivate honesty, self-discipline, self-reliance, and responsible behavior among hunters; and
- Strive for constant improvement in hunter education programs.

According to the IHEA, state fish and game agencies began offering hunter safety programs in 1949.

All states, including Florida, are currently members of the IHEA. The IHEA does not regulate, nor does it have an accreditation program for any state's hunter safety course program.

The IHEA does have standards and a model hunter safety course program which states are free to adopt. Each state sets its own hunter safety education program regulations and regulates the program within its own jurisdiction. Each state (including the FWCC) has a coordinator/administrator responsible for the hunter safety program and ensures that the program adheres to IHEA standards which allow for reciprocity.

Reciprocity means that a hunter safety course taken in one state will be honored in all other states. Should a state's hunter safety program not meet IHEA standards, the certification for the hunter safety course may not be accepted by other states. Currently, according to IHEA staff, all states meet standards.

The IHEA model hunter safety program can be viewed and taken on-line at http://homestudy.ihea.com/contents_checklist.htm . The website lists the content areas for the hunter safety course. Besides general content on hunting, the IHEA hunter safety course has content on: firearms; ammunition; firearm safety; shooting skills; hunting safety and skills; hunter responsibility and ethics; and wildlife.

Hunter Mentoring Programs

Florida does not currently have a hunter mentoring program. However, there is current authorization for persons under the age of 16 to participate in hunting activities without needing a hunting license when they hunt in the presence of a parent or guardian (s. 372.562, F.S.)

Several other states have established hunter mentoring programs. For example, Wisconsin recently established a hunter mentoring program which allows persons above the age of eight who have not taken a hunter safety course to hunt with an adult mentor under highly controlled and safe circumstances.

The Wisconsin hunter mentoring program requires that the mentor must have the person within "arm's reach" at all times while hunting. No person may serve as a hunter mentor unless they are at least 18 years of age, and all mentors born after 1973 must have successfully completed the state's hunter safety program. The mentor must be the parent or guardian of the person for whom he or she is serving as a mentor, or be authorized by the parent or guardian to serve as a mentor. This requirement does not apply to a person serving as a mentor for a person who is 18 years of age or older. A person who is authorized to hunt with a mentor and the mentor with whom the person hunts may jointly have only one firearm or one bow in their possession or control while hunting. A mentor may take only one

person at a time for which he or she is serving as a mentor. Finally, the program requires the development of an information pamphlet containing hunter safety information to be given to persons hunting with a mentor.

The Department of Texas Parks and Wildlife has had a hunter mentoring program since 2004. The program allows a person 17 or older, who has not taken and successfully completed a hunter education course, to defer the completion of the course and purchase a special deferral hunting license for a $10 fee in addition to the regular hunting license fee. The deferral hunting license can only be purchased on a one-time basis and is effective until August 31 of the same year the deferral hunting license was purchased.

Under the Texas hunter education deferral program, a hunter with a deferral hunting license must be accompanied (within range of normal voice communication) by another licensed hunter 17-years-of-age or older who has completed and passed the hunter education program or is otherwise exempt from the hunter education program. Proof of hunter safety certification or the deferral must be on the person while hunting. A person who has been convicted of or has received a deferred adjudication for a violation of the mandatory hunter education requirement is prohibited from purchasing a deferral.

Texas also has a hunter mentoring program for persons who have qualified as certified hunter safety instructors, but for whatever reasons have been reluctant to use their acquired knowledge and skills in hunting safety to teach courses for other hunters. The mentoring program is targeting new hunter education instructors and provides an opportunity for these instructors to team up with a seasoned more experienced hunting safety instructor who will help organize classes and provide support for the new hunter education instructor.

Crossbow Hunting

The use of crossbows for hunting is not currently allowed in Florida. In September 2004, the FWCC reviewed the issue of allowing the use of crossbows during the muzzleloading hunting season. FWCC staff were directed to determine what Florida hunters' opinions were on this issue. FWCC contracted with the Florida State University Government Performance Survey Research Center to conduct the survey. Findings from a random sample of Florida hunters indicated that 7% owned a crossbow and 2% said they had used a crossbow to hunt deer in the previous 3 years. About 45% of those surveyed favored a change to allow the use of crossbows on *wildlife management areas and public lands* during the archery season and 44% favored a change to allow the use of crossbows during the muzzleloading season. Approximately 51% favored a change to allow the use of crossbows on *private lands* during the archery season and 52% favored use during the muzzleloading season.

According to FWCC staff, the use of crossbows during archery and/or muzzleloading gun seasons is allowed in several states including Georgia, Alabama, Arkansas, Wyoming, and Ohio.

Based upon the results of the survey, FWCC staff recommended that rule changes be made that permitted the use of crossbows during archery and muzzleloading hunting seasons.

In February 2006, the FWCC approved the adoption of proposed rules (68A-13.004, 68A-12.002, and 68A-1.004) that establish new crossbow seasons during archery and muzzleloading hunting seasons.

EFFECT OF PROPOSED CHANGES

Penalties

Marine Resources

The bill amends s. 370.021, F.S., to provide that the penalties provided therein are limited to violations related to the *commercial* harvesting of marine fish. The bill provides a definition of "commercial

harvest." Penalties for violations of laws and regulations relating to the *recreational* taking of marine fish are provided in the newly created s. 372.83, F.S. The bill does not make any changes in the penalties.

Freshwater Fish and Wildlife

The bill amend s. 372.83, F.S., which establishes a framework for penalties that are applied to violations of *recreational* fish (freshwater and saltwater) and wildlife statutes and rules of the FWCC. The bill provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

A Level 1 violation constitutes noncriminal infractions punishable by the imposition of a civil penalty of $50 for the first conviction and $250 for each subsequent conviction. Citations shall be issued for these violations and the citation shall include a requirement for appearance before the county court. A person who willfully refuses the citation or who willfully fails to pay the civil penalty commits a misdemeanor of the second degree. Included in the list of Level 1 violations are violations of:

- FWCC rules or orders relating to quota hunting permits, and daily use permits
- Statutory provisions relating to hunting, fishing and trapping licenses
- Statutory provisions relating to hunter safety certification
- Statutory provisions relating to required clothing for persons hunting deer

A Level 2 violation constitutes a first degree misdemeanor. A first conviction is punishable under s. 775.082, F.S. (relating to sentencing), or s. 775.083, F.S. (relating to fines). Persons convicted of subsequent Level 2 violations are subject to increasing amounts of fines and license suspensions. Included in the list of Level 2 violations are violations of:

- FWCC rules or orders relating to the season, bag limits and size limits for saltwater fish, freshwater game fish, and wildlife
- FWCC rules or orders relating to access to wildlife management areas
- FWCC rules or orders relating to landing requirements for saltwater fish and freshwater game fish
- FWCC rules or orders relating to the use of dogs for hunting
- Statutory provisions relating to bonefish and crawfish
- Statutory provisions relating to feeding of alligators and crocodiles

A Level 3 violation also constitutes a first degree misdemeanor punishable under s. 775.082 or s. 775.083, F.S. As with Level 2 violations, persons convicted of subsequent Level 3 violations are subject to increasing amounts of fines and license suspensions. Included in the list of Level 3 violations are violations of:

- FWCC rules or orders relating to the sale of saltwater fish
- Statutory provisions relating to "major violations"
- Statutory provisions relating to the taking of saltwater fish with nets
- Statutory provisions relating to hunting and fishing while a license is suspended or revoked
- Statutory provisions relating to the illegal sale or possession of alligators, and the illegal taking and possession of deer and wild turkey

A Level 4 violation constitutes a felony of the third degree punishable under s. 775.082 or s. 775.083, F.S. Level 4 violations include violations of:

- Statutory provisions relating to the molestation of stone crab, blue crab, and crawfish gear
- Statutory provisions relating to forgery of a license or possession of a forged license
- Statutory provisions relating to the sale of deer or turkey that is illegally taken

Captive Wildlife

The bill creates penalties for violations of statutes and FWCC rules related to captive wildlife. A person who violates an FWCC rule or order for a non-fee permit for the possession of captive wildlife for personal use commits a noncriminal infraction and is subject to a civil penalty of $50.

The violation of FWCC rules and orders relating to poisonous and venomous reptiles and to the possession of captive wildlife for personal use and exhibition or sale is punishable as a second degree misdemeanor under s. 775.082 or s. 775.083, F.S.

Wildlife Violators Compact

The bill creates the Wildlife Violators Compact which allows Florida to join 21 other compact member states in recognizing fish and wildlife violations by persons from member states and sharing such information among each member state. The Compact specifically provides for:

- Findings relating to the management of wildlife resources
- Definitions
- Procedures for the state issuing a citation
- Procedures for the licensing authority of the home state of the violator
- Reciprocal recognition of a license suspension
- Procedures for the entry into and withdrawal from the Compact

Hunting Licenses

Hunter Mentoring Program
The bill amends s. 372.5717, F.S., to authorize the FWCC to defer the hunter safety course requirement for one year and issue a restricted hunting license to persons wanting to try out hunting. Such persons may receive only one deferment and a person with a restricted hunting license can only hunt under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from completing the required hunter safety course.

For those persons hunting under the deferral provisions of the bill, the bill provides an exemption from the current requirement that a hunter safety course certification must be in the person's possession while hunting or when purchasing a hunting license.

Hunter Safety Course
The bill also amends s. 372.5717, F.S., to remove the current requirement that the FWCC's hunter safety course consist of no less than 12 hours of instruction, while maintaining the current requirement that the course consist of no more than 16 hours of instruction.

Crossbow Hunting Seasons
The bill amends s. 372.57, F.S., to acknowledge the creation of a crossbow season permit (during the archery and muzzleloading seasons) and to impose of a $5 annual fee for such permit.

Hunting Licenses Fee Increases
The bill increases the fee for an annual sportsman's license from $66 to $71 and an annual gold sportsman's license from $82 to $87.

C. SECTION DIRECTORY:

Section 1: Amends s. 370.01, F.S., to define "commercial harvest" to mean the taking or harvest of marine life while operating under a permit, license, or authorization issued pursuant to chapter 370, F.S.

Section 2: Amends s. 370.021, F.S., to clarify that this section applies exclusively to commercial harvesting.

Section 3: Amends s. 370.061, F.S., to conform a cross reference.

Section 4: Creates s. 372.825, F.S., to provide penalties relating to captive wildlife.

Section 5: Amends s. 372.5717, F.S., to authorize the FWCC to waive the hunter safety education course for 1 year and issue a one-time restricted hunting license to persons wanting to hunt.

Section 6: Amends s. 372.83, F.S., to create four levels of violations with commensurate penalties of higher severity.

Section 7: Amends s. 372.57, F.S., to provide for a crossbow season permit and increase certain license fees.

Section 8: Amends s. 372.573, F.S., to conform a cross reference.

Section 9: Amends s. 372.661, F.S., to conform a cross reference.

Section 10: Creates s. 372.831, F.S., to adopt in statute the Wildlife Violator Compact.

Section 11: Creates s. 372.832, F.S., to provide that FWCC is the licensing authority for the state to enforce the provisions of the Wildlife Violator Compact.

Section 12: Creates s.372.833, F.S., to provide that any action taken by FWCC in enforcing provisions of the Compact will be subject to review by the FWCC in accordance with chapter 120, F.S.

Section 13: Amends s. 370.028, F.S., to conform a cross reference.

Section 14: Amends s. 370.092, F.S., to conform cross references.

Section 15: Amends s. 370.093, F.S., to conform a cross reference.

Section 16: Amends s. 370.12, F.S., to conform a cross reference.

Section 17: Amends s. 370.1405, F.S., to conform a cross reference.

Section 18: Amends s. 370.142, F.S., to conform a cross reference.

Section 19: Provides and effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments below.

2. Expenditures:

   See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would have a positive impact on the private sector depending on the number of persons participating in and using the hunter safety education deferral provisions of the bill, purchasing a hunting license at the increased rate (annual sportsman's license increased from $66 to $71 and an annual gold sportsman's license increased from $82 to $87), and in turn, purchasing hunting equipment and supplies.

D. FISCAL COMMENTS:

FWCC has determined that there will be minimal, if any, additional costs associated with the proposed penalties section of the bill. However, it is possible that there could be an increase in the amount of revenue received from the enhanced penalties for certain repeat offenders.

FWCC has determined that no additional funds will be needed to implement the Wildlife Violator Compact. Currently, the Wildlife Violator's Compact database is hosted by the Utah Department of Public Safety (Criminal Investigation Bureau). The database was developed to answer the needs of participating member states, to exchange basic identification information, and conviction information about revokees subject to reciprocal revocation.

FWCC has determined that the revenue impacts from the hunter safety education deferral provisions of the bill and the purchase of hunting licenses are unknown since FWCC has no estimates of the number of persons who may participate in this program. Unlike the Texas hunter mentoring program, the bill does not provide for a fee in addition to the normal hunting license fee. FWCC views the revenue impact of the bill as less important than using the mentoring and deferral provisions of the bill to "...remove obstacles and increase efforts to engage new hunters..." in order to reverse the trend of declining hunters in Florida.

FWCC estimates that there would be minimal costs associated with programming its Total Licensing System (TLS), which produces the state's hunting licenses, in issuing and identifying a one-year-option deferral hunting license. A person seeking the special deferral hunting license would purchase a regular hunting license at the regular cost and declare that they do not have the required hunter safety education certificate. The TLS and the actual hunting license would identify that the person is using the deferral option. Since the deferral option is only valid for one-year, the TLS would be programmed to deny the purchase of a subsequent hunting license if the person has not successfully completed the hunter safety course and produced the certification documentation at the time of the purchase.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to "exercise the regulatory and executive powers of the state with respect to" fresh water aquatic life, marine life, and wild animal life. The Legislature may only "enact laws in aid of" the FWCC not inconsistent with the Constitutional provision. The bill appears to be "in aid of" the FWCC and does not appear to be inconsistent with the Constitution.

B. RULE-MAKING AUTHORITY:

The bill does not require the promulgation of rules nor alter the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the effective date for the bill is January 1, 2007, this effective date may not provide for sufficient time for the FWCC law enforcement and court systems to make the necessary changes related to the new penalty structure. Also, sufficient notice of the new penalty structure needs to be given to the persons who are purchasing hunting and fishing licenses.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 471. The strike-all amendment makes the following changes to the bill:

- Limits the penalties in s. 370.021, F.S., to commercial harvesting of saltwater fish.
- Creates a framework for and enhances penalties for violations of recreational fish and wildlife statutes and FWCC rules.
- Creates penalties for violations of statutes and rules related to the possession and exhibition of captive wildlife.
- Creates the Wildlife Violators Compact in statute allowing Florida to join 21 other states in recognizing fish and wildlife violations.
- Amends s. 372.57, F.S., to acknowledge the creation of a crossbow season permit (during the archery and muzzleloading seasons) and to impose of a $5 annual fee for such permit.
- Increases the fees for certain hunting and fishing licenses.

This analysis has been revised to reflect the strike-all amendment.

CHAMBER ACTION

The Water & Natural Resources Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to fish and wildlife; amending s. 370.01, F.S.; defining "commercial harvest"; amending s. 370.021, F.S.; revising penalties for violations related to commercial harvest; correcting cross-references; amending s. 370.061, F.S.; correcting a cross-reference; amending s. 372.57, F.S.; specifying seasonal recreational activities for which a license or permit is required; increasing fees for certain annual licenses; providing fees for certain permits; providing for crossbow season permits; providing penalties for the production, possession, and use of fraudulent fishing and hunting licenses; providing penalties for the taking of game and fish with a suspended or revoked license; amending s. 372.571, F.S.; correcting a cross-reference; amending s. 372.5717, F.S.; authorizing the Fish and Wildlife Conservation Commission to defer the hunter safety course requirement for a specified time period and issue a

restricted hunting license; limiting the number of deferrals an individual is allowed; permitting hunting with a restricted license under certain circumstances; deleting the mandatory minimum number of instructional hours for the required hunter safety course; providing an exemption for the display of hunter safety certification; providing penalties for violations; creating s. 372.825, F.S.; establishing penalties for violations related to the possession of captive wildlife; revising the penalties for violations related to hunter safety course requirements; amending s. 372.83, F.S.; revising the penalties for violations of law and Fish and Wildlife Conservation Commission rules and orders relating to recreational activities; providing circumstances requiring a court appearance; authorizing suspension or revocation of license or permit; defining "conviction"; amending ss. 372.573 and 372.661, F.S.; correcting cross-references; creating s. 372.831, F.S.; creating the interstate Wildlife Violators Compact; providing findings, policy, and purpose; providing definitions; providing requirements and procedures for issuing and participating states for issuance of violation citations; providing for reciprocal recognition of certain license suspension related to fish and wildlife activities; providing for applicability of laws; providing procedures for compact administration; establishing a board of compact administrators; providing requirements and procedures with respect thereto; providing for compact entry, withdrawal, ratification, and

amendment; providing for compact construction and severability; providing the compact title; creating s. 372.832, F.S.; providing for compact licensing authority; creating s. 372.833, F.S.; providing for compact enforcement and violation review; amending ss. 370.028, 370.092, 370.093, 370.12, 370.1405, and 370.142, F.S.; correcting cross-references; providing an effective date.

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

Section 1. Subsections (5) through (28) of section 370.01, Florida Statutes, are renumbered as subsections (6) through (29), respectively, and a new subsection (5) is added to that section to read:

370.01 Definitions.--In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(5) "Commercial harvest" means the taking or harvest of marine fish while operating under a permit, license, or authorization issued pursuant to this chapter; while operating in a manner consistent with such a permit, license, or authorization while such permit, license, or authorization is suspended or revoked; or in quantities sufficient to suggest intent to sell.

Section 2. Present subsections (1) through (4) of section 370.021, Florida Statutes, are renumbered as subsections (2) through (5), respectively, and amended, present subsections (5) through (12) are renumbered as subsections (6) through (13),

respectively, and a new subsection (1) is added to that section, to read:

370.021 Administration; rules, publications, records; penalties; injunctions.--

(1) APPLICATION OF PENALTIES.--The penalties in this section apply when the commission of a violation is related to commercial harvest; when the commission of a violation is related to commercial harvest, the penalties in s. 372.83 do not apply.

(2) ~~(1)~~ PENALTIES.--Unless otherwise provided by law, any person, firm, or corporation who violates ~~is convicted for violating any~~ provision of this chapter, or any rule of the Fish and Wildlife Conservation Commission relating to the conservation of marine resources, shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 60 days or by a fine of not less than $100 nor more than $500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than $250 nor more than $1,000, or by both such fine and imprisonment.

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

(3) ~~(2)~~ MAJOR VIOLATIONS.--In addition to the penalties provided in paragraphs (2) ~~(1)~~ (a) and (b), the court shall assess

additional penalties against any person, firm, or corporation convicted of major violations as follows:

(a) For a violation involving more than 100 illegal blue crabs, crawfish, or stone crabs, an additional penalty of $10 for each illegal blue crab, crawfish, stone crab, or part thereof.

(b) For a violation involving the taking or harvesting of shrimp from a nursery or other prohibited area, or any two violations within a 12-month period involving shrimping gear, minimum size (count), or season, an additional penalty of $10 for each pound of illegal shrimp or part thereof.

(c) For a violation involving the taking or harvesting of oysters from nonapproved areas or the taking or possession of unculled oysters, an additional penalty of $10 for each bushel of illegal oysters.

(d) For a violation involving the taking or harvesting of clams from nonapproved areas, an additional penalty of $100 for each 500 count bag of illegal clams.

(e) For a violation involving the taking, harvesting, or possession of any of the following species, which are endangered, threatened, or of special concern:

1. Shortnose sturgeon (Acipenser brevirostrum);
2. Atlantic sturgeon (Acipenser oxyrhynchus);
3. Common snook (Centropomus undecimalis);
4. Atlantic loggerhead turtle (Caretta caretta caretta);
5. Atlantic green turtle (Chelonia mydas mydas);
6. Leatherback turtle (Dermochelys coriacea);

7. Atlantic hawksbill turtle (Eretmochelys imbricata imbracata);

8. Atlantic ridley turtle (Lepidochelys kempi); or

9. West Indian manatee (Trichechus manatus latirostris),

an additional penalty of $100 for each unit of marine life or part thereof.

(f) For a second or subsequent conviction within 24 months for any violation of the same law or rule involving the taking or harvesting of more than 100 pounds of any finfish, an additional penalty of $5 for each pound of illegal finfish.

(g) For any violation involving the taking, harvesting, or possession of more than 1,000 pounds of any illegal finfish, an additional penalty equivalent to the wholesale value of the illegal finfish.

(h) Permits issued to any person, firm, or corporation by the commission to take or harvest saltwater products, or any license issued pursuant to s. 370.06 or s. 370.07 may be suspended or revoked by the commission, pursuant to the provisions and procedures of s. 120.60, for any major violation prescribed in this subsection:

1. Upon a first conviction, for up to 30 calendar days.

2. Upon a second conviction which occurs within 12 months after a prior violation, for up to 90 calendar days.

3. Upon a third conviction which occurs within 24 months after a prior conviction, for up to 180 calendar days.

4. Upon a fourth conviction which occurs within 36 months after a prior conviction, for a period of 6 months to 3 years.

(i) Upon the arrest and conviction for a major violation involving stone crabs, the licenseholder must show just cause why his or her license should not be suspended or revoked. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal stone crabs; any single violation involving possession of more than 25 stone crabs during the closed season or possession of 25 or more whole-bodied or egg-bearing stone crabs; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal stone crabs in the aggregate are involved.

(j) Upon the arrest and conviction for a major violation involving crawfish, the licenseholder must show just cause why his or her license should not be suspended or revoked. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal crawfish; any single violation involving possession of more than 25 crawfish during the closed season or possession of more than 25 wrung crawfish tails or more than 25 egg-bearing or stripped crawfish; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal crawfish in the aggregate are involved.

(k) Upon the arrest and conviction for a major violation involving blue crabs, the licenseholder shall show just cause why his or her saltwater products license should not be suspended or revoked. This paragraph shall not apply to an

individual fishing with no more than five traps. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal blue crabs, any single violation wherein 50 or more illegal blue crabs are involved; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 100 illegal blue crabs in the aggregate are involved.

(l) Upon the conviction for a major violation involving finfish, the licenseholder must show just cause why his or her saltwater products license should not be suspended or revoked. For the purposes of this paragraph, a major violation is prescribed for the taking and harvesting of illegal finfish, any single violation involving the possession of more than 100 pounds of illegal finfish, or any combination of violations in any 3-consecutive-year period wherein more than 200 pounds of illegal finfish in the aggregate are involved.

(m) For a violation involving the taking or harvesting of any marine life species, as those species are defined by rule of the commission, the harvest of which is prohibited, or the taking or harvesting of such a species out of season, or with an illegal gear or chemical, or any violation involving the possession of 25 or more individual specimens of marine life species, or any combination of violations in any 3-year period involving more than 70 such specimens in the aggregate, the suspension or revocation of the licenseholder's marine life endorsement as provided in paragraph (h).

Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any major violation prescribed in this subsection. The proceeds from the penalties assessed pursuant to this subsection shall be deposited into the Marine Resources Conservation Trust Fund to be used for marine fisheries research or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.

(4) ~~(3)~~ PENALTIES FOR USE OF ILLEGAL NETS.--

(a) It is a major violation pursuant to this section, punishable as provided in paragraph (b) for any person, firm, or corporation to be simultaneously in possession of any species of mullet in excess of the recreational daily bag limit and any gill or other entangling net as defined in s. 16(c), Art. X of the State Constitution. Simultaneous possession under this provision shall include possession of mullet and gill or other entangling nets on separate vessels or vehicles where such vessels or vehicles are operated in coordination with one another including vessels towed behind a main vessel. This subsection does not prohibit a resident of this state from transporting on land, from Alabama to this state, a commercial quantity of mullet together with a gill net if:

1. The person possesses a valid commercial fishing license that is issued by the State of Alabama and that allows the person to use a gill net to legally harvest mullet in commercial quantities from Alabama waters.

2. The person possesses a trip ticket issued in Alabama and filled out to match the quantity of mullet being

transported, and the person is able to present such trip ticket immediately upon entering this state.

3. The mullet are to be sold to a wholesale saltwater products dealer located in Escambia County or Santa Rosa County, which dealer also possesses a valid seafood dealer's license issued by the State of Alabama. The dealer's name must be clearly indicated on the trip ticket.

4. The mullet being transported are totally removed from any net also being transported.

(b)1. A flagrant violation of any rule or statute which implements s. 16(b), Art. X of the State Constitution shall be considered a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this paragraph, a flagrant violation shall be the illegal possession or use of a monofilament net or a net with a mesh area larger than 2,000 square feet. A violation means any judicial disposition other than acquittal or dismissal.

2. In addition to being subject to the other penalties provided in this chapter, any violation of s. 16(b), Art. X of the State Constitution, or any statute or rule of the commission which implements the gear prohibitions and restrictions specified therein shall be considered a major violation; and any person, firm, or corporation receiving any judicial disposition other than acquittal or dismissal of such violation shall be subject to the following additional penalties:

a. For a first major violation within a 7-year period, a civil penalty of $2,500 and suspension of all saltwater products

license privileges for 90 calendar days following final disposition shall be imposed.

b. For a second major violation under this subparagraph charged within 7 years of a previous judicial disposition, which results in a second judicial disposition other than acquittal or dismissal, a civil penalty of $5,000 and suspension of all saltwater products license privileges for 12 months shall be imposed.

c. For a third or subsequent major violation under this subparagraph, charged within a 7-year period, resulting in a third or subsequent judicial disposition other than acquittal or dismissal, a civil penalty of $5,000, lifetime revocation of the saltwater products license, and forfeiture of all gear and equipment used in the violation shall be imposed.

d. For a first flagrant violation under this subparagraph, a civil penalty of $5,000 and a suspension of all saltwater license privileges for 12 months shall be imposed. For a second or subsequent flagrant violation under this subparagraph, a civil penalty of $5,000, a lifetime revocation of the saltwater products license, and the forfeiture of all gear and equipment used in the violation shall be imposed.

A court may suspend, defer, or withhold adjudication of guilt or imposition of sentence only for any first violation of s. 16, Art. X of the State Constitution, or any rule or statute implementing its restrictions, determined by a court only after consideration of competent evidence of mitigating circumstances to be a nonflagrant or minor violation of those restrictions

upon the use of nets. Any violation of s. 16, Art. X of the State Constitution, or any rule or statute implementing its restrictions, occurring within a 7-year period commencing upon the conclusion of any judicial proceeding resulting in any outcome other than acquittal shall be punished as a second, third, or subsequent violation accordingly.

(c) During the period of suspension or revocation of saltwater license privileges under this subsection, the licensee shall not participate in the taking or harvesting, or attempt the taking or harvesting, of saltwater products from any vessel within the waters of the state; be aboard any vessel on which a commercial quantity of saltwater products is possessed through an activity requiring a license pursuant to this section; or engage in any other activity requiring a license, permit, or certificate issued pursuant to this chapter. Any person who is convicted of violating this paragraph:

1. Upon a first or second conviction, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Upon a third or subsequent conviction, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Upon reinstatement of saltwater license privileges suspended pursuant to a violation of this subsection, a licensee owning or operating a vessel containing or otherwise transporting in or on Florida waters any gill net or other entangling net, or containing or otherwise transporting in nearshore and inshore Florida waters any net containing more

than 500 square feet of mesh area shall remain restricted for a period of 12 months following reinstatement, to operating under the following conditions:

1. Vessels subject to this reinstatement period shall be restricted to the corridors established by commission rule.

2. A violation of the reinstatement period provisions shall be punishable pursuant to paragraphs (2) ~~(1)~~ (a) and (b).

(5) ~~(4)~~ ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING CERTAIN FINFISH.--It is a major violation pursuant to this section, punishable as provided in paragraph (4) ~~(3)~~ (b), for any person to be in possession of any species of trout, snook, or redfish which is three fish in excess of the recreational or commercial daily bag limit.

Section 3. Paragraph (d) of subsection (5) of section 370.061, Florida Statutes, is amended to read:

370.061 Confiscation, seizure, and forfeiture of property and products.--

(5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS; PROCEDURE.--

(d) For purposes of confiscation under this subsection, the term "saltwater products" has the meaning set out in s. 370.01(27) ~~(26)~~, except that the term does not include saltwater products harvested under the authority of a recreational license unless the amount of such harvested products exceeds three times the applicable recreational bag limit for trout, snook, or redfish.

Section 4. Paragraphs (h), (i), and (j) of subsection (4), paragraphs (e) through (i) of subsection (8), paragraph (b) of

subsection (11), and paragraph (b) of subsection (12) of section 372.57, Florida Statutes, are amended, and subsections (16) and (17) are added to that section, to read:

372.57 Recreational licenses, permits, and authorization numbers; fees established.--

(4) RESIDENT HUNTING AND FISHING LICENSES.--The licenses and fees for residents participating in hunting and fishing activities in this state are as follows:

(h) Annual sportsman's license, $71 ~~$66~~, except that an annual sportsman's license for a resident 64 years of age or older is $12. A sportsman's license authorizes the person to whom it is issued to take game and freshwater fish, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of the taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a turkey permit, a Florida waterfowl permit, ~~and~~ an archery season permit, and a crossbow season permit.

(i) Annual gold sportsman's license, $87 ~~$82~~. The gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a turkey permit, a Florida waterfowl permit, an archery season permit, a crossbow season permit, a snook permit, and a crawfish permit.

(j) Annual military gold sportsman's license, $18.50. The gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a turkey permit, a Florida waterfowl permit, an archery season permit, a crossbow season permit, a snook permit, and a crawfish permit. Any resident who is an active or retired member of the United States Armed Forces, the United States Armed Forces Reserve, the National Guard, the United States Coast Guard, or the United States Coast Guard Reserve is eligible to purchase the military gold sportsman's license upon submission of a current military identification card.

(8) SPECIFIED HUNTING, FISHING, AND RECREATIONAL ACTIVITY PERMITS.--In addition to any license required under this chapter, the following permits and fees for specified hunting, fishing, and recreational uses and activities are required:

(e) A $5 fee is imposed for the following permits:

1. An annual archery season permit for a resident or nonresident to hunt within the state during any archery season authorized by the commission.

2. An annual crossbow season permit for a resident or nonresident to hunt within the state during any crossbow season authorized by the commission.

3. An annual muzzle-loading gun season permit for a resident or nonresident to hunt within the state during any ~~with~~

~~a~~ muzzle-loading gun season ~~is $5. Hunting with a muzzle-loading gun is limited to game seasons in which hunting with a modern firearm is not~~ authorized by the commission.

~~(f) An annual archery permit for a resident or nonresident to hunt within the state with a bow and arrow is $5. Hunting with an archery permit is limited to those game seasons in which hunting with a firearm is not authorized by the commission.~~

(f) ~~(g)~~ A special use permit for a resident or nonresident to participate in limited entry hunting or fishing activities as authorized by commission rule shall not exceed $100 per day or $250 per week. Notwithstanding any other provision of this chapter, there are no exclusions, exceptions, or exemptions from this permit fee. In addition to the permit fee, the commission may charge each special use permit applicant a nonrefundable application fee not to exceed $10.

(g) ~~(h)~~1. A management area permit for a resident or nonresident to hunt on, fish on, or otherwise use for outdoor recreational purposes land owned, leased, or managed by the commission, or by the state for the use and benefit of the commission, shall not exceed $25 per year.

2. Permit fees for short-term use of land that is owned, leased, or managed by the commission may be established by rule of the commission for activities on such lands. Such permits may be in lieu of, or in addition to, the annual management area permit authorized in subparagraph 1.

3. Other than for hunting or fishing, the provisions of this paragraph shall not apply on any lands not owned by the

commission, unless the commission has obtained the written consent of the owner or primary custodian of such lands.

(h) ~~(i)~~ 1. A recreational user permit is required to hunt on, fish on, or otherwise use for outdoor recreational purposes land leased by the commission from private nongovernmental owners, except for those lands located directly north of the Apalachicola National Forest, east of the Ochlocknee River until the point the river meets the dam forming Lake Talquin, and south of the closest federal highway. The fee for a recreational user permit shall be based upon the economic compensation desired by the landowner, game population levels, desired hunter density, and administrative costs. The permit fee shall be set by commission rule on a per-acre basis. The recreational user permit fee, less administrative costs of up to $25 per permit, shall be remitted to the landowner as provided in the lease agreement for each area.

2. One minor dependent, 16 years of age or younger, may hunt under the supervision of the permittee and is exempt from the recreational user permit requirements. The spouse and dependent children of a permittee are exempt from the recreational user permit requirements when engaged in outdoor recreational activities other than hunting and when accompanied by a permittee. Notwithstanding any other provision of this chapter, no other exclusions, exceptions, or exemptions from the recreational user permit fee are authorized.

(11) RESIDENT LIFETIME HUNTING LICENSES.--

(b) The following activities are authorized by the purchase of a lifetime hunting license:

1. Taking, or attempting to take or possess, game consistent with the state and federal laws and regulations and rules of the commission in effect at the time of the taking.

2. All activities authorized by a muzzle-loading gun season permit, a turkey permit, an archery season permit, a crossbow season permit, a Florida waterfowl permit, and a management area permit, excluding fishing.

(12) RESIDENT LIFETIME SPORTSMAN'S LICENSES.--

(b) The following activities are authorized by the purchase of a lifetime sportsman's license:

1. Taking, or attempting to take or possess, freshwater and saltwater fish, and game, consistent with the state and federal laws and regulations and rules of the commission in effect at the time of taking.

2. All activities authorized by a management area permit, a muzzle-loading gun season permit, a turkey permit, an archery season permit, a crossbow season permit, a Florida waterfowl permit, a snook permit, and a crawfish permit.

(16) FORGING OF LICENSES.--It is unlawful for any person to make, forge, or counterfeit a freshwater fishing, hunting, or saltwater fishing license. Such a license may be reproduced only as authorized by the commission. It is unlawful for any person to knowingly have in his or her possession a forgery, counterfeit, or imitation of such a license unless possession by the person has been fully authorized by the commission. A person who violates this subsection commits a level 4 violation as classified and punishable under s. 372.83.

(17) TAKING OF GAME AND FISH WHILE LICENSE SUSPENDED OR REVOKED.--A person may not take game, freshwater game fish, saltwater fish, or fur-bearing animals within this state while the license required to do so is suspended or revoked. A person who violates this subsection commits a level 3 violation as classified and punishable under s. 372.83.

Section 5. Section 372.571, Florida Statutes, is amended to read:

372.571 Expiration of licenses and permits.--Each license or permit issued under this chapter must be dated when issued. Each license or permit issued under this chapter remains valid for 12 months after the date of issuance, except for a lifetime license issued pursuant to s. 372.57 which is valid from the date of issuance until the death of the individual to whom the license is issued unless otherwise revoked in accordance with s. 372.99, or a 5-year license issued pursuant to s. 372.57 which is valid for 5 consecutive years from the date of purchase unless otherwise revoked in accordance with s. 372.99, or a license issued pursuant to s. 372.57(5)(a), (b), (c), or (f) or (8)(f)~~(g)~~ or (g)~~(h)~~2., which is valid for the period specified on the license. A resident lifetime license or a resident 5-year license that has been purchased by a resident of this state and who subsequently resides in another state shall be honored for activities authorized by that license.

Section 6. Subsections (2), (3), (6), and (8) of section 372.5717, Florida Statutes, are amended to read:

372.5717 Hunter safety course; requirements; penalty.--

(2)(a) A person born on or after June 1, 1975, may not be issued a license to take wild animal life with the use of a firearm, gun, bow, or crossbow in this state without having first successfully completed a hunter safety course as provided in this section~~,~~ and without having in his or her personal possession a hunter safety certification card~~,~~ as provided in this section.

(b) The commission may defer the hunter safety course requirement for 1 year and issue a restricted hunting license. Individuals may receive only one deferment. Individuals issued a restricted hunting license shall only be permitted to take wild animal life with the use of a firearm, gun, bow, or crossbow under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from completing the required hunter safety course as provided in this section.

(3) The commission ~~Fish and Wildlife Conservation Commission~~ shall institute and coordinate a statewide hunter safety course which must be offered in every county and consist of not ~~less than 12 hours nor~~ more than 16 hours of instruction including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.

(6) All persons subject to the requirements of subsection (2) must have in their personal possession~~,~~ proof of compliance with this section~~,~~ while taking or attempting to take wildlife with the use of a firearm, gun, bow, or crossbow and must display a valid hunter safety certification card, unless the hunter safety course requirement is deferred pursuant to this

section, ~~to county tax collectors or their subagents~~ in order to purchase a Florida hunting license. After the issuance of a license, the license itself shall serve as proof of compliance with this section. A holder of a lifetime license whose license does not indicate on the face of the license that a hunter safety course has been completed must have in his or her personal possession a hunter safety certification card, as provided by this section, while attempting to take wild animal life with the use of a firearm, gun, bow, or crossbow.

(8) A person who violates this section shall be cited for a level 1 violation as classified and punishable under s. 372.83 ~~noncriminal infraction, punishable as provided in s. 372.711~~.

Section 7. Section 372.825, Florida Statutes, is created to read:

372.825 Captive wildlife penalties.--

(1) A person who violates any commission rules or orders for the non-fee permit for the possession of captive wildlife for personal use and related reporting requirements commits a noncriminal infraction.

(2) Any person cited for committing a violation of this section shall be cited to appear before the county court. The civil penalty is $50.

(3) A person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any violation of the following:

(a) Commission rules or orders that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife.

(b) Commission rules or orders relating to captive wildlife not specified in paragraph (a).

(c) Section 372.86, relating to possessing or exhibiting certain reptiles.

(d) Section 372.87, relating to licensing of certain reptiles.

(e) Section 372.88, relating to bonding requirements.

(f) Section 372.89, relating to safe housing requirements.

(g) Section 372.90, relating to transportation.

(h) Section 372.901, relating to inspection.

(i) Section 372.91, relating to limitation of access to certain reptiles.

(j) Section 372.912, relating to certain reptile hunts.

(k) Section 372.921, relating to exhibition or sale of wildlife.

(l) Section 372.922, relating to personal possession of wildlife.

Section 8. Section 372.83, Florida Statutes, is amended to read:

372.83 Recreational ~~Noncriminal infractions; criminal~~ penalties; suspension and revocation of licenses and permits.--

(1) LEVEL 1 VIOLATIONS.--

(a) Unless otherwise provided by law, a person convicted of an offense classified as a level 1 violation is guilty of a noncriminal infraction, which is punishable as provided in this subsection and includes violation of the following:

1. Commission rules or orders relating to the filing of required reports or other documents for licensees or

permitholders, excluding those related to commercial harvest of saltwater fish or possession of captive wildlife.

2. Commission rules or orders relating to quota hunting permits, daily use permits, hunting zone assignments, check stations, possession of alcoholic beverages, campsite use, and the operation of vehicles within wildlife management areas or other areas managed by the commission.

3. Commission rules or orders relating to daily permits, possession of alcoholic beverages, possession of firearms, swimming activities, the operation of watercraft, and the operation of vehicles within fish management areas or other areas managed by the commission.

