JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, October 19, 2005
9:00 a.m. – 12:00 p.m.
Morris Hall
(17 HOB)

Allan G. Bense
Speaker

David Simmons
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time:	Wednesday, October 19, 2005 09:00 am
End Date and Time:	Wednesday, October 19, 2005 12:00 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Workshop on sexual predator residency and movement restrictions

Workshop on the appropriate scope of the Florida Constitution

Continued workshop on Amendment 7 to the Florida Constitution and the legislative implementation of the Amendment

Consideration of the following proposed committee bill:
PCB JU 06-01 -- State Minimum Wage

NOTICE FINALIZED on 10/07/2005 15:37 by Williams.Tanesha

Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)
October 19, 2005
9:00 a.m. – 12:00 p.m.

Agenda

1. **Call to order**

2. **Roll call**

3. **Welcome and opening remarks**

   Representative David Simmons, Chair

4. **Workshop on sexual predator residency and movement restrictions**
   [Tab "A"]

   Presenters:

   Representative Dick Kravitz, Chair, House Criminal Justice Committee
   Representative Susan Goldstein, Member, Florida House of Representatives
   Councilman James Greer, Vice-Chair, City Council of Oviedo
   Thomas Drage, County Attorney, Orange County, and Jerry Demings, Public Safety Director, Orange County
   Jill S. Levenson, Ph.D., LCSW, Asst. Prof. of Human Services, Lynn University
   Michael Ramage, General Counsel, Florida Department of Law Enforcement

5. **Workshop on the appropriate scope of the Florida Constitution**
   [Tab "B"]

   Review and discussion of changes since approval of the 1968 Constitution

6. **Continuing workshop on Amendment 7 to the Florida Constitution and the legislative implementation of the Amendment**
[Tab "C"]

7. **Consideration of the following proposed committee bill:**
[Tab "D"]

PCB JU 06-01 – State Minimum Wage

8. **Closing remarks**

Representative David Simmons, Chair

9. **Adjourn**

TAB INDEX

TAB "A"

HB 91 (2006) by Rep. Goldstein, relating to residence of sexual offenders and predators

Sampling of local sexual offender/predator ordinances from Central Florida

City of Oviedo, Ordinance 1310

City of Oviedo, Ordinance 1315

City of Palm Bay, Ordinance 2005-60

City of Palm Bay, Ordinance 2005-61

City of Palm Bay, Ordinance 2005-62

Levenson & Cotter study

Minnesota Department of Corrections Report to the Legislature

Milks v. STATE of Florida, Supreme Court of Florida, Feb. 3, 2005

Seering v. STATE of Iowa, Supreme Court of Iowa, July 29, 2005

Doe v. Miller, U.S. Court of Appeals, Eighth Circuit, April 29, 2005

Doe v. Moore, U.S. Court of Appeals, Eleventh Circuit, June 6, 2005

TAB "B"

Florida Constitution (Color-coded to show changes since adoption of the 1968 Constitution)

Florida Constitution: Commentary and Historical Notes

TAB "C"

Constitutional Revision 7

Implementing law: Chapter 2005-265

Beane v. Pare, Jr.

Bowen, Green & Nicely v. Notami Hospital

TAB "D"

Bill analysis for JU 06-01: State Minimum Wage

Text of JU 06-01: State Minimum Wage

TAB A

1 A bill to be entitled
2 An act relating to residence of sexual offenders and
3 predators; amending s. 775.21, F.S.; prohibiting sexual
4 predators from establishing or maintaining a residence
5 within 2,500 feet of specified locations; providing for
6 county or municipal ordinances that restrict the residence
7 of sexual offenders; providing requirements for such
8 ordinances; providing exceptions; amending s. 794.065,
9 F.S.; revising provisions relating to the residence of
10 specified sex offenders; providing definitions;
11 prohibiting the knowing rental or lease of a residence
12 within 2,500 feet of specified locations to a restricted
13 sex offender who intends to occupy the unit; providing a
14 due diligence defense; providing criminal penalties;
15 amending s. 947.1405, F.S.; revising conditional release
16 program restrictions on the residence of certain sexual
17 offenders; revising the requirements for the location of
18 public school bus stops in relation to the permanent
19 residence of specified sexual offenders; amending s.
20 948.30, F.S.; revising terms and conditions of probation
21 or community control restricting the residence of persons
22 convicted of certain sex offenses; providing that
23 amendments in this act to provisions restricting the
24 residence of sexual offenders and sexual predators shall
25 not require the relocation of such an offender who had
26 established, prior to the effective date of this act, a
27 residence not in compliance with the amendments to such
28 restrictions; providing an effective date.

29
30 WHEREAS, recent attacks on children by registered sex
31 offenders within this state have shed light on the necessity of
32 providing greater protection to children from the risks posed by
33 registered sex offenders, and
34 WHEREAS, the recidivism rate of sex offenders is high,
35 especially for offenders who commit crimes involving children,
36 and
37 WHEREAS, the Legislature is deeply concerned about the
38 health, safety, and protection of all of Florida's residents,
39 particularly its children, NOW, THEREFORE
40
41 Be It Enacted by the Legislature of the State of Florida:
42
43 Section 1. Subsection (7) of section 775.21, Florida
44 Statutes, is amended to read:
45 775.21 The Florida Sexual Predators Act.--
46 (7) COMMUNITY AND PUBLIC NOTIFICATION; RESIDENCE
47 RESTRICTIONS.--
48 (a) Law enforcement agencies must inform members of the
49 community and the public of a sexual predator's presence. Upon
50 notification of the presence of a sexual predator, the sheriff
51 of the county or the chief of police of the municipality where
52 the sexual predator establishes or maintains a permanent or
53 temporary residence shall notify members of the community and
54 the public of the presence of the sexual predator in a manner
55 deemed appropriate by the sheriff or the chief of police. Within
56 48 hours after receiving notification of the presence of a

57 sexual predator, the sheriff of the county or the chief of
58 police of the municipality where the sexual predator temporarily
59 or permanently resides shall notify each licensed day care
60 center, elementary school, middle school, and high school within
61 a 1-mile radius of the temporary or permanent residence of the
62 sexual predator of the presence of the sexual predator.
63 Information provided to members of the community and the public
64 regarding a sexual predator must include:
65 1. The name of the sexual predator;
66 2. A description of the sexual predator, including a
67 photograph;
68 3. The sexual predator's current address, including the
69 name of the county or municipality if known;
70 4. The circumstances of the sexual predator's offense or
71 offenses; and
72 5. Whether the victim of the sexual predator's offense or
73 offenses was, at the time of the offense, a minor or an adult.
74
75 This paragraph does not authorize the release of the name of any
76 victim of the sexual predator.
77 (b) The sheriff or the police chief may coordinate the
78 community and public notification efforts with the department.
79 Statewide notification to the public is authorized, as deemed
80 appropriate by local law enforcement personnel and the
81 department.
82 (c) The department shall notify the public of all
83 designated sexual predators through the Internet. The Internet
84 notice shall include the information required by paragraph (a).

85 (d) The department shall adopt a protocol to assist law
86 enforcement agencies in their efforts to notify the community
87 and the public of the presence of sexual predators.
88 (e)1. The sexual predator shall not establish or maintain
89 a permanent or temporary residence within 2,500 feet, as
90 measured in s. 794.065, of a school, day care center, park,
91 playground, public school bus stop located as provided in s.
92 947.1405(7)(a), or other place where children regularly
93 congregate.
94 2. Nothing contained in this paragraph shall prevent any
95 county or municipality from enacting an ordinance relating to
96 restrictions as to the location of the residence of sexual
97 offenders provided that such restrictions are identical to the
98 provisions of subparagraph 1. Such an ordinance may differ as to
99 the offenses that might subject an offender to residence
100 restrictions.
101 Section 2. Section 794.065, Florida Statutes, is amended
102 to read:
103 794.065 Unlawful place of residence for restricted sex
104 offenders; certain leases prohibited ~~persons convicted of~~
105 ~~certain sex offenses~~.--
106 (1) As used in this section, the term:
107 (a) "Convicted" shall have the same meaning as provided in
108 s. 943.0435.
109 (b) "Restricted sex offender" means a person convicted of:
110 1. A felony violation of any statute listed in s.
111 943.0435(1)(a)1.;
112 2. Any similar offense committed in this state that has

113 been redesignated from a former statute number to one of those
114 listed in s. 943.0435(1)(a)1.; or
115 3. Any similar offense in another jurisdiction that would
116 be a felony if committed in this state,
117
118 where the victim of the offense was under the age of 18 at the
119 time of the offense and the offender was 18 years of age or
120 older at the time of the offense, or the offender was under the
121 age of 18 at the time of the offense and was prosecuted as an
122 adult.
123 (c) "Within 2,500 feet" means a distance that shall be
124 measured in a straight line from the outer boundary of the real
125 property upon which the residential dwelling unit of the
126 restricted sex offender is located. The distance may not be
127 measured by a pedestrian route or automobile route, but instead
128 shall be measured as the shortest straight line between the two
129 points without regard to any intervening structures or objects.
130 Without otherwise limiting the foregoing measurement
131 instructions, under those circumstances in which the residential
132 dwelling unit of the restricted sex offender is within a
133 cooperative, condominium, or apartment building, the parcel of
134 real property described in this paragraph shall consist of the
135 parcel or parcels of real property upon which the cooperative,
136 condominium, or apartment building that contains the residential
137 dwelling unit of the restricted sex offender is located.
138 (2)(a) It is unlawful for any person who is a restricted
139 sex offender to reside within 2,500 feet of any school, public
140 school bus stop located as provided in s. 947.1405(7)(a), day

141 care center, park, playground, or other place where children
142 regularly congregate. A restricted sex offender who violates
143 this section and whose conviction of an offense described in
144 paragraph (1)(b) was classified as a felony of the first degree
145 or higher commits a felony of the third degree, punishable as
146 provided in s. 775.082 or s. 775.083. A restricted sex offender
147 who violates this section and whose conviction of an offense
148 described in paragraph (1)(b) was classified as a felony of the
149 second or third degree commits a misdemeanor of the first
150 degree, punishable as provided in s. 775.082 or s. 775.083.
151 (b) The provisions of this subsection shall not prohibit a
152 restricted sex offender from continuing to reside at his or her
153 residence solely because a school, public school bus stop
154 located as provided in s. 947.1405(7)(a), day care center, park,
155 playground, or other place where children regularly congregate
156 is built or established within 2,500 feet of that residence
157 after the offender has established residence.
158 (c) This subsection applies to any person convicted of an
159 offense described in paragraph (1)(b) that occurs on or after
160 October 1, 2006.
161 (3)(a)~~(1)~~ It is unlawful for any person who has been
162 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,
163 or s. 847.0145, regardless of whether adjudication has been
164 withheld, in which the victim of the offense was less than 16
165 years of age, to reside within 2,500 ~~1,000~~ feet of any school,
166 day care center, park, or playground. A person who violates this
167 section and whose conviction under s. 794.011, s. 800.04, s.
168 827.071, or s. 847.0145 was classified as a felony of the first

169 degree or higher commits a felony of the third degree,
170 punishable as provided in s. 775.082 or s. 775.083. A person who
171 violates this section and whose conviction under s. 794.011, s.
172 800.04, s. 827.071, or s. 847.0145 was classified as a felony of
173 the second or third degree commits a misdemeanor of the first
174 degree, punishable as provided in s. 775.082 or s. 775.083.
175 (b) ~~(2)~~ This subsection ~~section~~ applies to any person
176 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,
177 or s. 847.0145 for offenses that occur on or after October 1,
178 2006 ~~2004~~.
179 (4) A landlord or owner of a residential dwelling unit
180 shall not knowingly rent or lease a residential dwelling unit
181 located within 2,500 feet of a school, public school bus stop
182 located as provided in s. 947.1405(7)(a), day care center, park,
183 playground, or other place where children regularly congregate
184 if a prospective tenant, as defined in s. 83.43, is a restricted
185 sex offender who intends to occupy the unit unless the landlord
186 or owner can establish that, prior to rental or lease, he or she
187 used reasonable due diligence and was unable to determine that a
188 prospective tenant of the unit was a restricted sex offender
189 intending to occupy the unit. A person who violates this
190 subsection commits a misdemeanor of the second degree,
191 punishable as provided in s. 775.082 or s. 775.083.
192 Section 3. Paragraph (a) of subsection (7) of section
193 947.1405, Florida Statutes, is amended to read:
194 947.1405 Conditional release program.--
195 (7)(a) Any inmate who is convicted of a crime committed on
196 or after October 1, 1995, or who has been previously convicted