4. Commission rules or orders regulating vessel size or specifying motor restrictions on specified water bodies.

5. Section 370.063, relating to special recreational crawfish licenses.

6. Section 372.57, relating to hunting, fishing, and trapping licenses.

7. Section 372.5717, relating to hunter safety certification.

8. Section 372.988, relating to required clothing for persons hunting deer.

(b) Citations issued for any violation specified in paragraph (a) shall include a requirement for appearance before the county court.

(c)1. The civil penalty for any noncriminal level 1 violation of the license and permit requirements of s. 372.57 is $50 for the first conviction and $250 for each subsequent

conviction in addition to the cost of the required license and permit.

2. The civil penalty for any other noncriminal level 1 violation is $50 for the first conviction and $250 for each subsequent conviction, except as otherwise provided in this subsection.

(d) Any person issued a citation for a violation specified in this subsection may:

1. Post a bond equal to the amount of the civil penalty and appear before the court; or

2. Pay the civil penalty by mail or in person within 30 days after the date of receiving the citation, or if a bond has been posted, forfeit the bond for payment by failure to appear before the court.

Payment of the civil penalty without appearing before the court is considered an admission of guilt and waives any further right to a hearing on the violation for which the citation was issued. Such admission shall not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(e)1. Any person who willfully refuses the issuance of a citation for a violation specified in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Any person who willfully fails to pay the civil penalty within 30 days after the issuance of a citation for a violation

specified in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(f)1. Electing or being required to appear before the court shall waive the limitations on the civil penalty specified in this subsection. The court shall determine whether a violation has occurred and may impose a civil penalty not less than those specified in this subsection and not more than $500.

2. Violations must be proved beyond a reasonable doubt before the court.

3. A person found guilty of a violation may file an appeal with the circuit court.

(g) A person charged with violating the requirement for personal possession of a license or permit under s. 372.57 may not be convicted if the person presents the required license or permit for verification by the hearing officer or clerk of the court prior to the scheduled court proceeding. The license or permit must have been issued to the person charged with committing the violation and valid at the time the violation occurred. The clerk of the court may assess a fee of $5 to cover related court costs under this paragraph.

(2) LEVEL 2 VIOLATIONS.--

(a) Unless otherwise provided by law, a person convicted of an offense classified as a level 2 violation is guilty of a misdemeanor, which is punishable as provided in this subsection and includes violation of the following:

1. Commission rules or orders that specify season or time periods for the taking of saltwater fish, freshwater game fish, or wildlife.

2. Commission rules or orders that establish bag, possession, or size limits for, or restrict methods of the taking of, saltwater fish, freshwater game fish, or wildlife.

3. Commission rules or orders that prohibit public access for specified periods to wildlife management areas or other areas managed by the commission.

4. Commission rules or orders that relate to the access to wildlife management areas or other areas managed by the commission.

5. Commission rules or orders relating to the feeding of saltwater fish, freshwater game fish, or wildlife.

6. Commission rules or orders relating to restricted hunting areas, bird sanctuaries, or critical wildlife areas.

7. Commission rules or orders relating to landing requirements for saltwater fish or freshwater game fish.

8. Commission rules or orders relating to tagging requirements for game and fur-bearing animals.

9. Commission rules or orders relating to the use of dogs for the taking of game.

10. Any commission rules or orders not otherwise classified.

11. Any prohibitions in chapter 370 not otherwise classified in this section.

12. Section 370.08, relating to obstructing waterways with net gear.

13. Section 370.1105, relating to finfish traps.

14. Section 370.1121, relating to bonefish.

15. Section 370.14, relating to crawfish.

16. Section 370.25, relating to placement of artificial reefs.

17. Section 372.667, relating to feeding or enticement of alligators or crocodiles.

18. Section 372.705, relating to harassment of hunters, fishers, or trappers.

(b)1. A person convicted of any level 2 violation without any previous conviction for a level 2 violation is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person convicted of any level 2 violation within 3 years after any previous conviction for a level 2 violation is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 and by a minimum mandatory fine of $250 and suspension of all recreational licenses issued pursuant to this chapter for not less than 1 year.

3. A person convicted of any level 2 violation within 5 years after any three previous convictions for level 2 violations is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 and by a minimum mandatory fine of $500 and suspension of all recreational licenses issued pursuant to this chapter for not less than 3 years.

4. A person convicted of any level 2 violation within 10 years after any three previous convictions for level 2 violations is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 and by a minimum mandatory fine of $750 and suspension of all

recreational licenses issued pursuant to this chapter for not less than 3 years.

(3) LEVEL 3 VIOLATIONS.--

(a) Unless otherwise provided by law, a person convicted of an offense classified as a level 3 violation is guilty of a misdemeanor, which is punishable as provided in this subsection and includes violation of the following:

1. Commission rules or orders related to the prohibited sale of saltwater fish.

2. Section 370.021(3), relating to major violations.

3. Section 370.021(5), relating to possession in excess of certain bag limits.

4. Section 370.081, relating to illegal importation or possession of exotic marine plants and animals.

5. Section 370.093, relating to the taking of saltwater fish with nets.

6. Section 372.26, relating to imported fish.

7. Section 372.57(17), relating to taking while license is suspended or revoked.

8. Section 372.662, relating to the illegal sale or possession of alligators.

9. Section 372.99, relating to the illegal taking and possession of deer and wild turkey.

10. Section 372.9903, relating to the illegal possession and transportation of commercial quantities of freshwater game fish.

(b)1. A person convicted of a level 3 violation without any previous conviction for a level 3 violation in the past 10

years is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person convicted of a level 3 violation within 10 years after any previous conviction of a level 3 violation is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 and by a minimum mandatory fine of $750 and the suspension of all recreational licenses issued pursuant to this chapter for not less than 3 years.

3. The penalty for a violation of s. 372.57(17) shall include a mandatory fine of $1,000 and a suspension of all recreational licenses issued pursuant to this chapter for 5 years.

(4) LEVEL 4 VIOLATIONS.--Unless otherwise provided by law, a person convicted of an offense classified as a level 4 violation is guilty of a felony of the third degree, which is punishable as provided in s. 775.082 or s. 775.083 and includes violation of the following:

(a) Section 370.13, relating to the molestation of stone crab gear.

(b) Section 370.135, relating to the molestation of blue crab gear.

(c) Section 370.14, relating to the molestation of crawfish gear.

(d) Section 372.57(16), relating to forgery of a license or possession of a forged license.

(e) Section 372.99(5), relating to the sale of deer or turkey that is taken illegally.

(f) Section 372.99022, relating to molestation or theft of freshwater gear.

~~(1) A person is guilty of a noncriminal infraction, punishable as provided in s. 372.711, if she or he violates any of the following provisions:~~

~~(a) Rules, regulations, or orders relating to the filing of reports or other documents required of persons who are licensed or who hold permits issued by the commission.~~

~~(b) Rules, regulations, or orders relating to fish management areas.~~

~~(c) Rules, regulations, or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping restrictions, the use of alcoholic beverages, vehicle use, and check station requirements within wildlife management areas or other areas managed by the commission.~~

~~(d) Rules, regulations, or orders requiring permits free of charge to possess captive wildlife for personal use.~~

~~(e) Rules, regulations, or orders establishing size or slot limits for freshwater game fish.~~

~~(f) Rules, regulations, or orders regulating vessel size or specifying motor restrictions on specified water bodies.~~

~~(g) Rules, regulations, or orders relating to the registration of off-road vehicles and airboats operated on state lands.~~

~~(h) Section 372.57, relating to hunting, fishing, and trapping licenses.~~

~~(i) Section 372.988, relating to required clothing for persons hunting deer.~~

~~A person who fails to pay the civil penalty specified in s. 372.711 within 30 days after being cited for a noncriminal infraction or to appear before the court pursuant to that section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(2) A person is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if she or he violates any of the following rules, regulations, or orders of the commission:~~

~~(a) Rules, regulations, or orders that specify season or time periods for the taking of freshwater fish or wildlife.~~

~~(b) Rules, regulations, or orders that specify bag limits or restrict methods of taking freshwater fish or wildlife.~~

~~(c) Rules, regulations, or orders that relate to the sale, possession for sale, purchase, transfer, transportation, or importation of freshwater fish or wildlife.~~

~~(d) Rules, regulations, or orders that prohibit public access for specified periods to wildlife management areas or other areas managed by the commission.~~

~~(e) Rules, regulations, or orders that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife.~~

~~(f) All other rules, regulations, and orders of the commission, except those specified in subsection (1).~~

~~(3) It is unlawful for any person to make, forge, counterfeit, or reproduce a freshwater fishing, hunting, or saltwater fishing license unless authorized by the commission.~~

~~It is unlawful for any person to knowingly have in his or her possession a forgery, counterfeit, or imitation of such a license unless possession by the person has been fully authorized by the commission. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(5)~~(4)~~ Unless otherwise provided in this chapter, a person who violates any provision of this chapter commits ~~is guilty~~, for the first offense, ~~of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and ~~is guilty~~, for the second offense or any subsequent offense, ~~of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)~~(5)~~ The court may order the suspension or revocation of any license or permit issued to a person pursuant to this chapter, if that person commits a criminal offense specified in this chapter or a noncriminal infraction specified in this section.

(7) For purposes of this section, "conviction" means any judicial disposition other than acquittal or dismissal.

Section 9. Section 372.573, Florida Statutes, is amended to read:

372.573 Management area permit revenues.--The commission shall expend the revenue generated from the sale of the management area permit as provided for in s. 372.57(8)(g)~~(h)~~ or that pro rata portion of any license that includes management area privileges as provided for in s. 372.57(4)(h), (i), and (j)

for the lease, management, and protection of lands for public hunting, fishing, and other outdoor recreation.

Section 10. Subsection (2) of section 372.661, Florida Statutes, is amended to read:

372.661 Private hunting preserve license fees; exception.--

(2) A commercial hunting preserve license, which shall exempt patrons of licensed preserves from the license and permit requirements of s. 372.57(4)(c), (d), (f), (h), (i), and (j); (5)(f) and (g); (8)(a), (b), and (e)~~, and (f)~~; (9)(a)2.; (11); and (12) while hunting on the licensed preserve property, shall be $500. Such commercial hunting preserve license shall be available only to those private hunting preserves licensed pursuant to this section which are operated exclusively for commercial purposes, which are open to the public, and for which a uniform fee is charged to patrons for hunting privileges.

Section 11. Section 372.831, Florida Statutes, is created to read:

372.831 Wildlife Violators Compact.--The Wildlife Violators Compact is created and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Findings

(1) The participating states find that:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(a) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances, and administrative rules relating to the management of such resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(e) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(g) In most instances, a person who is cited for a wildlife violation in a state other than his or her home state:

1. Is required to post collateral or a bond to secure appearance for a trial at a later date;

2. Is taken into custody until the collateral or bond is posted; or

3. Is taken directly to court for an immediate appearance.

(h) The purpose of the enforcement practices set forth in paragraph (g) is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his or her way after receiving the citation, could return to his or her home state and disregard his or her duty under the terms of the citation.

(i) In most instances, a person receiving a wildlife citation in his or her home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his or her way after agreeing or being instructed to comply with the terms of the citation.

(j) The practices described in paragraph (g) cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine and thus is compelled to remain in custody until some alternative arrangement is made.

(k) The enforcement practices described in paragraph (g) consume an undue amount of law enforcement time.

(2) It is the policy of the participating states to:

(a) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(b) Recognize the suspension of wildlife license privileges of any person whose license privileges have been

suspended by a participating state and treat such suspension as if it had occurred in that person's home state.

(c) Allow a violator, except as provided in subsection (2) of Article III, to accept a wildlife citation and, without delay, proceed on his or her way, regardless of whether he or she is a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact.

(d) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(e) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.

(f) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(g) Maximize effective use of law enforcement personnel and information.

(h) Assist court systems in the efficient disposition of wildlife violations.

(3) The purpose of this compact is to:

(a) Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection (2) in a uniform and orderly manner.

(b) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II

Definitions

As used in this compact, unless the context requires otherwise:

(1) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance," with respect to a citation, means the act of answering a citation through an appearance in a court or tribunal or through the payment of fines, costs, and surcharges, if any.

(4) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, and such conviction shall also include the forfeiture of any bail, bond, or other security deposited to

secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the participating state that issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state; however, when applied to licenses issued by the State of Florida, only those licenses issued pursuant to ss. 372.561, 372.562, and 372.57, Florida Statutes, shall be considered licenses.

(9) "Licensing authority" means the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Participating state" means any state that enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(12) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(15) "Wildlife" means all species of animals, including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, that are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state, and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(17) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III

Procedures for Issuing State

(1) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in subsection (2), if the officer receives the recognizance of such person that he or she will comply with the terms of the citation.

(2) Personal recognizance is acceptable if not prohibited by local law, by any issuing agency policy, procedure, or regulation, or by the compact manual and if the violator provides adequate proof of identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance pursuant to subsection (3), the licensing authority of the issuing state shall transmit to the licensing

authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE IV

Procedure for Home State

(1) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V

Reciprocal Recognition of Suspension

(1) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(2) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII

Compact Administrator Procedures

(1) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall

be composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he or she represents. A compact administrator may provide for the discharge of his or her duties and the performance of his or her functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his or her identity has been given to the board.

(2) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes is cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states is represented.

(3) The board shall elect annually from its membership a chair and vice chair.

(4) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(5) The board may accept for any of its purposes and functions under this compact any and all donations and grants of moneys, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency and may receive, utilize, and dispose of same.

(6) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation or any private nonprofit organization or institution.

(7) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII

Entry into and Withdrawal from Compact

(1) This compact shall become effective at such time as it is adopted in substantially similar form by two or more states.

(2)(a) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chair of the board.

(b) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

1. A citation of the authority from which the state is empowered to become a party to this compact.

2. An agreement of compliance with the terms and provisions of this compact.

3. An agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(c) The effective date of entry shall be specified by the applying state but shall not be less than 60 days after notice has been given by the chair of the board of the compact administrators or by the secretary of the board to each participating state that the resolution from the applying state has been received.

(3) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX

Amendments to the Compact

(1) This compact may be amended. Amendments shall be presented in resolution form to the chair of the board of compact administrators and shall be initiated by one or more participating states.

(2) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(3) Failure of a participating state to respond to the chair of the board within 60 days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or if the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact is declared to be contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

ARTICLE XI

Title

This compact shall be known as the "Wildlife Violator Compact."

Section 12. Section 372.832, Florida Statutes, is created to read:

372.832 Compact licensing authority; ratification.--For purposes of this chapter and the interstate Wildlife Violator Compact, the Fish and Wildlife Conservation Commission is the licensing authority for the State of Florida and shall enforce the interstate Wildlife Violator Compact and do all things within its jurisdiction that are necessary to effectuate the

purposes and the intent of the compact. The commission is authorized to execute a resolution of ratification to formalize the state's entry into the compact.

Section 13. Section 372.833, Florida Statutes, is created to read:

372.833 Compact enforcement; violation review.--Any act done or omitted pursuant to, or in enforcing, the provisions of the interstate Wildlife Violator Compact shall be subject to review by the commission in accordance with chapter 120, but any review of a suspension for the failure of a violator to comply with the terms of a citation or a conviction pursuant to the compact shall be limited to establishing the identity of the person so convicted or failing to comply with a citation.

Section 14. Section 370.028, Florida Statutes, is amended to read:

370.028 Enforcement of commission rules; penalties for violation of rule.--Rules of the Fish and Wildlife Conservation Commission shall be enforced by any law enforcement officer certified pursuant to s. 943.13. Any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 370.021(2) ~~(1)~~.

Section 15. Subsections (3) and (4) of section 370.092, Florida Statutes, are amended to read:

370.092 Carriage of proscribed nets across Florida waters.--

(3) Notwithstanding subsections (1) and (2), unless authorized by rule of the Fish and Wildlife Conservation Commission, it is a major violation under this section,

punishable as provided in s. 370.021(4) ~~(3)~~, for any person, firm, or corporation to possess any gill or entangling net, or any seine net larger than 500 square feet in mesh area, on any airboat or on any other vessel less than 22 feet in length and on any vessel less than 25 feet if primary power of the vessel is mounted forward of the vessel center point. Gill or entangling nets shall be as defined in s. 16, Art. X of the State Constitution, s. 370.093(2)(b), or in a rule of the Fish and Wildlife Conservation Commission implementing s. 16, Art. X of the State Constitution. Vessel length shall be determined in accordance with current United States Coast Guard regulations specified in the Code of Federal Regulations or as titled by the State of Florida. The Marine Fisheries Commission is directed to initiate by July 1, 1998, rulemaking to adjust by rule the use of gear on vessels longer than 22 feet where the primary power of the vessel is mounted forward of the vessel center point in order to prevent the illegal use of gill and entangling nets in state waters and to provide reasonable opportunities for the use of legal net gear in adjacent federal waters.

(4) The Fish and Wildlife Conservation Commission shall adopt rules to prohibit the possession and sale of mullet taken in illegal gill or entangling nets. Violations of such rules shall be punishable as provided in s. 370.021(4) ~~(3)~~.

Section 16. Subsection (5) of section 370.093, Florida Statutes, is amended to read:

370.093 Illegal use of nets.--

(5) Any person who violates this section shall be punished as provided in s. 370.021(4) ~~(3)~~.

Section 17. Paragraph (s) of subsection (2) of section 370.12, Florida Statutes, is amended to read:

370.12 Marine animals; regulation.--

(2) PROTECTION OF MANATEES OR SEA COWS.--

(s) Except as otherwise provided in this paragraph, any person violating the provisions of this subsection or any rule or ordinance adopted pursuant to this subsection commits a misdemeanor, punishable as provided in s. 370.021(2) ~~(1)~~(a) or (b).

1. Any person operating a vessel in excess of a posted speed limit shall be guilty of a civil infraction, punishable as provided in s. 327.73, except as provided in subparagraph 2.

2. This paragraph does not apply to persons violating restrictions governing "No Entry" zones or "Motorboat Prohibited" zones, who, if convicted, shall be guilty of a misdemeanor, punishable as provided in s. 370.021(2) ~~(1)~~(a) or (b), or, if such violation demonstrates blatant or willful action, may be found guilty of harassment as described in paragraph (d).

3. A person may engage in any activity otherwise prohibited by this subsection or any rule or ordinance adopted pursuant to this subsection if the activity is reasonably necessary in order to prevent the loss of human life or a vessel in distress due to weather conditions or other reasonably unforeseen circumstances, or in order to render emergency assistance to persons or a vessel in distress.

Section 18. Subsection (2) of section 370.1405, Florida Statutes, is amended to read:

370.1405 Crawfish reports by dealers during closed season required.--

(2) Failure to submit a report as described in subsection (1) or reporting a greater or lesser amount of whole crawfish, crawfish tails, or crawfish meat than is actually in the dealer's possession or name is a major violation of this chapter, punishable as provided in s. 370.021(2)~~(1)~~, s. 370.07(6)(b), or both. The commission shall seize the entire supply of unreported or falsely reported whole crawfish, crawfish tails, or crawfish meat, and shall carry the same before the court for disposal. The dealer shall post a cash bond in the amount of the fair value of the entire quantity of unreported or falsely reported crawfish as determined by the judge. After posting the cash bond, the dealer shall have 24 hours to transport said products outside the limits of Florida for sale as provided by s. 370.061. Otherwise, the product shall be declared a nuisance and disposed of by the commission according to law.

Section 19. Paragraph (c) of subsection (2) of section 370.142, Florida Statutes, is amended to read:

370.142 Spiny lobster trap certificate program.--

(2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES; PENALTIES.--The Fish and Wildlife Conservation Commission shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(c) Prohibitions; penalties.--

1. It is unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is not a trap as defined in rule 68B-24.006(2), Florida Administrative Code.

2. It is unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. It is unlawful for any person to willfully molest, take possession of, or remove the contents of another harvester's trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap pursuant to this subparagraph or s. 370.1107 shall, in addition to the penalties specified in ss. 370.021 and 370.14 and the provisions of this section, permanently lose all his or her saltwater fishing privileges, including his or her saltwater products license, crawfish endorsement, and all trap certificates allotted to him or her through this program. In such cases, trap certificates and endorsements are nontransferable. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of willful molestation of a trap, in addition to the penalties specified in ss. 370.021 and 370.14, shall lose all saltwater fishing

privileges for a period of 24 calendar months. In addition, any person, firm, or corporation charged with violating this paragraph and receiving a judicial disposition other than dismissal or acquittal for violating this subparagraph or s. 370.1107 shall also be assessed an administrative penalty of up to $5,000. Immediately upon receiving a citation for a violation involving theft of or from a trap, or molestation of a trap, and until adjudicated for such a violation or, upon receipt of a judicial disposition other than dismissal or acquittal of such a violation, the person, firm, or corporation committing the violation is prohibited from transferring any crawfish trap certificates and endorsements.

4. In addition to any other penalties provided in s. 370.021, a commercial harvester, as defined by rule 68B-24.002(1), Florida Administrative Code, who violates the provisions of this section, or the provisions relating to traps of chapter 68B-24, Florida Administrative Code, shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the commission shall assess an additional civil penalty of up to $1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year. For all other first violations, the commission shall assess an additional civil penalty of up to $500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the commission shall assess an additional civil

penalty of up to $2,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1., subparagraph 2., or subparagraph 3. which occurs within 36 months of any previous two such violations, the commission shall assess an additional civil penalty of up to $5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(3)~~(2)~~(h).

d. Any person assessed an additional civil penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the civil penalty to the commission; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The commission shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for any person failing to comply with the provisions of sub-subparagraph d.

5.a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his or her possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by the commission as provided in this chapter or in the rules of the commission.

6.a. Any person who violates the provisions of subparagraph 5., or any person who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (6) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the commission shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any person who violates the provisions of sub-subparagraph 5.c.

7. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the commission. During any period of trap reduction, any certificates reverting to the commission shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the commission are to be reallotted in such manner as provided by the commission.

8. The proceeds of all civil penalties collected pursuant to subparagraph 4. and all fines collected pursuant to sub-subparagraph 6.b. shall be deposited into the Marine Resources Conservation Trust Fund.

9. All traps shall be removed from the water during any period of suspension or revocation.

Section 20. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1147 Crimes Against Homeless Persons
SPONSOR(S): Justice
TIED BILLS: **IDEN./SIM. BILLS:** SB 2074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson KF	Kramer
2) Criminal Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill requires the Office of the Attorney General (the office) to assess the extent of the problem of crimes against homeless persons and develop a plan in consultation with other agencies to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes. This bill requires the office to make an initial report to the Legislature by January 7, 2007 and a final report by December 1, 2007.

This bill also requires, by July 1, 2007, for the Department of Law Enforcement in consultation with other agencies to develop a 2-hour telecourse for all law enforcement agencies to address crimes against homeless persons and methods of dealing effectively and humanely with homeless persons.

This bill takes effect upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- This bill requires the Office of the Attorney General to assess the extent of the problem of crimes against homeless persons and develop a plan in consultation with other agencies to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes.

B. EFFECT OF PROPOSED CHANGES:

Effect of bill on the Office of the Attorney General (the office)

This bill requires the office to assess the extent of the problem of crimes against homeless persons and develop a plan in consultation with homeless persons and their advocates, law enforcement agencies, the Department of Law Enforcement, the Florida Criminal Justice Executive Institute, and the regional domestic task forces under s. 943.0312, F.S., to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes.

This bill requires the office to make an initial report to the Legislature by January 7, 2007 and a final report by December 1, 2007. These reports must include legislative recommendations to carry out this plan and recommendations for additional legislation to curtail crimes targeted against the homeless.

Effect of bill on the Florida Department of Law Enforcement (FDLE)

This bill requires, by July 1, 2007, the FDLE in consultation with the Criminal Justice Standards and Training Commission (CJSTC) and the Florida Criminal Justice Executive Institute (FCJEI)[1] to develop a two-hour telecourse addressing crimes against homeless persons, methods of dealing with them effectively and humanely, and instruction concerning hate crimes directed towards the homeless. The telecourse must be made available to all law enforcement agencies in the State.

The type of training mandated by this bill would be new for FDLE and different than other training developed by the agency, the CJSTC, and the FCJEI. To date, the FDLE has developed primarily training geared toward classroom delivery and some online training classes, not telecourses (i.e. courses of televised lectures).

The law enforcement basic recruit training curriculum approved by the CJSTC does teach law enforcement recruits to be sensitive to the needs of "special populations" they may encounter in their day to day duties. Specifically, mental retardation, mental illness, substance abuse, physical disabilities, gangs and the elderly are among the classifications identified, many of which could, in fact, apply to some homeless persons.

C. SECTION DIRECTORY:

Section 1 requires the Office of the Attorney General to assess and develop a plan in conjunction with other agencies as to the extent of the problem of crimes against homeless persons, prevent these crimes, and apprehend and prosecute the perpetrators of these crimes. It also requires, FDLE in conjunction with other agencies to develop a 2-hour telecourse for all law enforcement agencies to

[1] The FCJEI is statutorily created under s. 943.1755, F.S., for the purpose of providing such training as is deemed necessary to prepare the State's present and future criminal justice executives to deal with the complex issues facing the state. The FCJEI shall conduct research projects, utilizing the resources of community colleges and universities, for the purpose of improving law enforcement interaction and intervention in communities of diverse populations.

address crimes against homeless persons and methods of dealing effectively and humanely with homeless persons.

Section 2 provides that this bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

This chart reflects the Office of the Attorney General's analysis of this bill:

FY 06-07	FY07-08
$145,600 (OPS)	$60,550 (OPS)
$150,000 (Expense)	$50,000 (Expense)
$ 2,800 (OCO)	
$298,400 Total	**$110,550 Total**

The Florida Department of Law Enforcement's analysis of this bill indicates an approximate cost of $10,000 to develop curriculum and two-hour telecourse for FY 06-07.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   FDLE determined there would be no impact on law enforcement training centers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

As drafted, this bill requires the Office of the Attorney General to develop a plan to apprehend and prosecute the perpetrators of crimes against the homeless. However, the statutory authority to

prosecute these cases may not lie with the Office of the Attorney General, but rather, the State Attorney's Office.

Article IV, section 4 of the Florida Constitution, together with section 16.56, F.S., sets forth the jurisdiction and authority of the Office. The Office of Statewide Prosecution, established within the Office of the Attorney General, was created by constitutional amendment passed by the voters in 1986. In order for the Statewide Prosecutor to handle a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses enumerated in the law: bribery; burglary; usury; extortion; gambling; kidnapping; theft; murder; prostitution; perjury; robbery; home-invasion robbery; car-jacking; narcotics violations; antitrust violations; anti-fencing violations; crimes involving fraud and deceit; computer crimes; racketeering; and attempts, solicitations, or conspiracies to commit these offenses[2].

Article V, section17 of the Florida Constitution, together with chapter 27 part II, F.S., vests the State Attorney with the sole and sound discretion to conduct grand jury proceedings, perform criminal intake, and prosecute crimes committed against the people of the State of Florida in their respective circuit. Currently, there are twenty judicial circuits.

In light of the jurisdiction and authority of the Statewide Prosecutor and State Attorney's office, certain crimes are prosecuted by the State Attorney's office and not the Statewide Prosecutor. For example, if a crime occurred in only one judicial circuit with no conspiracy affecting more than one judicial circuit the State Attorney of that judicial circuit would be responsible for prosecuting the case. Furthermore, certain crimes, such as assault[3] or battery[4], would not fall under the statutory authority of the Statewide Prosecutor because assault and battery are not among the enumerated offenses in which the Statewide Prosecutor would have jurisdiction over.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[2] Section 16.56(1)(a) 1-12, F.S.
[3] Section 784.011, F.S.
[4] Section 784.03, F.S.

A bill to be entitled

An act relating to crimes against homeless persons; directing the Office of the Attorney General to develop and provide to the Legislature a report and recommendations regarding crimes against homeless persons; specifying certain contents of the report and recommendations; specifying entities to be consulted in the development of the report and recommendations; directing the Department of Law Enforcement, in consultation with the Criminal Justice Standards and Training Commission and the Florida Criminal Justice Executive Institute, to develop a telecourse to instruct state and local law enforcement agencies and operators concerning crimes against homeless persons and ways to deal with such crimes; specifying additional contents of the telecourse; specifying entities to be consulted in developing the telecourse; directing the department and local law enforcement agencies to provide the telecourse to officers; providing an effective date.

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

Section 1. (1)(a) The Office of the Attorney General shall assess the extent of the problem of crimes against homeless persons and develop a plan to prevent these crimes and to apprehend and prosecute the perpetrators of these crimes. In developing the assessment and plan, the office shall consult homeless persons and their advocates, law enforcement agencies

CODING: Words stricken are deletions; words underlined are additions.

having experience in investigating crimes against the homeless, the Department of Law Enforcement, the Florida Criminal Justice Executive Institute, and the regional domestic task forces created under s. 943.0312, Florida Statutes.

(b) The office shall make an initial report to the Legislature by January 7, 2007, and a final report by December 1, 2007. Each report must include recommendations for any legislation necessary to carry out the plan and a recommendation on whether to enact additional laws to address hate crimes that are committed in whole or in part because the victim is homeless or is perceived to be homeless.

(2) By July 1, 2007, the Department of Law Enforcement, in consultation with the Criminal Justice Standards and Training Commission and the Florida Criminal Justice Executive Institute shall develop a 2-hour telecourse, which shall be made available to all law enforcement agencies in this state and shall address crimes against homeless persons and methods of dealing effectively and humanely with homeless persons, including homeless persons with disabilities. The telecourse must include instruction concerning hate crimes and crimes committed in whole or in part because of the victims' actual or perceived homelessness. In developing the telecourse, the institute shall consult subject matter experts, including, but not limited to, homeless and formerly homeless persons in this state, service providers and advocates for such persons, experts on the disabilities that homeless persons commonly suffer, Florida Impact, and the National Coalition for the Homeless. The Department of Law Enforcement and local law enforcement agencies

shall make the telecourse available to all law enforcement officers.

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

CODING: Words stricken are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1225 Reckless Driving
SPONSOR(S): Glorioso
TIED BILLS: **IDEN./SIM. BILLS:** SB 1376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson KF	Kramer PK
2) Transportation Committee			
3) Transportation & Economic Development Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

This bill amends section 316.192, F.S., to expand the acts that constitute reckless driving and to specify that certain acts constitute reckless driving per se.

This bill has an effective date of July 1, 2006.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill expands the acts that constitute reckless driving and specifies that certain acts constitute reckless driving per se.

B. EFFECT OF PROPOSED CHANGES:

Current Florida Law

Section 316.192, F.S., provides that any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

To prove the crime of reckless driving, the State must prove the following two elements[1]:

1. Defendant drove a vehicle in Florida.
2. He or she did so with a willful[2] or wanton[3] disregard for the safety of persons or property.

A first conviction of reckless driving is punishable by imprisonment for a period of not more than 90 days or by fine of not less than $25 nor more than $500, or by both such fine and imprisonment.[4]

A second or subsequent conviction of reckless driving is punishable by imprisonment for not more than 6 months or by a fine of not less than $50 nor more than $1,000, or by both such fine and imprisonment.[5]

Penalties are increased to a first degree misdemeanor[6] for damage to the property or person of another.[7]

Penalties are increased to a third degree felony[8] for serious bodily injury which consist of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.[9]

Effective of Bill

This bill amends 316.192, F.S., to expand the acts that constitute reckless driving to include driving a vehicle at a speed or in a manner that is likely to endanger any person or property.

This bill also amends section 316.192, F.S., to provide that the following acts constitute reckless driving per se:

- Driving 20 miles per hour or more in excess of the posted speed limit that contributes to an accident that results in property damage, personal injury, or death.
- Driving 25 miles per hour or more in excess of the posted speed limit.

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[1] 28.5 Florida Standard Jury Instructions in Criminal Cases.

[2] The Florida Standard Jury Instructions defines this term as: intentionally, knowingly and purposely.

[3] The Florida Standard Jury Instructions defines this term as: a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.

[4] Section 316.192(2)(a), F.S.

[5] Section 316.192(2)(b), F.S.

[6] Punishable by a term of imprisonment not to exceed 1 year and a fine of $1,000. ss. 775.082(4)(a) and 775.083(1)(d), F.S.

[7] Section 316.192(3)(c)1., F.S.

[8] Punishable by a term of imprisonment not to exceed 5 years and a fine of $5,000. ss. 775.082(3)(d) and 775.083(1)(c), F.S.

[9] Section 316.192(3)(c)2., F.S.

- Driving 90 miles per hour or more regardless of the posted speed limit.
- Fleeing a law enforcement officer.

C. SECTION DIRECTORY:

Section 1 amends section 316.192, F.S. to expand the acts that constitute reckless driving and to specify that certain acts constitute reckless driving per se.

Section 2 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 Estimating Conference met March 21, 2006 and determined that HB 1225 would have an insignificant prison bed impact on the Department of Corrections.

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:

   It could be argued that section (1)(b) of HB 1225 (acts constituting reckless driving per se) creates an unconstitutional mandatory presumption because it relieves the state of its burden of proving willful or wanton disregard for the safety of persons or property, an essential element of the offense of reckless driving.

In, County Court v. Allen[10], the Court used the terms "permissive inference" and "mandatory presumption" to describe two types of evidentiary devices that will be subject to constitutional scrutiny. The court describes these two types of evidentiary devices as follows:

> A permissive inference allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. A mandatory presumption tells a factfinder that he or they must find the elemental fact upon proof of the basic fact, unless the defendant offers evidence that rebuts the presumption created by the connection between the two facts.[11]

In light of these differences, the threshold inquiry in analyzing the constitutionality of a statutory presumption is to determine the type of presumption that the statute creates.[12] If a statute creates a mandatory presumption, the Court has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide.[13] "A criminal statutory presumption must be regarded as 'irrational' or 'arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend."[14]

Section (1)(b) of HB 1225 provides that certain acts constitute reckless driving per se. Per se is a term of art that appears no where in Florida's criminal statutes. Black's legal dictionary defines per se as not requiring extraneous evidence or support to establish its existence. The term per se appears to be a mandatory presumption since by definition it requires no other evidence or support; thus, telling a factfinder that he or they must find the elemental fact (willful or wanton disregard for the safety of persons or property) upon proof of the basic fact (traveling 25 miles per hour or more in excess of the posted speed); nor, does it appear with substantial assurance that willful or wanton disregard for the safety of persons or property is more likely than not to flow from the per se acts listed under (1)(b) of HB 1225. In other words, a person could have a justifiable reason (e.g. medical emergency) for driving 25 miles per hour or more in excess of the posted speed limit and do so in a manner that does not rise to the level of willful or wanton disregard for the safety of persons or property, an essential element of the offense of reckless driving.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Many of the per se offenses addressed in HB 1225 are currently in Florida Statute. For example, s. 316.192(3)(c)1., F.S., addresses reckless driving that causes damage to the property or person of another, s. 316.192(3)(c)2., F.S., addresses reckless driving that causes serious bodily injury to another, s. 782.071, F.S., addresses vehicular homicide, and s. 316.1935, F.S., addresses fleeing or attempting to elude a law enforcement officer. Furthermore, penalties under current statute are more severe than the penalties would be under this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[10] 442 U.S. 140, 157-60 (1979).
[11] Allen, at 157; State v. Brake, 796 So.2d 522, 529 (Fla. 2001); State v. Rygwelski, 899 So.2d 498, 501 (2nd DCA 2005).
[12] Rygwelski, at 501.
[13] Allen, at 158; Brake, at 529.
[14] Leary v. U.S., 395 U.S. 6, 36 (1969); Brake, at 529.

A bill to be entitled

An act relating to reckless driving; amending s. 316.192, F.S.; revising the acts that constitute reckless driving; specifying certain acts that constitute reckless driving per se; providing an effective date.

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

Section 1. Subsection (1) of section 316.192, Florida Statutes, is amended to read:

316.192 Reckless driving.--

(1)(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property, or at a speed or in a manner that is likely to endanger any person or property, is guilty of reckless driving.

(b) The following acts constitute reckless driving per se:

1. Driving 20 miles per hour or more in excess of the posted speed limit that contributes to an accident that results in property damage, personal injury, or death;

2. Driving 25 miles per hour or more in excess of the posted speed limit;

3. Driving 90 miles per hour or more regardless of the posted speed limit; or

4. Fleeing a law enforcement officer.

Section 2. This act shall take effect July 1, 2006.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **1225**

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	_____

Council/Committee hearing bill: Criminal Justice

Representative(s) Glorioso offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 316.192, Florida Statutes, is amended to read:

316.192 Reckless driving.--

(1) Any person who drives any vehicle <u>at a speed or in a manner which demonstrates a</u> ~~in~~ willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Section 2. This act shall take effect July 1, 2006.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to reckless driving; amending s. 316.192, F.S.; revising the acts that constitute reckless driving; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HR 1627 Unanimity of Jury Recommendations in Death Penalty Cases
SPONSOR(S): Kyle
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer TK	Kramer TK
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Currently, in a case where a defendant has been convicted of a capital felony, after the penalty phase is conducted, the jury considers statutory aggravating and mitigating factors and recommends to the judge a sentence of death or life imprisonment. The jury's recommendation of death requires a majority vote of the twelve jurors.

In an opinion released in October 2005, the Florida Supreme Court recommended that the Legislature amend the death penalty statute to require unanimity in the jury's recommendations.

This House resolution contains a number of "whereas" clauses and provides that the "House of Representatives believes that the public policy of this state should be that unanimous jury recommendations not be required in death penalty cases."

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any House principles.

B. EFFECT OF PROPOSED CHANGES:

The Furman Decision – Historical Perspective

In *Furman v. Georgia* the U.S. Supreme Court found that then-existing death penalty statutes constituted cruel and unusual punishment under the Eighth Amendment. (*Furman v. Georgia*, 408 U.S. 238 (1972). Since that landmark decision, the Florida Legislature enacted a new capital sentencing scheme in 1972, which provides for a separate sentencing hearing after conviction or adjudication of guilt of a capital offense. The jury acts in an advisory capacity to the judge, who is the ultimate sentencing authority. Evidence is introduced regarding the defendant's character and the nature of the crime. The jury considers statutory aggravating and mitigating factors and advises the judge whether the sentence should be the death penalty or life imprisonment. The judge independently weighs the aggravating and mitigating factors and, considering the jury's recommendation as well, determines the sentence. The judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of Florida. Section 921.141. F.S.

Proportionality Review

In the *State v. Dixon* opinion, upholding the death penalty sentencing procedures enacted by the Legislature in response to *Furman*, the Florida Supreme Court indicated that automatic appellate review in death cases, and comparison with other cases in which the death penalty was handed down, could serve to control and channel the discretion in sentencing the *Furman* court struck down. *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

The Florida Supreme Court gleaned two points from the *Furman* decision: 1) the opinion did not abolish capital punishment; and 2) "the mere presence of discretion in the sentencing procedure cannot render the procedure violative of *Furman v. Georgia*; it was rather the quality of discretion and the manner in which it was applied that dictated the rule of law which constitutes *Furman*." (*Id.*at 6) "If the judicial discretion possible and necessary under Fla. Stat. s. 921.141, F.S.A., can be shown to be reasonable and controlled, rather than capricious and discriminatory, the test of *Furman v. Georgia* has been met." (*Id.*at 7)

Proportionality review is the comparison of one case in which the defendant was sentenced to death with other death cases. The Florida Supreme Court engages in proportionality review in all death penalty cases. The origin of proportionality review is found in the *Dixon* case.

The *Dixon* court found that the Florida Legislature had provided a death penalty sentencing system whereby aggravating and mitigating factors are defined, and the weighing process is left to the carefully scrutinized judgment of jurors and judges. (*Id.* at 7)

The court explained the five steps between conviction of a defendant in a capital case and imposition of the death penalty:

- The question of punishment is reserved for a post-conviction hearing – relevant evidence, which may not have been heard during the guilt phase, can be heard as to the issue of punishment.
- The jury must make a recommendation (unless waived by the defendant), as a separate and distinct issue from the question of guilt. The question before the jury in the penalty phase is "whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty." (*Id.* at 8)

- The trial judge decides the sentence – guided by, but not bound by, the jury's recommendation. In the court's view, this was intended as a safeguard against the inflamed emotions of jurors – the appropriate sentence is "viewed in the light of judicial experience." The court must weigh the aggravating and mitigating factors, as the jury did, in handing down the sentence.
- The reasons for the sentence must be set forth in writing by the judge. Although the statute did not require it, in its opinion, the court required that life sentences be set out in writing as well as sentences of death, "to provide the opportunity for meaningful review." (*Id.* at 8)
- Automatic review of the conviction and death sentence by the Florida Supreme Court was viewed by the *Dixon* court as "evidence of legislative intent to extract the penalty of death for only the most aggravated, the most indefensible of crimes." (*Id.* at 8)

The court opined that the "most important safeguard" in the sentencing scheme is the aggravating and mitigating circumstances which "must be determinative of the sentence imposed." (*Id.*at 8) When one or more of the aggravating factors is found (beyond a reasonable doubt), death is presumed to be the appropriate sentence, unless the aggravating factor is overcome by one or more mitigating factors.

The court stated: "It must be emphasized that the procedure to be followed by the trial judges and juries is not a mere counting process of X number of aggravating circumstances and Y number of mitigating circumstances, but rather a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of the circumstances present. Review by this court guarantees that the reasons present in one case will reach a similar result to that reached under similar circumstances in another case. No longer will one man die and another live on the basis of race, or a woman live and a man die on the basis of sex. If a defendant is sentenced to die, this Court can review that case in light of the other decisions and determine whether or not the punishment is too great. Thus, the discretion charged in *Furman v. Georgia, Supra*, can be controlled and channeled until the sentencing process becomes a matter of reasoned judgment rather than an exercise in discretion at all." (*Id.* at 10)

In *Proffitt v. Florida*, 428 U.S. 242 (1976), the U.S. Supreme Court seemed to rely on the Florida Supreme Court's promise to give each death case a meaningful review, including proportionality review, when the *Proffitt* court upheld Florida's new death penalty sentencing structure. The court stated: "[T]he Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases....In fact, it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences (citations omitted)." (*Id.* at 258, 259)

In his article "The Most Aggravated and Least Mitigated Murders: Capital Proportionality Review in Florida," *11 St. Thomas L. Rev. 207* (1999), Ken Driggs makes the following observations: "Jury death recommendations on close votes are more likely to see their death sentences reduced to life by the Florida Supreme Court. The court has often reduced death sentences to life where they were imposed on a 7-5 jury recommendation. Death sentences are more commonly imposed on an 8-4 jury recommendation. A 9-3 jury death recommendation still represents a significant sentiment for life and often comes to the Florida Supreme Court on proportionality review. Not surprisingly, when a jury recommends death by a 10-2, 11-1, or 12-0 vote the sentence is very likely to withstand proportionality review." (*Id.* at 267-270.)

The Jury's Role in Capital Cases in Florida – A "Hybrid" System

Florida has what is commonly called a "hybrid" system for sentencing in capital cases. That is, the jury acts in an advisory capacity to the sentencing judge and the judge has the ability to "override" the jury's recommendation of life or death.

In Florida, the jury in a capital case makes a sentencing recommendation – death or life imprisonment – unless the jury is waived. This recommendation is by majority vote, and is based on the weighing of aggravating and mitigating factors, as well as argument presented during the penalty phase of the trial.

The judge must then decide the appropriate sentence, independently weighing the jury's recommendation along with the aggravating and mitigating factors. The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in a meaningful review. The judge may sentence a defendant in a different manner than the jury recommends – this is known as an "override."

The Florida Supreme Court must review all cases in which the death penalty has been imposed. *Article V, section (3),(b)(1), Florida Constitution.* The Court scrutinizes overrides very carefully. The recommendation of the jury must be given great weight in the trial judge's decision-making process on the sentence handed down.

What is referred to as the Tedder "Great Weight" Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the Court determined that "[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." (*Id.* at 910). The same consideration by the sentencing judge is expected of a death recommendation as a life recommendation. *Grossman v. State*, 525 So.2d 833, 839, n.1 (Fla. 1988).

It has been reported that the Supreme Court of Florida has vacated "roughly three-fourths of death sentences imposed in the face of contrary jury recommendations." (Matters of Life or Death: The Sentencing Provisions in Capital Punishment Statutes, James R. Acker and Charles S. Lanier, *31 Crim Law Bull 19, at 22* (1995)).

Jury Votes in Florida Death Penalty Cases, 1990-1999

The Clerk of the Supreme Court of Florida has compiled data from direct appeals in capital cases disposed of by the Court during the years 1990 through 1999 which reflects the breakdown of the jury votes in those cases. This data is reported as follows:

Jury Recommendations for Death Sentence

Jury Vote	Number of Sentences	Percentage
12-0	77	15.9%
11-1	59	12.2%
10-2	59	12.2%
9-3	69	14.3%
8-4	72	14.9%
7-5	64	13.2%
6-6	2	0.4%
5-7	1	0.2%
4-8	1	0.2%
vote unknown, life rec.	30	6.2%
jury rec. waived by defendant	19	3.9%
death sentence imposed by judge on remand	18	3.7%
vote not recorded or not available	13	2.7%
TOTAL	484	100%

Clerk of the Supreme Court of Florida, correspondence dated November 9, 2000.

The Clerk cautions that the votes could only be determined by doing a manual count from data that was not stored in a computer database. Although the Clerk indicates that there were some "judgment calls" made with regard to how to record the votes, they were minimal and, in the Clerk's opinion, not statistically significant. The total number of jury votes and corresponding sentences (484) exceeds the total number of initial, resentence and retrial cases disposed of by the Court during that time period (467). This reflects multiple death sentences in several cases, with different jury votes on different counts.

Ring v. Arizona

On June 24, 2002, the United States Supreme Court handed down its decision in *Ring v. Arizona*, a death penalty case that has had a ripple effect all over the country. In a 7-2 decision, the Court ruled that juries rather than judges acting alone must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme wherein the judge, without any input from the jury beyond the verdict of guilty on the murder charge, made the sentencing decision. The Court found that the Arizona sentencing scheme violated the defendant's 6th Amendment right to a jury trial. *Ring v. Arizona*, 536 U.S. 584 (2002).

The Court was not clear about whether Florida's "hybrid" sentencing scheme was effected by the *Ring* decision. Florida, Alabama, Delaware, and Indiana provided for a recommendation of death or life from the jury, but the judge made the ultimate decision after considering the jury recommendation.

The Florida Supreme Court has not decided the overall applicability of *Ring* to our death penalty sentencing scheme, other than to clearly state that *Ring* does not apply retroactively in Florida.

State v. Steele

The Florida Supreme Court issued a ruling on October 12, 2005, in which the court stated: "Finally, we express our considered view, as the court of last resort charged with implementing Florida's capital sentencing scheme, that in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations." *State v. Steele*, No. SC04-802 (Fla. 2005) [Justice Cantero, writing for the majority; Wells, Lewis, Quince and Bell, JJ., concurring; C.J. Pariente wrote separately to concur in part and dissent in part, Anstead, J. concurring. Both Justices in the minority concurred with Justice Cantero's suggestions to the Legislature.]

The *Steele* case is a product of the post-*Ring* efforts by a trial court, in a death case, to comply with *Ring*. The trial judge imposed two requirements to address concerns with the sentencing scheme in death cases, which were unresolved by the Florida courts at the time of the trial.

The trial court required: 1) the State to provide advance notice of the aggravating factors upon which it would rely at the penalty phase, and 2) an interrogatory verdict form at the penalty phase. The trial court required the jurors to specify each aggravator found and the vote for that aggravator. A majority vote was required to find an aggravator proven.

As to those two issues, the Florida Supreme Court held that:

1. Notice of Aggravating Factors: Because of the expansion of the statutory aggravators (8 additional in the last several years), and because there is no express prohibition on requiring notice, the trial court did not violate an established principle of law. Further, notice does not constitute a miscarriage of justice, nor is the notice requirement inequitable.

2. Special Verdict on Aggravators: *Ring* does not require it; Florida's current sentencing statute only requires a majority of the jury to agree that an aggravator has been proven – not necessarily the same one; therefore the trial court's requirement constituted a departure from the essential requirements of law.

The Court then reached beyond the analysis and holding in the case before it, and included a section in the opinion entitled "The Need for Legislative Action." The court stated:

> Florida is now the only state in the country that allows a jury to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote. Of the 38 states that retain the death penalty, 35 require, *at least*, a unanimous jury finding of aggravators. Of these, 24 states require by statute *both* that the jury unanimously agree on the existence of aggravators *and* that it unanimously recommend the death penalty. Three states require by statute unanimity only as to the jury's finding of aggravators. Seven more states have judicially imposed a requirement *at least* that the aggravators be determined unanimously. Of these seven states, five ... require that *both* the aggravators *and* the recommendation of death be unanimous. ... Although Missouri law is less clear, it appears that a jury at least must unanimously find the aggravators. ... That leaves Utah and Virginia. In those states, the jury need not find each aggravator unanimously, but the jury must unanimously recommend the death penalty. ... Finally, the federal government, when imposing the death penalty, also requires a unanimous jury." *Id.*

The court stated that "many courts and scholars have recognized the value of unanimous verdicts." The court concludes its discussion as follows:

> The bottom line is that Florida is now the only state in the country that allows the death penalty to be imposed even though the penalty-phase jury may determine by a mere majority vote both whether aggravators exist and whether to recommend the death penalty. Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.

The opinion did not specifically indicate what constitutional deficiency may arise to cast Florida's death penalty statute into jeopardy.

Attorney General's Letter

In a letter written to the Speaker of the House of Representatives following the *Steele* decision, the Attorney General recommended that the Legislature not change its death penalty sentencing scheme. The Attorney General noted that the jury recommendations in several well-known murder cases were not unanimous including Theodore Bundy (10-2 recommendation), Aileen Wuornos (10-2 recommendation) and Joe Nixon (10-2 recommendation).

House Resolution

This House resolution contains the following wheras clauses:

> WHEREAS, the Florida Supreme Court in its opinion in the case of State of Florida v. Alfredie Steele, SC04-802, issued October 12, 2005, suggested that "in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations" in death penalty cases, and
>
> WHEREAS, the Florida Supreme Court quoted the view of the Supreme Court of Connecticut, which stated in part "[t]he requirement of a unanimous verdict can only assist the capital sentencing jury in reaching such a reasoned decision," and
>
> WHEREAS, the House of Representatives notes that the State of Connecticut has executed only one person since 1976 and that person was a volunteer, and
>
> WHEREAS, the House of Representatives finds that no majority opinion of the United States Supreme Court has suggested that unanimous agreement of a twelve-member jury was required, recommended, or advisable for the determination of whether a death sentence is an appropriate punishment for the commission of a capital crime, and
>
> WHEREAS, the United States Supreme Court has upheld Florida's existing death penalty statute as constitutional in Proffitt v. Florida, 428 U.S. 242 (1976), and the statute has

been repeatedly upheld by state and federal appellate courts against constitutional attacks for the past 29 years, and

WHEREAS, the Florida Supreme Court acknowledges that the question of whether Florida's death penalty should require unanimous agreement of the jury before it can be imposed is a matter of public policy for the Legislature to determine, and

WHEREAS, the House of Representatives finds that a requirement of unanimity among twelve jurors is not the proper mechanism to determine whether a death sentence is an appropriate sentence in individual cases because a requirement of unanimity vests with a single juror the ability to override the reasoned judgment of all other jurors weighing and considering the same facts and circumstances, and

WHEREAS, the House of Representatives finds that some of Florida's most notorious and heinous murderers, including Theodore Bundy and Aileen Wuornos, were sentenced to death and executed when the jury recommendation of death was less than unanimous and that these death sentences were just and appropriate despite the lack of unanimity, NOW, THEREFORE

HR 1627 provides that the "House of Representatives believes that the public policy of this state should be that unanimous jury recommendations not be required in death penalty cases.[1]"

C. SECTION DIRECTORY:

A House resolution is not divided into sections.

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.

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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

House Resolution

A resolution declaring the House of Representatives' view of what the public policy of this state regarding unanimity of jury recommendations in death penalty cases should be.

WHEREAS, the Florida Supreme Court in its opinion in the case of State of Florida v. Alfredie Steele, SC04-802, issued October 12, 2005, suggested that "in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations" in death penalty cases, and

WHEREAS, the Florida Supreme Court quoted the view of the Supreme Court of Connecticut, which stated in part "[t]he requirement of a unanimous verdict can only assist the capital sentencing jury in reaching such a reasoned decision," and

WHEREAS, the House of Representatives notes that the State of Connecticut has executed only one person since 1976 and that person was a volunteer, and

WHEREAS, the House of Representatives finds that no majority opinion of the United States Supreme Court has suggested that unanimous agreement of a twelve-member jury was required, recommended, or advisable for the determination of whether a death sentence is an appropriate punishment for the commission of a capital crime, and

WHEREAS, the United States Supreme Court has upheld Florida's existing death penalty statute as constitutional in Proffitt v. Florida, 428 U.S. 242 (1976), and the statute has

been repeatedly upheld by state and federal appellate courts against constitutional attacks for the past 29 years, and

WHEREAS, the Florida Supreme Court acknowledges that the question of whether Florida's death penalty should require unanimous agreement of the jury before it can be imposed is a matter of public policy for the Legislature to determine, and

WHEREAS, the House of Representatives finds that a requirement of unanimity among twelve jurors is not the proper mechanism to determine whether a death sentence is an appropriate sentence in individual cases because a requirement of unanimity vests with a single juror the ability to override the reasoned judgment of all other jurors weighing and considering the same facts and circumstances, and

WHEREAS, the House of Representatives finds that some of Florida's most notorious and heinous murderers, including Theodore Bundy and Aileen Wuornos, were sentenced to death and executed when the jury recommendation of death was less than unanimous and that these death sentences were just and appropriate despite the lack of unanimity, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That House of Representatives believes that the public policy of this state should be that unanimous jury recommendations not be required in death penalty cases.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 PCB HCR 06-03 Clandestine Laboratory Contamination
SPONSOR(S): Health Care Regulation Committee, Garcia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Health Care Regulation Committee	9 Y, 0 N	Hamrick	Mitchell
1) Criminal Justice Committee		Kramer	Kramer
2) Health Care Appropriations Committee			
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine laboratory due to the absence of decontamination requirements. The bill addresses this issue by providing protections to the public from unsafe conditions that may be found in a house where methamphetamine was manufactured. The residual chemicals and waste products from such production pose a treat to the health, safety, and welfare of the public. Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency and/or the Florida Department of Law Enforcement and all hazardous ingredients and lab equipment are removed from the premises but nothing is done to decontaminate property. In Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks.

HB 7065 provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health (DOH) if the residential property was used as a clandestine laboratory. The bill requires an owner to use a "contamination assessment specialist", authorized by the department to determine if a home is contaminated and a "decontamination specialist" authorized by the department to perform cleanup, treatment, repair, and removal of contaminated materials. The property will remain quarantined until the department receives documentation that the property was decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. The bill prohibits a person from inhabiting the quarantined property or from offering the property to the public for habitation.

Fiscal Impact: The bill is expected to have a fiscal impact on the Department of Health of approximately $27,000 annually. Property owners will be responsible to pay for the testing and cleanup of their own property. Costs will vary depending upon the size of the lab, duration, frequency, and types of chemicals used in the manufacturing process. It is estimated that decontamination costs average $6,500 per 1,200 square feet.

The bill will take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government-The bill provides a mechanism that will prevent a person from unknowingly living in a former clandestine laboratory that has not been decontaminated. The bill will prohibit a person from inhabiting a property that is quarantined because of contamination.

Promote personal responsibility-The bill may encourage landlords to thoroughly screen potential renters or applicants and encourage them to look for signs of illegal drug activity.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency (DEA) and/or the Florida Department of Law Enforcement (FDLE) and all hazardous ingredients and equipment are removed from the premises but nothing is done with the property or remaining contaminated materials. Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine lab due to the absence of decontamination requirements.[1] In 2004, 61 children were found at seized methamphetamine labs in Florida.[2] Currently in Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks. Law enforcement and/or special contract vendors simply remove all hazardous chemicals and lab items from a clandestine laboratory.

FEDERAL INITIATIVES

COPS Program Provides Federal Funding to States and Local Governments

In 1998, the Office of Community Oriented Policing Services (COPS) began the Methamphetamine Initiative program that provided $4.5 million to six US cities to implement anti-methamphetamine projects. In 2005, Florida received $832,116 from the COPS program to remove hazardous materials from 388 seized clandestine labs.

Removal and cleanup of hazardous materials seized at clandestine labs must meet the requirements of the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency's Resource Conservation and Recovery Act regulations pertaining to the generation, storage, transport, and disposal of hazardous wastes in addition to any state or local requirements.[3] COPS funding does not extend to any level of cleanup relating to decontamination other than removal of remaining hazardous materials and manufacturing equipment.

According to the U.S. Department of Justice, the removal of hazardous materials from a seized clandestine lab is the responsibility of the state or local law enforcement agency that discovers the materials.[4] The state or local law enforcement agency may use the COPS funding to perform the removal themselves using qualified law enforcement or other qualified government personnel; use Drug

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[1] Jerome, Richard. PEOPLE. "Home Toxic Home?" (August 8, 2005).
[2] Tseng, Nin-Hai. Orlando Sentinel. "Children fall by the wayside in meth-addicted homes." (September 11, 2005).
[3] See 29 CFR Part 1910.120, and Part 1200; 40 CRR Part 260.
[4] US Department of Justice, Office of Community Oriented Policing Services. Methamphetamine Initiative: Final Environmental Assessment. May 13, 2003.

Enforcement Administration hazardous waste management contractors; or use other qualified contractors. State and local law enforcement agencies may only use COPS grant funding to pay for hazardous waste removal, transportation, storage, and payment of hazardous waste disposal fees.[5]

COPS Program and El Paso Intelligence Center (EPIC)

In order to receive COPS funding for handling hazardous lab materials a DEA Form 612 also called "EPIC form" must be completed and forwarded to the El Paso Intelligence Center, which is the national repository of data concerning clandestine laboratory seizures. The data collected includes the location of the lab, estimated lab capacity, manufacturing process used, lab equipment found on the scene, name of chemist and clean-up personnel, weapons and/or explosives seized, quantity of drugs seized, and precursor agents/catalysts/solvents/reagents seized.[6]

Environmental Protection Agency Funding to State and Local Governments

The Environmental Protection Agency (EPA) makes funding available to state and local governments for the assessment and cleanup of meth lab sites through the Office of Brownfields Cleanup and Redevelopment via grants of up to $200,000 per site.[7] State and local governments may receive grants up to $1 million to be used for the capitalization of revolving loan funds; they may then make loans and sub-grants for the cleanup of methamphetamine lab sites.

FLORIDA INITATIVES

In 2003, the Office of Drug Control, the Florida Department of Law Enforcement, and the federal Drug Enforcement Administration signed a resolution to jointly implement a statewide strategy to deal with clandestine methamphetamine laboratories in Florida. The purpose of the strategy is to combine efforts to combat the manufacturing and distribution of methamphetamines in Florida and improve the overall effectiveness and efficiency of law enforcement's response and investigations.

In 2005, the Florida Department of Children and Families (DCF) established the Northwest Florida Drug Endangered Children Work Group. Subsequently, they published the Northwest Florida Drug Endangered Children Multidisciplinary Protocol to provide law enforcement, DCF, social services, fire and medical services, and prosecutors a basis for the development of community specific procedures handling children where there has been drug production, trafficking, and abuse. DCF is required to remove children from homes in which they have suffered from neglect, abuse, and exposure to toxic and volatile environments.

In 2005 the Legislature passed HB 1347 that placed quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. The bill also increased several penalty provisions and made it a first degree felony to manufacture methamphetamine while a child less than 16 years of age is present.

In 2005, the Florida Office of Drug Control brought together a multi-agency group of experts in handling methamphetamine issues. The workgroup is in the process of creating a single source document called the Florida Statewide Methamphetamine Protocol that will assist federal, state, and local agencies in handling the criminal, environmental, sociological and economic issues that are characteristic of clandestine methamphetamine laboratories.

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[5] Ibid.
[6] See DEA Form 612 Instructions (Rev. 04/03)
[7] U.S. Congress. House Committee on Energy and Commerce, Subcommittee on Energy and Hazardous Materials. 2005. "Testimony of Peter Murtha, Director Office of Criminal Enforcement, Forensics and Training Office of Enforcement and Compliance Assurance U.S. Environmental Protection Agency." 109th Congress.

The Attorney General's Office in partnership with the Department of Health, the Department of Children and Families, the Office of Drug Control, the Florida Department of Law Enforcement, and the Drug Enforcement Agency recently unveiled the Florida Alliance for Drug Endangered Children website (www.floridadec.org).

AUTHORITY TO QUARANTINE

Current Statutory Provisions for Quarantines

According to s. 381.0011, F.S., it is the duty of the Department of Health to:

- Administer and enforce laws and rules relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and the general health of the people of the state.

- Cooperate with and accept assistance from federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health.

- Declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided in ss. 384.28 and 392.545-392.60, F.S.

Current Statutory Authority for the Enforcement of a Quarantine by Law Enforcement

Section 381.0012(5), F.S., provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials upon request to assist the department or any of its agents in enforcing the state health laws and the rules adopted in chapter 381, F.S. The department may also commence and maintain all proper and necessary actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.

WHAT IS METHAMPHETAMINE?

Methamphetamine is a central nervous system stimulant commonly referred to as "meth." Its street names are numerous and include such terms as crank, speed, ice or crystal.[8] Meth is a derivative of amphetamine that dates back to the early 1900s. The drug became more widely used during World War II and eventually became widely available in tablet form.[9] Meth can be found and used in numerous forms, i.e., injected, smoked, inhaled, or taken orally. The 1970 Controlled Substances Act, made the production of injectable meth illegal. According to the Oregon Department of Human Services, methamphetamine is currently the illicit "drug of choice" due to its ease of manufacture, comparatively low cost, 12-hour half-life, and the euphoria, energy, and feelings of power, and sexual arousal that it produces.[10] A key ingredient of methamphetamine production is pseudoephedrine/ephedrine, which is commonly found in cold medicine.

According to a report by the State of North Carolina, clandestine[11] methamphetamine laboratories account for more than 90% of all U.S. illegal drug seizures in recent years.[12] In 2000 the Drug Abuse

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[8] US Department of Justice, Office of Community Policing Services. Methamphetamine Fact Sheet. http://www.cops.usdoj.gov/mime/open.pdf?Item=1356 (February 3, 2006).

[9] US Department of Justice, Office of Community Policing Services. An Evaluation of the COPS Office Methamphetamine Initiative. http://www.cops.usdoj.gov/mime/open.pdf?Item=608 (February 3, 2006).

[10] An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine 'Labs' in Oregon. Vol. 52, No. 16. August 12, 2003.

[11] Clandestine drug laboratories are used in the illicit production of illegal drugs.

Warning Network, indicated that among club drugs, meth accounted for the largest share of emergency department mentions, and was especially problematic in the metropolitan areas of the western US. The DEA has estimated that the manufacturing or "cooking" of methamphetamine leaves behind 5 to 7 pounds of chemical waste for each pound of meth that is made.[13]

HEALTH RISKS ASSOCIATED WITH METHAMPHETAMINE MANUFACTURING

Toxic substances from the cooking process can permeate walls, floorboards, and carpeting. The resulting contaminations can last for years without extensive remediation. Homes may be filled with residue from acetone, red phosphorus, and other toxic agents. Waste may consist of corrosives and flammables that have been dumped down sinks, toilets, tubs, and in the environment.

Threat to Children, Medical Concerns and Long-term Effects

According to a program coordinator with the National Jewish Medical and Research Center, a leading researcher on the impact of methamphetamine production, long-term health risks could include damage to the lungs, liver, kidneys, and cancer. Individuals with existing medical conditions and young children are at higher risk.[14]

In Oregon, one-third to one-half of the children found in meth labs have tested positive for methamphetamine, via urinalysis testing, due to accidental ingestion or passive inhalation of the drug.[15] Pediatric patients with methamphetamine poisoning may experience tachycardia, agitation, inconsolable crying, irritability, and vomiting.[16] The most common complication of meth poisoning is rhabdomyolyis, which is the breakdown of muscle fibers that are then released in to the blood and may result in kidney damage.[17]

Reasons there is Limited Data on the Long-term Health Effects

There is limited data available on the long-term health effects caused by exposure to the chemicals utilized in methamphetamine manufacturing. Knowledge in this area is limited due to the following reasons:[18]

- Clandestine laboratories have only occurred in the last 10 years and their health effects have been studied for an even shorter period of time.
- Restrictions on tracking health records of minor children.
- It is difficult to determine the magnitude of the exposure to children in a home not only during, but after manufacturing has occurred. To date, contamination studies of controlled manufacturing have only occurred in buildings slated for demolition.[19]

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[12] State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. http://www.epi.state.nc.us/epi/oii/methguidelines.pdf
[13] Minnesota Department of Health. Lab Cleanup. http://www.health.state.mn.us/divs/eh/meth/lab/labcleanup.html (February 11, 2006).
[14] Highlights from the People article.
[15] An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine "Labs" in Oregon. Vol. 52, No. 16. August 12, 2003.
[16] Ibid.
[17] Ibid.
[18] U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[19] Researchers have requested federal dollars to conduct long-term research at a secure location such as Los Alamos, New Mexico.

MANUFACTURING OF METHAMPHETAMINE

There are different levels of clandestine laboratories i.e. "superlabs" and "mom and pop" labs. Large-scale production by "superlabs" is predominantly done in Mexico, a major producer or transshipment point for much of the methamphetamine entering America.[20]

The production of methamphetamine is a relatively simple process and can be carried out by individuals without special knowledge or expertise in chemistry. Recipes number in the hundreds and are constantly evolving. There are well over 300 substances that can be used to produce meth. However, there are two primary methods for manufacturing methamphetamine.

Red Phosphorus

The red phosphorous method of manufacturing methamphetamine involves the use of a number of readily obtained materials, including solvents, iodine, hydrogen chloride gas (which can be made by combining sulfuric acid and rock salt), sodium hydroxide, and red phosphorus.[21] Red Phosphorus, for example, can be obtained from match stick heads and flares.

Red Phosphorus labs have the following dangers: phosphine gas production, acid gas generation, acutely corrosive and toxic atmospheres, flammable and explosive atmospheres and oxygen deficient atmospheres. A study[22] on controlled cooks revealed significant exposure to solvents, phosphine,[23] iodine, hydrogen chloride, and methamphetamine aerosol.[24] Due to the spread of methamphetamine during this cooking process, virtually all items within the house as well as all people, pets, toys, etc. become contaminated with methamphetamine.[25] Levels of exposure are exceptionally high for children and infants, who due to their developing physiology and their inquisitive oral habits, are exposed to high levels of hazardous chemicals.[26]

Birch Reduction

This method is also referred as the "Nazi" or "Ammonia" method. This method uses lithium metal from batteries and anhydrous ammonia from fertilizer and refrigeration "chillers" in the reduction of ephedrine/pseudoephedrine.

Birch Reduction labs have the following dangers: electroplating sodium metal from sodium hydroxide; sodium hydroxide which may cause skin or lung irritation; a flammability and irritant toxicity hazard from concentrated ammonia atmospheres; the violent reaction of water with sodium or lithium metals; a flammable, explosive atmosphere; an acutely corrosive atmosphere because of the acutely reactive metals used. Phosphine and aerosol iodine are not produced in this method. The levels of anhydrous ammonia produced during these cooks are significantly high. The National Institute of Occupational

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[20] U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109th Congress.
[21] U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[22] The study was conducted by John Martyny, Ph.D., C.I.H., with the Department of Preventative Medicine at the University of Colorado and the National Jewish Medical Research Center in Denver, Colorado.
[23] Phosphine is a gas produced when the solution of iodine, water, ephedrine, and red phosphorous is heated. This is a gas that may cause severe pulmonary irritation resulting in pulmonary edema and death. At lower levels may cause nausea, vomiting, headache, and chest tightness, which are symptoms frequently reported by exposed law enforcement personnel at the time of seizure.
[24] U.S. Congress. House Committee on Science Committee Testimony. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[25] Ibid.
[26] Ibid.

Safety and Health currently recommends that ammonia exposure not exceed 300 parts per million (ppm). However, a meth cook can easily reach 500 ppm of ammonia or more.[27]

Examples of Common Names/Uses for Chemicals in Methamphetamine Laboratories[28]	
Chemical	**Common Name or Product Used**
Acetone	Fingernail polish remover, solvents
Acetic Acid	Vinegar
Alcohol, isopropyl	Rubbing Alcohol
Ammonia (anhydrous)	Fertilizer, used in chillers
Ethyl ether	Computer dust-off
Freon	Refrigerant, propellants
Hydrochloric acid/muriatic acid	Iron ore processing, mining, concrete cleaner
Iodine (crystals)	Antiseptic, catalyst
Lithium metal	Batteries
Methylene chloride	Paint remover, solvent
Phosphoric acid	Fertilizer
Red phosphorus	Match striker plates, road flares
Sulfuric acid	Battery acid, drain cleaner
Toluene	Brake cleaner fluid

LAW ENFORCMENT RESPONSE

How Does a Typical Clandestine Laboratory Seizure Occur?

Typically, law enforcement gets a call or report of a potential clandestine laboratory. Depending on the validity of the information a response team (which may be a combination of local, state or federal officers) is dispatched, or a first responder (city police department or county sheriff) goes to the location, to verify if there is a potential clandestine lab. Once confirmed, the location is evacuated and a clandestine laboratory response team responds to begin the investigation. Once all the appropriate photos, evidence sampling, and other investigative issues are taken care of, a contract vendor (as part of the federal COPS program) responds to the scene to remove all chemicals, glassware, equipment, etc.

All law enforcement personnel who investigate and dismantle labs must be clandestine laboratory certified, which requires attending specialized training that is sanctioned by the Drug Enforcement Administration (DEA) and the Occupational Safety and Health Administration (OSHA). Due to the hazards of entering a clandestine lab all personnel who investigate and dismantle labs are required to wear personal protective equipment. Below is the basic list of the equipment that must be used and the associate costs. The (*) denotes equipment that has to be discarded after each laboratory investigation due to contamination.

No remediation is done to the structure or the property, simply the removal of all chemicals and lab items. If there are containers of chemicals outside the premises that pose a threat to the environment, or any other indicators, the Department of Environmental Protection is called to handle soil and/or water sampling and cleanup. If children are present, the Department of Children and Families is called to the scene. Nothing may be removed from the house and taken with the children or any arrestees due to contamination.

2006 Clandestine Laboratory Investigators Personal Protective Equipment (PPE) List	
Description	**Total Cost**
Self Contained Breathing Apparatus 30-Minute Cylinder	$2,134.00
Clan Lab Monitor Field and Investigators Detector Kit	2,905.00
Ballistic Helmet and Vest	1,055.45

[27] Ibid.
[28] State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. http://www.epi.state.nc.us/epi/oii/methguidelines.pdf

SWAT Coverall, Hood, Gloves, Respirator w/filter, gloves and other equipment*	486.70
TOTAL	$6,581.15

REMEDIATION STANDARDS

National Guidelines for the Cleanup of Clandestine Laboratories and Determining Cleanliness

The Office of National Drug Control Policy is in the process of revising the Guidelines for the Cleanup of Clandestine Drug Laboratories. The so-called "Red Book" includes voluntary standards, lessons learned, and best practices for methamphetamine laboratory cleanup and the removal of hazardous materials found at seized clandestine laboratories for federal, state, and local law enforcement and environmental officials.[29]

A problem with remediation of a clandestine laboratory is determining an acceptable level of "cleanliness" to assure the public that there are not any potential health risks. Currently, there are no national standards for remediated labs, and a baseline definition of "clean" is not available.[30] Fundamental research describing standards for "clean" still need to occur.[31]

There is an ongoing debate about the effectiveness of using a feasibility-based standard rather than a long-term clinical standard. Because research into the long-term health effects associated with clandestine laboratories has just recently begun, health or risk based standards have not yet been determined.[32]

Remediation Standards in Other States

According to the National Alliance for Model State Drug Laws,[33] several states currently regulate the cleanup and remediation of clandestine laboratories, but state statutes specifically relating to the cleanup and remediation of clandestine laboratories vary from state to state.[34]

Given the growing concern regarding cleanup and remediation issues, the variety of approaches among states, the increasing number of states dealing with former meth labs, and the changing nature of labs, the Alliance has convened a national working group to address these issues.[35] The Alliance is drafting a model act or model guidelines for the cleanup and remediation of methamphetamine laboratories that should be released next year.[36]

The two most commonly used feasibility-based decontamination standards for methamphetamine is 0.1 micrograms per 100 square centimeters and 0.5 micrograms per square foot.[37] A microgram is one millionth of gram and there are 28.3 grams in an ounce. One hundred square centimeters is equivalent to the area about the size of a 3X5 index card. Arizona, North Carolina, Tennessee, and Washington are among several states that require an indoor air quality standard of 0.1 micrograms per 100 square

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[29] U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109th Congress.
[30] U.S. Congress. House Committee on Science. 2005. "Testimony of Robert Bell, Ph.D., President, Tennessee Technological University." 109th Congress.
[31] Ibid.
[32] Ibid.
[33] The National Alliance for Model State Drug Laws is a nonprofit bipartisan organization that resulted from the President's Commission on Model State Drug Laws. It was created to be a resource to assist states in assessing needs, strategizing, and implementing laws and policies to address alcohol and other drug problems.
[34] U.S. Congress. House Committee on Science. 2005. "Statement of Sherry Green, Esq., Executive Director of the National Alliance for Model State Drug Laws." 109th Congress.
[35] Ibid.
[36] Ibid.
[37] Ibid.

centimeters for methamphetamine. Several other states such as Tennessee, Washington, and California also regulate the level of lead, mercury and volatile organic compounds.

Several states have implemented policy standards to establish guidelines in rule. This allows for changes in indoor air quality standard values as research on levels of health risk improve. Oregon has set a policy standard of 0.5 micrograms per square foot; for methamphetamine; 10 micrograms per square foot for lead; and 0.05 micrograms per square foot for mercury. The bill allows the Department of Health the ability to adopt indoor air quality standards by rule.

DECONTAMINATION PROCESS AND DEMOLITION

The cleanup of residual substances that may persist on surfaces and furnishings may involve: removal of surface material layers; use of encapsulants and fixative sealers; neutralization of corrosives; steam cleaning; use of industrial steam and pressure washers; use of detergent washers; use of chemical neutralizers/cover-ups and "bake-out" of a property."[38] In rare cases of severe contamination, effective cleanup may only be accomplished by demolition of the contaminated structure.[39]

Based on the known physical properties of the chemicals associated with methamphetamine production, there is no current scientific evidence to suggest a continuing human health risk after a thorough decontamination.[40]

EFFECT OF HB 7065

The bill provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health (DOH) if the residential property was used as a clandestine laboratory. A clandestine laboratory is defined as any location or area that is used or contaminated as a result of the manufacturing, processing, cooking, disposing, or storing of any illegal drug or substance. The residential property will remain quarantined until the Department of Health receives a certificate of fitness documenting that the property was properly decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. No person may inhabit a quarantined residential property or remove the notice of a quarantine. A person who violates the provisions of a quarantine commits a second degree misdemeanor.

The bill does not create a new penalty, but cross-references existing authority under the quarantine provision already granted to the Department of Health in s. 381, F.S. Under section 381.0011, F.S., DOH has the authority to declare, enforce, modify, or abolish a quarantine placed on persons and premises as the circumstances indicate in order to protect the public from unsafe conditions that pose a threat to public health. Section 381.0012(5), F.S. also provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials to assist the department in enforcing the state health laws.

The bill:

- Creates definitions in chapter 893, F.S., for "clandestine laboratory", "contaminated", "contamination assessment specialist", "decontamination", "decontamination specialist", and "residential property."

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[38] Chesley, Michelle R., M.D., Department of Emergency Medicine, Howard University Hospital. 1999. Methamphetamines: an epidemic of clandestine labs and health risk. http://www.health.state.mn.us/divs/eh/meth/lab/mchesley.pdf (February 11, 2006).

[39] Colorado Department of Public Health and Environment. Cleanup of Clandestine Methamphetamine Labs Guidance Document. 2003. http://www.cdphe.state.co.us./hm/methlab.pdf (February 11, 2006.)

[40] Oregon Department of Human Services, Drug Lab Clean-up Program. "Chemicals used in Methamphetamine Manufacture, http://www.oregon.gov/DHS/ph/druglab/chemicals.shtml (February 11, 2006).

- Requires law enforcement personnel to enforce a quarantine on a clandestine laboratory if the lab is located in a residential property. Enforcement occurs at the time law enforcement secures and removes evidence from the property.
- Requires law enforcement to post a notice on the residential property at the time they are collecting and removing evidence.
    - The notice must state: The property is quarantined and a clandestine lab was found on the residential property; the date of quarantine; the name of agency posting the quarantine; a statement specifying the hazards that may remain and the exposure to the substances may be harmful and may pose a threat to public health and the environment; that it is unlawful for unauthorized persons to enter the contaminated property; a statement explaining how to have the quarantine lifted; and that it is a second degree misdemeanor to remove the notice.
- Requires local law enforcement to immediately notify the local health officer and the Department of Health's, Division of Environmental Health. Law enforcement must provide the department contacts with the name of the property owner or property manager and address of the property.
- DOH is responsible for contacting the property owner or manager, within 5 days by mailing them a letter of notification of the quarantine, a list of contamination assessment specialists, a list of decontamination specialists, and any other information the department deems appropriate.
- Allows property owners to petition a court to have a court order issued to lift the quarantine in the event they believe their property was wrongfully quarantined or has been decontaminated or demolished, but DOH refuses or fails to lift the quarantine.
- Provides residential property owners the option to demolish a home in lieu of decontamination, with certain requirements.
- Provides immunity from liability to property owners from health-based civil actions, with certain restrictions, if the residential property owner meets the decontamination standards or opts to demolish the residential property. The property owner or manager must have been issued a certificate of fitness by a contamination assessment specialist and a letter of reoccupancy issued by the Department of Health.
- Requires the department to compile and maintain a list on the internet of "contamination assessment specialists" and "decontamination specialists." The department must also denote on the list if a contactor is bonded and insured. The list will also be mailed to the residential property owner or property manager.
- Allows contamination assessment specialists or decontamination specialists the ability to request copies of any available law enforcement reports or information relating to the clandestine laboratory activities, to assist them in determining the levels of contamination in a quarantined residential property.
- Provides the Department of Health the authority to promulgate rules to:
    - Create a uniform notice and letter.
    - Establish standards for indoor air quality regarding contaminates produced by clandestine laboratory activities. The standards must include values for methamphetamine, lead, mercury, and volatile organic compounds and be consistent with values adopted by other states or they must comply with national standards.
    - Establish standards for the cleanup and testing of clandestine laboratories.
    - Establish the requirements for persons authorized to perform contamination assessments and decontamination.
    - Establish a "certificate of fitness" that will be issued by a contamination assessment specialist to function as documentation signifying that a home has been properly decontaminated.
    - Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.