197 of a crime committed on or after October 1, 1995, in violation
198 of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is
199 subject to conditional release supervision, shall have, in
200 addition to any other conditions imposed, the following special
201 conditions imposed by the commission:
202 1. A mandatory curfew from 10 p.m. to 6 a.m. The
203 commission may designate another 8-hour period if the offender's
204 employment precludes the above specified time, and such
205 alternative is recommended by the Department of Corrections. If
206 the commission determines that imposing a curfew would endanger
207 the victim, the commission may consider alternative sanctions.
208 2. If the victim was under the age of 18, a prohibition on
209 living within 2,500 ~~1,000~~ feet of a school, day care center,
210 park, playground, designated public school bus stop, or other
211 place where children regularly congregate. A releasee who is
212 subject to this subparagraph may not relocate to a residence
213 that is within 2,500 ~~1,000~~ feet of a public school bus stop.
214 Beginning October 1, 2006 ~~2004~~, the commission or the department
215 may not approve a residence that is located within 2,500 ~~1,000~~
216 feet of a school, day care center, park, playground, designated
217 school bus stop, or other place where children regularly
218 congregate for any releasee who is subject to this subparagraph.
219 On October 1, 2006 ~~2004~~, the department shall notify each
220 affected school district of the location of the residence of a
221 releasee 30 days prior to release and thereafter, if the
222 releasee relocates to a new residence, shall notify any affected
223 school district of the residence of the releasee within 30 days
224 after relocation. If, on October 1, 2006 ~~2004~~, any public school

225 bus stop is located within 2,500 ~~1,000~~ feet of the existing
226 residence of such releasee, the permanent residence of a sexual
227 predator who is subject to s. 775.21(7)(e), the permanent
228 residence of an individual subject to registration as a sexual
229 offender under s. 943.0435, or the permanent residence of a
230 restricted sex offender under s. 794.065, the district school
231 board shall relocate that school bus stop. Beginning October 1,
232 2006 ~~2004~~, a district school board may not establish or relocate
233 a public school bus stop within 2,500 ~~1,000~~ feet of the
234 residence of a releasee who is subject to this subparagraph, the
235 permanent residence of a sexual predator who is subject to s.
236 775.21(7)(e), the permanent residence of an individual subject
237 to registration as a sexual offender under s. 943.0435, or the
238 permanent residence of a restricted sex offender under s.
239 794.065. The failure of the district school board to comply with
240 this subparagraph shall not result in a violation of conditional
241 release supervision or a violation of s. 775.21(7)(e). For
242 purposes of this subparagraph, a 2,500-foot distance shall be
243 measured as in s. 794.065.
244 3. Active participation in and successful completion of a
245 sex offender treatment program with qualified practitioners
246 specifically trained to treat sex offenders, at the releasee's
247 own expense. If a qualified practitioner is not available within
248 a 50-mile radius of the releasee's residence, the offender shall
249 participate in other appropriate therapy.
250 4. A prohibition on any contact with the victim, directly
251 or indirectly, including through a third person, unless approved

252 by the victim, the offender's therapist, and the sentencing
253 court.
254 5. If the victim was under the age of 18, a prohibition
255 against contact with children under the age of 18 without review
256 and approval by the commission. The commission may approve
257 supervised contact with a child under the age of 18 if the
258 approval is based upon a recommendation for contact issued by a
259 qualified practitioner who is basing the recommendation on a
260 risk assessment. Further, the sex offender must be currently
261 enrolled in or have successfully completed a sex offender
262 therapy program. The commission may not grant supervised contact
263 with a child if the contact is not recommended by a qualified
264 practitioner and may deny supervised contact with a child at any
265 time. When considering whether to approve supervised contact
266 with a child, the commission must review and consider the
267 following:
268 a. A risk assessment completed by a qualified
269 practitioner. The qualified practitioner must prepare a written
270 report that must include the findings of the assessment and
271 address each of the following components:
272 (I) The sex offender's current legal status;
273 (II) The sex offender's history of adult charges with
274 apparent sexual motivation;
275 (III) The sex offender's history of adult charges without
276 apparent sexual motivation;
277 (IV) The sex offender's history of juvenile charges,
278 whenever available;

279 (V) The sex offender's offender treatment history,
280 including a consultation from the sex offender's treating, or
281 most recent treating, therapist;
282 (VI) The sex offender's current mental status;
283 (VII) The sex offender's mental health and substance abuse
284 history as provided by the Department of Corrections;
285 (VIII) The sex offender's personal, social, educational,
286 and work history;
287 (IX) The results of current psychological testing of the
288 sex offender if determined necessary by the qualified
289 practitioner;
290 (X) A description of the proposed contact, including the
291 location, frequency, duration, and supervisory arrangement;
292 (XI) The child's preference and relative comfort level
293 with the proposed contact, when age-appropriate;
294 (XII) The parent's or legal guardian's preference
295 regarding the proposed contact; and
296 (XIII) The qualified practitioner's opinion, along with
297 the basis for that opinion, as to whether the proposed contact
298 would likely pose significant risk of emotional or physical harm
299 to the child.
300
301 The written report of the assessment must be given to the
302 commission.
303 b. A recommendation made as a part of the risk-assessment
304 report as to whether supervised contact with the child should be
305 approved;

306 c. A written consent signed by the child's parent or legal
307 guardian, if the parent or legal guardian is not the sex
308 offender, agreeing to the sex offender having supervised contact
309 with the child after receiving full disclosure of the sex
310 offender's present legal status, past criminal history, and the
311 results of the risk assessment. The commission may not approve
312 contact with the child if the parent or legal guardian refuses
313 to give written consent for supervised contact;
314 d. A safety plan prepared by the qualified practitioner,
315 who provides treatment to the offender, in collaboration with
316 the sex offender, the child's parent or legal guardian, and the
317 child, when age appropriate, which details the acceptable
318 conditions of contact between the sex offender and the child.
319 The safety plan must be reviewed and approved by the Department
320 of Corrections before being submitted to the commission; and
321 e. Evidence that the child's parent or legal guardian, if
322 the parent or legal guardian is not the sex offender,
323 understands the need for and agrees to the safety plan and has
324 agreed to provide, or to designate another adult to provide,
325 constant supervision any time the child is in contact with the
326 offender.
327
328 The commission may not appoint a person to conduct a risk
329 assessment and may not accept a risk assessment from a person
330 who has not demonstrated to the commission that he or she has
331 met the requirements of a qualified practitioner as defined in
332 this section.

333 6. If the victim was under age 18, a prohibition on
334 working for pay or as a volunteer at any school, day care
335 center, designated public school bus stop, park, playground, or
336 other place where children regularly congregate, as prescribed
337 by the commission.
338 7. Unless otherwise indicated in the treatment plan
339 provided by the sexual offender treatment program, a prohibition
340 on viewing, owning, or possessing any obscene, pornographic, or
341 sexually stimulating visual or auditory material, including
342 telephone, electronic media, computer programs, or computer
343 services that are relevant to the offender's deviant behavior
344 pattern.
345 8. Effective for a releasee whose crime is committed on or
346 after July 1, 2005, a prohibition on accessing the Internet or
347 other computer services until the offender's sex offender
348 treatment program, after a risk assessment is completed,
349 approves and implements a safety plan for the offender's
350 accessing or using the Internet or other computer services.
351 9. A requirement that the releasee must submit two
352 specimens of blood to the Florida Department of Law Enforcement
353 to be registered with the DNA database.
354 10. A requirement that the releasee make restitution to
355 the victim, as determined by the sentencing court or the
356 commission, for all necessary medical and related professional
357 services relating to physical, psychiatric, and psychological
358 care.

359 11. Submission to a warrantless search by the community
360 control or probation officer of the probationer's or community
361 controllee's person, residence, or vehicle.
362 Section 4. Subsection (4) is added to section 948.30,
363 Florida Statutes, to read:
364 948.30 Additional terms and conditions of probation or
365 community control for certain sex offenses.--Conditions imposed
366 pursuant to this section do not require oral pronouncement at
367 the time of sentencing and shall be considered standard
368 conditions of probation or community control for offenders
369 specified in this section.
370 (4) Effective for probationers or community controllees
371 whose crime was committed on or after October 1, 2006, and who
372 are placed under supervision for violation of chapter 794, s.
373 800.04, s. 827.071, or s. 847.0145, in addition to all other
374 standard and special conditions imposed, the court must impose a
375 prohibition on living within 2,500 feet of a school, public
376 school bus stop located as provided in s. 947.1405(7)(a), day
377 care center, park, playground, or other place where children
378 regularly congregate as prescribed by the court. For purposes of
379 this subsection, a 2,500-foot distance shall be measured as in
380 s. 794.065.
381 Section 5. The amendments in this act to provisions
382 restricting the residence of sexual offenders and sexual
383 predators shall not require the relocation of such an offender
384 who had established, prior to the effective date of this act, a
385 residence not in compliance with the amendments to such
386 restrictions contained in this act.

387 Section 6. This act shall take effect October 1, 2006.

SAMPLING OF LOCAL SEXUAL OFFENDER/PREDATOR ORDINANCES FROM CENTRAL FLORIDA

(Prepared by staff of the House Judiciary Committee, October 12, 2005)

Government	Distance	Application	Penalties	Other Provisions
Edgewood	1000 ft.	school, day care center, park, playground, library, church	up to $500 and 60 days	travel restrictions; must identify themselves at emergency shelter; grandfathering provisions
Kissimmee	2500 ft.	school, day care center, park, playground, school bus stop, library, church, or other such place	up to $500 and 60 days; $1000 and 12 months subsequent offense	separate emergency shelters; grandfathering provisions
Longwood	1000 ft.	school, day care center, park, playground	up to $500 and 60 days	travel restrictions; must identify themselves at emergency shelter; local photo I.D. cards; grandfathering provisions
Maitland	2500 ft.	school, day care center, park, playground, library, church	up to $500 and 60 days	annual notification to neighbors by Police Chief; offender must update information every 3 months; field contact cards for police when making contact with offender; grandfathering provisions
Osceola	2500 ft.	school, day care center, park, playground, school bus stop, library, church, or other such place	up to $500 and 60 days; $1000 and 12 months subsequent offense	separate emergency shelters; grandfathering provisions
Oviedo	2500 ft.	school, day care center, park, playground, library, church	up to $500 and 60 days	grandfathering provisions
Palm Bay	N/A		Penalties apply to employer or offender employee; 1st degree misdemeanor	requires employer to determine if employee is offender; offender employees must be directly supervised when providing repairs or services; self-employed offenders must provide notice to clients before providing repairs or services
Sanford	2500 ft.	school, day care center, park, playground, library, church	up to $500 and 60 days	grandfathering provisions
Seminole	1000 ft.	school, day care center, park, playground	up to $500 and 60 days	travel restrictions; must identify themselves at emergency shelter; local photo I.D. cards; grandfathering provisions
Winter Park	2500 ft.	school, day care center, park, playground	up to $500 and 60 days; $1000 and 12 months subsequent offense	grandfathering provisions

ORDINANCE NO. 1310

AN ORDINANCE OF THE CITY OF OVIEDO, FLORIDA, RELATING TO THE RESIDENCES OF SEXUAL OFFENDERS (THOSE CONVICTED OF A VIOLATION OF SECTION 794.011, SECTION 800.04, SECTION 827.071, OR SECTION 847.0145, *FLORIDA STATUTES*, REGARDLESS OF WHETHER ADJUDICATION HAS BEEN WITHHELD, WHEN THE VICTIM OF THE OFFENSE FOR WHICH THE CONVICTION RESULTED WAS LESS THAN SIXTEEN (16) YEARS OF AGE AT THE TIME THE OFFENSE WAS COMMITTED) WITHIN THE CITY LIMITS OF THE CITY OF OVIEDO; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A PROHIBITION AGAINST CERTAIN SEXUAL OFFENDERS FROM LIVING WITHIN THE CITY OF OVIEDO WHEN THEIR RESIDENCE LIES WITHIN 2,500 FEET OF SPECIFIED LOCATIONS (SCHOOLS, DAY CARE CENTERS, PUBLIC PARKS, PUBLIC AND PRIVATE PLAYGROUNDS AND RECREATIONAL OPEN SPACES (SUCH AS MINIPARKS), AND CHURCHES); PROVIDING FOR APPLICABILITY/EFFECT UPON CURRENT RESIDENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. (Title amended to conform to enacted ordinance.)

WHEREAS, the Mayor, Chairman and members of the City Council of the City of Oviedo are deeply and profoundly concerned about the unfortunate numerous occurrences within the State of Florida and the United States when convicted sexual offenders have been released from custody and then repeat the unlawful acts for which they had originally been convicted; and

WHEREAS, the City Council of the City of Oviedo find from the available evidence that the recidivism rate for released sexual offenders is alarmingly high, especially for those who commit crimes upon children; and

WHEREAS, the United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), studied the recidivism of sex offenders released since 1994 and found the following:

(1) Within three (3) years following their release, 5.3% of sex offenders (men who had committed rape or sexual assault) were rearrested for another sex crime.
(2) On average the 9,691 sex offenders served less than half of their 8-year sentence.
(3) Compared to non-sex offenders released from state prisons, released sex offenders were four (4) times more likely to be rearrested for a sex crime.
(4) Of the released sex offenders, 3.5% were reconvicted for a sex crime within the three (3) year follow-up period, 24% were reconvicted for a new offense and 38.6% were returned to prison, either because they received another prison sentence or because of a parole violation.

(5) The 9,691 released sex offenders studied included 4,295 men who were in prison for child molesting; and

WHEREAS, other BJS surveys have shown that 70% of all men in prison for a sex crime were men whose victim was a child; and

WHEREAS, the Washington State Institute for Public Policy published its findings of high recidivism rates among 417 released sexual predators and determined that 57% of the predators re-offended within six (6) years of being released from prison and the study further showed that felony sex offenses were the crimes of choice for the sex offenders of which 16% did not register as sex offenders and that approximately 180 of the "recidivists" committed crimes "considered precursors to child molestation"; and

WHEREAS, experts in the area of criminology have stated that "all sexual assaults should be considered violent behavior"; and

WHEREAS, Section 947.1405(7), *Florida Statutes*, provides, in pertinent part, that:

> "Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has been previously convicted of a crime committed on or after October 1, 1995, in violation of chapter 794,[1] s. 800.04,[2] s. 827.071,[3] or s. 847.0145,[4] and is subject to conditional release supervision, shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:
>
> 1. . . . . .
>
> 2. If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop, or other place where children regularly congregate. A releasee who is subject to this subparagraph may not relocate to a residence that is within 1,000 feet of a public school bus stop. Beginning October 1, 2004,[5] the commission or the department may not approve a residence that is located within 1,000 feet of a school, day care center, park, playground, designated school bus stop, or other place where children regularly congregate for any releasee who is subject to this subparagraph. On October 1, 2004, the department shall notify each affected school district of the location of the residence of a releasee 30 days prior to release and thereafter, if the releasee relocates to a new residence, shall notify any affected school district of the residence of the releasee within 30 days after relocation. If, on October 1, 2004, any public school bus stop is located within 1,000 feet of the existing residence of such releasee, the district school board shall relocate that school bus stop. Beginning October 1, 2004, a district school board

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[1] Sexual battery.
[2] Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
[3] Sexual performance by a child.
[4] Selling or buying of minors.
[5] Consistent with the provisions of Section 7 of this Ordinance.

may not establish or relocate a public school bus stop within 1,000 feet of the residence of a releasee who is subject to this subparagraph. The failure of the district school board to comply with this subparagraph shall not result in a violation of conditional release supervision.

3. . . . .

. . . . . .

10. . . . . " ; and

WHEREAS, during the recently ended Legislative Session, the Florida Legislature passed House Bill 1877 which is commonly known as the "Jessica Lunsford Act" which Act was approved by Governor Jeb Bush on May 2, 2005 and has been codified as Chapter 2005-28, *Laws of Florida*; and

WHEREAS, the "Jessica Lunsford Act" will likely increase the number of offenders who will be designated as sexual offenders and will require electronic monitoring of certain offenders and will otherwise strengthen the State's efforts to control the cancer of child sexual victimization; and

WHEREAS, the Florida Department of Law Enforcement provides a database containing public record information on offenders classified as sexual predators and sexual offenders under Florida law because of a conviction for a sex-related crime and/or a specified crime against children which information is made available to interested citizens to help them educate themselves about the possible presence of such offenders in their local communities; and

WHEREAS, experts in the field of child sex crimes, such as those at the John Jay College in New York, state that " . . . child sexual abuse is significantly underreported" and a study of the Center for Sex Offender Management, a project of the United States Department of Justice, noted that "[a]lthough sex offenders account for only a small percentage of the total offender population, probably no other group of offenders evokes as much fear in citizens and concern among policymakers and practitioners. In an effort to protect the public from the threats posed by known sex offenders and to ensure that the most effective management practices possible are in place, communities across the country are working hard to assess and plan improvements in their current approaches to sex offender management"; and

WHEREAS, one expert author has written that "[t]here is overwhelming evidence that indicates that our current system of punishing or treating sexual offenders is failing us" and a publication of the American Medical Association (AMA) states that "[c]hild sexual abuse has been endemic for generations, but recognition of the prevalence and the potential devastating psychological effects have only recently received attention" and the AMA publication goes on to state that "[r]ecent studies suggest that approximately 20% of children will be sexually abused in someway before they reach adulthood, with this figure cumulating at a rate of about 1% each year"; and

WHEREAS, the Florida Department of Law Enforcement has noted that "[t]he theme of the 1997 National Institute of Justice (NIJ) Conference on Criminal Justice Research and Evaluation, *Crime and Place*, reflects an emerging trend among criminal justice researchers and practitioners to shift the focus of crime prevention and suppression efforts from people (potential offenders) to places"; and

WHEREAS, the Colorado Bureau of Investigation has assembled the following relevant statistics:

(1) In 2001, there were approximately 386,000 registered sex offenders in United States.

(2) Approximately 95% of sex offenders in the U.S. are under correctional supervision in the community.

(3) At least half of convicted child molesters report that they also have been sexually assaulted as a child.

(4) Over 80% of convicted adult rapists report that they have molested children.

(5) Approximately one-third (1/3) of sex offenders report assaulting both males and females. Research shows that most convicted sex offenders have committed many, many assaults before they are caught.

(6) Most sex offenders report that they have committed multiple types of sexual assault (sexual assault crimes include exhibitionism, voyeurism, oral sex, vaginal penetration, attempted penetration, fondling, and incest).

(7) Over two-thirds (2/3) of offenders who reported committing incest also said they assaulted victims outside the family.

(8) Studies of victims have found that less than 16% of sex crimes are reported to law enforcement.

(9) Young victims who know or are related to the perpetrator are least likely to report the crime to authorities.

(10) Most offenders commit multiple crimes against multiple types of victims with whom they have varying types of relationships (adults, children, male, female, known and unknown). This behavior is known as "crossover."

(11) Sex offenders rarely commit a single type of offense. Many offenders have NO official criminal record or sex crime history of any kind.

(12) There is no such thing as a "typical" sex offender, however all tend to be manipulative, deceptive, and secretive. Sex offenders come from all backgrounds, ages, income levels, and professions.

(13) Sex offenders usually do not commit their crimes impulsively. They usually carefully plan their crimes; and

WHEREAS, the City of Oviedo is a family oriented community which highly values its children and is a place that families with young children find highly desirable; and

WHEREAS, schools, day care centers, public parks, playgrounds (such as miniparks and recreational open spaces), libraries and churches are places within the City of Oviedo that children are frequently and regularly located and involved in activities and to which children walk thereby passing the residences of persons who may target the children for criminal activities; and

WHEREAS, State Board of Education Rule 6A-3.001 and Rule 6A-3.0171, *Florida Administrative Code*; the statutes which those Rules implement; and the policies of the Seminole County School District provide that children living within two (2) miles of the school must provide their own transportation or either walk or ride their bicycles to their assigned school; and

WHEREAS, the City Council of the City of Oviedo desires to ensure that the citizens of the City of Oviedo are protected from criminal activity to the maximum extent afforded by controlling law in order to advance the public health, safety and welfare, and benefit the citizens of the City of Oviedo to the maximum extent possible; and

WHEREAS, the City Council of the City of Oviedo may act in accordance with the provisions of Article VIII, Section 2(b) of the *Constitution of the State of Florida,* which provides, in pertinent part, that "[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law"; and

WHEREAS, the City Council of the City of Oviedo may act in accordance with the provisions of Section 166.021(1), *Florida Statutes,* which provides, in pertinent part, that "[a]s provided in S. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law"; and

WHEREAS, the City Council of the City of Oviedo may act in accordance with the provisions of Section 166.021(3), *Florida Statutes*, which provides, in pertinent part, that "[t]he Legislature recognizes that pursuant to the grant of power set forth in S. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act" except for certain very limited matters; and

WHEREAS, the City Council of the City of Oviedo finds and concludes that the City is not prohibited from acting on the subject matter of this Ordinance, that the Legislature of the State of Florida may act upon the subject matter of this Ordinance and that the provisions of this Ordinance are not preempted by and are consistent with State law; and

WHEREAS, this Ordinance is enacted under the general home rule and police powers of the City of Oviedo and is not a zoning matter or a land development regulation; and

WHEREAS, the City of Oviedo has complied with all requirements and procedures of Florida law in processing, noticing and advertising this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT.

(a). The findings set forth in the recitals (whereas clauses) to this Ordinance are hereby adopted as additional legislative findings.

(b). The City Council of the City of Oviedo hereby adopts the provisions of Section 775.21(3)(a), *Florida Statutes*, which state as follows:

> "Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant."

(c). The City Council of the City of Oviedo hereby adopts the provisions of Section 947.1405(7), *Florida Statutes*, which provides, in pertinent part, that:

> "It is the finding of the Legislature that the population of offenders released from state prison into the community who meet the conditional release criteria poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, the Department of Corrections is to provide intensive supervision by experienced correctional probation officers to conditional release offenders."

(d). The City Council of the City of Oviedo hereby finds and determines that the provisions of this Ordinance advance a legitimate public purpose and promote and protect the public health, safety, morals and welfare of the public.

(e). It is the desire of the City Council of the City of Oviedo that the Seminole County School District carefully adhere to the provisions of 947.1405(7), *Florida Statutes*, which relates to the requirement that school bus stops be located at least one thousand feet (1,000') of the persons who are the subject of this Ordinance.

SECTION 2. PROHIBITED RESIDENCES OF SEXUAL OFFENDERS.

A new Section of the *Code of Ordinances of the City of Oviedo* is hereby created to read as follows:

It is prohibited and unlawful for any person who has been convicted of a violation of Section 794.011,[6] Section 800.04,[7] Section 827.071,[8] or Section 847.0145,[9] *Florida Statutes*, regardless of whether adjudication has been withheld, when the victim of the offense for which the conviction resulted was sixteen (16) years of age or less at the time the offense was committed, to reside in a residence located within the City of Oviedo when such residence is located within 2,500 feet of any school, day care center, public park, playground (such as miniparks and recreational open spaces), library or church regardless of whether the school, day care center, public park, playground (such as miniparks and recreational open spaces), library or church lies within the City Limits of the City of Oviedo or unincorporated Seminole County.