C. SECTION DIRECTORY:

Section 1. Amends s. 893.02, F.S., to provide definitions for clandestine laboratory, contaminated, contamination assessment specialist, decontamination, decontamination specialist, and residential property.
Section 2. Creates s. 893.121, F.S., to provide for a quarantine of any residential property where clandestine laboratory activities occur; the establishment of a uniform notice and letter of notification; provide that a notice is posted at the site of a quarantine; provide requirements that a letter be sent to a residential property owner or property manager; provide an alternative to residential property owners to have a quarantine lifted; and provide limitations and enforcement provisions for habitation of quarantined residential property.
Section 3. Creates s. 893.122, F.S., to provide the option of demolition of contaminated residential property under certain conditions; provide immunity from health-based civil actions for residential property owners who have met certain criteria; and provide an exception from the immunity clause for individuals convicted of operating the clandestine laboratory.
Section 4. Creates s. 893.123, F.S., to provide rulemaking to adopt clandestine laboratory decontamination standards; provide guidelines for issuance of a certificate of fitness to indicate that decontamination is complete; provide guidelines for issuance of a letter of reoccupancy; and provide requirements for lifting a quarantine of a demolished property.
Section 5. Creates s. 893.124, F.S., to require the department to compile and maintain a list of persons authorized to perform contamination assessments and decontamination; require the department to specify qualifications for persons authorized to perform contamination assessments and decontamination; provide responsibilities for decontamination specialists; provide authority for contamination assessment specialist or decontamination specialist to request certain documents from law enforcement; and provide for issuance of a certificate of fitness by a contamination assessment specialist.
Sections 6 through 12 amend ss. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S., to correct cross-references.
Section 13. Provides that the bill will take effect on July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   No dedicated source of revenue.

2. Expenditures:

   According to the Department of Health, the bill is expected to have an estimated fiscal impact of approximately $27,000 annually.

   DOH based their projection of the possible fiscal implications of the regulation of clandestine drug laboratories in residential properties, on DEA/FDLE clandestine laboratory seizure statistics. The annual seizures from 2000 through 2005 for illegal methamphetamine laboratories are:

   2000 – 15
   2001 – 28
   2002 – 168
   2003 – 271
   2004 – 319
   2005 - 338

   These statistics include seizures that may have occurred in automobiles, hotels, motels, and not specifically residential properties.

The bill requires the department to adopt rules on clandestine laboratories; set standards for clandestine laboratory cleanup; set qualifications for clandestine lab contamination assessors and decontamination specialists; maintain lists of qualified clandestine lab contamination assessors and decontamination specialists; and issue notices of quarantine and letters of reoccupancy. The adoption and development of rules, setting of cleanup standards, the setting of qualifications of contamination assessors and decontamination specialists may be simplified by the adoption of policies utilized by other states.

According to DOH once the rule is established, the department's only response to a clandestine drug laboratory incident is to maintain a web listing of clandestine drug laboratory contamination assessors and decontamination specialists, and to provide affected parties with mailed communications of three form letters. One form letter is required to be sent to the property owner at the beginning of the quarantine and two letters at the satisfaction of quarantine, one to law enforcement and one to the property owner. The function of providing these notices will have to be a highly responsible support staff function since there will be no programmatic or professional support for this function.

Estimated Expenditures	**1st Year**	**2nd Year** (Annualized/ Recurr.)	**3rd Year** (Annualized/ Recurr.)
Salaries			
.6 FTE Administrative Secretary (FTE computed w/ 10% above base, 28% fringe, 25% lapse the first year and 3% annual increase in salary)	$ 13,948	$ 19,155	$ 19,729
Expense			
1 FTE @ Std DOH Support	$ 7,986	$ 5,195	$ 5,195
Quarantine related postage	$ 2,140	$ 2,140	$ 2,140
Printing of rule packets	$ 750		
Publishing in Florida Administrative Weekly	$ 500		
Operating Capital Outlay			
1FTE @ Std DOH supp. pkg	$ 2,100		
Total Estimated Expenditures	$27,424	$26,490	$27,064

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will prohibit an owner from inhabiting a quarantined residential property or offering the property to the public for habitation. The owner will be required to meet the decontamination standards established by the Department of Health and will be required to pay for the costs of assessment and cleanup. Costs for clandestine laboratory cleanup will vary depending upon the nature and extent of the cleanup needed. The size, duration, frequency, and types of chemicals used are all variables that impact the degree of contamination. According to the Washington State Department of Health, decontamination costs average $6,500 per 1,200 square-feet.[41] According to an Arkansas news article, clean-up costs generally range from $2,000 to $10,000; depending on the size of the lab.[42]

D. FISCAL COMMENTS:

The analysis by DOH assumes that 338 clandestine drug laboratories will be seized per year – the number that was seized in 2005.

In 2005, the legislature passed a bill placing quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. States that have placed similar restrictions on the sale of ephedrine, pseudoephedrine or phenylpropanolamine have seen a dramatic decrease in the incidence of clandestine laboratories. If these restrictions reduce the number of illegal labs in Florida, the fiscal impact of the bill may be less than that anticipated by the Department of Health.

If clandestine laboratory seizures increase, the costs incurred by DOH will increase accordingly.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Several constitutional issues have been mentioned as potential items of concern, i.e., the immunity from health-based civil action and the quarantine of personal property. As currently provided in the bill, the immunity from health-based civil action provision encourages property owners to decontaminate their property. Authority to quarantine a property that may pose a health hazard is well established for instances where a quarantine is meant to protect the public from harm. Each issue is discussed in detail below.

Access to Courts

This bill provides that a residential property owner who has met the decontamination standards, or has demolished the residential property "shall have immunity from health-based civil actions brought by any future owner, renter, or other person who occupies the residential property, or a neighbor of such residential property, in which the alleged cause of the injury or loss is the existence of the clandestine laboratory". This provision in the bill could possibly be an unconstitutional violation of Article I, s. 21, of the Florida Constitution.

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[41] Washington State Department of Health, Division of Environmental Health, Office of Environmental Health and Safety. Information for Landlords and Property Owners. http://www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm (February 11, 2006).
[42] Bradford, Michelle. 2000. U.S. Denies funds for State Meth Cleanup; Officials Mull Options. http://www.kci.org/meth_info/sites/ark_drug%20cleanup.htm (February 12, 2006).

Article I, s. 21,. provides the following:

> SECTION 21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The right to go to court to resolve disputes is a fundamental right.[43] In order to make a 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.[44] A person's guaranteed access to the courts should not be unduly or unreasonably burdened or restricted.[45] If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation. It may be possible that this bill could be found to be an unreasonable burden to an individual's right of access to courts. This bill is taking away a previously available cause of action to any person who is injured by the negligent use of a person's property simply because the property owner has followed the decontamination or demolition procedures of the bill. The Florida Supreme Court, in the case Kluger v. White, 281 So.2d 1 (Fla. 1973), held that, "where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of Florida, or where such right has become a part of the common law of the State, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown".[46]

Taking of Property

Article X, s. 6, Fla. Stat. provides the following:

> SECTION 6. Eminent domain.--
>
> (a) No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner.
> (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

Takings issues could arise based on the fact that this bill allows a government entity to force a person from their property and restrict any devise of the property until the residential property is decontaminated or demolished. A state law quarantining property pursuant to this bill probably would not be considered a taking. However, although the state may validly exercise its police power in conformance with applicable statutes and rules when it destroys property, its exercise of the police powers can still result in a taking.[47] Full and just compensation is required when the state, pursuant to its police power, destroys healthy but suspect citrus trees to prevent the spread of citrus canker.[48] There is no settled formula for determining when the valid exercise of police power stops and an impermissible encroachment on private property rights begins, but some of the factors which have been considered are:[49]

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[43] *DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach*, 819 So. 2d 971 (Fla. Dist. Ct. App. 4th Dist. 2002).
[44] *Yachting Promotions, Inc. v. Broward Yachts, Inc.*, 792 So. 2d 660 (Fla. Dist. Ct. App. 4th Dist. 2001); *Strohm v. Hertz Corporation/Hertz Claim Management*, 685 So. 2d 37 (Fla. Dist. Ct. App. 1st Dist. 1996).
[45] *Preferred Medical Plan, Inc. v. Ramos*, 742 So. 2d 322 (Fla. Dist. Ct. App. 3d Dist. 1999); *Swain v. Curry*, 595 So. 2d 168 (Fla. Dist. Ct. App. 1st Dist. 1992).
[46] *Id.* at 4.
[47] *Albrecht v. State*, 444 So. 2d 8 (Fla. 1984); *Conner v. Reed Bros., Inc.*, 567 So. 2d 515 (Fla. Dist. Ct. App. 2d Dist. 1990).
[48] *Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.*, 521 So. 2d 101 (Fla. 1988).
[49] *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981).

- Whether there is a physical invasion of the property;
- The degree to which there is a diminution in value of the property or whether the regulation precludes all economically reasonable use of the property;
- Whether the regulation confers a public benefit or prevents a public harm;
- Whether the regulation promotes the health, safety, welfare, or morals of the public;
- Whether the regulation is arbitrarily and capriciously applied; and
- The extent to which the regulation curtails investment-backed expectations.

Where a regulation creates a public benefit, it is more likely an exercise of eminent domain, and where a public harm is prevented it is more likely an exercise of the police power.[50] Reasonable regulations pursuant to the police power of the state, intended to promote public health, safety, or general public welfare, may be adopted and enforced without violating the constitutional rights of property owners.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health rule-making authority to promulgate rules to:

- Establish a 'certificate of fitness' that acts as documentation signifying that a home has been properly decontaminated;
- Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.
- Establish indoor air quality standards;
- Establishing the standards for cleanup and testing of clandestine laboratories;
- Establish the requirements for persons authorized to perform contamination assessments and decontamination;
- Create a uniform notice and letter; and
- Specify the requirements of persons authorized to perform clandestine laboratory cleanup.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by Chairman Garcia. The strike-all amendment significantly reduced the fiscal impact to the Department of Health by transferring the contamination assessment and decontamination to qualified independent contractors in the private sector; stream-lined several requirements and processes required in the bill to clarify the roles of law enforcement and the Department of Health; and addressed concerns brought to the attention of staff by the Florida Department of Law Enforcement, Florida Sheriff's Association, and the Department of Health.

The PCB, as amended, was reported favorably by the Health Care Regulation Committee.

[50] *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981); *State Plant Bd. v. Smith*, 110 So. 2d 401 (Fla. 1959).

A bill to be entitled

An act relating to clandestine laboratory contamination; amending s. 893.02, F.S.; providing definitions; creating s. 893.121, F.S.; providing for quarantine of any residential property where illegal clandestine laboratory activities occurred; providing for establishment of a uniform notice and a uniform letter of notification; providing for posting of specified notice at the site of a quarantine; providing requirements for the sending of a specified letter of notification to a residential property owner or manager; providing for petitions by certain persons in circuit court to lift such quarantines under certain conditions; prohibiting specified violations relating to such quarantines; creating s. 893.122, F.S.; permitting demolition of quarantined residential property under certain conditions; providing immunity from health-based civil actions for residential property owners who have met specified clandestine laboratory decontamination standards as evidenced by specified documentation; providing an exception to such immunity for persons convicted of manufacturing controlled substances at the site; creating s. 893.123, F.S.; providing for rulemaking to adopt clandestine laboratory decontamination standards; providing for certificates of fitness to indicate that decontamination has been completed; providing requirements for the lifting of a quarantine upon demolition of the property; creating s. 893.124, F.S.; requiring the Department of Health to specify requirements for persons

authorized to perform decontamination and contamination assessments; requiring the department to compile and maintain lists of decontamination and contamination assessment specialists; providing responsibilities for decontamination specialists; permitting decontamination and contamination assessment specialists to request specified documents; providing for the issuance of certificates of fitness by contamination assessment specialists; amending ss. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S.; conforming cross-references; providing an effective date.

WHEREAS, methamphetamine use and production is increasing throughout the state, and

WHEREAS, in places where methamphetamine production has occurred, significant levels of chemical contamination may be found, especially in residential properties when the contamination is not decontaminated, and

WHEREAS, children are susceptible to environmental toxicants via the skin, and the ingestion of residual methamphetamine is considered to be a result of hand-to-mouth activities, and

WHEREAS, studies on methamphetamine use during pregnancy showed an increased incidence of intrauterine growth retardation, prematurity, and perinatal complications, and

WHEREAS, once clandestine laboratories have been seized, the public may continue to be harmed by the illegal dumping of

chemical byproducts and the chemical residues that remain on the residential property, and

WHEREAS, there are no statewide standards for determining when a site of a seized clandestine laboratory has been successfully decontaminated, and

WHEREAS, the Legislature finds that this act is necessary for the immediate preservation of the public health, safety, and welfare and fulfills an important state interest, NOW, THEREFORE,

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

Section 1. Section 893.02, Florida Statutes, is amended to read:

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

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(2) "Analog" or "chemical analog" means a structural derivative of a parent compound that is a controlled substance.

(3) "Cannabis" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

(4) "Clandestine laboratory" means any location and proximate areas set aside or used that are likely to be contaminated as a result of manufacturing, processing, cooking, disposing, or storing, either temporarily or permanently, any substances in violation of this chapter, except as such activities are authorized in chapter 499.

(5) "Contaminated" or "contamination" means containing levels of chemicals at or above the levels defined by the department pursuant to s. 893.123(1) as a result of clandestine laboratory activity.

(6) "Contamination assessment specialist" or "contamination assessor" means a person responsible for assessing the extent of contamination and decontamination by determining the indoor air quality in a residential property based on the standards defined by the department. Upon the conclusion of decontamination, a residential property must successfully test less than or equal to the values defined by the department. The person must have specialized training that provides him or her with the knowledge, skills, and abilities to use quantitative measurement techniques in collecting and assessing specified contamination levels that have the ability to impair human health and well-being.

(7) ~~(4)~~ "Controlled substance" means any substance named or described in Schedules I-V of s. 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.

(8) "Decontamination" means the process of reducing the levels of contaminants to the levels defined by the department

pursuant to s. 893.123(1) that allow human reoccupancy using currently available methods and processes.

(9) "Decontamination specialist" means a person responsible for the cleanup, treatment, repair, removal, and decontamination of contaminated materials located in a residential property where clandestine laboratory activities occurred. The person must have the knowledge, skills, and ability to prescribe methods to eliminate, control, or reduce contamination; and must have been trained in the removal, storage, transport, and disposal of hazardous chemicals or chemical residues commonly associated with clandestine laboratory activities.

(10) ~~(5)~~ "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(11) ~~(9)~~ "Department" means the Department of Health.

(12) ~~(6)~~ "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.

(13) ~~(7)~~ "Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

(14) ~~(8)~~ "Distributor" means a person who distributes.

(15) ~~(10)~~ "Hospital" means an institution for the care and treatment of the sick and injured, licensed pursuant to the

provisions of chapter 395 or owned or operated by the state or Federal Government.

(16) ~~(11)~~ "Laboratory" means a laboratory approved by the Drug Enforcement Administration as proper to be entrusted with the custody of controlled substances for scientific, medical, or instructional purposes or to aid law enforcement officers and prosecuting attorneys in the enforcement of this chapter.

(17) ~~(12)~~ "Listed chemical" means any precursor chemical or essential chemical named or described in s. 893.033.

(18) ~~(13)~~ (a) "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

(b) "Manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug

as defined by the Florida Drug and Cosmetic Act. However, this definition does not apply to manufacturers of patent or proprietary preparations as defined in the Florida Pharmacy Act. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

(19) ~~(14)~~ "Mixture" means any physical combination of two or more substances.

(20) ~~(15)~~ "Patient" means an individual to whom a controlled substance is lawfully dispensed or administered pursuant to the provisions of this chapter.

(21) ~~(16)~~ "Pharmacist" means a person who is licensed pursuant to chapter 465 to practice the profession of pharmacy in this state.

(22) ~~(17)~~ "Possession" includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.

(23) ~~(18)~~ "Potential for abuse" means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being:

(a) Used in amounts that create a hazard to the user's health or the safety of the community;

(b) Diverted from legal channels and distributed through illegal channels; or

(c) Taken on the user's own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

(24) ~~(19)~~ "Practitioner" means a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number.

(25) ~~(20)~~ "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so, and meeting the requirements of s. 893.04. The term also includes an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was

issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in s. 465.031(5), which does not fall within the definition of a controlled substance as defined in this act.

(26) "Residential property" means a dwelling unit used, or intended for use, by an individual or individuals as a permanent residence. The term includes improved real property of between one and four dwellings; a condominium unit, as defined in s. 718.103(27); a cooperative unit, as defined in s. 719.103(24); or a mobile home or manufactured home, as defined in s. 320.01(2). The term does not include a hotel, motel, campground, marina, or timeshare unit.

(27)~~(21)~~ "Wholesaler" means any person who acts as a jobber, wholesale merchant, or broker, or an agent thereof, who sells or distributes for resale any drug as defined by the Florida Drug and Cosmetic Act. However, this definition does not apply to persons who sell only patent or proprietary

preparations as defined in the Florida Pharmacy Act. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

Section 2. Section 893.121, Florida Statutes, is created to read:

893.121 Quarantine of a clandestine laboratory.--

(1) The purpose of the quarantine provided for in this section is to prevent exposure of any person to the hazards associated with clandestine laboratory activities and provide protection from unsafe conditions that pose a threat to the public health, safety, and welfare. The department has the authority to quarantine residential property under s. 381.0011.

(2) Whenever a sheriff, police officer, or other law enforcement entity secures evidence from a residential property in which illegal clandestine laboratory activities occurred, the department must quarantine the property. The local law enforcement entity securing evidence shall enforce a quarantine on the residential property as part of its duty to assist the department under s. 381.0012(5). Enforcement does not require the 24-hour posting of law enforcement personnel. The residential property shall remain quarantined until the department receives a certificate of fitness documenting that the property was decontaminated as defined by the department pursuant to s. 893.123 or demolished in accordance with s. 893.122(1), or a court order is presented requiring the quarantine to be lifted.

(3) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to establish a uniform notice to post at

the site of a quarantined clandestine laboratory and a uniform letter of notification of the quarantine to be sent to the residential property owner or manager. It is the responsibility of local law enforcement to post the notice of a quarantine on the residential property, and it is the responsibility of the department to mail the letter of notification. The material in the letter and notice shall include, but not be limited to:

(a) That the residential property has been quarantined and a clandestine laboratory was seized on or inside the residential property.

(b) The date of the quarantine.

(c) The name and contact telephone number of the law enforcement entity posting the quarantine.

(d) A statement specifying that hazardous substances, toxic chemicals, or other hazardous waste products may have been present and may remain on or inside the residential property and that exposure to the substances may be harmful and may pose a threat to public health and the environment.

(e) A statement that it is unlawful for an unauthorized person to enter the contaminated residential property and that the removal of any notice of the quarantine is a second degree misdemeanor under s. 381.0025(1).

(f) A statement, in the notification letter, explaining how to have the quarantine lifted.

(4) Upon securing evidence from a residential property in which illegal clandestine laboratory activities occurred, the local law enforcement entity shall immediately notify the local health officer and the department's Division of Environmental

Health that a residential property is quarantined and shall provide the name and contact information of the law enforcement entity, the name of the residential property owner or residential property manager, and the address of the property.

(5) To the extent possible, the department shall mail the letter of notification to the residential property owner or the manager of the residential property within 5 working days from the date of quarantine notifying the owner or manager that a clandestine laboratory was found on the property and that the property has been quarantined. The department shall also include a list of contamination assessment specialists and decontamination specialists and any other information deemed appropriate by the department to the residential property owner or manager.

(6) Any person who has an interest in a residential property that is quarantined pursuant to this section may file a petition in the circuit court in which the residential property is located to request a court order that the quarantine of the residential property be lifted for one of the following reasons:

(a) The residential property was wrongfully quarantined; or

(b) The residential property has been properly decontaminated as defined by the department pursuant to s. 893.123 or demolished pursuant to s. 893.122(1) and may be reoccupied for habitation, but the department refuses or fails to lift the quarantine.

(7) No person shall inhabit a quarantined residential property, offer the residential property to the public for

temporary or indefinite habitation, or remove any notice of the quarantine. Any person who willfully violates a provision of this subsection commits a second degree misdemeanor under s. 381.0025(1).

Section 3. Section 893.122, Florida Statutes, is created to read:

893.122 Option of demolition; immunity from liability from health-based civil actions.--

(1) A residential property owner shall, upon notification from a law enforcement entity that clandestine laboratory activities have occurred in a property owned by that owner and that the property is quarantined, meet the decontamination standards as defined by the department pursuant to s. 893.123 unless the property owner, at the owner's discretion, elects to demolish the contaminated residential property. The demolition and removal of materials must meet the requirements of the Occupational Safety and Health Administration and the United States Environmental Protection Agency regulations pertaining to the generation, storage, transport, and disposal of hazardous wastes and any state or local requirements.

(2) A residential property owner who has met the decontamination standards, as evidenced by a certificate of fitness and a letter of reoccupancy pursuant to s.893.123, or has demolished the residential property in compliance with subsection (1), shall have immunity from health-based civil actions brought by any future owner, renter, or other person who occupies such residential property, or a neighbor of such residential property, in which the alleged cause of the injury

or loss is the existence of the clandestine laboratory. However, a person with a conviction, as defined in s. 944.607, for the manufacture of any substance regulated under this chapter on the residential property where clandestine laboratory activities occurred shall not have the immunity provided in this subsection.

Section 4. Section 893.123, Florida Statutes, is created to read:

893.123 Clandestine laboratory decontamination standards, certificate of fitness, and letter of reoccupancy.--

(1) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 that establish:

(a) Standards for indoor air quality regarding levels of contaminants produced by clandestine laboratory activities to include methamphetamine, lead, mercury, and volatile organic compounds. These standards must be consistent with values commonly used by other states or comply with national standards.

(b) Standards for the cleanup and testing of clandestine laboratories.

(c) A certificate of fitness that shall act as appropriate documentation that a residential property has been decontaminated in accordance with specified standards. The certificate of fitness shall be submitted to the department by a contamination assessment specialist. The certificate of fitness shall include, but is not limited to:

1. The name of the residential property owner, the mailing and street address of the residential property owner, and, if

applicable, the parcel identification of the residential property.

2. The dates the residential property was quarantined and cleanup was completed.

3. A summary of the indoor air quality test results, findings, and conclusions as determined by a contamination assessment specialist.

4. The name and address of the contamination assessment specialist.

5. The name and address of the decontamination specialist.

6. The method of repair, replacement, or decontamination of the residential property.

(d) A letter of reoccupancy that will notify the residential property owner that the property may be reoccupied for habitation.

(2) Upon receipt of the certificate of fitness, the department shall send a letter of reoccupancy to the residential property owner or manager and to the local law enforcement entity that enforced the quarantine and posted the notice. The letter of reoccupancy must include the address of the residential property, a statement that the quarantine is lifted, and a statement that the residential property may be reoccupied for habitation.

(3) In the case of demolition, the department shall lift the quarantine on a residential property upon receipt of a letter presented by a demolition company stating that the quarantined property was demolished. The letter must include the address of the residential property and a statement that the

demolition was performed in accordance to the requirements in s. 893.122(1).

Section 5. Section 893.124, Florida Statutes, is created to read:

893.124 Decontamination and contamination assessment specialists.--

(1)(a) The department shall compile and maintain lists of decontamination and contamination assessment specialists. The lists shall be posted on the department's Internet website. The department shall indicate on the website whether the specialists are bonded and insured.

(b) Persons authorized to perform decontamination or contamination assessments must have knowledge and skill in the handling of toxic substances. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the requirements for persons authorized to perform decontamination and contamination assessments. Decontamination specialists shall be responsible for ensuring that all hazardous substances, toxic chemicals, or other hazardous waste products that may have been present are removed from the residential property and disposed of in accordance with federal, state, and local laws and regulations.

(2) In determining the level of contamination in a clandestine laboratory, the decontamination or contamination assessment specialist may request copies of any available law enforcement reports or information relating to the following:

(a) The length of time the residential property was used as a clandestine laboratory.

(b) The extent to which the residential property was exposed to chemicals used in clandestine laboratory activities.

(c) The chemical processes that were involved in the clandestine laboratory activities.

(d) The chemicals that were removed from the residential property.

(e) The location of the clandestine laboratory activities in relation to the habitable areas of the residential property.

(3) If the contamination assessment specialist determines that the residential property is not contaminated, the contamination assessment specialist shall prepare a certificate of fitness and submit the certificate to the department.

Section 6. Paragraph (s) of subsection (1) of section 465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.--

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(s) Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

Section 7. Paragraph (e) of subsection (1) of section 465.023, Florida Statutes, is amended to read:

465.023 Pharmacy permittee; disciplinary action.--

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee, and may fine, place on

probation, or otherwise discipline any pharmacy permittee who has:

(e) Dispensed any medicinal drug based upon a communication that purports to be a prescription as defined by s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

Section 8. Paragraph (c) of subsection (1) of section 856.015, Florida Statutes, is amended to read:

856.015 Open house parties.--

(1) Definitions.--As used in this section:

(c) "Drug" means a controlled substance, as that term is defined in ss. 893.02~~(4)~~ and 893.03.

Section 9. Subsection (6) of section 893.135, Florida Statutes, is amended to read:

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

(6) A mixture, as defined in s. 893.02~~(14)~~, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance

described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

Section 10. Paragraph (a) of subsection (1) of section 944.47, Florida Statutes, is amended to read:

944.47 Introduction, removal, or possession of certain articles unlawful; penalty.--

(1)(a) Except through regular channels as authorized by the officer in charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any of the following articles which are hereby declared to be contraband for the purposes of this section, to wit:

1. Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

2. Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

3. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.

4. Any controlled substance as defined in s. 893.02~~(4)~~ or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.

5. Any firearm or weapon of any kind or any explosive substance.

Section 11. Subsection (1) of section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.--

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any written or recorded communication; any currency or coin; any article of food or clothing; any tobacco products as defined in s. 210.25(11); any cigarette as defined in s. 210.01(1); any cigar; any intoxicating beverage or beverage which causes or may cause an intoxicating effect; any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02~~(4)~~; any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon; and any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

Section 12. Paragraph (a) of subsection (1) of section 985.4046, Florida Statutes, is amended to read:

985.4046 Introduction, removal, or possession of certain articles unlawful; penalty.--

(1)(a) Except as authorized through program policy or operating procedure or as authorized by the facility superintendent, program director, or manager, a person may not introduce into or upon the grounds of a juvenile detention facility or commitment program, or take or send, or attempt to take or send, from a juvenile detention facility or commitment program, any of the following articles, which are declared to be contraband under this section:

1. Any unauthorized article of food or clothing.

2. Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.

3. Any controlled substance, as defined in s. 893.02~~(4)~~, or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.

4. Any firearm or weapon of any kind or any explosive substance.

Section 13. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. ____ (for drafter's use only)

Bill No. **HB 7065**

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Garcia offered the following:

Amendment (with directory and title amendments)

Remove line(s) 344 and insert:

from the department that clandestine laboratory

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7199 (PCB FFF 06-05) Forensic Treatment and Training
SPONSOR(S): Future of Florida's Families Committee and Rep. Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2010, HB 1503

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	5 Y, 0 N	Davis	Collins
1) Criminal Justice Committee		Cunningham	Kramer
2) Health & Families Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of persons who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for 'forensic client' to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities;
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedure as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and
- Clarifies distinction between ch. 916, F.S., forensic procedures for involuntary commitment and ch. 393, F.S., procedures for **non**-forensic involuntary commitment (the source of much court confusion).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 916.105, 916.106, 916.107, 916.1075, 916.1081, 916.1085, 916.1091, 916.1093, 916.111, 916.115, 916.12, 916.13, 916.145, 916.15, 916.16, 916.17, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 921.137, 985.223, 287.057, 408.036, 943.0585, 942.059.

According to the Agency for Persons with Disabilities, there is no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government: The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Chapter 916, F.S., the "Forensic Client Services Act," applies to persons charged with a felony and found to be incompetent to proceed due to mental illness, mental retardation, or autism or who have been acquitted of felonies by reason of insanity. Persons committed under ch. 916, F.S., remain under the jurisdiction of the committing court but are committed to the custody of the department. Chapter 916, F.S., is divided into three parts: Part I, General Provisions; Part II, Forensic Services for Persons Who are Mentally Ill; and, Part III, Forensic Services for Persons Who are Retarded or Autistic. The Florida Rules of Criminal Procedure (FRCP Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed, hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Part I provides legislative intent for DCF to "establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants" committed under the provisions of the chapter.[1] This part provides definitions for terminology used in the entire chapter, including definitions of "autism," "forensic client," "mental illness," and "retardation."[2] Part I also includes the rights of forensic clients, which include the right to:

- Individual dignity,
- Treatment,
- Express and informed consent,
- Quality treatment, communication,
- Abuse reporting, and visits,
- To have personal effects and clothing,
- To vote if otherwise eligible,
- Confidentiality of the clinical record, and
- Habeas corpus.[3]

This part also provides prohibitions and penalties for sexual misconduct by an employee with a forensic client, penalties for escape from a forensic program, and penalties for the introduction or removal of certain articles into a forensic facility. It provides general rulemaking authority for the department.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental illness or who have been adjudicated not guilty by reason of insanity.

This part also directs DCF to provide either directly or through a contract with accredited institutions standardized criteria and procedures to be used in evaluations and to develop clinical protocol and procedures consistent with the FRCP. In addition, DCF must develop a training plan for community

[1] s. 916.105, F.S.
[2] s. 916.106, F.S.
[3] s. 916.107, F.S.

mental health professionals who perform forensic evaluations, provide training for professionals doing evaluations and providing reports to the court and develop a system to evaluate the program's success. Each year DCF is required to provide the court with a list of mental health professionals approved as experts.

Part II authorizes the court to appoint no more than three nor fewer than two experts to evaluate a criminal defendant's mental condition, including competency, insanity, and the need for involuntary hospitalization or placement. The court is required to authorize reasonable fees for expert evaluations and testimony.

Pursuant to this part, an individual is incompetent to proceed if he or she "does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him."[4]

In considering the issue of competence to proceed, the statute requires that the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him or her, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel regarding the facts pertinent to the case, behave appropriately in court, and testify relevantly. The examining expert must include in the report to the court any other information deemed relevant. If the expert finds the defendant incompetent to proceed, they must also report on recommended treatment that will allow the defendant to regain competence. The expert's report to the court must also address the defendant's mental illness, recommended treatments and alternatives and their availability in the community, the likelihood of the defendant's attaining competence under the recommended treatment, an assessment of the probable duration of the treatment, and the probability that the defendant will attain competence to proceed in the foreseeable future.[5]

A defendant may not automatically be deemed incompetent to proceed simply because his or her satisfactory mental functioning is dependent upon psychotropic medication. "Psychotropic medication" is defined for the purposes of ch. 916, F.S., as "any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs."[6]

Part II of ch. 916, F.S., also provides the criteria for defendants who are adjudicated incompetent to proceed to be involuntarily committed for treatment. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; and
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.[7]

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[4] s. 916.12, F.S.
[5] s. 916.12, F.S.
[6] s. 916.12(5), F.S.
[7] s. 916.13, F.S.

This part also provides that a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed if he or she is mentally ill and, because of the mental illness, is manifestly dangerous to himself or herself or others.[8] Persons committed under Part I of ch. 916, F.S., are committed to the custody of DCF and are usually treated at one of the three forensic state mental health treatment facilities at Florida State Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami.

The court may also order conditional release of a defendant who has been found incompetent to proceed or not guilty by reason of insanity. Conditional release must be based on an approved plan for providing appropriate outpatient care. The court may also order conditional release in lieu of an involuntary commitment to a facility. If outpatient treatment is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court.[9]

Part III of ch. 916, F.S., relates to forensic services for persons with retardation or autism and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental retardation or autism. Similar to the provisions of Part I, this section directs that the department must provide the courts annually with a list of professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic, but one of the experts appointed by the court must be the "developmental services program of the department," and the department is directed to "select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant."[10]

The court must find by clear and convincing evidence that:

- The defendant is retarded or autistic,
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm,
- There is no less restrictive treatment available, and
- There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and he or she will regain competency to proceed in the reasonably foreseeable future.[11]

A defendant who is found to be incompetent to proceed and meets the above criteria is committed to the department. No later than six months after admission, at the end of any period of extended commitment, or at any time the administrator determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator must file a report with the court.[12]

If a defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed two years, the charges against him or her are to be dropped. The only exception is if the court specifies in its order the reasons for expecting that the defendant will become competent to proceed within the foreseeable future and specifies the time within which that is expected to occur. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the

[8] s. 916.15, F.S.
[9] s. 916.17, F.S.
[10] s. 916.301, F.S.
[11] s. 916.302, F.S.
[12] Ibid.

defendant be declared competent to proceed in the future.[13] The individual may then apply for services from the agency.

If the defendant requires involuntary residential services under s. 393.11, F.S., and there is a substantial likelihood that he or she will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings are inappropriate, then the defendant's placement in a secure facility or program may be continued. An individual involuntarily placed under this provision must have an annual review of his or her status by the court at a hearing. The annual review and hearing are to determine whether the individual continues to meet the criteria for involuntary residential services and, if so, if placement in a secure facility is still required because the court finds that the individual is likely to physically injure others. However, in no circumstance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.[14]

Forensic programs for persons with developmental disabilities are the Mentally Retarded Defendant Programs, which are located at Sunland in Marianna, Florida State Hospital in Chattahoochee, and Taccachale in Gainesville.

The Agency for Persons with Disabilities (APD) was created effective October 1, 2004. The agency is housed within the Department of Children and Families (DCF) for administrative purposes only. It is not subject to the control, supervision or direction of DCF, and the director of APD is appointed by the Governor. The agency's mission is to assist people who have developmental disabilities and their families. The agency also provides assistance to identify the needs of people with developmental disabilities and funding to purchase supports and services. Although the agency's Central Office is located in Tallahassee, supports and services for people with developmental disabilities are provided through district offices throughout the state.

Developmental disabilities include mental retardation, autism, spina bifida, cerebral palsy, and Prader Willi syndrome. The bill proposes to continue the conforming changes to statutes begun in 2004 to conform to the establishment of the new agency, plus make some needed updating and clarifications; as well as several substantive changes that will allow the agency to better serve the needs of service recipients and the public interest.

As part of those transitions, institutions housing clients with developmental disabilities were also transferred to APD. This included institutions housing forensic clients diagnosed with mental retardation or autism that had been charged with a felony offense but found incompetent to proceed to trial. Statutory provisions relating to forensic clients are found in chapter 916, F.S. However, the current chapter, which is divided into 3 parts, has not yet been modified to recognize the distinction between the DCF with respect to forensic clients with mental illness, and the APD, which is responsible for forensic clients with mental retardation or autism.

The DCF is no longer responsible for the treatment and training of defendants who have solely mental retardation or autism. The delay in modifying Chapter 916, F.S., to clearly distinguish the department's responsibility from the responsibilities of the new agency has caused confusion among the courts. Individuals with mental retardation or autism, at times, continue to be committed to the department and commitment packets are being sent to the Forensic Admissions Office within mental health. Because individuals can have both mental retardation and mental illness, it becomes very difficult at times to determine whether the court intended to commit the individual due to mental illness or mental retardation. This uncertainty requires staff time to obtain clarification from the court and may result in the court's issuing new orders and/or requiring new evaluations. The individual may have to move from the mental health waiting list to the mental retardation waiting list, which ultimately delays the individual's admission time.

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[13] s. 916.303, F.S.
[14] s. 916.303, F.S.

According to DCF, clearly distinguishing that the treatment and training of defendants with mental retardation or autism is the responsibility of the Agency for Persons with Disabilities will minimize the courts' confusion, lead to fewer inappropriate commitments to the department, and help to ensure that defendants with mental retardation or autism are placed on the appropriate waiting list so that admission can occur without unnecessary delays.

Use of Restraint and Seclusion

According to the Advocacy Center for Persons with Disabilities (Advocacy Center), based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida had the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Of those deaths, 14 of the 16 suspicious deaths that came to the attention of the Advocacy Center involved the use of restraint and/or seclusion. The Advocacy Center learned of these deaths from a variety of sources, including the CMS, Agency for Healthcare Administration (AHCA), APD, DCF, and newspaper articles, as well as from families and friends of the deceased. However, the unreliability and uncertainty of the reporting procedures in Florida make it difficult to know with complete certainty the extent of use of restraint and seclusion.

Both the agency and DCF have some statutory provisions in place regarding the use of restraint and seclusion. Section 393.13(4)(i), F.S., states, "Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a rehabilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort."

Pursuant to federal law, CMS must report Florida restraint or seclusion related deaths to the Advocacy Center. Hospitals receiving federal funds must report to CMS any deaths that occur while an individual is restrained or in seclusion or where it is reasonable to assume that an individual's death is a result of restraint and seclusion. However, according to the Advocacy Center, Florida hospitals are often late sending reports to CMS, which then often fails to notify the Advocacy Center in a timely manner or sends incomplete information.

Mental Health Treatment Facilities

The purpose of mental health treatment facilities is to stabilize adults with mental illnesses so they can return to the community. Florida's mental health institutions, also known as mental health treatment facilities, are part of the continuum of care for the most seriously mentally ill residents of the state. In Fiscal Year 2004-05, the program served 3,950 adults in two population categories.

The "civil population category" includes adults with a serious mental illness who meet voluntary or involuntary admission criteria (are a danger to themselves or others) and for whom less restrictive treatment settings are not available or appropriate.

The "forensic population category" includes adults with a serious mental illness who are either charged with a criminal offense and found not guilty of a crime by reason of insanity or found incompetent to proceed through any phase of the judicial process.

Institutional mental health services are provided at five state mental health treatment facilities, which include two civil facilities, two forensic facilities, and one facility with both civil and forensic units.

"Civil facilities" serve the general population and provide evaluation, mental health treatment, rehabilitation and support to facilitate clients' successful return to the community. Each hospital serves a designated geographic area.

"Forensic facilities" serve adults charged with a felony criminal offense (and juveniles adjudicated as adults) and provide mental health treatment and competency restoration services in a secure residential setting. The facilities serve individuals who are found incompetent to proceed to trial and individuals who are found not guilty of their crime due to reason of insanity. Forensic facilities serve individuals from all geographic areas of the state.

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness and are involved with the criminal justice system. The goal is to provide assessment, evaluation, and treatment to individuals adjudicated incompetent to proceed at any stage of a criminal proceeding or not guilty by reason of insanity.

In addition to the general psychiatric treatment approaches and milieu, specialized services include:

- Psychosocial rehabilitation
- Education
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention
- Sexually transmitted disease education and prevention
- Substance abuse awareness and prevention
- Vocational training
- Occupational therapies
- Full range of medical and dental services

Services include comprehensive assessment, evaluation, and treatment of psychiatric disorders for individuals involved with the criminal court system. Evaluations for competency to proceed, treatment following a finding of not guilty by reason of insanity, and services to individuals on conditional release in the community are provided. Additionally, in-jail services are provided by local county jails, often with assistance from community mental health providers.

Forensic services are provided to adults over the age of 18 and juveniles adjudicated as adults. Diagnostic categories include all major DSMIV disorder classifications (primarily schizophrenia and mood disorders). Secondary diagnoses, such as substance abuse and personality disorders, are also present for a significant number of people.

Individuals determined by the court to require treatment in a state mental health facility are typically served by one of three maximum security facilities. These facilities have a combined capacity to serve 890 people. Individuals who do not require a secure setting may be directly admitted or transferred into one of three civil mental health treatment facilities. The facilities admit over 1,000 individuals into the state treatment facilities on a yearly basis.

Community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities. There are two forensic halfway houses in Florida, with a capacity to serve 35 individuals from one of the state treatment facilities. Individuals are also accepted into other community programs. Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Services vary by county jail, ranging from visits by a mental health professional on an as needed basis to full service inpatient mental health units located in the jail complex.

Section 916.145, F.S., states, "The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed five years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the

foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future."

An acquittal of not guilty by reason of insanity (NGBRI) is an adjudication by the court. The individual remains NGBRI of the charge(s) indefinitely and cannot be retried on the same charge(s). However, the court may maintain jurisdiction and may commit the individual to the DCF for inpatient treatment or order treatment and supervision in the community under the terms of a conditional release.

If committed to the department for inpatient treatment, the treating facility must file a report with the court within six months of the individual's admission, prior to the end of any extended period of treatment or at any time the administrator or designee determines that the individual no longer meets the criteria for involuntary commitment. Individuals placed on conditional release may remain under court supervision until such time that the court determines they no longer require court supervision.

In Fiscal Year 2003-04, 69% of the individuals committed under the civil statute experienced symptom relief, and 53% of the forensic individuals who were Not Guilty by Reason of Insanity experienced symptom relief. In future years, the performance measurement system will shift from measuring symptom relief to measuring improvement in functioning. In Fiscal Year 2005-06, the DCF goal is to improve the level of functioning for 73% of the civil population and 63% of the forensic population.

Effect of the Bill

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for "forensic client" to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities.
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and

- Amends statute to clarify distinction between ch. 916 forensic procedures for involuntary commitment and ch. 393 procedures for **non**-forensic involuntary commitment (the source of much court confusion).

The bill updates, clarifies, and adds reference to APD; adds language relating to the use of restraints and seclusion; revises the definition of "Forensic Clients" and their right to treatment; revises a forensic client's right to express and informed consent during emergency situations to include a review of the need for treatment review every 48 hours; adds quality of treatment language pertaining to a client's right to be free from unnecessary use of restraint and seclusion (restraints and seclusion should only be used in situations in which the client or others are at risk); and specifies that the release of confidential information comply with state and federal law.

Provisions related to the appointment of experts are updated. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant;
(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
(c) Understand the adversarial nature of the legal process;
(d) Disclose to counsel facts pertinent to the proceedings at issue;
(e) Manifest appropriate courtroom behavior;
(f) Testify relevantly; and
(g) Any other factor deemed relevant by the experts.

C. SECTION DIRECTORY:

Section 1. Amends s. 916.105, F.S., relating to legislative intent to reduce the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Amends s. 916.106, F.S., providing and revising definitions.

Section 3. Amends s. 916.107, F.S., relating to the rights of forensic clients.

Section 4. Amends s. 916.1075, F.S., relating to sexual misconduct to substitute the term "covered person" for "employee" and require APD to directly report misconduct rather than reporting through the agency's inspector general.

Section 5. Amends s. 916.1081, F.S., relating to penalties for escaping from a forensic facility to distinguish from forensic clients in the correctional system.

Section 6. Amends s. 916.1085. F.S., providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with Disabilities.

Section 7. Amends s. 916.1091, F.S., relating to security personnel to add APD.

Section 8. Amends s. 916.1093, F.S., relating to administration and rules to add APD, and to specify the content of rules relating to restraint and seclusion.

Section 9. Amends s. 916.111, F.S., updating provisions relating to training of mental health experts.

Section 10. Amends s. 916.115, F.S., updating provisions relating to appointment of experts. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

Section 11. Amends s. 916.12, F.S., adding provisions relating to competency to proceed.

Section 12. Amends s. 916.13, F.S., relating to involuntary commitment to alter the burden of commitment.

Section 13. Amends s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent.

Section 14. Amends s. 916.15, F.S., relating to insanity to clarify that incompetence is determined according to Rule 3.217 of the Florida Rules of Criminal Procedure.

Section 15. Amends s. 916.16, F.S., relating to jurisdiction of courts over defendants involuntarily committed due to a determination of incompetence.

Section 16. Amends s. 916.17, F.S., relating to conditional release.

Section 17. Amends s. 916.301, F.S., relating to the appointment of experts and to update and clarify the persons to be selected as experts.

Section 18. Amends s. 916.3012, F.S., clarifying provisions governing the determination of a defendant's mental competence to proceed.

Section 19. Amends s. 916.302, F.S., relating to involuntary commitment and to require the submission of an evaluation by DCF and APD for dually diagnosed defendants.

Section 20. Amends s. 916.3025, F.S., relating to jurisdiction of committing court and to permit the court to transfer jurisdiction to a court in the circuit where the defendant resides.

Section 21. Amends s. 916.303, F.S., relating to determination of incompetency to clarify the difference between the grounds for involuntary commitments under ch. 393, F.S., and the requirement for continued secure placement under ch. 916, F.S.

Section 22. Amends s. 916.304, F.S., relating to conditional release to update and clarify the difference between involuntary placements and forensic commitments.

Section 23. Amends s. 921.137, F.S., relating to the death sentence for retarded inmates and to update the reference from DCF to APD.

Section 24. Amends s. 985.223, updating the provisions relating to juvenile delinquency cases.

Section 25. Amends. s. 287.057, F.S., to update cross-reference.

Section 26. Amends s. 408.036, F.S., to update cross-reference.

Section 27. Amends s. 943.0585, F.S., to update cross-reference.

Section 28. Amends s. 943.059, F.S., to update cross-reference.

Section 29. Provides an effective date of upon becoming law.

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:

According to the Agency for Persons with Disabilities and the Department and Children and Family Services, there is no fiscal impact to this bill.

The Legislature appropriated $289 million to the state mental health institutions for Fiscal Year 2005-06. Approximately 65% of the funding is used for personnel. For Fiscal Year 2005-06, the Legislature has authorized 4,270.5 staff positions for the institutions. The staff provides mental health, medical, security, administrative, housekeeping and maintenance services. The program's annual appropriation also includes funds for the department to contract with a private provider for the operation and management of South Florida Evaluation and Treatment Center.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Agency for Persons with Disabilities to adopt rules under s. 916.1093, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to forensic treatment and training; amending s. 916.105, F.S.; revising legislative intent with respect to the treatment or training of defendants who have mental illness, mental retardation, or autism and are committed to the Agency for Persons with Disabilities; providing intent with respect to the use of restraint and seclusion; amending s. 916.106, F.S.; providing and revising definitions; amending s. 916.107, F.S., relating to the rights of forensic clients; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; revising provisions governing the involuntary treatment of clients; requiring the coordination of services between the department, the agency, and the Department of Corrections; amending s. 916.1075, F.S.; revising certain prohibitions on sexual misconduct involving covered persons of the Department of Children and Family Services or the Agency for Persons with Disabilities; defining the term "covered person"; requiring that notice of sexual misconduct be provided to the inspector general of the agency or department; amending s. 916.1081, F.S.; providing that an escape or an attempt to escape from a civil or forensic facility constitutes a second-degree felony; amending s. 916.1085, F.S.; providing for certain prohibitions concerning contraband articles to apply to facilities under the

supervision or control of the Agency for Persons with Disabilities; deleting a cross-reference; amending s. 916.1091, F.S.; authorizing the use of chemical weapons by agency personnel; amending s. 916.1093, F.S.; authorizing the agency to enter into contracts and adopt rules; requiring department and agency rules to address the use of restraint and seclusion; providing requirements for such rules; amending s. 916.111, F.S.; revising provisions governing the training of mental health experts; amending s. 916.115, F.S.; requiring that the court appoint experts to determine the mental condition of a criminal defendant; requiring that the Department of Children and Family Services annually provide the courts with a list of certain mental health professionals; amending s. 916.12, F.S.; revising provisions governing the evaluation of a defendant's competence to proceed; amending s. 916.13, F.S.; revising conditions under which a defendant may be involuntarily committed for treatment; amending s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent; conforming provisions to changes made by the act; amending s. 916.15, F.S.; clarifying that the determination of not guilty by reason of insanity is made under a specified Florida Rule of Criminal Procedure; amending s. 916.16, F.S.; providing for the continuing jurisdiction of the court over a defendant involuntarily committed due to mental illness; amending s. 916.17, F.S.; clarifying circumstances under which the court may order the conditional release of a

defendant; amending s. 916.301, F.S.; requiring that certain evaluations be conducted by certain qualified experts; requiring that the Agency for Persons with Disabilities provide the court with a list of certain available retardation and autism professionals; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the agency; amending s. 916.3012, F.S.; clarifying provisions governing the determination of a defendant's mental competence to proceed; amending s. 916.302, F.S., relating to the involuntary commitment of a defendant; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the agency; requiring that the department and agency submit an evaluation to the court before the transfer of a defendant from one civil or forensic facility to another; amending s. 916.3025, F.S.; clarifying that the committing court retains jurisdiction over a defendant placed on conditional release; providing for the transfer of continuing jurisdiction to another court where the defendant resides; amending s. 916.303, F.S.; clarifying provisions governing the dismissal of charges against a defendant found to be incompetent to proceed due to retardation or autism; amending s. 916.304, F.S.; providing for the conditional release of a defendant to a civil facility; amending ss. 921.137 and 985.223, F.S.,

relating to provisions governing the imposition of the death sentence upon a defendant with mental retardation and the determination of incompetency in cases involving juvenile delinquency; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending ss. 287.057, 408.036, 943.0585, and 943.059, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 916.105, Florida Statutes, is amended to read:

916.105 Legislative intent.--

(1) It is the intent of the Legislature that the Department of Children and Family Services and the Agency for Persons with Disabilities, as appropriate, establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been ~~are~~ charged with a felony and who have been found to be incompetent to proceed due to their mental illness, mental retardation, or autism, or who have been acquitted of a felony ~~felonies~~ by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department or agency under the provisions of this chapter. Such ~~The separate, secure~~ facilities shall be sufficient to

accommodate the number of defendants committed under the conditions noted above.~~,~~ Except for those defendants found by the department or agency to be appropriate for treatment or training in a civil ~~treatment~~ facility or program pursuant to subsection (3), forensic~~. Such secure~~ facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.

(2) It is ~~further~~ the intent of the Legislature that treatment or training programs for defendants who are found to have mental illness, mental retardation, or autism ~~are found to be mentally ill, retarded, or autistic~~ and are involuntarily committed to the department or agency, and who are still under the jurisdiction of the committing court, be provided in ~~such~~ a manner, subject to security requirements and other mandates of this chapter, as to ensure the rights of the defendants as provided in this chapter.

(3) It is the intent of the Legislature that evaluation and services to defendants who have mental illness, mental retardation, or autism ~~are mentally ill, retarded, or autistic~~ be provided in community settings, in community residential facilities, or in civil~~, nonforensic~~ facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

(4) It is the intent of the Legislature to minimize and achieve an ongoing reduction in the use of restraint and

seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.--For the purposes of this chapter, the term:

(1) "Agency" means the Agency for Persons with Disabilities. The agency is responsible for training forensic clients who are developmentally disabled due to mental retardation or autism and have been determined incompetent to proceed.

(2) ~~(1)~~ "Autism" has the same meaning as in s. 393.063. ~~means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders, with the age of onset of autism occurring during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.~~

(3) ~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof in any form, or any other agent with lacrimatory properties, and shall include products such as that commonly known as "mace."

(4) ~~(3)~~ "Civil facility" means:

(a) A mental health facility established within the department or by contract with the department to serve

individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility; or~~.~~

(b) An intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, designated by the agency to serve those defendants who do not require the security provided in a forensic facility.

(5)~~(4)~~ "Court" means the circuit court.

(6) "Defendant" means an adult, or a juvenile who is prosecuted as an adult, who has been arraigned and charged with a felony offense under the laws of this state.

(7)~~(5)~~ "Department" means the Department of Children and Family Services. The department is responsible for the treatment of forensic clients who have been determined incompetent to proceed due to mental illness or who have been acquitted of a felony by reason of insanity.

(8)~~(6)~~ "Express and informed consent" or "consent" means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.

(9)~~(7)~~ "Forensic client" or "client" means any defendant who has been ~~is mentally ill, retarded, or autistic and who is~~ committed to the department or agency pursuant to s. 916.13, s. 916.15, or s. 916.302. ~~this chapter and:~~

~~(a) Who has been determined to need treatment for a mental~~

~~illness or training for retardation or autism;~~

~~(b) Who has been found incompetent to proceed on a felony offense or has been acquitted of a felony offense by reason of insanity;~~

~~(c) Who has been determined by the department to:~~

~~1. Be dangerous to himself or herself or others; or~~

~~2. Present a clear and present potential to escape; and~~

~~(d) Who is an adult or a juvenile prosecuted as an adult.~~

(10) ~~(8)~~ "Forensic facility" means a separate and secure facility established within the department or agency to serve forensic clients. A ~~Such~~ separate and secure facility means a ~~facilities shall be~~ security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents ~~buildings located on grounds distinct in location from other facilities for persons who are mentally ill~~. ~~The Florida State Hospital shall not be required to maintain separate facilities for mentally ill, retarded, or autistic defendants who are found incompetent to proceed or who are acquitted of a criminal offense by reason of insanity.~~

(11) ~~(9)~~ "Incompetent to proceed" means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant's failure to comply with court

orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

(12) ~~(10)~~ "Institutional security personnel" means the staff of forensic facilities ~~members~~ who meet or exceed the requirements of s. 943.13 and who are responsible for providing security, protecting ~~for protection of~~ clients and personnel, enforcing ~~for the enforcement of~~ rules, preventing and investigating ~~for prevention and investigation of~~ unauthorized activities, and ~~for~~ safeguarding the interests of citizens in the surrounding communities.

(13) ~~(11)~~ "Mental illness" means an impairment of the emotional processes that exercise conscious control of one's actions, or of the ability to perceive or understand reality, which impairment substantially interferes with a defendant's ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants with only mental retardation or autism ~~who are solely retarded or autistic,~~ and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.

(14) "Restraint" means a physical device, method, or drug used to control dangerous behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to an individual's body so that he or she cannot easily remove the restraint and that restricts freedom of movement or normal access to his or her body.

(b) A drug used as a restraint is a medication used to control a person's behavior or to restrict his or her freedom of movement and is not a standard treatment for the person's medical or psychiatric condition. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(15) ~~(12)~~ "Retardation" has the same meaning as in s. 393.063. ~~means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.~~

(16) "Seclusion" means the physical segregation of a

person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person's medical condition or symptoms, the confinement in state mental health treatment facilities to a bedroom or area during normal hours of sleep when there is not an active order for seclusion, or during an emergency such as a riot or hostage situation when clients may be temporarily placed in their rooms for their own safety.

(17) ~~(13)~~ "Social service professional~~,~~" ~~for the purposes of part III,~~ means a person whose minimum qualifications include a bachelor's degree and at least 2 years of social work, clinical practice, special education, habilitation, or equivalent experience working directly with persons with retardation, autism, or other developmental disabilities.

Section 3. Section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.--

(1) RIGHT TO INDIVIDUAL DIGNITY.--

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, retardation, or autism ~~Defendants who are mentally ill, retarded, or autistic~~ and who are charged with committing

felonies shall receive appropriate treatment or training. In a criminal case involving a client ~~defendant~~ who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following ~~from~~ the date the department or agency receives a completed copy of the court commitment order containing all ~~the~~ documentation required by the applicable ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For a forensic client ~~defendant who is mentally ill, retarded, or autistic,~~ who is held in a jail awaiting admission to a facility of the department or agency~~, and who has been adjudicated incompetent to proceed or not guilty by reason of insanity~~, evaluation and treatment or training may ~~shall~~ be provided in the jail by the local community mental health provider ~~public receiving facility~~ for mental health services, ~~or~~ by the developmental disabilities ~~services~~ program for persons with retardation or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility ~~the custody of the department~~.

(b) Forensic clients ~~Mentally ill, retarded, or autistic defendants who are committed to the department pursuant to this chapter and~~ who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there.

(2) RIGHT TO TREATMENT.--

(a) The policy of the state is that neither the department

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

nor the agency shall ~~not~~ deny treatment or training to any client and that no services shall be delayed ~~at a facility~~ because the forensic client is indigent pursuant to s. 27.52 and presently unable to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing services to clients able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made by facilities providing services pursuant to this chapter and in accordance with the provisions of s. 402.33.

(b) Each forensic client shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

(c) Every forensic client ~~committed pursuant to this act~~ shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments or training, as determined by the facility.

(d) Not more than 30 days after admission, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

(a) A forensic client ~~committed to the department pursuant to this act~~ shall be asked to give express and informed written consent for treatment. If a client ~~in a forensic facility~~ refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team ~~at the forensic~~

~~facility~~ for the appropriate care of the client ~~and the safety of the client or others~~, such treatment may be provided under the following circumstances:

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

2. In a situation other than an emergency situation, the administrator or designee of the ~~forensic~~ facility shall petition the court for an order authorizing necessary and essential ~~the~~ treatment for ~~to~~ the client. The order shall allow such treatment for a period not to exceed 90 days following ~~from~~ the date of the entry of the order. Unless the court is notified in writing that the client has provided express and informed consent in writing or that the client has been discharged by the

committing court, the administrator or designee shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the client provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client was unable to or ~~has~~ refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, retardation, or autism ~~is mentally ill, retarded, or autistic as defined in this chapter~~, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

a. The client's expressed preference regarding treatment;

b. The probability of adverse side effects;

c. The prognosis without treatment; and

d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian,

and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client, if the client is legally competent, from the parent or guardian of a minor client, or from the guardian of an incompetent client. The administrator or designee of the forensic facility or a designated representative may, with the concurrence of the client's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to the client and permission of the client or the client's guardian could not ~~cannot~~ be obtained before provision of the needed treatment.

(4) QUALITY OF TREATMENT.--Each forensic client ~~committed pursuant to this chapter~~ shall receive treatment or training suited to the client's needs, which shall be administered skillfully, safely, and humanely with full respect for the client's dignity and personal integrity. Each client shall

receive such medical, vocational, social, educational, and rehabilitative services as the client's condition requires to bring about a return to court for disposition of charges or a return to the community. In order to achieve this goal, the department and the agency shall coordinate their services with each other, the Department of Corrections, ~~is directed to coordinate the services of the Mental Health Program Office and the Developmental Disabilities Program Office with all other programs of the department~~ and other appropriate state agencies.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

~~(a)~~ Each forensic client ~~committed pursuant to the provisions of this chapter~~ has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the client or others. Clients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(a) ~~(b)~~ Each forensic client ~~committed under the provisions of this chapter~~ shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances that ~~which~~ may be harmful to the client or others, in which case the administrator or designee may direct reasonable examination of such mail and may regulate the disposition of such items or substances. For purposes of this paragraph, the term "correspondence" does ~~shall~~ not include parcels or packages. Forensic facilities may ~~are authorized to~~

promulgate reasonable institutional policies to provide for the inspection of parcels or packages and for the removal of contraband items for health or security reasons prior to the contents being given to a client.

(b) ~~(c)~~ If a client's right to communicate is restricted by the administrator, written notice of such restriction and the duration of the restriction shall be served on the client or his or her legal guardian or representatives, and such restriction shall be recorded on the client's clinical record with the reasons therefor. The restriction of a client's right to communicate shall be reviewed at least every 7 days.

(c) ~~(d)~~ Each forensic facility shall establish reasonable institutional policies governing visitors, visiting hours, and the use of telephones by clients in the least restrictive manner possible.

(d) ~~(e)~~ Each forensic client ~~committed pursuant to this chapter~~ shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally and in writing inform each client of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, shall be posted in plain view.

(e) ~~(f)~~ The department's or agency's forensic facilities shall develop policies providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A forensic client's right to possession of clothing and personal effects shall be respected. The department or agency by rule, or the administrator of any forensic facility by written institutional policy, may declare certain items to be hazardous to the health or welfare of clients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.--A forensic client ~~committed pursuant to this chapter~~ who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department and agency shall establish rules to enable clients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or the client's legal guardian or, if the client is deceased, by the client's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and

s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the client or the client's legal guardian.

2. To persons authorized by order of court and to the client's counsel when the records are needed by the counsel for adequate representation.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

5. If a client receiving services ~~pursuant to this chapter~~ has declared an intention to harm other persons~~. When such a declaration has been made~~, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client.

6. To the parent or next of kin of a client ~~mentally ill, retarded, or autistic person~~ who is committed to, or is being served by, a facility or program when such information is limited to that person's service plan and current physical and mental condition. Release of such information shall be in

accordance with the code of ethics of the profession involved and must comply with all state and federal laws and regulations pertaining to the release of personal health information.

(b) Notwithstanding other provisions of this subsection, the department or agency may request or receive from or provide to any of the following entities client information to facilitate treatment, habilitation, rehabilitation, and continuity of care of any forensic client:

1. The Social Security Administration and the United States Department of Veterans Affairs;

2. Law enforcement agencies, state attorneys, defense attorneys, and judges in regard to the client's status;

3. Jail personnel in the jail in ~~to~~ which a client may be housed ~~returned~~; and

4. Community agencies and others expected to provide followup care to the client upon the client's return to the community.

(c) The department or agency may provide notice to any client's next of kin or first representative regarding any serious medical illness or the death of the client.

(d)1. Any law enforcement agency, facility, or other governmental agency that receives information pursuant to this subsection shall maintain the confidentiality of such information except as otherwise provided herein.

2. Any agency or private practitioner who acts in good faith in releasing information pursuant to this subsection is not subject to civil or criminal liability for such release.

(9) HABEAS CORPUS.--

(a) At any time, and without notice, a forensic client detained by a facility, or a relative, friend, guardian, representative, or attorney on behalf of such client, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the committing court issue a writ for release. Each client ~~committed pursuant to this chapter~~ shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) A client or his or her legal guardian or representatives or attorney may file a petition in the circuit court in the county where the client is committed alleging that the client is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the circuit court shall have the authority to conduct a judicial inquiry and to issue any appropriate order to correct an abuse of the provisions of this chapter.

(10) TRANSPORTATION.--

(a) The sheriff shall consult with the governing board of the county as to the most appropriate and cost-effective means of transportation for forensic clients who have been committed for treatment or training. Such consultation shall include, but is not limited to, consideration of the cost to the county of transportation performed by sheriff's ~~department~~ personnel as opposed to transportation performed by other means and, if sheriff's ~~department~~ personnel are to be used for transportation, the effect such use will have, if any, on service delivery levels of the sheriff's road patrol. After such

consultation with the governing board of the county, the sheriff shall determine the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training.

(b) The governing board of each county is authorized to contract with private transport companies for the transportation of such clients to and from a facility.

(c) Any company that transports a client pursuant to this section is considered an independent contractor and is solely liable for the safe and dignified transportation of the client. Any transport company that contracts with the governing board of a county for the transport of clients as provided for in this section shall be insured and provide no less than $100,000 in liability insurance with respect to the transportation of the clients.

(d) Any company that contracts with a governing board of a county to transport clients shall comply with the applicable rules of the department or agency to ensure the safety and dignity of the clients.

(11) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of a forensic client in the custody of the department or agency that are provided under this chapter shall be ~~by this act is~~ liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this chapter ~~act~~ is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client to or from a facility. However, this subsection does not

relieve any person from liability if he or she is negligent.

Section 4. Subsections (1), (2), (3), (4), and (5) of section 916.1075, Florida Statutes, are amended to read:

916.1075 Sexual misconduct prohibited; reporting required; penalties.--

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

(a) "Covered person" means an employee," ~~includes any paid staff member,~~ volunteer, or intern of the department or agency; any person under contract with the department or agency; and any person providing care or support to a forensic client on behalf of the department, the agency, or their ~~its~~ providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual

bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) "Sexual misconduct" means any sexual activity between a covered person ~~an employee~~ and a forensic client in the custody of the department or agency, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by a covered person ~~an employee~~.

(2) A covered person ~~An employee~~ who engages in sexual misconduct with a forensic client who resides in a civil or forensic facility commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Such person ~~An employee~~ may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of a forensic ~~the~~ client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to a covered person ~~an employee~~ who:

(a) Is legally married to the client; or

(b) Has no reason to believe that the person with whom the covered person ~~employee~~ engaged in sexual misconduct is a client receiving services as described in subsection (2).

(5) A covered person ~~An employee~~ who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. The covered person ~~Such employee~~ shall also prepare,

date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. For an allegation pertaining to a forensic client committed to the agency, the covered person ~~employee~~ shall deliver the report to the supervisor or program director, who shall provide copies to the agency's ~~is responsible for providing copies to the department's~~ inspector general. For an allegation pertaining to a forensic client committed to the department, the covered person shall deliver the report to the supervisor or program director, who shall provide copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

Section 5. Section 916.1081, Florida Statutes, is amended to read:

916.1081 Escape from program; penalty.--

(1) A forensic client who is ~~A defendant~~ involuntarily committed to the department or agency, who is in the custody of the department or agency, and ~~under the provisions of this chapter~~ who escapes or attempts to escape from a civil or forensic facility ~~or program~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who is involuntarily committed to the department or the agency, who is in the custody of the

Department of Corrections, and who escapes or attempts to escape from a facility or program commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any punishment of imprisonment imposed under this subsection shall run consecutive to any former sentence imposed upon the person.

Section 6. Subsection (1) and paragraph (b) of subsection (2) of section 916.1085, Florida Statutes, are amended to read:

916.1085 Introduction or removal of certain articles unlawful; penalty.--

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of a facility, it is unlawful to introduce into or upon the grounds of any facility under the supervision or control of the department or agency, or to take or attempt to take or send therefrom, any of the following articles, which are ~~hereby~~ declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893;

3. Any firearm or deadly weapon; or

4. Any other item as determined by the department or the agency, and as designated by ~~departmental~~ rule or ~~by the administrator of any facility, and designated~~ by written institutional policies, to be hazardous to the welfare of clients ~~patients~~ or the operation of the facility.

(b) It is unlawful to transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by

any client of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place that ~~which~~ is outside of the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of such facility.

(2)

(b) These provisions shall be enforced by institutional security personnel ~~as defined in s. 916.106(10)~~ or by a law enforcement officer as defined in s. 943.10.

Section 7. Section 916.1091, Florida Statutes, is amended to read:

916.1091 Duties, functions, and powers of institutional security personnel.--In case of emergency, and when necessary to provide protection and security to any client, to the personnel, equipment, buildings, or grounds of a department or agency facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide ~~such~~ protection and security. Under no circumstances shall any ~~such~~ officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

Section 8. Section 916.1093, Florida Statutes, is amended to read:

916.1093 Operation and administration; rules.--

(1) The department or agency may ~~is authorized to~~ enter into contracts and do such things as may be necessary and incidental to assure compliance with and to carry out the provisions of this chapter in accordance with the stated legislative intent.

(2) The department or agency may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Such rules must address the use of restraint and seclusion in forensic facilities and must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data-dissemination procedures and requirements relating to the use of restraint and seclusion, including a requirement that each instance of the use of restraint or seclusion be documented in the facility's client record.

Section 9. Subsection (1) of section 916.111, Florida Statutes, is amended to read:

916.111 Training of mental health experts.--The evaluation of defendants for competency to proceed or for sanity at the time of the commission of the offense shall be conducted in such a way as to ensure uniform application of the criteria enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The department shall develop, and may contract with accredited institutions:

(1) To provide:

(a) A plan for training ~~community~~ mental health professionals to perform forensic evaluations and to standardize the criteria and procedures to be used in these evaluations;

(b) Clinical protocols and procedures based upon the criteria of Rules 3.210 and 3.216, Florida Rules of Criminal Procedure; and

(c) Training for ~~community~~ mental health professionals in the application of these protocols and procedures in performing forensic evaluations and providing reports to the courts; and

Section 10. Section 916.115, Florida Statutes, is amended to read:

916.115 Appointment of experts.--

(1)~~(a) Annually, the department shall provide the courts with a list of mental health professionals who have completed approved training as experts.~~

~~(b)~~ The court shall ~~may~~ appoint no more than three experts to determine ~~issues of~~ the mental condition of a defendant in a criminal case, including ~~the issues of~~ competency to proceed, insanity, ~~and~~ involuntary ~~hospitalization or~~ placement, and treatment. The panel of experts ~~An expert~~ may evaluate the

defendant in jail or in another appropriate local facility or in a facility of the Department of Corrections.

(a) ~~(c)~~ To the extent possible, the ~~an~~ appointed experts ~~expert~~ shall have completed forensic evaluator training approved by the department and each shall be ~~either~~ a psychiatrist, licensed psychologist, or physician.

(b) The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.

(2) ~~Expert witnesses appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators of competence or sanity and as witnesses.~~

~~(a)1.~~ The court shall pay for any expert that it appoints by court order, upon motion of counsel for the defendant or the state or upon its own motion. If the defense or the state retains an expert and waives the confidentiality of the expert's report, the court may pay for no more than two additional experts appointed by court order. If an expert appointed by the court upon motion of counsel for the defendant specifically to evaluate the competence of the defendant to proceed also addresses ~~in his or her evaluation~~ issues related to sanity as an affirmative defense, the court shall pay only for that portion of the expert's fees relating to the evaluation on competency to proceed, and the balance of the fees shall be chargeable to the defense.

(a) ~~2.~~ Pursuant to s. 29.006, the office of the public defender shall pay for any expert retained by the office.

(b) ~~3.~~ Pursuant to s. 29.005, the office of the state attorney shall pay for any expert retained by the office and~~.~~ ~~Notwithstanding subparagraph 1., the office of the state attorney shall pay~~ for any expert whom the office retains and whom the office moves the court to appoint in order to ensure that the expert has access to the defendant.

(c) ~~4.~~ An expert retained by the defendant who is represented by private counsel appointed under s. 27.5303 shall be paid by the Justice Administrative Commission.

(d) ~~5.~~ An expert retained by a defendant who is indigent for costs as determined by the court and who is represented by private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

(e) ~~(b)~~ State employees shall be reimbursed for ~~paid~~ expenses pursuant to s. 112.061.

(f) ~~(c)~~ The fees shall be taxed as costs in the case.

(g) ~~(d)~~ In order for an expert to be paid for the services rendered, the expert's report and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 11. Subsections (1), (2), and (3) of section 916.12, Florida Statutes, are amended to read:

916.12 Mental competence to proceed.--

(1) A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have

sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

(2) Mental health experts appointed pursuant to s. 916.115 ~~An expert~~ shall first determine whether the defendant has a mental illness ~~person is mentally ill~~ and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection (1)~~; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings~~. A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action authorized by this chapter or the Florida Rules of Criminal Procedure, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding, the court may commit the defendant or take other action authorized by this chapter or the rules without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.

(3) In considering the issue of competence to proceed, an examining expert shall first consider and specifically include in his or her report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant.~~,~~

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.~~,~~

(c) Understand the adversarial nature of the legal process.~~,~~

(d) Disclose to counsel facts pertinent to the proceedings at issue.~~,~~

(e) Manifest appropriate courtroom behavior.~~; and~~

(f) Testify relevantly.~~,~~

(g) ~~and include in his or her report~~ Any other factor deemed relevant by the expert.

Section 12. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.--

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed~~, pursuant to the applicable Florida Rules of Criminal Procedure,~~ may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness ~~is mentally ill~~ and because of the mental illness:

1. The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or

refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or ~~and~~

2. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment to the department under the provisions of this chapter, may be committed to the department, and the department shall retain and treat the defendant. No later than 6 months after the date of admission and ~~or~~ at the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of

Criminal Procedure.

Section 13. Section 916.145, Florida Statutes, is amended to read:

916.145 ~~Adjudication of incompetency due to mental illness;~~ Dismissal of charges.--The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

Section 14. Section 916.15, Florida Statutes, is amended to read:

916.15 Involuntary commitment of defendant adjudicated not guilty by reason of insanity.--

(1) The determination of whether a defendant is not guilty by reason of insanity shall be determined in accordance with Rule 3.217, Florida Rules of Criminal Procedure.

(2)~~(1)~~ A defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the defendant has a mental illness ~~is mentally ill~~ and, because of the illness, is manifestly dangerous to himself or herself or

others.

(3) ~~(2)~~ Every defendant acquitted of criminal charges by reason of insanity and found to meet the criteria for involuntary commitment may be committed and treated in accordance with the provisions of this section and the applicable Florida Rules of Criminal Procedure. The department shall admit a defendant so adjudicated to an appropriate facility or program for treatment and shall retain and treat such defendant. No later than 6 months after the date of admission, prior to the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant no longer meets the criteria for continued commitment placement, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(4) ~~(3)~~ In all proceedings under this section ~~subsection~~, both the defendant and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or the administrator's designee as well as by the state and the defendant. The defendant shall have the right to counsel at any such hearing. In the event that a defendant is determined to be indigent pursuant to s. 27.52, the public defender shall represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 15. Section 916.16, Florida Statutes, is amended

to read:

916.16 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction over ~~in the case of~~ any defendant involuntarily committed due to a determination of incompetency ~~hospitalized as incompetent~~ to proceed due to mental illness or ~~because of~~ a finding of not guilty by reason of insanity pursuant to this chapter. The ~~No such~~ defendant may not be released except by order of the committing court. An ~~The~~ administrative hearing examiner does not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing commitment ~~hospitalization~~ or release of any defendant involuntarily committed ~~admitted~~ pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.17. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

Section 16. Section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, ~~The committing court may order a conditional release of any defendant who has been found to be incompetent to proceed or not guilty by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment.~~ the committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15 based upon an approved plan for providing appropriate outpatient care and treatment. Upon a

recommendation that outpatient treatment of the defendant is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be returned to the department if it is found, after

the appointment and report of experts, that the person meets the criteria for involuntary commitment under s. 916.13 or s. 916.15 ~~treatment~~.

(3) If at any time it is determined after a hearing that the defendant who has been conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 17. Section 916.301, Florida Statutes, is amended to read:

916.301 Appointment of experts.--

(1) All evaluations ordered by the court under this part must be conducted by qualified experts who have expertise in evaluating persons with retardation or autism. The agency ~~department~~ shall maintain and provide the courts annually with a list of available retardation and autism professionals who are appropriately licensed and qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when appointing experts and ordering evaluations under this part ~~for defendants suspected of being retarded or autistic~~.

(2) If a defendant's suspected mental condition is retardation or autism, the court shall appoint a panel of experts consisting of: ~~two experts, one of whom must be the developmental services program of the department, each of whom will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is~~

~~competent to proceed.~~

(a) ~~(3)~~ At least one, or at the request of any party, two experts ~~the court may appoint one additional expert~~ to evaluate ~~the defendant. The expert appointed by the court will evaluate~~ whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

(b) ~~(4) The developmental services program shall select~~ A psychologist selected by the agency who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional, with experience in working with persons with retardation or autism ~~to evaluate the defendant~~.

1. ~~(a)~~ The psychologist shall evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is incompetent to proceed due to retardation or autism.

2. ~~(b)~~ The social service professional shall provide a social and developmental history of the defendant.

~~(5) All evaluations ordered by the court must be from qualified experts with experience in evaluating persons with retardation or autism.~~

(3) ~~(6)~~ The panel of experts may examine the defendant in jail, in another appropriate local facility, in a facility of the Department of Corrections, or on an outpatient basis.

(4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to evaluate the mental condition of a defendant in a criminal case

shall be allowed reasonable fees for services rendered as evaluators and as witnesses, which shall be paid by the court. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the experts to be paid for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 18. Subsections (1), (2), and (3) of section 916.3012, Florida Statutes, are amended to read:

916.3012 Mental competence to proceed.--

(1) A defendant whose suspected mental condition is retardation or autism is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against the defendant.

(2) ~~The~~ Experts in retardation or autism appointed pursuant to s. 916.301 shall first consider whether the defendant meets the definition of retardation or autism and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection (1)~~; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings~~.

(3) In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant.~~,~~

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.~~,~~

(c) Understand the adversarial nature of the legal process.~~,~~

(d) Disclose to counsel facts pertinent to the proceedings at issue.~~,~~

(e) Manifest appropriate courtroom behavior.~~; and~~

(f) Testify relevantly.~~,~~

(g) ~~and include in their report~~ Any other factor deemed relevant by the experts.

Section 19. Section 916.302, Florida Statutes, is amended to read:

916.302 Involuntary commitment of defendant determined to be incompetent to proceed ~~due to retardation or autism~~.--

(1) CRITERIA.--Every defendant who is charged with a felony and who is adjudicated ~~found to be~~ incompetent to proceed due to retardation or autism~~, pursuant to this chapter and the applicable Florida Rules of Criminal Procedure,~~ may be involuntarily committed for training upon a finding by the court of clear and convincing evidence that:

(a) The defendant has retardation or autism ~~is retarded or autistic~~;

(b) There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(c) All available, less restrictive alternatives, including services provided in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate; and

(d) There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) ADMISSION TO A FACILITY.--

(a) A defendant who has been charged with a felony and who is found to be incompetent to proceed due to retardation or autism, and who meets the criteria for involuntary commitment to the agency ~~department~~ under the provisions of this chapter, shall be committed to the agency ~~department~~, and the agency ~~department~~ shall retain and provide appropriate training for ~~serve~~ the defendant. No later than 6 months after the date of admission or at the end of any period of extended commitment or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to this chapter and the applicable Florida Rules of Criminal Procedure.

(b) A defendant determined to be incompetent to proceed due to retardation or autism may be ordered by a circuit court into a forensic ~~secure~~ facility designated by the agency ~~department~~ for ~~retarded or autistic~~ defendants who have mental retardation or autism.