SECTION 3. APPLICATION OF ORDINANCE/EXISTING CONTRACTS. The provisions of this Ordinance shall not be applied to persons residing at a prohibited location on the effective date of this Ordinance such that it is not the intent of this Ordinance to impair valid, existing and *bona fide* contract rights; provided, however, that the provisions of this Ordinance shall apply upon termination of any leasehold relationship arising from a landlord tenant relationship or the expiration of a lease. When a person who is the subject of this Ordinance changes residences, this Ordinance shall fully apply to such persons.

SECTION 4. CONFLICTS. All Ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 5. SEVERABILITY. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 6. PENALTIES. The City may pursue any enforcement action or legal remedy available under controlling State law and any legal remedy available to the City to include, but not be limited to, a fine not exceeding $500.00 unless otherwise authorized by State law or by imprisonment for a term not exceeding sixty (60) days unless otherwise authorized by State law, or by both such fine and imprisonment.

SECTION 7. CODIFICATION. The provisions of this Ordinance shall be codified as and become and be made a part of the *Code of Ordinances of the City of Oviedo*. The Sections

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[6] Sexual battery.
[7] Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
[8] Sexual performance by a child.
[9] Selling or buying of minors.

of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 4, 5, 6, 7 and 8 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its enactment; provided, however, that this Ordinance shall apply to any person convicted of a violation of Section 794.011,[10] Section 800.04,[11] Section 827.071,[12] or Section 847.0145,[13] *Florida Statutes*, for offenses that occur on or after October 1, 2004.[14]

FIRST READING: _____

SECOND READING: _____

PASSED AND ADOPTED this _____ day of _____, 2005.

_____
THOMAS G. WALTERS
MAYOR of the City of Oviedo, Florida

_____
DOMINIC PERSAMPIERE
CHAIRMAN of the City Council of the City of Oviedo, Florida

_____
JAMES GREER
COUNCIL MEMBER

_____
REGINA BERESWILL
COUNCIL MEMBER

_____
TODD RUSSELL
COUNCIL MEMBER

ATTEST:

_____
BARBARA J. BARBOUR
CITY CLERK

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[10] Sexual battery.
[11] Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
[12] Sexual performance by a child.
[13] Selling or buying of minors.
[14] See, Section 947.1405(7), *Florida Statutes*, relative to this date.

ORDINANCE NO. 1315

AN ORDINANCE OF THE CITY OF OVIEDO, FLORIDA, AMENDING ORDINANCE NUMBER 1310 RELATING TO THE RESIDENCES OF SEXUAL OFFENDERS (THOSE CONVICTED OF A VIOLATION OF SECTION 794.011, SECTION 800.04, SECTION 827.071, OR SECTION 847.0145, *FLORIDA STATUTES*, REGARDLESS OF WHETHER ADJUDICATION HAS BEEN WITHHELD, WHEN THE VICTIM OF THE OFFENSE FOR WHICH THE CONVICTION RESULTED WAS SIXTEEN (16) YEARS OF AGE OR LESS AT THE TIME THE OFFENSE WAS COMMITTED) WITHIN THE CITY LIMITS OF THE CITY OF OVIEDO; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PROHIBITION AGAINST CERTAIN SEXUAL OFFENDERS FROM LIVING WITHIN THE CITY OF OVIEDO WHEN THEIR RESIDENCE LIES WITHIN 2,500 FEET OF SPECIFIED LOCATIONS (SCHOOLS PRE-KINDERGARTEN THROUGH GRADE 12, STATE LICENSED DAY CARE CENTERS, PUBLIC AND PRIVATELY DESIGNATED PARKS (SUCH AS RECREATIONAL OPEN SPACES MINIPARKS), AND CHURCHES OR HOUSES OF WORSHIP); PROVIDING FOR A MEANS OF MEASUREMENT; PROVIDING FOR EXEMPTIONS; PROHIBITING THE RENTING OF RESIDENCES TO PERSONS WHO ARE SUBJECT TO THE SEPARATION REQUIREMENTS; PROVIDING FOR APPLICABILITY/EFFECT UPON CURRENT RESIDENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor, Chairman and members of the City Council of the City of Oviedo enacted Ordinance Number 1310 on June 6, 2005; and

WHEREAS, the City Council of the City of Oviedo ratifies and affirms the findings and substance relating to and of Ordinance Number 1310; and

WHEREAS, the City Council of the City of Oviedo has determined that it would be prudent and in the public interest to amend certain provisions of Ordinance Number 1310 and to add supplemental provisions providing additional provisions to Ordinance Number 1310 to ensure that the controlling requirements of law are adhered in the text of this Ordinance and that the procedures and provisions of this Ordinance and Ordinance Number 1310 comport with the essential requirements of substantive and procedural law; and

WHEREAS, words with <u>underlined</u> type shall constitute additions to the text of Ordinance Number 1310 and ~~strike through~~ shall constitute deletions to the original text of Ordinance Number 1310; and

WHEREAS, the City of Oviedo has complied with all requirements and procedures of

Florida law in processing, noticing and advertising this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT.

(a). The findings set forth in the recitals (whereas clauses) to this Ordinance are hereby adopted as additional legislative findings.

(b). The City Council of the City of Oviedo hereby finds and determines that repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant and a drain on the resources of society.

(c). It is the intent of this Ordinance to serve the City's compelling interest to promote, protect and improve the health, safety, morals and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual predators are prohibited from establishing temporary or permanent residences.

SECTION 2. DEFINITIONS. The following terms are defined as follows with regard to the application of Ordinance Number 1310 and this Ordinance:

(a). *Permanent residence* means a place where a person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.

(b). *Temporary residence* means a place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month which is not the person's permanent residence.

(c). *Church or house of worship* means (consistent with the definitions of the Internal Revenue Service) a body of worshipers which has indicia of existence such as the following characteristics (all of which need not be present to result in a determination of existence): (1) a distinct legal existence, (2) a recognized creed and form of worship; (3) A definite and distinct ecclesiastical government; (4) A formal code of doctrine and discipline; (5) A distinct religious history; (6) A membership not associated with any other church or denomination; (7) An organization of ordained ministers; (8) Ordained ministers selected after completing prescribed studies; (9) A body of literature of its own; (10) Established places of worship; (11) Regular congregations; (12) Regular religious services; (13) Sunday schools for religious instruction of

the young; or (14) Schools for the preparation of its ministers.

SECTION 3. PROHIBITED RESIDENCES OF SEXUAL OFFENDERS.

Section 2 of City of Oviedo Ordinance Number 1310 is hereby amended to read as follows:

"(a). It is prohibited and unlawful for any person who has been convicted of a violation of Section 794.011,[1] Section 800.04,[2] Section 827.071,[3] or Section 847.0145,[4] *Florida Statutes*, regardless of whether adjudication has been withheld, when the victim of the offense for which the conviction resulted was less than sixteen (16) years of age or less at the time the offense was committed, to establish a permanent residence or temporary ~~reside in a~~ residence located within the City of Oviedo when such residence is located within 2,500 feet of any school pre-kindergarten through grade 12, State licensed day care center, public or privately designated park~~, playground~~ (such as miniparks and recreational open spaces), public library or church or house of worship regardless of whether the school, State licensed day care center, public or privately designated park~~, playground~~ (such as miniparks and recreational open spaces), public library or church or house of worship lies within the City Limits of the City of Oviedo or unincorporated Seminole County.

(b). For the purposes of determining the minimum distance separation requirement, distance shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of the school pre-kindergarten through grade 12, State licensed day care center, public or privately designated park (such as miniparks and recreational open spaces), public library or church or house of worship.

(c). A person residing within 2,500 feet of any school pre-kindergarten through grade 12, State licensed day care center, public or privately designated park (such as miniparks and recreational open spaces), public library or church or house of worship does not commit a violation of Ordinance Number 1310,[4] as amended by this Ordinance, if any of the following apply:

(1). The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Section 775.21,[5] 943.0435 [6]or 944.607,[7] *Florida Statutes*, prior to June 6, 2005.

(2). The person was a minor when he/she committed the offense and was not

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[1] Sexual battery.
[2] Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
[3] Sexual performance by a child.
[4] Selling or buying of minors.
[4] The effective date of Ordinance Number 1310.
[5] The Florida Sexual Predators Act.
[6] Registration of Sexual Offenders.
[7] Notification of Department of Law Enforcement of Information on Sexual Offenders.

convicted as an adult.

(3). The person is a minor.

(4). The school, State licensed day care center, public or privately designated park (such as miniparks and recreational open spaces), public library or church or house of worship was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Section 775.21,[8] 943.0435 [9] or 944.607[10], *Florida Statutes*."

SECTION 4. PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS.

A new Section of the Code of Ordinances of the City of Oviedo is hereby created to read as follows:

It is prohibited and unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to Ordinance Number 1310, as amended, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of any school pre-kindergarten through grade 12, State licensed day care center, public or privately designated park (such as miniparks and recreational open spaces), public library or church or house of worship regardless of whether the school pre-kindergarten through grade 12, State licensed day care center, public park (such as miniparks and recreational open spaces), public library or church or house of worship lies within the City Limits of the City of Oviedo or unincorporated Seminole County.

SECTION 5. AMENDMENT TO SECTION 8 OF ORDINANCE NUMBER 1310.

Section 8 of City of Oviedo Ordinance Number 1310 is hereby amended to read as follows:

"This Ordinance shall take effect immediately upon its enactment~~; provided, however, that this Ordinance shall apply to any person convicted of a violation of Section 794.011,~~[8] ~~Section 800.04,~~[9] ~~Section 827.071,~~[10] ~~or Section 847.0145,~~[11] ~~Florida Statutes, for offenses that occur on or after October 1, 2004.~~[12]"

SECTION 6. CONFLICTS. All Ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

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[8] The Florida Sexual Predators Act.
[9] Registration of Sexual Offenders.
[10] Notification of Department of Law Enforcement of Information on Sexual Offenders.
[8] ~~Sexual battery.~~
[9] ~~Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.~~
[10] ~~Sexual performance by a child.~~
[11] ~~Selling or buying of minors.~~
[12] ~~See, Section 947.1405(7), *Florida Statutes*, relative to this date.~~

SECTION 7. SEVERABILITY. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 8. PENALTIES. The City may pursue any enforcement action or legal remedy available under controlling State law and any legal remedy available to the City to include, but not be limited to, a fine not exceeding $500.00 unless otherwise authorized by State law or by imprisonment for a term not exceeding sixty (60) days unless otherwise authorized by State law, or by both such fine and imprisonment.

SECTION 9 CODIFICATION. The provisions of this Ordinance shall be codified as and become and be made a part of the Code of Ordinances of the City of Oviedo. The Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 6, 7, 8, 9 and 10 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its enactment.

FIRST READING: _____

SECOND READING: _____

PASSED AND ADOPTED this _____ day of _____, 2005.

_____
DOMINIC PERSAMPIERE
CHAIRMAN of the City Council of the City of Oviedo, Florida

_____
THOMAS G. WALTERS
MAYOR of the City of Oviedo, Florida

ATTEST:

_____
BARBARA J. BARBOUR
CITY CLERK

ORDINANCE NO. 2005-60

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XIII, BY REPEALING CHAPTER 134, INFORMING THE PUBLIC ABOUT SEXUAL OFFENDERS, AND SUBSTITUTING IN ITS PLACE A NEW CHAPTER 134, TO BE TITLED "SEXUAL PREDATORS AND SEXUAL OFFENDERS"; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XIII, is hereby amended by repealing Chapter 134, Informing the Public About Sexual Offenders, and substituting in its place a new Chapter 134, to be titled "Sexual Predators and Sexual Offenders", which shall read as follows:

"CHAPTER 134: SEXUAL PREDATORS AND SEXUAL OFFENDERS

INFORMING THE PUBLIC

Section 134.01 PURPOSE.