(c) The agency ~~department~~ may transfer a defendant from a designated forensic ~~secure~~ facility to another designated forensic ~~secure~~ facility and must notify the court of the transfer within 30 days after the transfer is completed.

(d) The agency ~~department~~ may not transfer a defendant from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~ facility without first notifying the court, and all parties, 30 days before the proposed transfer. If the court objects to the proposed transfer ~~to a nonsecure facility~~, it must send its written objection to the agency ~~department~~. The agency ~~department~~ may transfer the defendant unless it receives the written objection from the court within 30 days after the court's receipt of the notice of the proposed transfer.

(3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.--

(a) If a defendant has ~~is~~ both mental retardation or autism ~~retarded or autistic~~ and has a mental illness ~~mentally ill~~, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to a civil or forensic ~~the~~ facility ~~or program~~ most appropriate to address the symptoms that ~~which~~ are the cause of the defendant's incompetence.

(b) Transfer from one civil or forensic facility ~~or program~~ to another civil or forensic facility ~~or program~~ may

occur when, in the department's and agency's judgment, it is in the defendant's best treatment or training interests. The department and agency shall submit an evaluation and justification for the transfer to the court. The court may consult with an outside expert if necessary. Transfer will require an amended order from the committing court.

Section 20. Section 916.3025, Florida Statutes, is amended to read:

916.3025 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction in the case of any defendant found to be incompetent to proceed due to retardation or autism and ordered into a forensic ~~secure~~ facility designated by the agency ~~department~~ for ~~retarded or autistic~~ defendants who have mental retardation or autism. A ~~No~~ defendant may not be released except by the order of the committing court. An administrative hearing examiner does not have jurisdiction to determine issues of continuing commitment or release of any defendant involuntarily committed pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.304. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

(3) The committing court shall consider a ~~the~~ petition to involuntarily admit a defendant whose charges have been dismissed to residential services provided by the agency ~~department's developmental services program a person whose charges have been dismissed,~~ and, when applicable, to continue

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secure placement of such person as provided in s. 916.303. The committing court shall retain jurisdiction over such person so long as he or she remains in secure placement or is on conditional release as provided in s. 916.304. However, upon request the court may transfer continuing jurisdiction to the court in the circuit where the defendant resides. The defendant may not be released from an order for secure placement except by order of the court.

Section 21. Section 916.303, Florida Statutes, is amended to read:

916.303 Determination of incompetency due to retardation or autism; dismissal of charges.--

(1) The charges against any defendant found to be incompetent to proceed due to retardation or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges may be refiled by the state if ~~against the defendant are dismissed without prejudice to the state to refile the charges should~~ the defendant is ~~be~~ declared competent to proceed in the future.

(2) ~~(a)~~ If the charges are dismissed and if the defendant is considered to lack sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for his

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or her well-being or is likely to physically injure himself or herself or others if allowed to remain at liberty, the agency ~~department~~, the state attorney, or the defendant's attorney shall ~~may~~ apply to the committing court to involuntarily admit the defendant to residential services pursuant to s. 393.11.

(3) ~~(b)~~ If the defendant is considered to need involuntary residential services for reasons described in subsection (2) ~~under s. 393.11~~ and, further, there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate, ~~then~~ the agency ~~person or entity filing the petition under s. 393.11~~, the state attorney, or the defendant's counsel may request~~, the petitioning commission, or the department may also petition~~ the committing court to continue the defendant's placement in a secure facility ~~or program~~ pursuant to this part ~~section~~. Any placement so continued under this subsection must be ~~defendant involuntarily admitted under this paragraph shall have his or her status~~ reviewed by the court at least annually at a hearing. The annual review and hearing shall determine whether the defendant continues to meet the criteria described in this subsection ~~for involuntary residential services~~ and, if so, whether the defendant still requires involuntary placement in a secure facility ~~or program because the court finds that the defendant is likely to physically injure others as specified in s. 393.11~~ and whether

the defendant is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Notice of the annual review and review hearing shall be given to the state attorney and ~~to~~ the defendant's attorney. In no instance may a defendant's placement in a secure facility ~~or program~~ exceed the maximum sentence for the crime for which the defendant was charged.

Section 22. Section 916.304, Florida Statutes, is amended to read:

916.304 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, the committing court may order a conditional release of any defendant who has been found to be incompetent to proceed due to retardation or autism, based on an approved plan for providing ~~continuing~~ community-based training. The committing criminal court may order a conditional release of any defendant to a civil facility in lieu of an involuntary commitment to a forensic facility pursuant to s. 916.302. Upon a recommendation that community-based training for the defendant is appropriate, a written plan for community-based training, including recommendations from qualified professionals, may be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court, with copies to all parties. The plan must ~~shall~~ include:

(a) Special provisions for residential care and adequate supervision of the defendant, including recommended location of placement.

(b) Recommendations for auxiliary services such as vocational training, psychological training, educational services, leisure services, and special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the courts regarding the defendant's compliance with the conditions of the release and progress in training, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. With notice to the court, the agency may detain a defendant in a forensic facility until the hearing occurs. After the hearing, the court may modify the release conditions. The court may also order that the defendant be placed into more appropriate programs for further training or may order the defendant to be committed ~~returned~~ to a forensic facility ~~involuntary residential services of the department~~ if it is found, after the appointment and report of experts, that the defendant meets the criteria for placement in a forensic facility ~~involuntary residential services~~.

(3) If at any time it is determined after a hearing that the defendant conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall

terminate its jurisdiction in the cause and discharge the defendant.

Section 23. Subsection (1) of section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon a ~~mentally retarded~~ defendant with mental retardation prohibited.--

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities ~~Department of Children and Family Services~~. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities ~~Department of Children and Family Services~~ shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

Section 24. Paragraphs (d), (e), (g), and (h) of subsection (1), subsections (2), (3), and (4), paragraph (b) of subsection (5), and paragraph (a) of subsection (6) of section 985.223, Florida Statutes, are amended to read:

985.223 Incompetency in juvenile delinquency cases.--

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

(d) For incompetency evaluations related to mental illness, the Department of Children and Family Services shall maintain and annually provide the courts with a list of available mental health professionals who have completed a training program approved by the Department of Children and Family Services to perform the evaluations.

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities ~~Developmental Disabilities Program Office within the Department of Children and Family Services~~ to examine the child to determine if the child meets the definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

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

(h) After placement of the child in the appropriate

setting, the Department of Children and Family Services in consultation with the Agency for Persons with Disabilities, as appropriate, must, within 30 days after placement of ~~the Department of Children and Family Services places~~ the child, prepare and submit to the court a treatment or training plan for the child's restoration of competency. A copy of the ~~treatment~~ plan must be served upon the child's attorney, the state attorney, and the attorneys representing the Department of Juvenile Justice.

(2) A child ~~who is mentally ill or retarded,~~ who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Family Services for treatment or training. A child who has been adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism ~~is mentally ill or retarded~~ and adjudicates the child incompetent to proceed, the court must

also determine whether the child meets the criteria for secure placement. A child may be placed in a secure facility or program if the court makes a finding by clear and convincing evidence that:

(a) The child has mental illness, mental retardation, or autism ~~is mentally ill~~ and because of the mental illness, mental retardation, or autism~~; or the child is mentally retarded and because of the mental retardation~~:

1. The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

2. There is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive alternatives, including treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate.

(4) A child who is determined to have mental retardation or autism ~~be mentally ill or retarded~~, who has been adjudicated incompetent to proceed, and who meets the criteria set forth in subsection (3), must be committed to the Department of Children and Family Services~~,~~ and receive treatment or training ~~the~~

~~Department of Children and Family Services must treat or train the child~~ in a secure facility or program that ~~which~~ is the least restrictive alternative consistent with public safety. Any placement of a child to a secure residential program must be separate from adult forensic programs. If the child attains competency, then custody, case management, and supervision of the child will be transferred to the department in order to continue delinquency proceedings; however, the court retains authority to order the Department of Children and Family Services to provide continued treatment or training to maintain competency.

(a) A child adjudicated incompetent due to mental retardation or autism may be ordered into a secure program or facility designated by the Department of Children and Family Services for ~~retarded~~ children with mental retardation or autism.

(b) A child adjudicated incompetent due to mental illness may be ordered into a secure program or facility designated by the Department of Children and Family Services for ~~mentally ill~~ children have mental illnesses.

(c) Whenever a child is placed in a secure residential facility, the department will provide transportation to the secure residential facility for admission and from the secure residential facility upon discharge.

(d) The purpose of the treatment or training is the restoration of the child's competency to proceed.

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile

Procedure not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the child's attorney, the department, and the Department of Children and Family Services.

(5)

(b) Whenever the provider files a report with the court informing the court that the child will never become competent to proceed, the Department of Children and Family Services will develop a discharge plan for the child prior to any hearing determining whether the child will ever become competent to proceed and send the~~. The Department of Children and Family Services must send the proposed discharge~~ plan to the court, the state attorney, the child's attorney, and the attorneys representing the Department of Juvenile Justice. The provider will continue to provide services to the child until the court issues the order finding the child will never become competent to proceed.

(6)(a) If a child is determined to have mental illness, mental retardation, or autism ~~be mentally ill or retarded~~ and is found to be incompetent to proceed but does not meet the criteria set forth in subsection (3), the court shall commit the child to the Department of Children and Family Services and

shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. The purpose of the treatment or training is the restoration of the child's competency to proceed.

Section 25. Paragraph (b) of subsection (14) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.--

(14)

(b) Notwithstanding paragraph (a), the Department of Children and Family Services may enter into agreements, not to exceed 20 years, with a private provider to finance, design, and construct a forensic treatment facility, as defined in s. 916.106(10) ~~(8)~~, of at least 200 beds and to operate all aspects of daily operations within the forensic treatment facility. The selected contractor is authorized to sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the forensic treatment facility. This paragraph expires July 1, 2006.

Section 26. Paragraph (r) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.--

(3) EXEMPTIONS.--Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(r) For beds in state mental health treatment facilities operated under s. 394.455(30) and state mental health forensic facilities operated under chapter 916 ~~s. 916.106(8)~~.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Section 27. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion,

order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and

s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial

school, or any local governmental entity that licenses child care facilities.

Section 28. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of

a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective

criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 29. This act shall take effect upon becoming a law.

CRIMINAL JUSTICE COMMITTEE MEETING

Tuesday, April 4, 2006
10:15 a.m. - 11:00 a.m.
404 House Office Building

AMENDMENT PACKET

Allan G. Bense
Speaker

Dick Kravitz
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **0471**

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Troutman offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (5) through (28) of section 370.01, Florida Statutes, are redesignated as subsections (6) through (29), respectively, and a new subsection (5) is added to that section, to read:

370.01 Definitions.--In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(5) "Commercial harvester" means any person, firm, or corporation that takes, harvests, or attempts to take or harvest saltwater products for sale, or with intent to sell as evidenced by any of the following:

(a) The person, firm, or corporation is operating under or is required to operate under a license or permit or authorization issued pursuant to this chapter;

(b) The person, firm, or corporation is using gear that is prohibited for use in the harvest of recreational amounts of any saltwater product being taken or harvested; or

(c) The person, firm, or corporation is harvesting any saltwater product in an amount that is at least two times the recreational bag limit for the saltwater product being taken or harvested.

Section 2. Subsections (1), (2), (4), (5), (6), and (12) of section 370.021, Florida Statutes, are amended to read:

370.021 Administration; rules, publications, records; penalties; injunctions.--

(1) BASE PENALTIES.--Unless otherwise provided by law, any person, firm, or corporation who violates ~~is convicted for violating~~ any provision of this chapter, or any rule of the Fish and Wildlife Conservation Commission relating to the conservation of marine resources, shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 60 days or by a fine of not less than $100 nor more than $500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than $250 nor more than $1,000, or by both such fine and imprisonment.

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

(2) MAJOR VIOLATIONS.--In addition to the penalties provided in paragraphs (1)(a) and (b), the court shall assess additional penalties against any commercial harvester ~~person, firm, or corporation~~ convicted of major violations as follows:

(a) For a violation involving more than 100 illegal blue crabs, crawfish, or stone crabs, an additional penalty of $10

for each illegal blue crab, crawfish, stone crab, or part thereof.

(b) For a violation involving the taking or harvesting of shrimp from a nursery or other prohibited area, or any two violations within a 12-month period involving shrimping gear, minimum size (count), or season, an additional penalty of $10 for each pound of illegal shrimp or part thereof.

(c) For a violation involving the taking or harvesting of oysters from nonapproved areas or the taking or possession of unculled oysters, an additional penalty of $10 for each bushel of illegal oysters.

(d) For a violation involving the taking or harvesting of clams from nonapproved areas, an additional penalty of $100 for each 500 count bag of illegal clams.

(e) For a violation involving the taking, harvesting, or possession of any of the following species, which are endangered, threatened, or of special concern:

1. Shortnose sturgeon (Acipenser brevirostrum);
2. Atlantic sturgeon (Acipenser oxyrhynchus);
3. Common snook (Centropomus undecimalis);
4. Atlantic loggerhead turtle (Caretta caretta caretta);
5. Atlantic green turtle (Chelonia mydas mydas);
6. Leatherback turtle (Dermochelys coriacea);
7. Atlantic hawksbill turtle (Eretmochelys imbricata imbracata);
8. Atlantic ridley turtle (Lepidochelys kempi); or
9. West Indian manatee (Trichechus manatus latirostris),

an additional penalty of $100 for each unit of marine life or part thereof.

(f) For a second or subsequent conviction within 24 months for any violation of the same law or rule involving the taking or harvesting of more than 100 pounds of any finfish, an additional penalty of $5 for each pound of illegal finfish.

(g) For any violation involving the taking, harvesting, or possession of more than 1,000 pounds of any illegal finfish, an additional penalty equivalent to the wholesale value of the illegal finfish.

(h) Permits issued to any commercial harvester ~~person, firm, or corporation~~ by the commission to take or harvest saltwater products, or any license issued pursuant to s. 370.06 or s. 370.07 may be suspended or revoked by the commission, pursuant to the provisions and procedures of s. 120.60, for any major violation prescribed in this subsection:

1. Upon a first conviction, for up to 30 calendar days.

2. Upon a second conviction which occurs within 12 months after a prior violation, for up to 90 calendar days.

3. Upon a third conviction which occurs within 24 months after a prior conviction, for up to 180 calendar days.

4. Upon a fourth conviction which occurs within 36 months after a prior conviction, for a period of 6 months to 3 years.

(i) Upon the arrest and conviction for a major violation involving stone crabs, the licenseholder must show just cause why his or her license should not be suspended or revoked. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal stone crabs; any single violation involving possession of more than 25 stone crabs during the closed season or possession of 25 or more whole-bodied or egg-bearing stone crabs; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period

wherein more than 75 illegal stone crabs in the aggregate are involved.

(j) Upon the arrest and conviction for a major violation involving crawfish, the licenseholder must show just cause why his or her license should not be suspended or revoked. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal crawfish; any single violation involving possession of more than 25 crawfish during the closed season or possession of more than 25 wrung crawfish tails or more than 25 egg-bearing or stripped crawfish; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal crawfish in the aggregate are involved.

(k) Upon the arrest and conviction for a major violation involving blue crabs, the licenseholder shall show just cause why his or her saltwater products license should not be suspended or revoked. This paragraph shall not apply to an individual fishing with no more than five traps. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal blue crabs, any single violation wherein 50 or more illegal blue crabs are involved; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 100 illegal blue crabs in the aggregate are involved.

(l) Upon the conviction for a major violation involving finfish, the licenseholder must show just cause why his or her saltwater products license should not be suspended or revoked. For the purposes of this paragraph, a major violation is prescribed for the taking and harvesting of illegal finfish, any

single violation involving the possession of more than 100 pounds of illegal finfish, or any combination of violations in any 3-consecutive-year period wherein more than 200 pounds of illegal finfish in the aggregate are involved.

(m) For a violation involving the taking or harvesting of any marine life species, as those species are defined by rule of the commission, the harvest of which is prohibited, or the taking or harvesting of such a species out of season, or with an illegal gear or chemical, or any violation involving the possession of 25 or more individual specimens of marine life species, or any combination of violations in any 3-year period involving more than 70 such specimens in the aggregate, the suspension or revocation of the licenseholder's marine life endorsement as provided in paragraph (h).

The penalty provisions of this subsection apply to commercial harvesters and wholesale and retail products dealers as defined in s. 370.07. Any other person who commits a major violation under this subsection commits a Level Three violation under s. 372.83. Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any major violation prescribed in this subsection. The proceeds from the penalties assessed pursuant to this subsection shall be deposited into the Marine Resources Conservation Trust Fund to be used for marine fisheries research or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.

(4) ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING CERTAIN FINFISH.--

(a) It is a major violation pursuant to this section, ~~punishable as provided in paragraph (3)(b),~~ for any person to be

in possession of any species of trout, snook, or redfish which is three fish in excess of the recreational or commercial daily bag limit.

(b) A commercial harvester who violates this subsection shall be punished as provided under paragraph (3)(b). Any other person who violates this subsection commits a Level Three violation under s. 372.83.

(5) SALTWATER PRODUCTS; UNLICENSED SELLERS; ILLEGALLY HARVESTED PRODUCTS.--In addition to other penalties authorized in this chapter, any violation of s. 370.06 or s. 370.07, or rules of the commission implementing s. 370.06 or s. 370.07, involving the purchase of saltwater products by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption from an unlicensed person, firm, or corporation, ~~or the sale of saltwater products by an unlicensed person, firm, or corporation~~ or the purchase or sale of any saltwater product known to be taken in violation of s. 16, Art. X of the State Constitution, or rule or statute implementing the provisions thereof, by a commercial wholesale dealer, retail dealer, or restaurant facility, for public consumption, is a major violation, and the commission may assess the following penalties:

(a) For a first violation, the commission may assess a civil penalty of up to $2,500 and may suspend the wholesale or retail dealer's license privileges for up to 90 calendar days.

(b) For a second violation occurring within 12 months of a prior violation, the commission may assess a civil penalty of up to $5,000 and may suspend the wholesale or retail dealer's license privileges for up to 180 calendar days.

(c) For a third or subsequent violation occurring within a 24-month period, the commission shall assess a civil penalty of

$5,000 and shall suspend the wholesale or retail dealer's license privileges for up to 24 months.

Any proceeds from the civil penalties assessed pursuant to this subsection shall be deposited into the Marine Resources Conservation Trust Fund and shall be used as follows: 40 percent for administration and processing purposes and 60 percent for law enforcement purposes.

(6) PENALTIES FOR UNLICENSED SALE, PURCHASE, OR HARVEST.--It is a major violation and punishable as provided in this subsection for any ~~an~~ unlicensed person, firm, or corporation who is required to be licensed as a commercial harvester or a wholesale or retail saltwater products dealer under this chapter to sell or purchase any saltwater product or to harvest or attempt to harvest any saltwater product with intent to sell the saltwater product.

(a) Any person, firm, or corporation who sells or purchases any saltwater product without having purchased the licenses required by this chapter for such sale is subject to ~~additional~~ penalties as follows:

1. A first violation is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. A second violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and such person may also be assessed a civil penalty of up to $2,500 and is subject to a suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 90 days.

3. A third violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 6 months, and such person may also be assessed a civil penalty of up to $5,000 and

is subject to a suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 6 months.

4. A third violation within 1 year after a second violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such person shall be assessed a civil penalty of $5,000 and all license privileges under this chapter and chapter 372 shall be permanently revoked.

5. A fourth or subsequent violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such person shall be assessed a civil penalty of $5,000 and all license privileges under this chapter and chapter 372 shall be permanently revoked.

(b) Any person whose license privileges under this chapter have been permanently revoked and who thereafter sells or purchases or who attempts to sell or purchase any saltwater product commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such person shall also be assessed a civil penalty of $5,000. All property involved in such offense shall be forfeited pursuant to s. 370.061.

(c) Any commercial harvester or wholesale or retail saltwater products dealer ~~person~~ whose license privileges under this chapter are under suspension and who during such period of suspension sells or purchases or attempts to sell or purchase any saltwater product shall be assessed the following penalties:

1. A first violation, or a second violation occurring more than 12 months after a first violation, is a first degree misdemeanor, punishable as provided in ss. 775.082 and 775.083, and such commercial harvester or wholesale or retail saltwater

products dealer ~~person~~ may be assessed a civil penalty of up to $2,500 and an additional suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 90 days.

2. A second violation occurring within 12 months of a first violation is a third degree felony, punishable as provided in ss. 775.082 and 775.083, with a mandatory minimum term of imprisonment of 1 year, and such commercial harvester or wholesale or retail saltwater products dealer ~~person~~ may be assessed a civil penalty of up to $5,000 and an additional suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 180 days. All property involved in such offense shall be forfeited pursuant to s. 370.061.

3. A third violation within 24 months of the second violation or subsequent violation is a third degree felony, punishable as provided in ss. 775.082 and 775.083, with a mandatory minimum term of imprisonment of 1 year, and such commercial harvester or wholesale or retail saltwater products dealer ~~person~~ shall be assessed a mandatory civil penalty of up to $5,000 and an additional suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 24 months. All property involved in such offense shall be forfeited pursuant to s. 370.061.

(d) Any commercial harvester ~~person~~ who harvests or attempts to harvest any saltwater product with intent to sell the saltwater product without having purchased a saltwater products license with the requisite endorsements is subject to penalties as follows:

1. A first violation is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. A second violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and such commercial harvester ~~person~~ may also be assessed a civil penalty of up to $2,500 and is subject to a suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 90 days.

3. A third violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 6 months, and such commercial harvester ~~person~~ may also be assessed a civil penalty of up to $5,000 and is subject to a suspension of all license privileges under this chapter and chapter 372 for a period not exceeding 6 months.

4. A third violation within 1 year after a second violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such commercial harvester ~~person~~ shall also be assessed a civil penalty of $5,000 and all license privileges under this chapter and chapter 372 shall be permanently revoked.

5. A fourth or subsequent violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such commercial harvester ~~person~~ shall also be assessed a mandatory civil penalty of $5,000 and all license privileges under this chapter and chapter 372 shall be permanently revoked.

For purposes of this subsection, a violation means any judicial disposition other than acquittal or dismissal.

(12) LICENSES AND ENTITIES SUBJECT TO PENALTIES.--For purposes of imposing license or permit suspensions or revocations authorized by this chapter, the license or permit under which the violation was committed is subject to suspension or revocation by the commission. For purposes of assessing monetary civil or administrative penalties authorized by this chapter, the commercial harvester ~~person, firm, or corporation~~ cited and subsequently receiving a judicial disposition of other than dismissal or acquittal in a court of law is subject to the monetary penalty assessment by the commission. However, if the license or permitholder of record is not the commercial harvester ~~person, firm, or corporation~~ receiving the citation and judicial disposition, the license or permit may be suspended or revoked only after the license or permitholder has been notified by the commission that the license or permit has been cited in a major violation and is now subject to suspension or revocation should the license or permit be cited for subsequent major violations.

Section 3. Section 370.028, Florida Statutes, is amended to read:

370.028 Enforcement of commission rules; penalties for violation of rule.--Rules of the Fish and Wildlife Conservation Commission shall be enforced by any law enforcement officer certified pursuant to s. 943.13. Except as provided under s. 372.83, any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 370.021(1).

Section 4. Paragraph (d) of subsection (5) of section 370.061, Florida Statutes, is amended to read:

370.061 Confiscation, seizure, and forfeiture of property and products.--

(5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS; PROCEDURE.--

(d) For purposes of confiscation under this subsection, the term "saltwater products" has the meaning set out in s. 370.01(27) ~~s. 370.01(26)~~, except that the term does not include saltwater products harvested under the authority of a recreational license unless the amount of such harvested products exceeds three times the applicable recreational bag limit for trout, snook, or redfish.

Section 5. Subsection (8) is added to section 370.063, Florida Statutes, to read:

370.063 Special recreational crawfish license.--There is created a special recreational crawfish license, to be issued to qualified persons as provided by this section for the recreational harvest of crawfish (spiny lobster) beginning August 5, 1994.

(8) Any person who violates this section commits a Level One violation under s. 372.83.

Section 6. Subsection (8) is added to section 370.08, Florida Statutes, to read:

370.08 Fishers and equipment; regulation.--

(8) PENALTIES.--A commercial harvester who violates this section shall be punished under s. 370.021. Any other person who violates this section commits a Level Two violation under s. 372.83.

Section 7. Subsection (6) is added to section 370.081, Florida Statutes, to read:

370.081 Illegal importation or possession of nonindigenous marine plants and animals; rules and regulations.--

(6) Any person who violates this section commits a Level Three violation under s. 372.83.

Section 8. Subsection (4) is added to section 370.1105, Florida Statutes, to read:

370.1105 Saltwater finfish; fishing traps regulated.--

(4) A commercial harvester who violates this section shall be punished under s. 370.021. Any other person who violates this section commits a Level Two violation under s. 372.83.

Section 9. Subsection (3) is added to section 370.1121, Florida Statutes, to read:

370.1121 Bonefish; regulation.--

(3) A commercial harvester or wholesale or retail saltwater products dealer who violates this section shall be punished under s. 370.021. Any other person who violates this section commits a Level Two violation under s. 372.83.

Section 10. Paragraphs (a), (b), (c), and (d) of subsection (2) of section 370.13, Florida Statutes, are amended to read:

370.13 Stone crab; regulation.--

(2) PENALTIES.--For purposes of this subsection, conviction is any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated under any state or federal law.

(a) It is unlawful to violate commission rules regulating stone crab trap certificates and trap tags. No person may use an expired tag or a stone crab trap tag not issued by the commission or possess or use a stone crab trap in or on state waters or adjacent federal waters without having a trap tag required by the commission firmly attached thereto.

1. In addition to any other penalties provided in s. 370.021, for any commercial harvester who violates this paragraph, ~~person, firm, or corporation who violates rule 68B-13.010(2), Florida Administrative Code, or rule 68B-13.011(5),~~

~~(6), (7), (8), or (11), Florida Administrative Code,~~ the following administrative penalties apply.

a.~~1.~~ For a first violation, the commission shall assess an administrative penalty of up to $1,000 and the stone crab endorsement under which the violation was committed may be suspended for the remainder of the current license year.

b.~~2.~~ For a second violation that occurs within 24 months of any previous such violation, the commission shall assess an administrative penalty of up to $2,000 and the stone crab endorsement under which the violation was committed may be suspended for 12 calendar months.

c.~~3.~~ For a third violation that occurs within 36 months of any previous two such violations, the commission shall assess an administrative penalty of up to $5,000 and the stone crab endorsement under which the violation was committed may be suspended for 24 calendar months.

d.~~4.~~ A fourth violation that occurs within 48 months of any three previous such violations, shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 370.021.

2. Any other person who violates the provisions of this paragraph commits a Level Two violation under s. 372.83.

Any commercial harvester ~~person~~ assessed an administrative penalty under this paragraph shall, within 30 calendar days after notification, pay the administrative penalty to the commission, or request an administrative hearing under ss. 120.569 and 120.57. The proceeds of all administrative

penalties collected under this paragraph shall be deposited in the Marine Resources Conservation Trust Fund.

(b) It is unlawful for any commercial harvester ~~person~~ to remove the contents of another harvester's trap or take possession of such without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft.

1. Any commercial harvester ~~person~~ convicted of theft of or from a trap pursuant to this subsection or s. 370.1107 shall, in addition to the penalties specified in s. 370.021 and the provisions of this section, permanently lose all ~~his or her~~ saltwater fishing privileges, including saltwater products licenses, stone crab or incidental take endorsements, and all trap certificates allotted to such commercial harvester ~~him or her~~ by the commission. In such cases, trap certificates and endorsements are nontransferable.

2. In addition, any commercial harvester ~~person, firm, or corporation~~ convicted of violating the prohibitions referenced in this paragraph shall also be assessed an administrative penalty of up to $5,000. Immediately upon receiving a citation for a violation involving theft of or from a trap and until adjudicated for such a violation, or, upon receipt of a judicial disposition other than dismissal or acquittal on such a violation, the violator is prohibited from transferring any stone crab or lobster certificates.

3. Any other person who violates the provisions of this paragraph commits a Level Two violation under s. 372.83.

(c)1. It is unlawful to violate ~~Any person, firm, or corporation convicted of violating~~ commission rules that prohibit any of the following:~~, commits a felony of the third~~

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

a.~~1.~~ The willful molestation of any stone crab trap, line, or buoy that is the property of any licenseholder, without the permission of that licenseholder.

b.~~2.~~ The bartering, trading, or sale, or conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates unless the action is duly authorized by the commission as provided by commission rules.

c.~~3.~~ The making, altering, forging, counterfeiting, or reproducing of stone crab trap tags.

d.~~4.~~ Possession of forged, counterfeit, or imitation stone crab trap tags.

e.~~5.~~ Engaging in the commercial harvest of stone crabs during the time either of the endorsements is under suspension or revocation.

2. Any commercial harvester who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other person who violates this paragraph commits a Level Four violation under s. 372.83.

In addition, any commercial harvester ~~person, firm, or corporation~~ convicted of violating this paragraph shall also be assessed an administrative penalty of up to $5,000, and the incidental take endorsement and/or the stone crab endorsement under which the violation was committed may be suspended for up to 24 calendar months. Immediately upon receiving a citation involving a violation of this paragraph and until adjudicated for such a violation, or if convicted of such a violation, the

person, firm, or corporation committing the violation is prohibited from transferring any stone crab certificates or endorsements.

(d) For any commercial harvester ~~person, firm, or corporation~~ convicted of fraudulently reporting the actual value of transferred stone crab certificates, the commission may automatically suspend or permanently revoke the seller's or the purchaser's stone crab endorsements. If the endorsement is permanently revoked, the commission shall also permanently deactivate the endorsement holder's stone crab certificate accounts. Whether an endorsement is suspended or revoked, the commission may also levy a fine against the holder of the endorsement of up to twice the appropriate surcharge to be paid based on the fair market value of the transferred certificates.

Section 11. Subsection (1) of section 370.135, Florida Statutes, is amended to read:

370.135 Blue crab; regulation.--

(1)(a) No commercial harvester ~~person, firm, or corporation~~ shall transport on the water, fish with or cause to be fished with, set, or place any trap designed for taking blue crabs unless such commercial harvester ~~person, firm, or corporation~~ is the holder of a valid saltwater products license issued pursuant to s. 370.06 and the trap has a current state number permanently attached to the buoy. The trap number shall be affixed in legible figures at least 1 inch high on each buoy used. The saltwater products license must be on board the boat, and both the license and the crabs shall be subject to inspection at all times. Only one trap number may be issued for each boat by the commission upon receipt of an application on forms prescribed by it. This subsection shall not apply to an individual fishing with no more than five traps.

(b) It is unlawful ~~a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084,~~ for any person willfully to molest any traps, lines, or buoys, as defined herein, belonging to another without the express written consent of the trap owner.

1. A commercial harvester who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Any other person who violates this paragraph commits a Level Four violation under s. 372.83.

Any commercial harvester ~~person~~ receiving a judicial disposition other than dismissal or acquittal on a charge of willful molestation of a trap, in addition to the penalties specified in s. 370.021, shall lose all saltwater fishing privileges for a period of 24 calendar months.

(c)1. It is unlawful for any person to remove the contents of or take possession of another harvester's trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft.

a. Any commercial harvester ~~person~~ receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap pursuant to this section or s. 370.1107 shall, in addition to the penalties specified in s. 370.021 and the provisions of this section, permanently lose all ~~his or her~~ saltwater fishing privileges, including any ~~his or her~~ saltwater products license and blue crab endorsement. In such cases endorsements, landings history, and trap certificates are nontransferable.

b. In addition, any commercial harvester ~~person, firm, or corporation~~ receiving a judicial disposition other than dismissal or acquittal for violating this subsection or s. 370.1107 shall also be assessed an administrative penalty of up to $5,000. Immediately upon receiving a citation for a violation involving theft of or from a trap and until adjudicated for such a violation, or receiving a judicial disposition other than dismissal or acquittal for such a violation, the commercial harvester ~~person, firm, or corporation~~ committing the violation is prohibited from transferring any blue crab endorsements, landings history, or trap certificates.

2. A commercial harvester who violates this paragraph shall be punished under s. 370.021. Any other person who violates this paragraph commits a Level Two violation under s. 372.83.

Section 12. Paragraph (a) of subsection (2) and subsection (4) of section 370.14, Florida Statutes, are amended to read:

370.14 Crawfish; regulation.--

(2)(a)1. Each commercial harvester ~~person~~ taking or attempting to take crawfish with a trap in commercial quantities or for commercial purposes shall obtain and exhibit a crawfish trap number, as required by the Fish and Wildlife Conservation Commission. The annual fee for a crawfish trap number is $125. This trap number may be issued by the commission upon the receipt of application by the commercial harvester ~~person~~ when accompanied by the payment of the fee. The design of the applications and of the trap number shall be determined by the commission. Any trap or device used in taking or attempting to take crawfish, other than a trap with the trap number, shall be seized and destroyed by the commission. The proceeds of the fees imposed by this paragraph shall be deposited and used as

provided in paragraph (b). The commission may adopt rules to carry out the intent of this section.

2. Each commercial harvester ~~person~~ taking or attempting to take crawfish in commercial quantities or for commercial purposes by any method, other than with a trap having a crawfish trap number issued by the commission, must pay an annual fee of $100.

(4)(a) It is unlawful ~~a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083,~~ for any person willfully to molest any crawfish traps, lines, or buoys belonging to another without permission of the licenseholder.

(b) A commercial harvester who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Any other person who violates this subsection commits a Level Four violation under s. 372.83.

Section 13. Paragraph (c) of subsection (2) of section 370.142, Florida Statutes, is amended to read:

370.142 Spiny lobster trap certificate program.--

(2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES; PENALTIES.--The Fish and Wildlife Conservation Commission shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(c) Prohibitions; penalties.--

1. It is unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is

not a trap as defined by rule of the commission ~~in rule 68B-24.006(2), Florida Administrative Code~~.

2. It is unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. It is unlawful for any person to willfully molest, take possession of, or remove the contents of another harvester's trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft.

a. A commercial harvester who violates this subparagraph shall be punished under ss. 370.021 and 370.14. Any commercial harvester ~~person~~ receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap pursuant to this subparagraph or s. 370.1107 shall, in addition to the penalties specified in ss. 370.021 and 370.14 and the provisions of this section, permanently lose all his or her saltwater fishing privileges, including his or her saltwater products license, crawfish endorsement, and all trap certificates allotted to him or her through this program. In such cases, trap certificates and endorsements are nontransferable.

b. Any commercial harvester ~~person~~ receiving a judicial disposition other than dismissal or acquittal on a charge of willful molestation of a trap, in addition to the penalties specified in ss. 370.021 and 370.14, shall lose all saltwater fishing privileges for a period of 24 calendar months.

c. In addition, any commercial harvester ~~person, firm, or corporation~~ charged with violating this paragraph and receiving a judicial disposition other than dismissal or acquittal for

violating this subparagraph or s. 370.1107 shall also be assessed an administrative penalty of up to $5,000.

Immediately upon receiving a citation for a violation involving theft of or from a trap, or molestation of a trap, and until adjudicated for such a violation or, upon receipt of a judicial disposition other than dismissal or acquittal of such a violation, the person, firm, or corporation committing the violation is prohibited from transferring any crawfish trap certificates and endorsements.

4. In addition to any other penalties provided in s. 370.021, a commercial harvester~~, as defined by rule 68B-24.002(1), Florida Administrative Code,~~ who violates the provisions of this section~~,~~ or commission rules ~~the provisions~~ relating to traps ~~of chapter 68B-24, Florida Administrative Code,~~ shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the commission shall assess an additional administrative ~~civil~~ penalty of up to $1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year. For all other first violations, the commission shall assess an additional administrative ~~civil~~ penalty of up to $500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the commission shall assess an additional administrative ~~civil~~ penalty of up to $2,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1., subparagraph 2., or subparagraph 3. which occurs within 36

months of any previous two such violations, the commission shall assess an additional administrative ~~civil~~ penalty of up to $5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(2)(h).

d. Any person assessed an additional administrative ~~civil~~ penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the administrative ~~civil~~ penalty to the commission; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The commission shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for any person failing to comply with the provisions of sub-subparagraph d.

5.a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his or her possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by the commission as provided in this chapter or in the rules of the commission.

6.a. Any commercial harvester ~~person~~ who violates the provisions of subparagraph 5., or any commercial harvester ~~person~~ who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (6) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the commission shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any commercial harvester ~~person~~ who violates the provisions of sub-subparagraph 5.c.

c. Any other person who violates the provisions of subparagraph 5. commits a Level Four violation under s. 372.83.

7. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the commission. During any period of trap reduction, any certificates reverting to the commission shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the commission are to be reallotted in such manner as provided by the commission.

8. The proceeds of all civil penalties collected pursuant to subparagraph 4. and all fines collected pursuant to sub-subparagraph 6.b. shall be deposited into the Marine Resources Conservation Trust Fund.

9. All traps shall be removed from the water during any period of suspension or revocation.

10. Except as otherwise provided, any person who violates this paragraph commits a Level Two violation under s. 372.83.

Section 14. Subsections (4), (8), (11), and (12) of section 372.57, Florida Statutes, are amended, and subsections (16) and (17) are added to that section, to read:

372.57 Recreational licenses, permits, and authorization numbers; fees established.--

(4) RESIDENT HUNTING AND FISHING LICENSES.--The licenses and fees for residents participating in hunting and fishing activities in this state are as follows:

(a) Annual freshwater fishing license, $12.

(b) Annual saltwater fishing license, $12.

(c) Annual hunting license to take game, $11.

(d) Annual combination hunting and freshwater fishing license, $22.

(e) Annual combination freshwater fishing and saltwater fishing license, $24.

(f) Annual combination hunting, freshwater fishing, and saltwater fishing license, $34.

(g) Annual license to take fur-bearing animals, $25. However, a resident with a valid hunting license or a no-cost license who is taking fur-bearing animals for noncommercial purposes using guns or dogs only, and not traps or other devices, is not required to purchase this license. Also, a resident 65 years of age or older is not required to purchase this license.

(h) Annual sportsman's license, $71 ~~$66~~, except that an annual sportsman's license for a resident 64 years of age or older is $12. A sportsman's license authorizes the person to whom it is issued to take game and freshwater fish, subject to the state and federal laws, rules, and regulations, including

rules of the commission, in effect at the time of the taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, and an archery permit.

(i) Annual gold sportsman's license, $87 ~~$82~~. The gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, an archery permit, a snook permit, and a crawfish permit.

(j) Annual military gold sportsman's license, $18.50. The gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, an archery permit, a snook permit, and a crawfish permit. Any resident who is an active or retired member of the United States Armed Forces, the United States Armed Forces Reserve, the National Guard, the United States Coast Guard, or the United States Coast Guard Reserve is eligible to purchase the military gold sportsman's license upon submission of a current military identification card.

(8) SPECIFIED HUNTING, FISHING, AND RECREATIONAL ACTIVITY PERMITS.--In addition to any license required under this chapter, the following permits and fees for specified hunting, fishing, and recreational uses and activities are required:

(a) An annual Florida waterfowl permit for a resident or nonresident to take wild ducks or geese within the state or its coastal waters is $3.

(b)1. An annual Florida turkey permit for a resident to take wild turkeys within the state is $5.

2. An annual Florida turkey permit for a nonresident to take wild turkeys within the state is $100.

(c) An annual snook permit for a resident or nonresident to take or possess any snook from any waters of the state is $2. Revenue generated from the sale of snook permits shall be used exclusively for programs to benefit the snook population.

(d) An annual crawfish permit for a resident or nonresident to take or possess any crawfish for recreational purposes from any waters of the state is $2. Revenue generated from the sale of crawfish permits shall be used exclusively for programs to benefit the crawfish population.

(e) A $5 fee is imposed for each of the following permits:

1. An annual archery season permit for a resident or nonresident to hunt within the state during any archery season authorized by the commission.

2. An annual crossbow season permit for a resident or nonresident to hunt within the state during any crossbow season authorized by the commission.

3. An annual muzzle-loading gun season permit for a resident or nonresident to hunt within the state during any ~~with a~~ muzzle-loading gun season ~~is $5~~. ~~Hunting with a muzzle-loading~~

~~gun is limited to game seasons in which hunting with a modern firearm is not authorized by the commission.~~

~~(f) An annual archery permit for a resident or nonresident to hunt within the state with a bow and arrow is $5. Hunting with an archery permit is limited to those game seasons in which hunting with a firearm is not authorized by the commission.~~

(f) ~~(g)~~ A special use permit for a resident or nonresident to participate in limited entry hunting or fishing activities as authorized by commission rule shall not exceed $100 per day or $250 per week. Notwithstanding any other provision of this chapter, there are no exclusions, exceptions, or exemptions from this permit fee. In addition to the permit fee, the commission may charge each special use permit applicant a nonrefundable application fee not to exceed $10.

(g) ~~(h)~~ 1. A management area permit for a resident or nonresident to hunt on, fish on, or otherwise use for outdoor recreational purposes land owned, leased, or managed by the commission, or by the state for the use and benefit of the commission, shall not exceed $25 per year.

2. Permit fees for short-term use of land that is owned, leased, or managed by the commission may be established by rule of the commission for activities on such lands. Such permits may be in lieu of, or in addition to, the annual management area permit authorized in subparagraph 1.

3. Other than for hunting or fishing, the provisions of this paragraph shall not apply on any lands not owned by the commission, unless the commission has obtained the written consent of the owner or primary custodian of such lands.

(h) ~~(i)~~ 1. A recreational user permit is required to hunt on, fish on, or otherwise use for outdoor recreational purposes land leased by the commission from private nongovernmental

owners, except for those lands located directly north of the Apalachicola National Forest, east of the Ochlocknee River until the point the river meets the dam forming Lake Talquin, and south of the closest federal highway. The fee for a recreational user permit shall be based upon the economic compensation desired by the landowner, game population levels, desired hunter density, and administrative costs. The permit fee shall be set by commission rule on a per-acre basis. The recreational user permit fee, less administrative costs of up to $25 per permit, shall be remitted to the landowner as provided in the lease agreement for each area.

2. One minor dependent, 16 years of age or younger, may hunt under the supervision of the permittee and is exempt from the recreational user permit requirements. The spouse and dependent children of a permittee are exempt from the recreational user permit requirements when engaged in outdoor recreational activities other than hunting and when accompanied by a permittee. Notwithstanding any other provision of this chapter, no other exclusions, exceptions, or exemptions from the recreational user permit fee are authorized.

(11) RESIDENT LIFETIME HUNTING LICENSES.--

(a) Lifetime hunting licenses are available to residents only, as follows, for:

1. Persons 4 years of age or younger, for a fee of $200.

2. Persons 5 years of age or older, but under 13 years of age, for a fee of $350.

3. Persons 13 years of age or older, for a fee of $500.

(b) The following activities are authorized by the purchase of a lifetime hunting license:

1. Taking, or attempting to take or possess, game consistent with the state and federal laws and regulations and rules of the commission in effect at the time of the taking.

2. All activities authorized by a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, an archery season permit, a Florida waterfowl permit, and a management area permit, excluding fishing.

(12) RESIDENT LIFETIME SPORTSMAN'S LICENSES.--

(a) Lifetime sportsman's licenses are available to residents only, as follows, for:

1. Persons 4 years of age or younger, for a fee of $400.

2. Persons 5 years of age or older, but under 13 years of age, for a fee of $700.

3. Persons 13 years of age or older, for a fee of $1,000.

(b) The following activities are authorized by the purchase of a lifetime sportsman's license:

1. Taking, or attempting to take or possess, freshwater and saltwater fish, and game, consistent with the state and federal laws and regulations and rules of the commission in effect at the time of taking.

2. All activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, an archery season permit, a Florida waterfowl permit, a snook permit, and a crawfish permit.

(16) PROHIBITED LICENSES OR PERMITS.--A person may not make, forge, or counterfeit a license or permit required under this section, except for those persons authorized by the commission to make or reproduce such a license or permit. A person may not knowingly possess a forgery, counterfeit, or unauthorized reproduction of such a license or permit. A person

who violates this subsection commits a Level Four violation under s. 372.83.

(17) SUSPENDED OR REVOKED LICENSES.--A person may not take game, freshwater fish, saltwater fish, or fur-bearing animals within this state if a license issued to such person as required under this section or a privilege granted to such person under s. 372.562 is suspended or revoked. A person who violates this subsection commits a Level Three violation under s. 372.83.

Section 15. Subsection (5) of section 372.5704, Florida Statutes, is amended to read:

372.5704 Fish and Wildlife Conservation Commission license program for tarpon; fees; penalties.--

(5) Any individual including a taxidermist who possesses a tarpon which does not have a tag securely attached as required by this section commits a Level Two violation under s. 372.83 ~~shall be subject to penalties as prescribed in s. 370.021~~. Provided, however, a taxidermist may remove the tag during the process of mounting a tarpon. The removed tag shall remain with the fish during any subsequent storage or shipment.

Section 16. Section 372.571, Florida Statutes, is amended to read:

372.571 Expiration of licenses and permits.--Each license or permit issued under this chapter must be dated when issued. Each license or permit issued under this chapter remains valid for 12 months after the date of issuance, except for a lifetime license issued pursuant to s. 372.57 which is valid from the date of issuance until the death of the individual to whom the license is issued unless otherwise revoked in accordance with s. 372.99, or a 5-year license issued pursuant to s. 372.57 which is valid for 5 consecutive years from the date of purchase unless otherwise revoked in accordance with s. 372.99, or a

license issued pursuant to s. 372.57(5)(a), (b), (c), or (f) or (8)(f) ~~(8)(g)~~ or (g)~~(h)~~2., which is valid for the period specified on the license. A resident lifetime license or a resident 5-year license that has been purchased by a resident of this state and who subsequently resides in another state shall be honored for activities authorized by that license.

Section 17. Section 372.5717, Florida Statutes, is amended to read:

372.5717 Hunter safety course; requirements; penalty.--

(1) This section may be cited as the Senator Joe Carlucci Hunter Safety Act.

(2)(a) Except as provided in paragraph (b), a person born on or after June 1, 1975, may not be issued a license to take wild animal life with the use of a firearm, gun, bow, or crossbow in this state without having first successfully completed a hunter safety course as provided in this section, and without having in his or her personal possession a hunter safety certification card, as provided in this section.

(b) A person born on or after June 1, 1975, who has not successfully completed a hunter safety course may apply to the commission for a special authorization to hunt under supervision. The special authorization for supervised hunting shall be designated on any license or permit required under this chapter for a person to take game or fur-bearing animals, and shall be valid for not more than 1 year. A special authorization for supervised hunting may not be issued more than once to the person applying for such authorization. A person issued a license with a special authorization to hunt under supervision must hunt under the supervision of, and in the presence of, a person 21 years or age or older who is licensed to hunt pursuant

to s. 372.57 or who is exempt from licensing requirements or eligible for a free license pursuant to s. 372.562.

(3) The Fish and Wildlife Conservation Commission shall institute and coordinate a statewide hunter safety course that ~~which~~ must be offered in every county and consist of not ~~less than 12 hours nor~~ more than 16 hours of instruction including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.

(4) The commission shall issue a permanent hunter safety certification card to each person who successfully completes the hunter safety course. The commission shall maintain records of hunter safety certification cards issued and shall establish procedures for replacing lost or destroyed cards.

(5) A hunter safety certification card issued by a wildlife agency of another state, or any Canadian province, which shows that the holder of the card has successfully completed a hunter safety course approved by the commission is an acceptable substitute for the hunter safety certification card issued by the commission.

(6) All persons subject to the requirements of subsection (2) must have in their personal possession, proof of compliance with this section, while taking or attempting to take wildlife with the use of a firearm, gun, bow, or crossbow and must, unless the requirement to complete a hunter safety course is deferred pursuant to this section, display a valid hunter safety certification card ~~to county tax collectors or their subagents~~ in order to purchase a Florida hunting license. After the issuance of such a license, the license itself shall serve as proof of compliance with this section. A holder of a lifetime license whose license does not indicate on the face of the license that a hunter safety course has been completed must have

in his or her personal possession a hunter safety certification card, as provided by this section, while attempting to take wild animal life with the use of a firearm, gun, bow, or crossbow.

(7) The hunter safety requirements of this section do not apply to persons for whom licenses are not required under s. 372.562(2).

(8) A person who violates this section shall be cited for a Level One violation as classified in s. 372.83 and shall be punished ~~noncriminal infraction, punishable~~ as provided in s. 372.83 ~~s. 372.711~~.

Section 18. Section 372.573, Florida Statutes, is amended to read:

372.573 Management area permit revenues.--The commission shall expend the revenue generated from the sale of the management area permit as provided for in s. 372.57(8)(g) ~~s. 372.57(8)(h)~~ or that pro rata portion of any license that includes management area privileges as provided for in s. 372.57(4)(h), (i), and (j) for the lease, management, and protection of lands for public hunting, fishing, and other outdoor recreation.

Section 19. Section 372.83, Florida Statutes, is amended to read:

(Substantial rewording of section. See
s. 372.83, F.S., for present text.)

372.83 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.--

(1)(a) LEVEL ONE VIOLATIONS.--A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by

persons who hold recreational licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

5. Section 370.063, providing for special recreational crawfish licenses.

6. Subsections (1) through (15) of s. 372.57, providing for recreational licenses to hunt, fish, and trap.

7. Section 372.5717, providing hunter safety course requirements.

8. Section 372.988, prohibiting deer hunting unless required clothing is worn.

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c)1. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 372.57 is $50, plus the cost of the license or permit if the person cited has not previously committed a Level One violation.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 372.57 is

$250, plus the cost of the license or permit if the person cited has previously committed a Level One violation.

(d)1. The civil penalty for any other Level One violation is $50 if the person cited has not previously committed a Level One violation.

2. The civil penalty for any other Level One violation is $250 if the person cited has previously committed a Level One violation.

(e) A person cited for a Level One violation shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(f) A person cited for a Level One violation may pay the civil penalty by mail or in person within 30 days after receipt of the citation. If the civil penalty is paid, the person shall be deemed to have admitted committing the Level One violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(g) A person who refuses to accept a citation, who fails to pay the civil penalty for a Level One violation, or who fails to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(h) A person who elects to appear before the county court or who is required to appear before the county court shall be deemed to have waived the limitations on civil penalties provided under paragraph (c). After a hearing, the county court shall determine if a Level One violation has been committed, and

if so, may impose a civil penalty of not less than $50 for a first-time violation, and not more than $500 for subsequent violations. A person found guilty of committing a Level One violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(i) A person cited for violating the requirements of s. 372.57 relating to personal possession of a license or permit may not be convicted if, prior to or at the time of a county court hearing, the person produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a $5 fee for costs under this paragraph.

(2)(a) LEVEL TWO VIOLATIONS.--A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to season or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.

4. Rules or orders of the commission relating to the feeding of wildlife, freshwater fish, or saltwater fish.

5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.

6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.

7. Rules or orders of the commission relating to tagging requirements for game and fur-bearing animals.

8. Rules or orders of the commission relating to the use of dogs for the taking of game.

9. Rules or orders of the commission which are not otherwise classified.

10. All prohibitions in chapter 370 which are not otherwise classified.

11. Section 370.028, prohibiting the violation of or noncompliance with commission rules.

12. Subsection 370.021(6) prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.

13. Section 370.08, prohibiting the obstruction of waterways with net gear.

14. Section 370.1105, prohibiting the unlawful use of finfish traps.

15. Section 370.1121, prohibiting the unlawful taking of bonefish.

16. Paragraphs 370.13(2)(a) and (b), prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.

17. Paragraph 370.135(2)(c), prohibiting the theft of blue crab trap contents or trap gear.

18. Paragraph 370.142 (2)(c), prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.

19. Section 372.5704, prohibiting the possession of tarpon without purchasing a tarpon tag.

20. Section 372.667, prohibiting the feeding or enticement of alligators or crocodiles.

21. Section 372.705, prohibiting the intentional harassment of hunters, fishers, or trappers.

(b)1. A person who commits a Level Two violation but who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Unless the stricter penalties in subparagraph 3. or subparagraph 4. apply, a person who commits a Level Two violation within 3 years after a previous conviction for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $250.

3. Unless the stricter penalties in subparagraph 4. apply, a person who commits a Level Two violation within 5 years after two previous convictions for a Level Two or higher violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $500 and a suspension of any recreational license or permit issued under s. 372.57 for 1 year. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under any exemption in s. 372.562.

4. A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational

license or permit issued under s. 372.57 for 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under any exemption in s. 372.562.

(3)(a) LEVEL THREE VIOLATIONS.--A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Subsection 370.021(2), establishing major violations.

3. Subsection 370.021(4), prohibiting the possession of certain finfish in excess of recreational or commercial daily bag limits.

4. Section 370.081, prohibiting the illegal importation or possession of exotic marine plants or animals.

5. Section 372.26, prohibiting the importation of freshwater fish.

6. Section 372.265, prohibiting the importation of nonindigenous species of the animal kingdom without a permit issued by the commission.

7. Subsection 372.57(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

8. Section 372.662, prohibiting the illegal sale or possession of alligators.

9. Section 372.99(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

10. Section 372.9903, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

(b)1. A person who commits a Level Three violation but who has not been convicted of a Level Three or higher violation within the past 10 years, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 372.57 for the remainder of the period for which the license or permit was issued up to 3 years. If the recreational license or permit being suspended was an annual license or permit, any privileges under s. 372.57 may not be acquired for a 3-year period following the date of the violation.

3. A person who commits a violation of s. 372.57(17) shall receive a mandatory fine of $1,000. Any privileges under s. 372.57 may not be acquired for a 5-year period following the date of the violation.

(4)(a) LEVEL FOUR VIOLATIONS.--A person commits a Level Four violation if he or she violates any of the following provisions:

1. Paragraph 370.13(2)(c), prohibiting the willful molestation of stone crab gear; the illegal trade, sale, or supply of stone crab trap tags or certificates; the unlawful reproduction or possession of stone crab trap tags or certificates; or the unlawful harvest of stone crabs.

2. Section 370.135, prohibiting the willful molestation of blue crab gear.

3. Subsection 370.14(4), prohibiting the willful molestation of crawfish gear.

4. Subparagraph 370.142(2)(c)5., prohibiting the unlawful reproduction of spiny lobster trap tags or certificates.

5. Subsection 372.57(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.

6. Subsection 372.99(5), prohibiting the sale of illegally-taken deer or wild turkey.

7. Section 372.99022, prohibiting the molestation or theft of freshwater gear.

(b) A person who commits a Level Four violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(5) VIOLATIONS OF CHAPTER.--Except as provided in this chapter:

(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) SUSPENSION OR FORFEITURE OF LICENSE.--The court may order the suspension or forfeiture of any license or permit issued under this chapter to a person who is found guilty of committing a violation of this chapter.

(7) CONVICTION DEFINED.--As used in this section, the term "conviction" means any judicial disposition other than acquittal or dismissal.

Section 20. Section 372.935, Florida Statutes, is created to read:

372.935 Captive wildlife; penalties for violations.--

(1)(a) NONCRIMINAL INFRACTIONS.--A person commits a noncriminal infraction if he or she violates any of the following provisions:

1. Rules or orders of the commission requiring a no-cost permit to possess captive wildlife for personal use.

2. Rules or orders of the commission requiring that persons who are licensed to possess captive wildlife file reports or other documents.

(b) A person cited for committing a noncriminal infraction under this section shall be cited to appear before the county court. The civil penalty for a person found guilty of committing a noncriminal violation under this section is $50, and the provisions of s. 372.83(1)(e)-(i) apply under this subsection.

(2) MISDEMEANORS.--A person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for violating any of the following provisions:

(a) Rules or orders of the commission which require the payment of a fee for a person to obtain a permit to possess captive wildlife.

(b) Rules or orders of the commission which require the maintenance of records relating to captive wildlife.

(c) Rules or orders of the commission relating to captive wildlife which are not specified in subsection (1).

(d) Section 372.86, prohibiting the possession or exhibition of poisonous or venomous reptiles without a license or permit.

(e) Section 372.88, prohibiting the exhibition of poisonous or venomous reptiles without posting a bond.

(f) Section 372.89, prohibiting the possession or exhibition of poisonous or venomous reptiles in an unsafe manner.

(g) Section 372.90, prohibiting the transportation of poisonous or venomous reptiles in an unsafe manner.

(h) Section 372.901, prohibiting the penning or caging of poisonous or venomous reptiles in an unsafe manner.

(i) Section 372.91, prohibiting certain persons from opening containers housing poisonous or venomous reptiles.

(j) Section 372.921, prohibiting the exhibition or sale of wildlife.

(k) Section 372.922, prohibiting the personal possession of wildlife.

Section 21. Section 372.26, Florida Statutes, is amended to read:

372.26 Imported fish.--

(1) No person shall import into the state or place in any of the fresh waters of the state any freshwater fish of any species without having first obtained a permit from the Fish and Wildlife Conservation Commission. The commission is authorized to issue or deny such a permit upon the completion of studies of the species made by it to determine any detrimental effect the species might have on the ecology of the state.

(2) A person who violates this section commits a Level Three violation under s. 372.83 ~~Persons in violation of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 22. Section 372.265, Florida Statutes, is amended to read:

372.265 Regulation of foreign animals.--

(1) It is unlawful to import for sale or use, or to release within this state, any species of the animal kingdom not indigenous to Florida without having obtained a permit to do so from the Fish and Wildlife Conservation Commission.

(2) The Fish and Wildlife Conservation Commission is authorized to issue or deny such a permit upon the completion of studies of the species made by it to determine any detrimental effect the species might have on the ecology of the state.

(3) A person ~~Persons~~ in violation of this section commits a Level Three violation under s. 372.83 ~~shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 23. Subsection (2) of section 372.661, Florida Statutes, is amended to read:

372.661 Private hunting preserve license fees; exception.--

(2) A commercial hunting preserve license, which shall exempt patrons of licensed preserves from the license and permit requirements of s. 372.57(4)(c), (d), (f), (h), (i), and (j); (5)(f) and (g); (8)(a), (b), and (e)~~, and (f)~~; (9)(a)2.; (11); and (12) while hunting on the licensed preserve property, shall be $500. Such commercial hunting preserve license shall be available only to those private hunting preserves licensed pursuant to this section which are operated exclusively for commercial purposes, which are open to the public, and for which a uniform fee is charged to patrons for hunting privileges.

Section 24. Section 372.662, Florida Statutes, is amended to read:

372.662 Unlawful sale, possession, or transporting of alligators or alligator skins.--Whenever the sale, possession, or transporting of alligators or alligator skins is prohibited

by any law of this state, or by the rules, regulations, or orders of the Fish and Wildlife Conservation Commission adopted pursuant to s. 9, Art. IV of the State Constitution, the sale, possession, or transporting of alligators or alligator skins is a Level Three violation under s. 372.83 ~~misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 25. Section 372.667, Florida Statutes, is amended to read:

372.667 Feeding or enticement of alligators or crocodiles unlawful; penalty.--

(1) No person shall intentionally feed, or entice with feed, any wild American alligator (Alligator mississippiensis) or American crocodile (Crocodylus acutus). However, the provisions of this section shall not apply to:

(a) Those persons feeding alligators or crocodiles maintained in protected captivity for educational, scientific, commercial, or recreational purposes.

(b) Fish and Wildlife Conservation Commission personnel, persons licensed or otherwise authorized by the commission, or county or municipal animal control personnel when relocating alligators or crocodiles by baiting or enticement.

(2) For the purposes of this section, the term "maintained in protected captivity" means held in captivity under a permit issued by the Fish and Wildlife Conservation Commission pursuant to s. 372.921 or s. 372.922.

(3) Any person who violates this section commits a Level Two violation under s. 372.83 ~~is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 26. Section 372.705, Florida Statutes, is amended to read:

372.705 Harassment of hunters, trappers, or fishers.--

(1) A person may not intentionally, within a publicly or privately owned wildlife management or fish management area or on any state-owned water body:

(a) Interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another.

(b) Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

(2) Any person who violates this section commits a Level Two violation under s. 372.83 ~~subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 27. Section 372.988, Florida Statutes, is amended to read:

372.988 Required clothing for persons hunting deer.--It is a Level One violation under s. 372.83 ~~unlawful~~ for any person to hunt deer, or for any person to accompany another person hunting deer, during the open season for the taking of deer on public lands unless each person shall wear a total of at least 500 square inches of daylight fluorescent orange material as an outer garment. Such clothing shall be worn above the waistline and may include a head covering. The provisions of this section shall not apply to any person hunting deer with a bow and arrow during seasons restricted to hunting with a bow and arrow.

Section 28. Subsection (1) of section 372.99022, Florida Statutes, is amended to read:

372.99022 Illegal molestation of or theft from freshwater fishing gear.--

(1)(a) Any person, firm, or corporation that willfully molests any authorized and lawfully permitted freshwater fishing

gear belonging to another without the express written consent of the owner commits a Level Four violation under s. 372.83 ~~felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~. Any written consent must be available for immediate inspection.

(b) Any person, firm, or corporation that willfully removes the contents of any authorized and lawfully permitted freshwater fishing gear belonging to another without the express written consent of the owner commits a Level Four violation under s. 372.83 ~~felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~. Any written consent must be available for immediate inspection.

A person, firm, or corporation that receives a citation for a violation of this subsection is prohibited, immediately upon receipt of such citation and until adjudicated or convicted of a felony under this subsection, from transferring any endorsements.

Section 29. Section 372.99, Florida Statutes, is amended to read:

372.99 Illegal taking and possession of deer and wild turkey; evidence; penalty.--

(1) Whoever takes or kills any deer or wild turkey, or possesses a freshly killed deer or wild turkey, during the closed season prescribed by law or by the rules and regulations of the Fish and Wildlife Conservation Commission, or whoever takes or attempts to take any deer or wild turkey by the use of gun and light in or out of closed season, commits a Level Three violation under s. 372.83 ~~is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~, and shall forfeit any license or permit issued to her

or him under the provisions of this chapter. No license shall be issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(2) The display or use of a light in a place where deer might be found and in a manner capable of disclosing the presence of deer, together with the possession of firearms or other weapons customarily used for the taking of deer, between 1 hour after sunset and 1 hour before sunrise, shall be prima facie evidence of an intent to violate the provisions of subsection (1). This subsection does not apply to an owner or her or his employee when patrolling or inspecting the land of the owner, provided the employee has satisfactory proof of employment on her or his person.

(3) Whoever takes or kills any doe deer; fawn or baby deer; or deer, whether male or female, which does not have one or more antlers at least 5 inches in length, except as provided by law or the rules of the Fish and Wildlife Conservation Commission, during the open season prescribed by the rules of the commission, commits a Level Three violation under 372.83 ~~is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~, and may be required to forfeit any license or permit issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(4) Any person who cultivates agricultural crops may apply to the Fish and Wildlife Conservation Commission for a permit to take or kill deer on land which that person is currently

cultivating. When said person can show, to the satisfaction of the Fish and Wildlife Conservation Commission, that such taking or killing of deer is justified because of damage to the person's crops caused by deer, the Fish and Wildlife Conservation Commission may issue a limited permit to the applicant to take or kill deer without being in violation of subsection (1) or subsection (3).

(5) Whoever possesses for sale or sells deer or wild turkey taken in violation of this chapter or the rules and regulations of the commission commits a Level Four violation under s. 372.83 ~~is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

(6) Any person who enters upon private property and shines lights upon such property, without the express permission of the owner of the property and with the intent to take deer by utilizing such shining lights, commits a Level Three violation under s. 372.83 ~~shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 30. Subsection (1) of section 372.9903, Florida Statutes, is amended to read:

372.9903 Illegal possession or transportation of freshwater game fish in commercial quantities; penalty.--

(1) Whoever possesses, moves, or transports any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities in violation of law or the rules of the Fish and Wildlife Conservation Commission commits a Level Three violation under s. 372.83 ~~shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 31. Section 372.831, Florida Statutes, is created to read:

372.831 Wildlife Violators Compact Act.--The Wildlife Violators Compact is created and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Findings and Purpose

(1) The participating states find that:

(a) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances, and administrative rules relating to the management of such resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(e) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(g) In most instances, a person who is cited for a wildlife violation in a state other than his or her home state is:

1. Required to post collateral or a bond to secure appearance for a trial at a later date;

2. Taken into custody until the collateral or bond is posted; or

3. Taken directly to court for an immediate appearance.

(h) The purpose of the enforcement practices set forth in paragraph (g) is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his or her way after receiving the citation, could return to his or her home state and disregard his or her duty under the terms of the citation.

(i) In most instances, a person receiving a wildlife citation in his or her home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his or her way after agreeing or being instructed to comply with the terms of the citation.

(j) The practices described in paragraph (g) cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine, and thus is compelled to remain in custody until some alternative arrangement is made.

(k) The enforcement practices described in paragraph (g) consume an undue amount of time of law enforcement agencies.

(2) It is the policy of the participating states to:

(a) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to the management of wildlife resources in their respective states.

(b) Recognize a suspension of the wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in each respective state.

(c) Allow a violator, except as provided in subsection (2) of Article III, to accept a wildlife citation and, without delay, proceed on his or her way, whether or not the violator is a resident of the state in which the citation was issued, if the violator's home state is party to this compact.

(d) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(e) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.

(f) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(g) Maximize the effective use of law enforcement personnel and information.

(h) Assist court systems in the efficient disposition of wildlife violations.

(3) The purpose of this compact is to:

(a) Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection (2) in a uniform and orderly manner.

(b) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II

Definitions

As used in this compact, the term:

(1) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(4) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule that results in suspension or revocation of a license. The term also includes the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the

payment of a penalty assessment, a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the participating state that issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state; any privilege to obtain such license, permit, or other public document; or any statutory exemption from the requirement to obtain such license, permit, or other public document. However, when applied to licenses issued by the State of Florida, only those licenses issued or privileges authorized pursuant to s. 372.561, s. 372.562, or s. 372.57 shall be considered licenses.

(9) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Participating state" means any state that enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(12) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(15) "Wildlife" means all species of animals, including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and the determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(17) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III

Procedures for Issuing State

(1) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose

primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in subsection (2), if the officer receives the recognizance of such person that he will comply with the terms of the citation.

(2) Personal recognizance is acceptable if not prohibited by local law; by policy, procedure, or regulation of the issuing agency; or by the compact manual and if the violator provides adequate proof of identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and must contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance pursuant to subsection (3), the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in the form and content prescribed in the compact manual.

ARTICLE IV

Procedure for Home State

(1) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a

suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due-process safeguards shall be accorded.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V

Reciprocal Recognition of Suspension

(1) Each participating state may recognize the suspension of license privileges of any person by any other participating state as though the violation resulting in the suspension had occurred in that state and would have been the basis for suspension of license privileges in that state.

(2) Each participating state shall communicate suspension information to other participating states in the form and content contained in the compact manual.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, this compact does not affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning the enforcement of wildlife laws.

ARTICLE VII

Compact Administrator Procedures

(1) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he or she represents. A compact administrator may provide for the discharge of his or her duties and the performance of his or her functions as a board member by an alternate. An alternate is not entitled to serve unless written notification of his or her identity has been given to the board.

(2) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(3) The board shall elect annually from its membership a chairman and vice chairman.

(4) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(5) The board may accept for any of its purposes and functions under this compact any and all donations and grants of moneys, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, use, and dispose of the same.

(6) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, corporation, or private nonprofit organization or institution.

(7) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII

Entry into Compact and Withdrawal

(1) This compact shall become effective at such time as it is adopted in substantially similar form by two or more states.

(2)(a) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairman of the board.

(b) The resolution shall substantially be in the form and content as provided in the compact manual and must include the following:

1. A citation of the authority from which the state is empowered to become a party to this compact;

2. An agreement of compliance with the terms and provisions of this compact; and

3. An agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(c) The effective date of entry shall be specified by the applying state, but may not be less than 60 days after notice has been given by the chairman of the board of the compact administrators or by the secretariat of the board to each participating state that the resolution from the applying state has been received.

(3) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice must be directed to the compact administrator of each member state. The withdrawal of any state does not affect the validity of this compact as to the remaining participating states.

ARTICLE IX

Amendments to the Compact

(1) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

(2) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

ARTICLE X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or if the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact is held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

Section 32. Section 372.8311, Florida Statutes, is created to read:

372.8311 Compact licensing and enforcement authority; administrative review.--

(1) For purposes of this chapter and the interstate Wildlife Violators Compact, the Fish and Wildlife Conservation Commission is the licensing authority for the State of Florida and the commission shall enforce the interstate Wildlife Violators Compact and shall do all things within the commission's jurisdiction which are necessary to effectuate the purposes and the intent of the compact. The commission may execute a resolution of ratification to formalize the State of

Florida's entry into the compact. Upon adoption of the Wildlife Violators Compact, the commission may adopt rules to administer the provisions of the compact.

(2) Any act done or omitted pursuant to, or in enforcing, the provisions of this compact are subject to review in accordance with chapter 120, Florida Statutes. Notwithstanding any other provision of this section, actions taken by another state or its courts shall not be reviewable.

Section 33. Sections 372.711 and 372.912, Florida Statutes, are repealed.

Section 34. This act shall take effect October 1, 2006.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to fish and wildlife; amending s. 370.01, F.S.; defining the term "commercial harvester"; amending s. 370.021, F.S.; providing for base penalties; conforming penalty provisions for commercial harvesters; providing penalties for persons other than commercial harvesters; amending s. 370.028, F.S.; conforming penalty provisions; amending s. 370.061, F.S.; correcting a cross-reference; amending ss. 370.063, 370.08, 370.081, 370.1105, 370.1121, 370.13, 370.135, 370.14, and 370.142, F.S.; conforming penalty provisions for commercial harvesters; providing penalties for persons other than commercial harvesters; amending s. 372.57, F.S.; specifying seasonal recreational activities for which a license or permit is required; increasing fees for certain licenses to conform; providing a fee for a crossbow season permit; providing for crossbow season permits; providing penalties for the production,

possession, and use of fraudulent fishing and hunting licenses; providing penalties for the taking of game and fish with a suspended or revoked license; amending s. 372.5704, F.S.; conforming penalty provisions; amending ss. 372.571 and 372.573, F.S.; correcting cross-references; amending s. 372.5717, F.S.; authorizing the Fish and Wildlife Conservation Commission to defer the hunter safety education course requirement for a specified time period and for a specified number of times; providing for a special authorization and conditions to hunt using a hunter safety education deferral; deleting the mandatory minimum number of instructional hours for persons required to take the hunter safety education course; providing an exemption for the display of hunter safety education certificates; providing penalties; amending s. 372.83, F.S.; revising the penalties for violations of rules, orders, and regulations of the Fish and Wildlife Conservation Commission; creating penalties for recreational violations of certain saltwater fishing regulations established in ch. 370, F.S.; providing for court appearances in certain circumstances; providing for Level One, Level Two, Level Three, and Level Four offenses; providing for enhanced penalties for multiple violations; providing for suspension and revocation of licenses and permits, including exemptions from licensing and permit requirements; defining the term "conviction" for purposes of penalty provisions; creating s. 372.935, F.S.; providing penalties for violations involving captive wildlife and poisonous or venomous reptiles; specifying violations that constitute noncriminal infractions or second-degree misdemeanors; amending ss. 372.26, 372.265,

372.661, 372.662, 372.667, 372.705, 372.988, 372.99022, 372.99, and 372.9903, F.S.; conforming penalty provisions; creating s. 372.831, F.S.; creating the Wildlife Violators Compact; providing findings and purposes; providing definitions; providing procedures for states issuing citations for wildlife violations; providing requirements for the home state of a violator; providing for reciprocal recognition of a license suspension; providing procedures for administering the compact; providing for entry into and withdrawal from the compact; providing for construction of the compact and for severability; creating s. 372.832, F.S.; providing for enforcement of the compact by the Fish and Wildlife Conservation Commission; providing that a suspension under the compact is subject to limited review under ch. 120, F.S.; providing that actions taken by another state or its courts are not reviewable; repealing s. 372.711, F.S., relating to noncriminal infractions; repealing s. 372.912, F.S., relating to organized poisonous reptile hunts; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1a (for drafter's use only)

Bill No. **HB 471**

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Hasner offered the following:

Amendment to Strike-all Amendment (1) by Representative Troutman (with title amendment)

Between lines 1306-1350 insert:

Section 372.935 is created to read:

372.935. Captive wildlife penalties.

(1) LEVEL ONE--Unless otherwise provided by law, the following classifications and penalties apply:

(a)A person commits a Level One violation if she or he violates any of the following provisions:

1. Rules or orders of the commission requiring free permits or other authorizations to possess captive wildlife.

2. Rules or orders of the Commission relating to the filing of reports or other documents required of persons who are licensed to possess captive wildlife.

3. Rules or orders of the commission requiring permits to possess captive wildlife that a fee is charged for, when the person being charged was issued the permit and the permit has expired less than 1 year prior to the violation.

(b) Any person cited for committing any offense classified as a Level One violation commits a noncriminal infraction, punishable as provided in this section.

(c) Any person cited for committing a noncriminal infraction specified in paragraph (a) shall be cited to appear before the county court. The civil penalty for any noncriminal infraction is $ 50 if the person cited has not previously been found guilty of any level one violation and $250 if the person cited has previously been found guilty of any level one violation, except as otherwise provided in this subsection; any person cited for failing to have a required permit or license shall pay an additional civil penalty in the amount of the license fee required.

(d) Any person cited for an infraction under this subsection may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty; or

2. Sign and accept a citation indicating a promise to appear before the county court. The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(e) Any person charged with a noncriminal infraction under this subsection may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit bond by not appearing at the designated time and location.

(f) If the person cited follows either of the procedures in sub-paragraphs (e)1. or 2., he or she shall be deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings

except to determine the appropriate fine for any subsequent violations.

(g) Any person who willfully refuses to post a bond or accept and sign a summons is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who fails to pay the civil penalty specified in this subsection within 30 days after being cited for a noncriminal infraction or to appear before the court pursuant to this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(h) Any person electing to appear before the county court or who is required so to appear shall be deemed to have waived the limitations on the civil penalty specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not less than those amounts in paragraph (c) and not to exceed $ 500.

(i) At a hearing under this chapter, the commission of a charged infraction must be proved beyond a reasonable doubt.

(j) If a person is found by the hearing official to have committed an infraction, she or he may appeal that finding to the circuit court.

(2) LEVEL TWO. - Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Two violation if he or she violates any of the following provisions:

1. Unless stated in subsection (1), rules or orders of the Commission that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife.

2. Rules or orders of the Commission relating to captive wildlife not specified in subsections (1) or (3).

3. Rules or orders of the Commission which require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.

4. Section 372.86, relating to possessing or exhibiting reptiles.

5. Section 372.87, relating to licensing of reptiles.

6. Section 372.88, relating to bonding requirements for exhibits.

7. Section 372.89, relating to housing requirements.

8. Section 372.90, relating to transportation.

9. Section 372.901, relating to inspection.

10. Section 372.91, relating to limitation of access to reptiles.

11. Section 372.921, relating to exhibition or sale of wildlife.

12. Section 372.922, relating to personal possession of wildlife.

(b) A person who commits any offense classified as a Level Two violation, who has not been convicted of a violation that is classified as Level Two or above within the past three years, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Unless otherwise stated in this paragraph, a person who commits any offense classified as a Level Two violation within a three year period of any previous conviction of any offense classified as level two violation or higher is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 with a minimum mandatory fine of $250.

(d) Unless otherwise stated in this paragraph, a person who commits any offense classified as a level two violation within a

five year period of any two previous convictions of offenses that are classified as level two violations or above is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 with a minimum mandatory fine of $500 and a suspension of all licenses issued under this chapter related to captive wildlife for 1 year.

(e) A person who commits any offense classified as a Level Two violation within a ten year period of any three previous convictions of offenses classified as level two violations or above is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 with a minimum mandatory fine of $750 and a suspension of all licenses issued under this chapter related to captive wildlife for 3 years.

(3) LEVEL THREE - Unless otherwise provided by law, the following classifications and penalties apply.

(a) A person is guilty of Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the Commission which require housing of wildlife in a safe manner when a violation results in an escape of Class I wildlife.

2. Rules or orders of the Commission related to captive wildlife when the violation results in serious bodily injury to another person by captive wildlife which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

3. Rules or orders of the Commission relating to the use of gasoline or to other chemical or gaseous substances on wildlife.

4. Rules or orders of the Commission prohibiting the release of wildlife for which only conditional possession is allowed.

5. Rules or orders of the Commission prohibiting knowingly entering false information on an application for a license or permit when the license or permit is to possess wildlife in captivity.

6. Section 372.265, relating to illegal importation or introduction of foreign wildlife.

(b) 1. A person who commits any offense classified as a Level Three violation, who has not been convicted of a violation that is classified as Level Three or above within the past ten years, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who commits any offense classified as a Level Three violation within a ten year period of any previous conviction of any offense classified as level three violation or above is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 with a minimum mandatory fine of $750 and a suspension of all licenses issued under this chapter relating to captive wildlife for 3 years.

(4) LEVEL FOUR - Unless otherwise provided by law, the following classifications and penalties apply.

(a) A person is guilty of Level Four violation if he or she violates any of the following provisions:

1. Section 370.081, relating to the illegal importation and possession of nonindigenous marine plants and animals.

2. Section 370.92, relating to release of reptiles of concern.

3. Rules or orders of the Commission relating to the importation, possession, or release of fish and wildlife for which possession is prohibited.

(b) A person who commits any offense classified as a level four violation is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 with a

permanent revocation of all licenses or permits to possess captive wildlife issued under this chapter.

(5) Unless otherwise provided in this chapter, a person who violates any provision of this section is guilty, for the first offense, of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and is guilty, for the second offense or any subsequent offense, of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The court may order the suspension or revocation of any license or permit issued to a person to possess captive wildlife pursuant to this chapter, if that person commits a criminal offense specified in this section or a noncriminal infraction specified in this section.