The City Council of the City of Palm Bay finds that it is in the best intrest of public safety, and will serve and benefit the health and safety of the public, to adopt policies and procedures to release all information, except for that made exempt or confidential by law, regarding sexual predators and offenders.

Section 134.02 AUTHORIZED RESPONSE OF THE POLICE DEPARTMENT.

(A) When a sexual predator or sexual offender, as defined by Florida Statutes, Sections 943.0435, 944.606, 944.607, and 775.21, moves into or relocates within the corporate limits of the City of Palm Bay, the Police Department is authorized to take the following action:

(1) Make an entry into the City's sexual predator and sexual offender data base;

(2) Verify address information pertaining to the sexual predator or sexual offender;

(3) Verify employment information pertaining to the sexual predator or sexual offender;

(4) Meet with the sexual predator or sexual offender;

(5) Meet with the employer of the sexual predator or sexual offender;

(6) Notify the community within the City's limits through the delivery of a profile sheet to area residences, churches, schools and daycare facilities;

(7) Contact the landlord or landlord's representative of the property wherein a sexual predator or sexual offender may reside.

(8) Annually notify the employer, via certified mail, of registered sexual predators or sexual offenders within Brevard County and the surrounding counties. Notification to the employer shall include the requirements, procedures and penalties related to this chapter."

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2005- held on 2005; and read in title only and duly passed and enacted at Meeting No. 2005- , held on , 2005.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

CC:

ORDINANCE NO. 2005-61

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, REQUIRING BUSINESS OWNERS TO DETERMINE IF EMPLOYEES ARE SEXUAL PREDATORS; PROVIDING FINDINGS AND INTENT; PROVIDING DEFINITIONS; PROHIBITING BUSINESSES AND EMPLOYERS FROM ALLOWING SEXUAL PREDATORS TO ENTER UPON ANY PRIVATE OR GOVERNMENT PROPERTY TO PROVIDE REPAIRS OR SERVICES WITHOUT BEING ACCOMPANIED AND DIRECTLY SUPERVISED BY ANOTHER ADULT EMPLOYEE WHO IS NOT A SEXUAL PREDATOR OR SEXUAL OFFENDER; PROHIBITING SEXUAL PREDATORS FROM ENTERING UPON ANY SPECIFIED PROPERTY WHILE PROVIDING REPAIRS OR SERVICES UNLESS ACCOMPANIED AND IN THE DIRECT PRESENCE OF AN ANOTHER ADULT EMPLOYEE, WHO IS NOT A SEXUAL PREDATOR OR OFFENDER AND NOT SUBORDINATE TO THE SEXUAL PREDATOR; PROVIDING PROCEDURES FOR SELF-EMPLOYED SEXUAL PREDATORS; PROVIDING FOR EMERGENCY REPAIRS AND SERVICES; PROVIDING FOR NOTICE TO PROPERTY OWNER OR OCCUPANT; PROVIDING FOR PENALTIES; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION INTO THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there is clear evidence of many occurrences in Florida and elsewhere, of convicted sexual predators repeating the unlawful acts for which they were originally convicted, and

WHEREAS, the recidivism rate for sexual predators is alarmingly high, especially for those who commit their crimes on children and adults, and

WHEREAS, the population of the City of Palm Bay is increasing rapidly, with a large portion of that population consisting of families with small children, elderly, mentally and physically handicapped and otherwise incapacitated adults, and

WHEREAS, sexual predators present an extreme threat to the public health and safety and are extremely likely to use physical violence and to repeat their offenses, and

WHEREAS, the City Council of the City of Palm Bay desires to provide the maximum protection of the lives and persons in the City against sexual predators, and

WHEREAS, most sexual predators commit many offenses, have many more victims than are ever reported and are prosecuted for only a fraction of their crimes, making the cost of sexual predator victimization to society at large, while incalculable, clearly exorbitant, and

WHEREAS, it is the intent of this provision to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City, and

WHEREAS, the City Council adopts the findings and intent of the State Legislature as set forth in Sections 394.910, 775.21, and 944.606, Florida Statutes, that apply to sexual predators, particularly with the intent, inter alia, to prohibit sexual predators from working with children, either for compensation or as volunteers.

WHEREAS, the City has a compelling interest in protecting the public from sexual predators and in protecting children and vulnerable adults from sex-related criminal acts and predatory activity, and there is sufficient justification for requiring sexual predators and their employers to give notification regarding access and entry into the homes of clients, and other locations that children and adults are commonly located or congregate.

WHEREAS, the City Council finds that it is in the best interest of the public to release certain information to the public when a sexual predator moves into the City, and

WHEREAS, Sections 744.065 and 947.1405, and 948.30, Florida Statutes, provide for one thousand (1,000) foot residence prohibitions from specified locations for certain sexual predators thereby manifesting a need to protect the public from them, and

WHEREAS, Article VIII, Section 2(b), Florida Constitution, and Section 166.021, Florida Statutes, provide the City authority to protect the health, safety and welfare of its residents.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

SEXUAL OFFENDER shall have the same meaning ascribed in Sections, 943.0435, 944.606, and 944.607, Florida Statutes.

SEXUAL PREDATOR shall have the same meaning ascribed in Sections 775.21, 944.606, and 944.607, Florida Statutes.

DIRECT SUPERVISION shall mean that the supervising person can observe, and has his or her uninterrupted attention, continuously focused on the sexual predator at all times while at a designated location.

REPAIRS or SERVICES shall mean repairs, labor, services, delivery to or work requested by the property owner or lawful occupant to restore utilities, provide services, products, and conditions to make improvements, mitigate damages, to ensure safety or permit the continued occupancy of the structure.

EMERGENCY REPAIRS/SERVICES shall be any **REPAIRS or SERVICES** immediately necessary to stop, prevent or mitigate on-going or imminent damages that are irreversible, progressive, or causes conditions that will result in significant loss of property value, poses a direct and immediate threat to life or negatively impacts the health of persons or domesticated animals. It includes conditions that may expose property to the elements or potential inclement weather and therefore suffer additional or further loss of value.

SECTION 2. Supervision and Notification; Requirements.

A. It is unlawful for any business owner, manager, supervisor or employer to allow, direct, dispatch, or instruct a known sexual predator, or for a person classified as a sexual predator, to enter into or upon any residence, including the curtilage thereof, or any designated private or public school facilities or grounds, including bus stops, or any day care center, library, after-care center, park, playground, or other place where children may reside or regularly congregate, or elder care facility, nursing home, hospice facility, hospital, senior center, or other location where physically or mentally restricted, incapacitated or restrained adults are housed, treated, or cared for, to make deliveries or perform repairs or services or emergency repairs or services, except when the sexual predator is under the direct supervision of another adult employee or supervisor, who is neither a sexual predator nor sexual offender, and is not subordinate to the sexual predator. Every owner, manager, supervisor, or employer directing an employee classified as a sexual predator to a designated location to perform repairs or services, shall give written notification to the property owner in advance that the employee conducting the work is a sexual predator, prior to any entry on or into a

designated location. Such written notification shall be acknowledged by the property owner or occupant by signature and retained in the possession of the supervising employee at all times while at the designated location.

B. Sexual predators who are self-employed, and therefore have no adult superior to provide direct supervision as required above, shall provide written notice in advance, on a form prepared by the City Attorney, informing the property owner or occupant of his or her status as self-employed sexual predator (as defined in Sections 775.21, 944.606, and 944.607, Florida Statutes) and that the sexual predator will be performing repairs or services unsupervised. A self-employed sexual predator shall receive and have in his or her possession a notarized copy of the client's acknowledgement of the notification.

1. If emergency repairs or services are required and obtaining a notarized acknowledgement is impractical, a self-employed sexual predator is required to contact, prior to the commencement of any repairs or services, the Palm Bay Police Department Communication Center and request a call report number (call for service), in addition to giving written notification to the client. In case of emergency repairs or services, a self-employed sexual predator shall receive a call report number (call for service) for each day their presence is required at a designated location and to have the number and written acknowledgement of the client in their immediate possession.

SECTION 3. Penalties.

A person who violates this ordinance shall be guilty of a misdemeanor of the second degree punishable as provided in Sections 775.082 and 775.083, Florida

Statutes; for a second or subsequent conviction of a violation of this ordinance, such person shall be guilty of a misdemeanor of the first degree punishable as provided in Section 775.082 and 775.083, Florida Statutes. This penalty is in addition to any violation of probation or other offenses specified by statute or ordinance.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 6. It is the intention of the City Council of the City of Palm Bay that the provisions of this ordinance shall be made a subchapter of Chapter 134 of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 7. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2005-, held on , and read in title only and duly enacted at Meeting No. 2005- , held on , 2005.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

cc: All Department Heads
Libraries (2)
ALP

ORDINANCE NO. 2005-62

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, REQUIRING SEXUAL OFFENDERS WHO ARE NOT UNDER THE DIRECT SUPERVISION OF AN ADULT SUPERIOR WHO IS NEITHER A SEXUAL PREDATOR NOR OFFENDER TO NOTIFY PROPERTY OWNERS OR OCCUPANTS OF SPECIFIED PROPERTY OF THEIR CLASSIFICATION AS A SEXUAL OFFENDER; PROVIDING FINDINGS AND INTENT; PROVIDING DEFINITIONS; PROVIDING ALTERNATIVE PROCEDURES FOR SEXUAL OFFENDERS WHO PROVIDE REPAIRS AND SERVICES; PROVIDING FOR PENALTIES; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION INTO THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there is clear evidence of many occurrences in Florida and elsewhere, of convicted sexual offenders repeating the unlawful acts for which they were originally convicted, and

WHEREAS, the recidivism rate for sexual offenders is alarmingly high, especially for those who commit their crimes on children and vulnerable adults, and

WHEREAS, the population of the City of Palm Bay is increasing rapidly, with a large portion of that population consisting of families with small children, elderly, mentally and physically handicapped and otherwise incapacitated adults, and

WHEREAS, sexual offenders present an extreme threat to the public health and safety and are extremely likely to use physical violence and to repeat their offenses, and

WHEREAS, the City Council of the City of Palm Bay desires to provide the maximum protection of the lives and persons in the City against sexual offenders, and

WHEREAS, most sexual offenders commit many offenses, have many more victims than are ever reported and are prosecuted for only a fraction of their crimes, making the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant, and

WHEREAS, it is the intent of this provision to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City, and

WHEREAS, the City Council adopts the findings and intent of the State Legislature as set forth in Sections 775.21 and 944.606, Florida Statutes, that apply to sexual offenders, particularly with the intent, inter alia, to prohibit sexual offenders from working with children, either for compensation or as volunteers.

WHEREAS, the City has a compelling interest in protecting the public from sexual offender and in protecting children and vulnerable adults from sex-related criminal acts, and there is sufficient justification for requiring sexual offenders to give notification regarding access and entry into the homes of clients, and other locations that children and vulnerable adults are commonly located or congregate.

WHEREAS, Sections 794.065, 947.1405, and 948.30, Florida Statutes, provide for one thousand (1,000) foot residence prohibitions from specified locations for certain sexual offenders and sexual predators thereby manifesting a need to protect the public from them, and

WHEREAS, Article VIII, Section 2(b), Florida Constitution, and Section 166.021, Florida Statutes, provide the City authority to protect the health, safety and welfare of its residents.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

SEXUAL OFFENDER shall have the same meaning ascribed in Sections, 943.0435, 944.606, and 944.607, Florida Statutes.

SEXUAL PREDATOR shall have the same meaning ascribed in Sections 775.21, 944.606, and 944.607, Florida Statutes.

DIRECT SUPERVISION shall mean that the supervising person can observe, and has his or her uninterrupted attention, continuously focused on the sexual predator at all times while at a designated location.

REPAIRS or SERVICES shall mean repairs, labor, services, delivery to or work requested by the property owner or lawful occupant to restore utilities, provide services, products, and conditions to make improvements, mitigate damages, to ensure safety or permit the continued occupancy of the structure.