(7) For any purpose of this section, conviction means any judicial disposition other than acquittal or dismissal.

(8) Nothing herein shall limit the commission from suspending or revoking any license to possess wildlife in captivity by administrative action in accordance with Chapter 120, Florida Statutes. For purposes of administrative action, a conviction of a criminal offense shall mean any judicial disposition other than acquittal or dismissal.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **1225**

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	_____

Council/Committee hearing bill: Criminal Justice

Representative(s) Glorioso offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 316.192, Florida Statutes, is amended to read:

316.192 Reckless driving.--

(1) Any person who drives any vehicle at a speed or in a manner which demonstrates a ~~in~~ willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Section 2. This act shall take effect July 1, 2006.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to reckless driving; amending s. 316.192, F.S.; revising the acts that constitute reckless driving; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 7065**

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative(s) Garcia offered the following:

Amendment (with directory and title amendments)

Remove line(s) 344 and insert:

from the department that clandestine laboratory

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 7199

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	_____

Council/Committee hearing bill: Criminal Justice Committee

Representative Galvano offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Section 916.105, Florida Statutes, is amended to read:

916.105 Legislative intent.--

(1) It is the intent of the Legislature that the Department of Children and Family Services and the Agency for Persons with Disabilities, as appropriate, establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been ~~are~~ charged with a felony and who have been found to be incompetent to proceed due to their mental illness, mental retardation, or autism, or who have been acquitted of a felony ~~felonies~~ by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department or agency under the provisions of this chapter. Such ~~The separate, secure~~ facilities shall be sufficient to accommodate the number of defendants committed under the conditions noted above.~~,~~ Except for those defendants found by

the department or agency to be appropriate for treatment or training in a civil ~~treatment~~ facility or program pursuant to subsection (3), forensic~~. Such secure~~ facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.

(2) It is ~~further~~ the intent of the Legislature that treatment or training programs for defendants who are found to have mental illness, mental retardation, or autism ~~are found to be mentally ill, retarded, or autistic~~ and are involuntarily committed to the department or agency, and who are still under the jurisdiction of the committing court, be provided in ~~such~~ a manner, subject to security requirements and other mandates of this chapter, as to ensure the rights of the defendants as provided in this chapter.

(3) It is the intent of the Legislature that evaluation and services to defendants who have mental illness, mental retardation, or autism ~~are mentally ill, retarded, or autistic~~ be provided in community settings, in community residential facilities, or in civil~~, nonforensic~~ facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

(4) It is the intent of the Legislature to minimize and achieve an ongoing reduction in the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.--For the purposes of this chapter, the term:

(1) "Agency" means the Agency for Persons with Disabilities. The agency is responsible for training forensic clients who are developmentally disabled due to mental retardation or autism and have been determined incompetent to proceed.

(2) ~~(1)~~ "Autism" has the same meaning as in s. 393.063. ~~means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders, with the age of onset of autism occurring during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.~~

(3) ~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof in any form, or any other agent with lacrimatory properties, and shall include products such as that commonly known as "mace."

(4) ~~(3)~~ "Civil facility" means:

(a) A mental health facility established within the department or by contract with the department to serve individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility; or~~.~~

(b) An intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, designated

by the agency to serve those defendants who do not require the security provided in a forensic facility.

(5) ~~(4)~~ "Court" means the circuit court.

(6) "Defendant" means an adult, or a juvenile who is prosecuted as an adult, who has been arraigned and charged with a felony offense under the laws of this state.

(7) ~~(5)~~ "Department" means the Department of Children and Family Services. The department is responsible for the treatment of forensic clients who have been determined incompetent to proceed due to mental illness or who have been acquitted of a felony by reason of insanity.

(8) ~~(6)~~ "Express and informed consent" or "consent" means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.

(9) ~~(7)~~ "Forensic client" or "client" means any defendant who has been ~~is mentally ill, retarded, or autistic and who is~~ committed to the department or agency pursuant to s. 916.13, s. 916.15, or s. 916.302. ~~this chapter and:~~

~~(a) Who has been determined to need treatment for a mental illness or training for retardation or autism;~~

~~(b) Who has been found incompetent to proceed on a felony offense or has been acquitted of a felony offense by reason of insanity;~~

~~(c) Who has been determined by the department to:~~

~~1. Be dangerous to himself or herself or others; or~~

~~2. Present a clear and present potential to escape; and~~

~~(d) Who is an adult or a juvenile prosecuted as an adult.~~

(10) ~~(8)~~ "Forensic facility" means a separate and secure facility established within the department or agency to serve forensic clients. A ~~Such~~ separate and secure facility means a ~~facilities shall be~~ security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents ~~buildings located on grounds distinct in location from other facilities for persons who are mentally ill~~. ~~The Florida State Hospital shall not be required to maintain separate facilities for mentally ill, retarded, or autistic defendants who are found incompetent to proceed or who are acquitted of a criminal offense by reason of insanity.~~

(11) ~~(9)~~ "Incompetent to proceed" means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant's failure to comply with court orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

(12) ~~(10)~~ "Institutional security personnel" means the staff of forensic facilities ~~members~~ who meet or exceed the requirements of s. 943.13 and who are responsible for providing security, protecting ~~for protection of~~ clients and personnel, enforcing ~~for the enforcement of~~ rules, preventing and investigating ~~for prevention and investigation of~~ unauthorized activities, and ~~for~~ safeguarding the interests of citizens in the surrounding communities.

(13) ~~(11)~~ "Mental illness" means an impairment of the emotional processes that exercise conscious control of one's actions, or of the ability to perceive or understand reality, which impairment substantially interferes with a defendant's ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants with only mental retardation or autism ~~who are solely retarded or autistic,~~ and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.

(14) "Restraint" means a physical device, method, or drug used to control dangerous behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to a person's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and not part of the standard treatment regimen of an individual with a diagnosed mental illness who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of

functional body position or proper balance; or when used to protect a person from falling out of bed.

(15) ~~(12)~~ "Retardation" has the same meaning as in s. 393.063. ~~means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.~~

(16) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person's medical condition or symptoms, the confinement in a forensic facility to a bedroom or area during normal hours of sleep when there is not an active order for seclusion, or during an emergency such as a riot or hostage situation when clients may be temporarily placed in their rooms for their own safety.

(17) ~~(13)~~ "Social service professional~~,~~" ~~for the purposes of part III,~~ means a person whose minimum qualifications include a bachelor's degree and at least 2 years of social work, clinical practice, special education, habilitation, or

equivalent experience working directly with persons with retardation, autism, or other developmental disabilities.

Section 3. Section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.--

(1) RIGHT TO INDIVIDUAL DIGNITY.--

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, retardation, or autism ~~Defendants who are mentally ill, retarded, or autistic~~ and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client ~~defendant~~ who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following ~~from~~ the date the department or agency receives a completed copy of the court commitment order containing all ~~the~~ documentation required by the applicable ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For a forensic client ~~defendant who is mentally ill, retarded, or autistic,~~ who is held in a jail awaiting admission to a facility of the department or agency~~, and who has been adjudicated incompetent to proceed or not guilty by reason of insanity~~, evaluation and treatment or training may ~~shall~~ be provided in the jail by the local community mental health provider ~~public receiving facility~~ for mental health services, ~~or~~ by the developmental disabilities ~~services~~ program for persons with retardation or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility ~~the custody of the department~~.

(b) Forensic clients ~~Mentally ill, retarded, or autistic defendants who are committed to the department pursuant to this chapter and~~ who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there.

(2) RIGHT TO TREATMENT.--

(a) The policy of the state is that neither the department nor the agency shall ~~not~~ deny treatment or training to any client and that no services shall be delayed ~~at a facility~~ because the forensic client is indigent pursuant to s. 27.52 and presently unable to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing services to clients able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made by facilities providing services pursuant to this chapter and in accordance with the provisions of s. 402.33.

(b) Each forensic client shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

(c) Every forensic client ~~committed pursuant to this act~~ shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments or training, as determined by the facility.

(d) Not more than 30 days after admission, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

(a) A forensic client ~~committed to the department pursuant to this act~~ shall be asked to give express and informed written consent for treatment. If a client ~~in a forensic facility~~ refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team ~~at the forensic facility~~ for the appropriate care of the client ~~and the safety of the client or others~~, such treatment may be provided under the following circumstances:

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

2. In a situation other than an emergency situation, the administrator or designee of the ~~forensic~~ facility shall petition the court for an order authorizing necessary and essential ~~the~~ treatment for ~~to~~ the client. The order shall allow such treatment for a period not to exceed 90 days following ~~from~~

the date of the entry of the order. Unless the court is notified in writing that the client has provided express and informed consent in writing or that the client has been discharged by the committing court, the administrator or designee shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the client provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client was unable to or ~~has~~ refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, retardation, or autism ~~is mentally ill, retarded, or autistic as defined in this chapter~~, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

a. The client's expressed preference regarding treatment;

b. The probability of adverse side effects;

c. The prognosis without treatment; and

d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian,

and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client, if the client is legally competent, from the parent or guardian of a minor client, or from the guardian of an incompetent client. The administrator or designee of the forensic facility or a designated representative may, with the concurrence of the client's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to the client and permission of the client or the client's guardian could not ~~cannot~~ be obtained before provision of the needed treatment.

(4) QUALITY OF TREATMENT.--

(a) Each forensic client ~~committed pursuant to this chapter~~ shall receive treatment or training suited to the client's needs, which shall be administered skillfully, safely, and humanely with full respect for the client's dignity and personal integrity. Each client shall receive such medical, vocational, social, educational, and rehabilitative services as the client's condition requires to bring about a return to court for

disposition of charges or a return to the community. In order to achieve this goal, the department and the agency shall coordinate their services with each other, the Department of Corrections, ~~is directed to coordinate the services of the Mental Health Program Office and the Developmental Disabilities Program Office with all other programs of the department~~ and other appropriate state agencies.

(b) Forensic clients shall be free from the unnecessary use of restraint or seclusion. Restraints shall be employed only in emergencies or to protect the client or others from imminent injury. Restraints may not be employed as punishment or for the convenience of staff.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

~~(a)~~ Each forensic client ~~committed pursuant to the provisions of this chapter~~ has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the client or others. Clients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(a) ~~(b)~~ Each forensic client ~~committed under the provisions of this chapter~~ shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances that ~~which~~ may be harmful to the client or others, in which case the administrator or designee may direct reasonable examination of such mail and may regulate the disposition of such items or substances. For purposes of this paragraph, the term "correspondence" does ~~shall~~ not include parcels or packages. Forensic facilities may ~~are authorized to~~

promulgate reasonable institutional policies to provide for the inspection of parcels or packages and for the removal of contraband items for health or security reasons prior to the contents being given to a client.

(b) ~~(c)~~ If a client's right to communicate is restricted by the administrator, written notice of such restriction and the duration of the restriction shall be served on the client or his or her legal guardian or representatives, and such restriction shall be recorded on the client's clinical record with the reasons therefor. The restriction of a client's right to communicate shall be reviewed at least every 7 days.

(c) ~~(d)~~ Each forensic facility shall establish reasonable institutional policies governing visitors, visiting hours, and the use of telephones by clients in the least restrictive manner possible.

(d) ~~(e)~~ Each forensic client ~~committed pursuant to this chapter~~ shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally and in writing inform each client of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, shall be posted in plain view.

(e) ~~(f)~~ The department's or agency's forensic facilities shall develop policies providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A forensic client's right to possession of clothing and personal effects shall be respected. The department or agency by rule, or

the administrator of any forensic facility by written institutional policy, may declare certain items to be hazardous to the health or welfare of clients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.--A forensic client ~~committed pursuant to this chapter~~ who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department and agency shall establish rules to enable clients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or the client's legal guardian or, if the client is deceased, by the client's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the client or the client's legal guardian.

2. To persons authorized by order of court and to the client's counsel when the records are needed by the counsel for adequate representation.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

5. If a client receiving services ~~pursuant to this chapter~~ has declared an intention to harm other persons~~. When such a declaration has been made~~, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client.

6. To the parent or next of kin of a client ~~mentally ill, retarded, or autistic person~~ who is committed to, or is being served by, a facility or program when such information is limited to that person's service plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved and must comply with all state and federal laws and regulations pertaining to the release of personal health information.

(b) Notwithstanding other provisions of this subsection, the department or agency may request or receive from or provide to any of the following entities client information to

facilitate treatment, habilitation, rehabilitation, and continuity of care of any forensic client:

1. The Social Security Administration and the United States Department of Veterans Affairs;

2. Law enforcement agencies, state attorneys, defense attorneys, and judges in regard to the client's status;

3. Jail personnel in the jail in ~~to~~ which a client may be housed ~~returned~~; and

4. Community agencies and others expected to provide followup care to the client upon the client's return to the community.

(c) The department or agency may provide notice to any client's next of kin or first representative regarding any serious medical illness or the death of the client.

(d)1. Any law enforcement agency, facility, or other governmental agency that receives information pursuant to this subsection shall maintain the confidentiality of such information except as otherwise provided herein.

2. Any agency or private practitioner who acts in good faith in releasing information pursuant to this subsection is not subject to civil or criminal liability for such release.

(9) HABEAS CORPUS.--

(a) At any time, and without notice, a forensic client detained by a facility, or a relative, friend, guardian, representative, or attorney on behalf of such client, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the committing court issue a writ for release. Each client ~~committed pursuant to this chapter~~ shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) A client or his or her legal guardian or representatives or attorney may file a petition in the circuit court in the county where the client is committed alleging that the client is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the circuit court shall have the authority to conduct a judicial inquiry and to issue any appropriate order to correct an abuse of the provisions of this chapter.

(10) TRANSPORTATION.--

(a) The sheriff shall consult with the governing board of the county as to the most appropriate and cost-effective means of transportation for forensic clients <u>who have been</u> committed for treatment or training. Such consultation shall include, but is not limited to, consideration of the cost to the county of transportation performed by sheriff's ~~department~~ personnel as opposed to transportation performed by other means and, if sheriff's ~~department~~ personnel are to be used for transportation, the effect such use will have, if any, on service delivery levels of the sheriff's road patrol. After such consultation with the governing board of the county, the sheriff shall determine the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training.

(b) The governing board of each county is authorized to contract with private transport companies for the transportation of such clients to and from a facility.

(c) Any company that transports a client pursuant to this section is considered an independent contractor and is solely liable for the safe and dignified transportation of the client. Any transport company that contracts with the governing board of

a county for the transport of clients as provided for in this section shall be insured and provide no less than $100,000 in liability insurance with respect to the transportation of the clients.

(d) Any company that contracts with a governing board of a county to transport clients shall comply with the applicable rules of the department or agency to ensure the safety and dignity of the clients.

(11) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of a forensic client in the custody of the department or agency that are provided under this chapter shall be ~~by this act is~~ liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this chapter ~~act~~ is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client to or from a facility. However, this subsection does not relieve any person from liability if he or she is negligent.

Section 4. Subsections (1), (2), (3), (4), and (5) of section 916.1075, Florida Statutes, are amended to read:

916.1075 Sexual misconduct prohibited; reporting required; penalties.--

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

(a) "Covered person" means an employee," ~~includes any paid staff member,~~ volunteer, or intern of the department or agency; any person under contract with the department or agency; and any person providing care or support to a forensic client on behalf of the department, the agency, or their ~~its~~ providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) "Sexual misconduct" means any sexual activity between a covered person ~~an employee~~ and a forensic client in the custody of the department or agency, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by a covered person ~~an employee~~.

(2) A covered person ~~An employee~~ who engages in sexual misconduct with a forensic client who resides in a civil or forensic facility commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Such person ~~An employee~~ may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of a forensic ~~the~~ client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to a covered person ~~an employee~~ who:

(a) Is legally married to the client; or

(b) Has no reason to believe that the person with whom the covered person ~~employee~~ engaged in sexual misconduct is a client receiving services as described in subsection (2).

(5) A covered person ~~An employee~~ who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. The covered person ~~Such employee~~ shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. For an allegation pertaining to a forensic client committed to the department or agency, the covered person ~~employee~~ shall deliver the report directly to the department's or agency's inspector general, as appropriate, or to the supervisor or program director, who shall provide copies to the department's or agency's ~~is responsible for providing copies to the department's~~ inspector general. ~~The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.~~

Section 5. Section 916.1081, Florida Statutes, is amended to read:

916.1081 Escape from program; penalty.--

(1) A forensic client who is ~~A defendant~~ involuntarily committed to the department or agency, who is in the custody of

the department or agency, and ~~under the provisions of this chapter~~ who escapes or attempts to escape from a civil or forensic facility ~~or program~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who is involuntarily committed to the department or the agency, who is in the custody of the Department of Corrections, and who escapes or attempts to escape from a facility or program commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any punishment of imprisonment imposed under this subsection shall run consecutive to any former sentence imposed upon the person.

Section 6. Subsection (1) and paragraph (b) of subsection (2) of section 916.1085, Florida Statutes, are amended to read:

916.1085 Introduction or removal of certain articles unlawful; penalty.--

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of a facility, it is unlawful to introduce into or upon the grounds of any facility under the supervision or control of the department or agency, or to take or attempt to take or send therefrom, any of the following articles, which are ~~hereby~~ declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893;

3. Any firearm or deadly weapon; or

4. Any other item as determined by the department or the agency, and as designated by ~~departmental~~ rule or ~~by the administrator of any facility, and designated~~ by written

institutional policies, to be hazardous to the welfare of clients ~~patients~~ or the operation of the facility.

(b) It is unlawful to transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place that ~~which~~ is outside of the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of such facility.

(2)

(b) These provisions shall be enforced by institutional security personnel ~~as defined in s. 916.106(10)~~ or by a law enforcement officer as defined in s. 943.10.

Section 7. Section 916.1091, Florida Statutes, is amended to read:

916.1091 Duties, functions, and powers of institutional security personnel.--In case of emergency, and when necessary to provide protection and security to any client, to the personnel, equipment, buildings, or grounds of a department or agency facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide ~~such~~ protection and security. Under no circumstances shall any ~~such~~ officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure

storage when their use is not authorized as provided in this section.

Section 8. Section 916.1093, Florida Statutes, is amended to read:

916.1093 Operation and administration; rules.--

(1) The department or agency may ~~is authorized to~~ enter into contracts and do such things as may be necessary and incidental to assure compliance with and to carry out the provisions of this chapter in accordance with the stated legislative intent.

(2) The department and agency are authorized ~~has authority~~ to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Such rules must address the use of restraint and seclusion in forensic facilities and must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; provide data-reporting and data-collection procedures relating to the use of restraint and seclusion; and provide for the documentation of the use of restraint or seclusion in the client's facility record.

Section 9. Subsection (1) of section 916.111, Florida Statutes, is amended to read:

916.111 Training of mental health experts.--The evaluation of defendants for competency to proceed or for sanity at the

time of the commission of the offense shall be conducted in such a way as to ensure uniform application of the criteria enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The department shall develop, and may contract with accredited institutions:

(1) To provide:

(a) A plan for training ~~community~~ mental health professionals to perform forensic evaluations and to standardize the criteria and procedures to be used in these evaluations;

(b) Clinical protocols and procedures based upon the criteria of Rules 3.210 and 3.216, Florida Rules of Criminal Procedure; and

(c) Training for ~~community~~ mental health professionals in the application of these protocols and procedures in performing forensic evaluations and providing reports to the courts; and

Section 10. Section 916.115, Florida Statutes, is amended to read:

916.115 Appointment of experts.--

(1)~~(a) Annually, the department shall provide the courts with a list of mental health professionals who have completed approved training as experts.~~

~~(b)~~ The court shall ~~may~~ appoint no more than three experts to determine ~~issues of~~ the mental condition of a defendant in a criminal case, including ~~the issues of~~ competency to proceed, insanity, ~~and~~ involuntary ~~hospitalization or~~ placement, and treatment. The experts ~~An expert~~ may evaluate the defendant in jail or in another appropriate local facility or in a facility of the Department of Corrections.

(a)~~(c)~~ To the extent possible, the ~~an~~ appointed experts ~~expert~~ shall have completed forensic evaluator training approved

by the department and each shall be ~~either~~ a psychiatrist, licensed psychologist, or physician.

(b) The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.

(2) ~~Expert witnesses appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators of competence or sanity and as witnesses.~~

~~(a)1.~~ The court shall pay for any expert that it appoints by court order, upon motion of counsel for the defendant or the state or upon its own motion. If the defense or the state retains an expert and waives the confidentiality of the expert's report, the court may pay for no more than two additional experts appointed by court order. If an expert appointed by the court upon motion of counsel for the defendant specifically to evaluate the competence of the defendant to proceed also addresses ~~in his or her evaluation~~ issues related to sanity as an affirmative defense, the court shall pay only for that portion of the expert's fees relating to the evaluation on competency to proceed, and the balance of the fees shall be chargeable to the defense.

(a)~~2.~~ Pursuant to s. 29.006, the office of the public defender shall pay for any expert retained by the office.

(b)~~3.~~ Pursuant to s. 29.005, the office of the state attorney shall pay for any expert retained by the office and~~.~~ ~~Notwithstanding subparagraph 1., the office of the state attorney shall pay~~ for any expert whom the office retains and whom the office moves the court to appoint in order to ensure that the expert has access to the defendant.

(c) ~~4.~~ An expert retained by the defendant who is represented by private counsel appointed under s. 27.5303 shall be paid by the Justice Administrative Commission.

(d) ~~5.~~ An expert retained by a defendant who is indigent for costs as determined by the court and who is represented by private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

(e) ~~(b)~~ State employees shall be reimbursed for ~~paid~~ expenses pursuant to s. 112.061.

(f) ~~(c)~~ The fees shall be taxed as costs in the case.

(g) ~~(d)~~ In order for an expert to be paid for the services rendered, the expert's report and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 11. Subsections (1), (2), and (3) of section 916.12, Florida Statutes, are amended to read:

916.12 Mental competence to proceed.--

(1) A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

(2) Mental health experts appointed pursuant to s. 916.115 ~~An expert~~ shall first determine whether the defendant has a mental illness ~~person is mentally ill~~ and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection

(1)~~; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings~~. A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action authorized by this chapter or the Florida Rules of Criminal Procedure, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding, the court may commit the defendant or take other action authorized by this chapter or the rules without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.

(3) In considering the issue of competence to proceed, an examining expert shall first consider and specifically include in his or her report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant.~~;~~

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.~~;~~

(c) Understand the adversarial nature of the legal process.~~;~~

(d) Disclose to counsel facts pertinent to the proceedings at issue.~~;~~

(e) Manifest appropriate courtroom behavior.~~; and~~

(f) Testify relevantly.~~;~~

(g) ~~and include in his or her report~~ Any other factor deemed relevant by the expert.

Section 12. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.--

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed~~, pursuant to the applicable Florida Rules of Criminal Procedure,~~ may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness ~~is mentally ill~~ and because of the mental illness:

1. The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or ~~and~~

2. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to

treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment to the department under the provisions of this chapter, may be committed to the department, and the department shall retain and treat the defendant. No later than 6 months after the date of admission and ~~or~~ at the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

Section 13. Section 916.145, Florida Statutes, is amended to read:

916.145 ~~Adjudication of incompetency due to mental illness;~~ Dismissal of charges.--The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

Section 14. Section 916.15, Florida Statutes, is amended to read:

916.15 Involuntary commitment of defendant adjudicated not guilty by reason of insanity.--

(1) The determination of whether a defendant is not guilty by reason of insanity shall be determined in accordance with Rule 3.217, Florida Rules of Criminal Procedure.

(2) ~~(1)~~ A defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the defendant has a mental illness ~~is mentally ill~~ and, because of the illness, is manifestly dangerous to himself or herself or others.

(3) ~~(2)~~ Every defendant acquitted of criminal charges by reason of insanity and found to meet the criteria for involuntary commitment may be committed and treated in accordance with the provisions of this section and the applicable Florida Rules of Criminal Procedure. The department shall admit a defendant so adjudicated to an appropriate facility or program for treatment and shall retain and treat such defendant. No later than 6 months after the date of admission, prior to the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant no longer meets the criteria for continued commitment placement, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(4) ~~(3)~~ In all proceedings under this section ~~subsection~~, both the defendant and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or the

administrator's designee as well as by the state and the defendant. The defendant shall have the right to counsel at any such hearing. In the event that a defendant is determined to be indigent pursuant to s. 27.52, the public defender shall represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 15. Section 916.16, Florida Statutes, is amended to read:

916.16 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction over ~~in the case of~~ any defendant involuntarily committed due to a determination of incompetency ~~hospitalized as incompetent~~ to proceed due to mental illness or ~~because of~~ a finding of not guilty by reason of insanity pursuant to this chapter. The ~~No such~~ defendant may not be released except by order of the committing court. An ~~The~~ administrative hearing examiner does not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing commitment ~~hospitalization~~ or release of any defendant involuntarily committed ~~admitted~~ pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.17. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

Section 16. Section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, ~~The committing court may order a conditional release of any defendant who has been found to be incompetent to proceed~~

~~or not guilty by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment.~~ the committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15 based upon an approved plan for providing appropriate outpatient care and treatment. Upon a recommendation that outpatient treatment of the defendant is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or

statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be returned to the department if it is found, after the appointment and report of experts, that the person meets the criteria for involuntary commitment under s. 916.13 or s. 916.15 ~~treatment~~.

(3) If at any time it is determined after a hearing that the defendant who has been conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 17. Section 916.301, Florida Statutes, is amended to read:

916.301 Appointment of experts.--

(1) All evaluations ordered by the court under this part must be conducted by qualified experts who have expertise in evaluating persons with retardation or autism. The agency ~~department~~ shall maintain and provide the courts annually with a list of available retardation and autism professionals who are appropriately licensed and qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when appointing experts and ordering evaluations under this part ~~for defendants suspected of being retarded or autistic~~.

(2) If a defendant's suspected mental condition is retardation or autism, the court shall appoint the following: ~~two experts, one of whom must be the developmental services program of the department, each of whom will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.~~

(a) ~~(3)~~ At least one, or at the request of any party, two experts ~~the court may appoint one additional expert~~ to evaluate ~~the defendant. The expert appointed by the court will evaluate~~ whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

(b) ~~(4) The developmental services program shall select~~ A psychologist selected by the agency who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional, with experience in working with persons with retardation or autism ~~to evaluate the defendant~~.

1. ~~(a)~~ The psychologist shall evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is incompetent to proceed due to retardation or autism.

2. ~~(b)~~ The social service professional shall provide a social and developmental history of the defendant.

~~(5) All evaluations ordered by the court must be from qualified experts with experience in evaluating persons with retardation or autism.~~

(3) ~~(6)~~ The ~~panel of~~ experts may examine the defendant in jail, in another appropriate local facility, in a facility of the Department of Corrections, or on an outpatient basis.

(4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators and as witnesses, which shall be paid by the court. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the

experts to be paid for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 18. Subsections (1), (2), and (3) of section 916.3012, Florida Statutes, are amended to read:

916.3012 Mental competence to proceed.--

(1) A defendant whose suspected mental condition is retardation or autism is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against the defendant.

(2) ~~The~~ Experts in retardation or autism appointed pursuant to s. 916.301 shall first consider whether the defendant meets the definition of retardation or autism and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection (1)~~; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings~~.

(3) In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant.~~;~~

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.~~,~~

(c) Understand the adversarial nature of the legal process.~~,~~

(d) Disclose to counsel facts pertinent to the proceedings at issue.~~,~~

(e) Manifest appropriate courtroom behavior.~~; and~~

(f) Testify relevantly.~~,~~

(g) ~~and include in their report~~ Any other factor deemed relevant by the experts.

Section 19. Section 916.302, Florida Statutes, is amended to read:

916.302 Involuntary commitment of defendant determined to be incompetent to proceed ~~due to retardation or autism~~.--

(1) CRITERIA.--Every defendant who is charged with a felony and who is adjudicated ~~found to be~~ incompetent to proceed due to retardation or autism~~, pursuant to this chapter and the applicable Florida Rules of Criminal Procedure,~~ may be involuntarily committed for training upon a finding by the court of clear and convincing evidence that:

(a) The defendant has retardation or autism ~~is retarded or autistic~~;

(b) There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(c) All available, less restrictive alternatives, including services provided in community residential facilities or other community settings, which would offer an opportunity

for improvement of the condition have been judged to be inappropriate; and

(d) There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) ADMISSION TO A FACILITY.--

(a) A defendant who has been charged with a felony and who is found to be incompetent to proceed due to retardation or autism, and who meets the criteria for involuntary commitment to the agency ~~department~~ under the provisions of this chapter, shall be committed to the agency ~~department~~, and the agency ~~department~~ shall retain and provide appropriate training for ~~serve~~ the defendant. No later than 6 months after the date of admission or at the end of any period of extended commitment or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to this chapter and the applicable Florida Rules of Criminal Procedure.

(b) A defendant determined to be incompetent to proceed due to retardation or autism may be ordered by a circuit court into a forensic ~~secure~~ facility designated by the agency ~~department~~ for ~~retarded or autistic~~ defendants who have mental retardation or autism.

(c) The agency ~~department~~ may transfer a defendant from a designated forensic ~~secure~~ facility to another designated forensic ~~secure~~ facility and must notify the court of the transfer within 30 days after the transfer is completed.

(d) The agency ~~department~~ may not transfer a defendant from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~ facility without first notifying the court, and all parties, 30 days before the proposed transfer. If the court objects to the proposed transfer ~~to a nonsecure facility~~, it must send its written objection to the agency ~~department~~. The agency ~~department~~ may transfer the defendant unless it receives the written objection from the court within 30 days after the court's receipt of the notice of the proposed transfer.

(3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.--

(a) If a defendant has ~~is~~ both mental retardation or autism ~~retarded or autistic~~ and has a mental illness ~~mentally ill~~, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to a civil or forensic ~~the~~ facility ~~or program~~ most appropriate to address the symptoms that ~~which~~ are the cause of the defendant's incompetence.

(b) Transfer from one civil or forensic facility ~~or program~~ to another civil or forensic facility ~~or program~~ may occur when, in the department's and agency's judgment, it is in the defendant's best treatment or training interests. The department and agency shall submit an evaluation and justification for the transfer to the court. The court may consult with an outside expert if necessary. Transfer will require an amended order from the committing court.

Section 20. Section 916.3025, Florida Statutes, is amended to read:

916.3025 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction in the case of any defendant found to be incompetent to proceed due to retardation or autism and ordered into a forensic ~~secure~~

facility designated by the agency ~~department~~ for ~~retarded or autistic~~ defendants who have mental retardation or autism. A ~~No~~ defendant may not be released except by the order of the committing court. An administrative hearing examiner does not have jurisdiction to determine issues of continuing commitment or release of any defendant involuntarily committed pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.304. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

(3) The committing court shall consider a ~~the~~ petition to involuntarily admit a defendant whose charges have been dismissed to residential services provided by the agency ~~department's developmental services program a person whose charges have been dismissed,~~ and, when applicable, to continue secure placement of such person as provided in s. 916.303. The committing court shall retain jurisdiction over such person so long as he or she remains in secure placement or is on conditional release as provided in s. 916.304. However, upon request the court may transfer continuing jurisdiction to the court in the circuit where the defendant resides. The defendant may not be released from an order for secure placement except by order of the court.

Section 21. Section 916.303, Florida Statutes, is amended to read:

916.303 Determination of incompetency due to retardation or autism; dismissal of charges.--

(1) The charges against any defendant found to be incompetent to proceed due to retardation or autism shall be dismissed without prejudice to the state if the defendant

remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges may be refiled by the state if ~~against the defendant are dismissed without prejudice to the state to refile the charges should~~ the defendant is ~~be~~ declared competent to proceed in the future.

(2) ~~(a)~~ If the charges are dismissed and if the defendant is considered to lack sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for his or her well-being or is likely to physically injure himself or herself or others if allowed to remain at liberty, the agency ~~department~~, the state attorney, or the defendant's attorney shall ~~may~~ apply to the committing court to involuntarily admit the defendant to residential services pursuant to s. 393.11.

(3) ~~(b)~~ If the defendant is considered to need involuntary residential services for reasons described in subsection (2) ~~under s. 393.11~~ and, further, there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate, ~~then~~ the agency ~~person or entity filing the petition under s. 393.11~~, the state attorney, or the defendant's counsel may request~~, the petitioning commission, or the department may also petition~~ the committing court to continue the defendant's placement in a secure facility ~~or program~~

pursuant to this part ~~section~~. Any placement so continued under this subsection must be ~~defendant involuntarily admitted under this paragraph shall have his or her status~~ reviewed by the court at least annually at a hearing. The annual review and hearing shall determine whether the defendant continues to meet the criteria described in this subsection ~~for involuntary residential services~~ and, if so, whether the defendant still requires involuntary placement in a secure facility ~~or program because the court finds that the defendant is likely to physically injure others as specified in s. 393.11~~ and whether the defendant is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Notice of the annual review and review hearing shall be given to the state attorney and ~~to~~ the defendant's attorney. In no instance may a defendant's placement in a secure facility ~~or program~~ exceed the maximum sentence for the crime for which the defendant was charged.

Section 22. Section 916.304, Florida Statutes, is amended to read:

916.304 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, the committing court may order a conditional release of any defendant who has been found to be incompetent to proceed due to retardation or autism, based on an approved plan for providing ~~continuing~~ community-based training. The committing criminal court may order a conditional release of any defendant to a civil facility in lieu of an involuntary commitment to a forensic facility pursuant to s. 916.302. Upon a recommendation that community-based training for the defendant is appropriate, a written plan for community-based training, including

recommendations from qualified professionals, may be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court, with copies to all parties. The plan must ~~shall~~ include:

(a) Special provisions for residential care and adequate supervision of the defendant, including recommended location of placement.

(b) Recommendations for auxiliary services such as vocational training, psychological training, educational services, leisure services, and special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the courts regarding the defendant's compliance with the conditions of the release and progress in training, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. With notice to the court and all parties, the agency may detain a defendant in a forensic facility until the hearing occurs. After the hearing, the court may modify the release conditions. The court may also order that the defendant be placed into more appropriate programs for further training or may order the defendant to be committed ~~returned~~ to a forensic facility ~~involuntary residential services of the department~~ if it is found, after the appointment and report of experts, that the defendant meets the criteria for

placement in a forensic facility ~~involuntary residential services~~.

(3) If at any time it is determined after a hearing that the defendant conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 23. Subsection (1) of section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon a ~~mentally retarded~~ defendant with mental retardation prohibited.--

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities ~~Department of Children and Family Services~~. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities ~~Department of Children and Family Services~~ shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

Section 24. Paragraphs (d), (e), (g), and (h) of subsection (1), subsections (2), (3), and (4), paragraph (b) of

subsection (5), and paragraph (a) of subsection (6) of section 985.223, Florida Statutes, are amended to read:

985.223 Incompetency in juvenile delinquency cases.--

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

(d) For incompetency evaluations related to mental illness, the Department of Children and Family Services shall maintain and annually provide the courts with a list of available mental health professionals who have completed a training program approved by the Department of Children and Family Services to perform the evaluations.

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities ~~Developmental Disabilities Program Office within the Department of Children and Family Services~~ to examine the child to determine if the child meets the definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

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

(h) After placement of the child in the appropriate setting, the Department of Children and Family Services in consultation with the Agency for Persons with Disabilities, as appropriate, must, within 30 days after placement of ~~the Department of Children and Family Services places~~ the child, prepare and submit to the court a treatment or training plan for the child's restoration of competency. A copy of the ~~treatment~~ plan must be served upon the child's attorney, the state attorney, and the attorneys representing the Department of Juvenile Justice.

(2) A child ~~who is mentally ill or retarded,~~ who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Family Services for treatment or training. A child who has been adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism ~~is mentally ill or retarded~~ and adjudicates the child incompetent to proceed, the court must also determine whether the child meets the criteria for secure placement. A child may be placed in a secure facility or program

if the court makes a finding by clear and convincing evidence that:

(a) The child has mental illness, mental retardation, or autism ~~is mentally ill~~ and because of the mental illness, mental retardation, or autism~~; or the child is mentally retarded and because of the mental retardation~~:

1. The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

2. There is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive alternatives, including treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate.

(4) A child who is determined to have mental retardation or autism ~~be mentally ill or retarded~~, who has been adjudicated incompetent to proceed, and who meets the criteria set forth in subsection (3), must be committed to the Department of Children and Family Services~~,~~ and receive treatment or training ~~the Department of Children and Family Services must treat or train the child~~ in a secure facility or program that ~~which~~ is the least restrictive alternative consistent with public safety. Any placement of a child to a secure residential program must be separate from adult forensic programs. If the child attains

competency, then custody, case management, and supervision of the child will be transferred to the department in order to continue delinquency proceedings; however, the court retains authority to order the Department of Children and Family Services to provide continued treatment or training to maintain competency.

(a) A child adjudicated incompetent due to mental retardation or autism may be ordered into a secure program or facility designated by the Department of Children and Family Services for ~~retarded~~ children with mental retardation or autism.

(b) A child adjudicated incompetent due to mental illness may be ordered into a secure program or facility designated by the Department of Children and Family Services for ~~mentally ill~~ children have mental illnesses.

(c) Whenever a child is placed in a secure residential facility, the department will provide transportation to the secure residential facility for admission and from the secure residential facility upon discharge.

(d) The purpose of the treatment or training is the restoration of the child's competency to proceed.

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the

child's attorney, the department, and the Department of Children and Family Services.

(5)

(b) Whenever the provider files a report with the court informing the court that the child will never become competent to proceed, the Department of Children and Family Services will develop a discharge plan for the child prior to any hearing determining whether the child will ever become competent to proceed and send the~~. The Department of Children and Family Services must send the proposed discharge~~ plan to the court, the state attorney, the child's attorney, and the attorneys representing the Department of Juvenile Justice. The provider will continue to provide services to the child until the court issues the order finding the child will never become competent to proceed.

(6)(a) If a child is determined to have mental illness, mental retardation, or autism ~~be mentally ill or retarded~~ and is found to be incompetent to proceed but does not meet the criteria set forth in subsection (3), the court shall commit the child to the Department of Children and Family Services and shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. The purpose of the treatment or training is the restoration of the child's competency to proceed.

Section 25. Paragraph (b) of subsection (14) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.--

(14)

(b) Notwithstanding paragraph (a), the Department of Children and Family Services may enter into agreements, not to

exceed 20 years, with a private provider to finance, design, and construct a forensic treatment facility, as defined in s. 916.106(10) ~~(8)~~, of at least 200 beds and to operate all aspects of daily operations within the forensic treatment facility. The selected contractor is authorized to sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the forensic treatment facility. This paragraph expires July 1, 2006.

Section 26. Paragraph (r) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.--

(3) EXEMPTIONS.--Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(r) For beds in state mental health treatment facilities as defined in s. 394.455 ~~operated under s. 394.455(30)~~ and state mental health forensic facilities operated under chapter 916 ~~s. 916.106(8)~~.

Section 27. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person

seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer

any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such

contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 28. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or

a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and

s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Amendment No. 1

Section 29. This act shall take effect upon becoming a law.