EMERGENCY REPAIRS/SERVICES shall be any **REPAIRS or SERVICES** immediately necessary to stop, prevent or mitigate on-going or imminent damages that are irreversible, progressive or causes conditions that will result in significant loss of property value, poses a direct and immediate threat to life or negatively impacts the health of persons or domesticated animals. It includes conditions that may expose property to the elements or potential inclement weather and therefore suffer additional or further loss of value.

SECTION 2. Notification; Requirements.

A. It is unlawful for any sexual offender not under the direct supervision of an adult superior who is neither a sexual offender nor sexual predator to enter into or upon any residence, including the curtilage thereof, or any designated private or public school facilities or grounds, including bus stops, or any day care center, library, after-care center, park, playground, or other place where children may reside or regularly congregate, or elder care facility, nursing home, hospice facility, hospital, senior center, or other location where physically or mentally restricted, incapacitated or restrained adults are housed, treated or cared for, to make deliveries or perform repair or services, except when the sexual offender has provided written notice, on a form prepared by the City Attorney, to the property owner or occupant, in advance of performing work at the location, that the person is classified as a sexual offender. Such written notification shall be acknowledged by the property owner or occupant by signature and retained in the possession of the sexual offender at all times while at the designated location.

B. If emergency repairs or service are required and obtaining a written acknowledgement is impractical, a sexual offender is required to contact, prior to the commencement of any work or service, the Palm Bay Police Department Communication Center and request a call report number (call for service), in addition to giving verbal notification to the property owner or occupant. In case of emergency repairs or service, a sexual offender shall receive a call report number (call for service) for each day their presence is required at a designated location and to have the call report number in their immediate possession.

SECTION 3. Penalties.

A person who violates this ordinance shall be guilty of a misdemeanor of the second degree punishable as provided in Sections 775.082 and 775.083, Florida Statutes; for a second or subsequent conviction of a violation of this ordinance, such person shall be guilty of a misdemeanor of the first degree punishable as provided in Section 775.082 and 775.083, Florida Statutes. This penalty is in addition to any violation of probation or other offenses specified by statute or ordinance.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 6. It is the intention of the City Council of the City of Palm Bay that the provisions of this ordinance shall be made a subchapter of Chapter 134 of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 7. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2005-, held on , and read in title only and duly enacted at Meeting No. 2005- , held on , 2005.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

cc: All Department Heads
Libraries (2)
ALP

The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?

Jill S. Levenson
Leo P. Cotter

Abstract: *Several states have enacted public policies that prohibit sex offenders who have abused children from living within close proximity to a school, park, day care center, or school bus stop. The purpose of this exploratory study was to describe the impact of residence restrictions on sex offender reintegration and to better understand sex offenders' perceptions of these laws. A survey of 135 sex offenders in Florida was conducted. Most of the molesters who responded to the survey indicated that housing restrictions increased isolation, created financial and emotional stress, and led to decreased stability. Respondents also indicated that they did not perceive residence restrictions as helpful in risk management and, in fact, reported that such restrictions may inadvertently increase triggers for reoffense. Implications for policy and practice are discussed.*

Keywords: *sex offender; 1,000-ft rule; proximity; residence restrictions; reintegration; rehabilitation*

Public concern about the threat posed by sex offenders has inspired varied legislation designed to combat recidivistic sexual violence. For example, policies mandating sex offender registration, community notification, civil commitment, castration, "three-strikes and you're out," and nondiscretionary sentencing have been introduced. The newest wave of such statutes has come in the form of laws controlling where sex offenders can live. These restrictions prohibit sex offenders from residing within specific distances from schools or places where children congregate.

Thus far, 14 states (Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Ohio, Oklahoma, Oregon, and Tennessee) have enacted buffer zones that prohibit sex offenders from residing within close proximity to a school, park, day care center, or school bus stop. The least restrictive distance requirement is in Illinois (500 ft), but most common are 1,000- to 2,000-ft boundaries. California law does not allow certain sex offenders on parole to live within a quarter mile of an elementary school and prohibits parolees from living within 35 miles of a victim or witness.

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There have been only a few studies investigating the relationship between housing and sex offending, and the results are mixed. In Arkansas, it was found that 48% of child molesters lived in close proximity to schools, day care centers, or parks compared with 26% of perpetrators convicted of sex crimes against adult victims (Walker, Golden, & VanHouten, 2001). The authors speculated that molesters who were motivated to reoffend might be more likely to purposely place themselves in close access to potential child victims. However, in Colorado it was found that molesters who reoffended while under supervision were randomly scattered throughout the study area and did not seem to live closer than nonrecidivists to schools or child care centers (Colorado Department of Public Safety, 2004). In Minnesota, sex offenders' proximity to schools or parks was not a factor in recidivism, nor did it affect community safety (Minnesota Department of Corrections, 2003). In fact, the opposite was found to be true: A sex offender was more likely to travel to another neighborhood in which he could seek victims without being recognized.

Public safety and child protection are understandably the primary considerations when sex offender restrictions are imposed. However, concerns have been raised that such mandates might exacerbate the shortage of housing options for sex offenders and force them to move to rural areas where they would be increasingly isolated with few employment and treatment options (Minnesota Department of Corrections, 2003). The dispersal of parks and schools may lead to overlapping restriction zones thus making it essentially impossible for sex offenders in some cities to find suitable housing. In some urban areas, offenders might be forced to cluster in high-crime neighborhoods. Such restrictions can lead to homelessness and transience, which interfere with effective tracking, monitoring, and close probationary supervision. Other scholars have concurred that sex offender statutes inadvertently may increase risk by aggravating the stressors (e.g., isolation, disempowerment, shame, depression, anxiety, lack of social supports) that can trigger some sex offenders to relapse (Edwards & Hensley, 2001; Freeman-Longo, 1996). The Colorado study recommended that residence restrictions do not appear to be a viable method for controlling sexual offender recidivism (Colorado Department of Public Safety, 2004).

Although sexual predator statutes are based on the presumption that sex offenders are repeatedly arrested in alarmingly high numbers, research suggests that sex offense recidivism rates are lower than commonly believed (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998). As well, ambiguity about the effectiveness of sex offender treatment (Furby, Weinrott, & Blackshaw, 1989) has led to pessimistic attitudes about the possibility of rehabilitation despite recent research suggesting more promising results (Hanson et al., 2002). Over the past decade, great gains have been made in the ability to assess and identify high-risk sex offenders (Epperson et al., 1999; Hanson, 1997; Hanson & Bussiere, 1998; Hanson & Harris, 1998, 2001; Hanson & Morton-Bourgon, 2004; Hanson & Thornton, 1999). Unfortunately, such research has not been consistently incorporated into policy development or implementation.

Most states continue to tighten their restrictions of sex offenders, whereas only a few states have questioned the benefits and consequences of proximity statutes. Recently, a U.S. District Court of Appeals judge in Iowa declared such restrictions unconstitutional and ordered that Iowa's statute, which prohibited sex offenders from living within a restricted zone of 2,000 ft, not be enforced (*Doe v. Miller & White*, 2004). The court opined that the law was punitive, it imposed restraints leading to housing disadvantages for sex offenders, and it hindered the right to conduct family affairs without interference from the state. Although the court noted that the public has a reasonable interest in restricting sex offenders' access to children, it found that the law went beyond what is necessary to protect the community and cited the lack of research indicating a relationship between proximity and recidivism. Constitutional issues notwithstanding, the impact of such statutes on offenders and communities remains largely unknown.

PURPOSE OF THE STUDY

The purpose of this exploratory study was twofold: to describe the impact of residence requirements on sex offender reintegration and to better understand sex offenders' perceptions of such restrictions. Specific hypotheses were not tested, but, using quantitative and qualitative techniques, the study attempted to ascertain (a) the proportion of sex offenders who report having suffered adverse effects as a result of housing restrictions and (b) the opinions of sex offenders about the utility of such restrictions. Florida was considered an ideal venue in which to conduct such research, because its residency limitations (often referred to as *1,000-ft rules*) are quite restrictive and have been in effect since 1997. The study was considered important because it can help policy makers to better understand the positive and negative, intended and unintended, consequences of proximity legislation. Such data ultimately can inform the development of evidence-based social policy and contribute to the effective management of sex offenders in the community.

METHOD

PARTICIPANTS

A nonrandom sample ($N = 135$) was drawn from a pool of sex offenders from two outpatient sex offender counseling centers in Fort Lauderdale, Florida ($n = 40$) and Tampa, Florida ($n = 95$). All clients attending treatment at the facilities were invited to complete a survey about the impact of sexual offender policies on their community reintegration. Out of those who voluntarily completed the survey ($n = 183$), this sample was made up of 135 who indicated that they were subject to residency restrictions. Clients had been on probation for an average of 40

months (median = 32 months, *SD* = 37 months). Slightly more than half had been in their current treatment group for 2 years or less, and 47% had been in treatment for more than 2 years.

Most of the respondents were between the ages of 25 and 64; 10% were younger than 25, and 6% were age 65 or older. About 68% were White, 14% were Black, 14% were Hispanic, and 4% described their race as "other." Marital status included 24% who were currently married with 35% reporting that they had never been married, 37% stating that they were divorced or separated, and 4% describing themselves as widowed. More than one third of the participants had graduated from high school (19%) or obtained a General Equivalency Diploma (16%), 33% had attended some college, and 14% were college graduates. About 77% reported an annual household income of less than $30,000 per year. About 97% were identified as child molesters. The remaining 3% identified themselves as having an index victim older than the age of 18, although they had minor victims as well. Other reported offenses included voyeurism (9%), exposure (13%), and computer-related sex crimes (9%). The percentages do not add up to 100% because about 20% of participants endorsed more than one type of offense. Offender and victim characteristics are displayed in Table 1.

In Florida, residence restrictions apply only to sex offenders who were sentenced after October 1, 1997, for crimes involving victims younger than the age of 18 (*Special Conditions of Sex Offender Probation*, 1997). At the time of the data collection, the conditions of probationary supervision in Florida precluded sex offenders with minor victims from living within 1,000 ft of a school, day care center, park, playground, or other place where children regularly congregate. Shortly after the data were collected, Florida's law was amended by adding school bus stops to the list of prohibitions for child molesters released from prison (*Conditional Release Program*, 2004).

INSTRUMENTATION

A survey was designed by the authors for the purpose of collecting data regarding the impact of residence restrictions on sex offenders. Client demographic data and information regarding offense history were elicited using forced-choice categorical responses to ensure anonymity. Participants were asked to rate 3-point and 5-point Likert scales indicating their degree of agreement with the issue in question and were also given the opportunity to provide narrative responses.

DATA COLLECTION PROCEDURES

Clients were invited to complete the survey during a group therapy session. Respondents were instructed not to write their names on the survey and to place the completed questionnaire in a sealed box with a slot opening. The research was conducted in accordance with federal guidelines for the ethical treatment of human participants.

TABLE 1
OFFENDER AND VICTIM CHARACTERISTICS

Offender	*Percentage*
Age	
Younger than 25	10%
25-64	84%
65 or older	6%
Race	
White	68%
Minority	32%
Currently married	24%
Education	
High school or equivalent	35%
Attended college or college graduate	47%
Victim	*Percentage*
Victim age	
Younger than 5	6%
Age 6-12	37%
Minor teen	54%
Relationship	
Extrafamilial only	67%
Intrafamilial only	20%
Both extra- and intrafamilial	12%
Gender	
Male only	14%
Female only	77%
Both genders	11%

DATA ANALYSIS

Descriptive and correlational statistics were used to interpret the quantitative results of the survey. Data analyses were conducted using SPSS version 12.

RESULTS

Overall, 50% of the respondents reported that proximity restrictions had forced them to move from a residence in which they were living, and 25% indicated that they were unable to return to their residence after their conviction (see Table 2). Nearly half reported that residence restrictions prevented them from living with supportive family members. A considerable proportion reported that the

TABLE 2
IMPACT OF RESIDENCE RESTRICTIONS ($N = 135$)

Item	*Yes*
I have had to move out of a home that I owned because of the 1,000-ft rule.	22%
I have had to move out of an apartment that I rented because of the 1,000-ft rule.	28%
When released from prison, I was unable to return to my home.	25%
I have been unable to live with supportive family members because of the 1,000-ft rule.	44%
I find it difficult to find affordable housing because of the 1,000-ft rule.	57%
I have suffered financially because of the 1,000-ft rule.	48%
I have suffered emotionally because of the 1,000-ft rule.	60%

geographical limitations created a financial hardship for them, and nearly 60% agreed or strongly agreed that they have suffered emotionally because of the restrictions.

Age was significantly related ($p < .05$) to being unable to live with family ($r = -.17$) and difficulty finding affordable housing ($r = -.19$) with younger offenders being more likely to report these events. There was also a significant inverse relationship between being married and the inability to find affordable housing ($r = -.19$), and minority race was related to having to move from a residence ($r = .20$). There was no significant relationship between adverse events and income, education, or length of time on probation.

In addition to the structured survey responses, narrative comments were also examined. There were 2 respondents who agreed that residency restrictions were a deterrent to offending, commenting, "It doesn't tempt you" and "It's good because you can't just walk from your home to a school." Overwhelmingly, however, the participants reported that they did not find the 1,000-ft rule to be practical or helpful, although some suggested that such restrictions should be imposed on a case-by-case basis. Several common themes emerged.

Importantly, many offenders emphasized their need for social support and believed their risk increased with isolation from supportive family and friends. For example, they commented, "I believe you have a better chance of recovery by living with supportive family members" and "What helps me is having support people around. . . . Isolating me is not helpful." Another respondent expressed distress that geographical restrictions kept him from living with and caring for his infirm mother. One reported concern at having to live alone because of the location of his family's home, and several young adults said they were unable to live with parents and younger siblings after committing what they referred to as a "statutory" offense. Some respondents indicated that they had to relocate several times, and one said he was forced to move to a "ghetto."

On the other hand, several participants reported that they had successfully petitioned the court for an exception to the rule and were then allowed to reside within 1,000 ft of a school. Such requests to the court were reportedly initiated for various reasons, the most common being home ownership or a desire to reside with family. What was most remarkable about these exceptions is that they were seemingly granted in the absence of an assessment of risk or relevant offender characteristics. They seemed to be based solely on the offender's request that the court eliminate a hardship created by the statute.

The majority of respondents emphatically proclaimed that the 1,000-ft rule would have no effect on their risk of reoffense. Many pointed out the need for internal motivation to prevent reoffense and said that if a sex abuser wanted to reoffend, the rule would not stop him. Their comments included "has no effect at all on offending," "does not make an impact on my life," "I follow the rule, but it has had little impact," "It's a childish rule," "You can walk as far as you want if that [child abuse] is what you're after," "Living 1,000 ft away compared to 900 ft doesn't prevent anything," and "It doesn't matter where a sex offender lives if he sets his mind on reoffending. . . . He can just get closer by walking or driving. The 1,000-rule is just a longer leash, I don't see the point."

Many opined that if an offender is not committed to treatment and recovery, "the 1,000-ft rule is inconsequential. If a person wants to offend, it doesn't matter how close he is to a convenient place to find kids." Another pointed out that "if a person wants to reoffend, he will, regardless of what laws are made up or what treatment they go through. . . . It's entirely up to him." Referring to his victim empathy training received in therapy, one offender suggested that some exposure to children might be a good thing: "When I see kids in the park, I can see them as real people with real lives and real feelings, not just an object."

Other respondents were somewhat more analytical and thoughtful about the issue. One questioned if there is a "link between sex offending and distance from schools," and another suggested that "resources would be better used by identifying dangerous individuals who [*sic*] the rule should apply to."

Noteworthy is that many respondents pointed out that they have always been careful not to reoffend in close proximity to their homes, so geographical restrictions provided little deterrence. The rule "serves no purpose but to give some people the illusion of safety," said one respondent. Others expressed similar sentiments: "I think that if someone wanted to reoffend, then they would do it at a place away from home instead of putting themselves at more risk of getting caught [near home]." Another reported, "It is better for me not to have sexual contact with neighborhood kids—less chance of being recognized," and others agreed, "Most people would worry more about being caught in their own neighborhood." One offender wryly noted, "I never noticed how many schools and parks there were until I had to stay away from them."

Some participants pointed out the myth of *stranger danger*: "It doesn't matter where you live; most offenses happen with someone you know or live with." Another commented, "Most abuse happens in homes or with family or close friends, not at bus stops or schools." Although acknowledging that they would be unlikely to abduct a child from a school or park, they did point out a chilling and ironic reality: "You can live next door to a minor but not a school," said one offender, and another agreed, "You don't want me to live near a school where the kids are when I'm at work. The way it is now, when I get home from work, they're home, too—right next door." One offender asked, "What is the point if the houses on your same block are full of kids?" Another offender noted a similar and equally illogical experience:

> I couldn't live in an adult mobile home park because a church was 880 ft away and had a children's class that met once a week. I was forced to move to a motel where right next door to my room was a family with three children—but it qualified under the rule.

DISCUSSION

Most of the molesters who responded to this survey indicated that housing restrictions increased isolation, created financial and emotional hardship, and led to decreased stability. The data further suggested that offenders do not perceive residence restrictions as helpful in risk management. Although this study did not measure risk or recidivism, the findings appear to confirm prior speculation that proximity rules might increase the types of stressors that can trigger reoffense (Minnesota Department of Corrections, 2003). Research regarding dynamic risk has indicated that a lack of positive social support and depressed mood, anger, and hostility are all associated with recidivism (Hanson & Harris, 1998, 2001). Restricting lower risk offenders unnecessarily, in ways that potentially interfere with their recovery, may be counter-productive. In Colorado, it was found that sex offenders who had more social support had a lower number of probation violations (Colorado Department of Public Safety, 2004).

On the other hand, sexual interest in children and access to victims are factors also associated with recidivism (Hanson & Harris, 1998, 2001; Hanson & Morton-Bourgon, 2004), so it makes sense that risk might be managed by reducing some molesters' exposure to children and prohibiting them from living near places where children congregate. However, blanket restrictions may fail to address individualized risk factors that are related to potential offending patterns. For example, proximity laws are usually designated only for sex offenders convicted of child molestation, even though research suggests that up to 50% of rapists have committed undetected sex crimes against child victims (Ahlmeyer, Heil,

McKee, & English, 2000). It is well established that most sex offenders have many more victims (and a variety of victims) than those for which they have been arrested (Abel et al., 1987; Abel, Becker, Cunningham-Rathner, Mittleman, & Rouleou, 1988; Ahlmeyer et al., 2000; Heil, Ahlmeyer, & Simons, 2003), and therefore, some may pose risks not readily apparent by relying solely on their documented offense history.

What we can learn from these sex offenders' responses is that they will circumvent restrictions if they are determined to reoffend. Therefore, restrictions must be sensible and feasible and should be based on a thorough assessment of past offense patterns and current risk factors. Practitioners and probation officers should collaborate in determining treatment plans and supervision restrictions that are most applicable to individual offenders' needs and risks. Noteworthy is that several respondents in our study had successfully petitioned the court for a modification of residence restrictions, seemingly without an assessment of risk by the treatment provider or probation officer. Restrictions are likely to be most effective when combined with appropriate assessment, support, monitoring, and rehabilitation. A more individualized approach to sex offender management can enhance public safety while promoting successful reintegration for offenders.

This study was preliminary and exploratory, and it was limited by the inherent problems of self-reported data. The data were collected from two large, metropolitan areas in Florida and therefore probably reflect urban implementation statewide but may fail to capture other problems or benefits more specific to rural communities. It is unknown whether these results can be generalized to other states, and continued research will assist us to more fully understand the national impact of residence restrictions on sex offender reintegration. Ultimately, empirical investigation must clarify the effect of proximity restrictions on recidivism to determine whether such policies are successful in achieving their stated goals.

Prevention of sexual violence requires a well-planned, comprehensive, interdisciplinary response that begins with developing clear goals and objectives, implementing strategies based on empirical research, and collecting and analyzing data on an ongoing basis (Center for Sex Offender Management, 2002). Some states (Minnesota and Colorado) have elected to study the relationship between housing and recidivism before implementing proximity restrictions. These states ultimately determined that the potential benefits of such legislation do not seem to outweigh the possible negative consequences. Social policy should be solidly grounded in empirical evidence and informed by theoretical literature. It is clear that public concern about sexual crimes sometimes leads to legislation that is not driven by data or science but rather by outrage and fear. Scientists and practitioners have a responsibility to assist lawmakers to respond to the problem of sexual violence by advocating for the development of evidence-based policies that protect women and children and rehabilitate perpetrators as well.

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LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES

2003 Report to the Legislature

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Level Three Sex Offenders
Residential Placement Issues
2003 Report to the Legislature

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Introduction

The Minnesota Legislature requested a report from the commissioner of corrections to address issues regarding residential locations of level three sex offenders (see Appendix A: Minnesota Session Laws 2002, Chapter 385, Sec. 10).

Offender Characteristics

As of December 31, 2002, there are 329 designated level three offenders in Minnesota. Of those, 97 are in residential settings in a Minnesota community. All are male. Fifty of those live in Hennepin County, 14 in Ramsey County, six in Olmsted County, and four in St. Louis County. Twenty-three live elsewhere, with no county having more than two.

Issues

Legislation mandating this report directed the commissioner of corrections to report on eight issues concerning level three sex offenders. This section of the report responds to that directive.

1. ***How level three offenders re-enter the community, including how housing and jobs are found and the role that corrections agents play in helping an offender find housing and jobs.***

   The specific resource for offenders is the institutional caseworker at each Minnesota correctional facility (MCF). While level three offenders may be released from any correctional facility, the majority of releases are done from the MCF-Lino Lakes. The MCF-Moose Lake, MCF-Rush City, and MCF-Stillwater are the release institutions for the greatest number of remaining releasees.

   In anticipation of release, the caseworker will work with the offender on transition plans. This may include a three-day workshop on effective transition from incarceration. Topics covered include residential and job issues. In addition, the transitions program will cover related areas of identification, money management, education, health and life skills, family/friend reunification and relationships, and living under supervision. For those leaving to a supervised release status, the caseworker will coordinate with the prospective supervising agent on a re-entry plan. That re-entry plan must include an acceptable residence. At that time, special conditions may be applied to the supervision plan. Special conditions may include restrictions on proximity to victims, minors, or vulnerable adults. Special conditions are applied on an individual basis to each offender. Common conditions subject to agent approval may be:

   a) No residence in a building where children are present;
   b) No direct or indirect contact with minors;
   c) No direct or indirect contact with vulnerable adults;
   d) No direct or indirect contact with victims;
   e) No membership in groups or organizations;

f) Must not be in any location where children or minors tend to congregate; or
g) Other variations as determined by the supervising agent.

Residential placement is dependent on the offender's personal and financial resources in the community. The caseworker and agent may be able to help the offender find placement, but limited opportunities exist if an acceptable supervision location is not provided by the offender.

Halfway house placement is one of the most common first steps in the transition, but there are a limited number of beds available at those placements. St. Paul, Minneapolis, Golden Valley, and Duluth each provide a halfway house facility but fall far short in meeting the housing needs of all sex offenders in need of transitional housing. These halfway houses provide not only for level three offenders but also level two and one offenders as well as non-sex offenders in need of such transition (primarily person offenders convicted of such crimes as Assault, Aggravated Robbery, Murder, etc.). Approximately 60 percent of level three predatory offenders are first released to a halfway house placement.

Transition services for offenders leaving prison at expiration of sentence are even more limited. These offenders leave an MCF without supervision. They are required to register an address with the Bureau of Criminal Apprehension (BCA) but receive no assistance other than that provided by a caseworker prior to release. Keeping track of these offenders is difficult due to their often transient housing options. Anecdotally, it appears that a small number (at least 12) of level three offenders have left Minnesota once their sentences expired, and several other level three offenders have come out of compliance with registration after the expiration of their sentences (although it appears they have stayed in Minnesota).

Generally, the housing options available to offenders are limited and well known to supervising agents. Specific properties and landlords are amenable to providing housing for level three offenders. In Minneapolis, certain landlords appear to have developed a specialty in renting to level three offenders. This has resulted in a concentration of level three offenders in some areas of the city. According to corrections agents, when a landlord rents one unit of a duplex to a level three offender, occupants of the other unit feel uncomfortable and seek other housing. The resulting vacancy is likely to be filled by another level three (or lower level) sex offender. Subsequent vacancies are also filled by sex offenders. The landlords then post information about vacancies at halfway houses, and level three offenders learn about potential openings through word of mouth. Such housing is a limited and finite resource in Minneapolis but can be even scarcer in other counties where the placement of level two offenders causes as much of a problem.

Job search is another topic covered in the transition program but, again, the offender bears most of the responsibility for finding employment. Halfway house placement provides the best transition period for job search. Without connections to a previous employer or family assistance, most employment tends to be in low-pay, non-public service jobs. Knowledge of the offender's level three status is an impediment to seeking employment. Fear of liability if re-offense occurs is a common roadblock to employer willingness to hire offenders. A common release condition is that offenders must maintain 40 hours per week of work or other productive activity. Corrections agents become aware of employers who are willing to hire ex-inmates, including sex offenders. If an offender has difficulty obtaining employment on his or her own, the agent will refer the offender to one of these employers.

In meetings and discussions with community corrections agents working throughout Minnesota, the common issue expressed was the ever-increasing difficulty in procuring residences and employment by level three offenders. The close connection between residence and job means that limiting residential options concurrently limits job options. For example, if offenders are required because of residential restrictions to live in largely unpopulated areas, it is likely that they will have difficulty securing employment as many do not own automobiles (and even have release conditions prohibiting ownership).

Expansion of halfway house beds and expansion of emergency housing funds were most commonly cited as needs when planning for level three releases and moves. Landlords willing to rent to a level three offender are non-existent in many communities, according to corrections agents.

Recent release plans for selected level three offenders:

a) **Offender A**
Released in early 2002 (expiration of sentence). Release address was his parent's home in St. Paul. Maintained that address until mid 2002. This initial placement with a family member is often the ideal placement for transition. Upon leaving that residence, he has been in a transient stage to this date. Registered address was in an outer-ring suburb for one day, the Minneapolis Salvation Army for 18 days, a Bloomington apartment for 19 days, another metro address for 11 days, South Minneapolis for 16 days, an inner ring suburban motel for seven days, and at a downtown St. Paul boarding house for the last 30 days. He has spoken with local law enforcement about living under a bridge. He has made numerous complaints about inability to find acceptable housing of any kind. He has done a fairly good job of maintaining his registration, but constant moving makes tracking difficult.

b) **Offender B**
Released in mid 2002 (intensive supervised release). His release was to a halfway house from which he absconded in late 2002. He was apprehended and returned to the MCF-Lino Lakes in the same month. He was then released in one month later (expiration of sentence). He was unable to provide a release address prior to release and has no support network. His responsibility for registration was explained to him. He did provide notice of a shelter address in Minneapolis for the first night. He moved to a second shelter the second night and is now officially registered with the BCA as "homeless."

c) **Offender C**
Released in late 2002 (intensive supervised release). Initial release plan was to a friend's house in rural Minnesota. Due to neighborhood pressure, the invitation was rescinded. His release address then became a transitional motel in a southeastern Minnesota city. His plan is to move into a house he owns in southeastern Minnesota as soon as the current tenant vacates the property. His ownership of property has solved this housing issue.

d) **Offender D**
Released in mid 2000 (intensive supervised release). His release was to a halfway house. He then moved to South Minneapolis in early 2001. He moved to a trailer park in an outer-ring suburb two months later. He then purchased rural property in an outstate

county. He was returned to prison for violating a release condition and was released again in late 2002, to his rural property. With financial resources available, he has been able to provide his own housing.

e) **Offender E**
Released in mid 2000 (intensive supervised release) to a halfway house. Two months later, he moved into the community in North Minneapolis. This is one of the limited number of rental properties available to level three offenders. In early 2001 he registered his address as his father's home but was infrequently there. His release was revoked two months later, due to use of chemicals. He was again released in mid 2001, to his father's home in Minneapolis. He left his father's home two months later. He registered in St. Paul for two weeks before returning to a North Minneapolis residence and then eventually registered at his father's house once again in early 2002. That same month, his sentence expired and he was no longer on supervision. Since that time, while he has been registered at his father's address, most contacts with police have pointed to a status as homeless.

2. ***Statewide locations and concentrations of the level three offenders.***

As of December 31, 2002, there were 97 level three offenders in residential locations in Minnesota. Of these, 50 were in Hennepin County, 14 were in Ramsey County, and 33 others were scattered in other counties. Olmsted County had six level three offenders and St. Louis County had four; they were the only counties other than Hennepin and Ramsey with more than two level three offenders (see maps for locations, Appendices B-1 to B-4).

3. ***Effects of having the offenders live in close proximity to one another.***

There have been 13 level three offenders released in 1997, 1998, or 1999 who are known to have been re-arrested for a new sex offense by March 2002. Each case has been reviewed to determine the offender's circumstances at the time of the new sex offense. This includes examining whether the re-offense was related to the offender's proximity to a school or park, and whether the offender was living with another sex offender at the time that he re-offended. Each case is summarized below.

Level three offenders released from January 1, 1997, through December 31, 1999, who have been rearrested for a new sex offense:

a) **Offender F**
Released in early 1997 (he was previously released in mid 1994, prior to notification, but was re-incarcerated for a serious release violation and served an additional two years). He had been referred for civil commitment, but Hennepin County chose not to pursue the case. He was re-released twice and re-incarcerated both times before he was released at the expiration of his sentence in late 1997. He re-offended in early 1998, against his live-in girlfriend. He was intoxicated and demanded that she have sex with him. When she refused, he slapped her in the face and raped her. He was registered as living at an address in Minneapolis, and the offense occurred at that location. He was not living with

another sex offender at the time of the offense. He was sentenced to 90 months in prison and was identified as a Minnesota Sex Offender Program-DOC (MSOP-DOC) referral. He has been in treatment at the MSOP-DOC site since late 2001.

b) Offender G

Released in early 1997 to the custody of a southwestern Minnesota county and placed in the county jail. He had been referred for civil commitment, and the county attorney was deliberating on whether to pursue commitment. This offender sexually assaulted a fellow inmate at the jail the following month. He pled guilty to 4th Degree Criminal Sexual Conduct (CSC) and received a sentence of 60 months. He has since stipulated to being a Sexually Dangerous Person and has been released to the custody of the Department of Human Services (DHS). He was incarcerated at the time of the offense, but it is unclear if any of his fellow inmates at the time were sex offenders.

c) Offender H

Released in early 1997, at the expiration of his sentence. He sought to have his risk level reduced by administrative review but was denied. He had been referred for civil commitment, but Hennepin County determined it was unlikely they could prove that he met commitment criteria. He was rearrested and charged with 5th Degree CSC for an offense that occurred in the following month. At the time, this offender had two addresses registered with the BCA: in South Minneapolis and a rural route address in a small town in the southeastern region of the state. It appears that he was not living with another sex offender. His re-offense was committed in downtown Minneapolis. He was in a bookstore where he harassed two separate victims – a juvenile female and an adult female. He was intoxicated. In both cases he grabbed the breast of the victim, but the victims were able to escape. The offender was arrested at the scene, ironically by the lieutenant in charge of Minneapolis' community notification at the time. He received a sentence to the county workhouse. He was re-incarcerated for Possession of Controlled Substance, 5th Degree, in mid 2000 and was again referred to Hennepin County for civil commitment Again, Hennepin County determined it was unlikely they could prove that he met commitment criteria. He is reportedly now living in Chicago.

d) Offender I

Released in mid 1997 to a halfway house. He had been referred for civil commitment, but Hennepin County determined it was unlikely they could prove that he met commitment criteria. While at the halfway house during the following month, this offender fondled the genitals of a fellow resident. There were other level three offender residents at the halfway house at the time of his re-offense. He was convicted of 4th Degree CSC and received a sentence of 36 months. At the same time there were allegations that he had fondled the genitals of a 13-year-old family member, but he was not convicted of this. He has since been re-released to the community in mid 1999 and has apparently not been arrested for a new sex offense since that time.

e) Offender J

Released in mid 1997, but detained until early 1998 at the Minnesota Security Hospital while he was undergoing a civil commitment trial. He was found not to meet the criteria for commitment and was released to a South Minneapolis address (his sentence had expired in late 1997). He left Minneapolis in early 1998 and lived in New Mexico for six

months. He then relocated to Nebraska where he was arrested for molesting children (reports are that it was in a Greyhound Bus Station). He was not known to be living with another sex offender at the time of this offense. He was convicted of Sexual Assault on a Child and received a sentence of one year, eight months to five years. He was imprisoned in Nebraska from late 1998 until his mandatory release date in late 2000. He is currently registered as living in Nebraska.

f) Offender K

Released in early 1998. Absconded from supervision in early 1999 and reincarcerated within 30 days. Not referred for civil commitment either time. Released again in late 2000. In early 2001, found to be in possession of child pornography involving children as young as three to five years old. Supervising agent made unannounced visit to his residence and found a videotape containing child pornography. Offender had subscribed to a Web TV service (without permission of agent) and recorded the videotape. He was living with a level two sex offender at the time. This roommate provided information to his therapist, who passed it along to his supervising agent, which led to discovery of the sexually-explicit material. He absconded again but was apprehended within two weeks. He pled guilty to three counts of Possession of Pornographic Work Involving Minors and received a sentence of 36 months. He is currently incarcerated with an expected release date of early 2004. He is currently involved in treatment at the MSOP-DOC site.

g) Offender L

Released in early 1998 (expiration of sentence). Referred for civil commitment, but Ramsey County determined it was unlikely they could prove he met commitment criteria. Rearrested in late1998 and convicted of False Imprisonment in early 1999. Registered as living in southwestern Minnesota at the time of the offense. He was not living with another sex offender. The offense occurred in his house. The victim (an adult female acquaintance) voluntarily entered his apartment after they had been out drinking. She lay down on the bed where the offender coerced her to take off her clothes, after which she fell asleep. She awoke to find he had tied her hands and legs to the bed. He threatened to rape her but didn't. He did slap the victim across the face and struck her breast. He was sentenced to 19 months but was civilly committed upon his release from prison.

h) Offender M

Released in late 1998; sentence expired two months later. Referred for civil commitment to Hennepin County, but they determined it was unlikely they could prove he met commitment criteria. Rearrested in late 1999, after exposing himself to four female children (ages four to eight). He called the children over to his truck and identified himself as a policeman, saying he was looking for a suspect. He opened the door and exposed himself to the children. He had reportedly been driving around the neighborhood during the summer and fall months watching children. Offenses were committed in Northeast Minneapolis; he was living in South Minneapolis at the time. Unknown if he was living with another sex offender at time of the offense. Convicted of felony-level 5th Degree CSC and sentenced to 43 months in prison. Reincarcerated in early 2000, and released 26 months later in early 2002, when his release date was reached. Currently on intensive supervised release and living in North Minneapolis. Again referred for civil commitment to Hennepin County, but they determined it was unlikely they could prove he met commitment criteria.

i) Offender N

Released in late 1999 and returned to prison twice on technical violations. He was not referred for civil commitment and sought by administrative review to have his risk level lowered, but his request was denied. He was most recently released in late 2000 to intensive supervised release. Three months later, in early 2001, he abducted a 17-year-old female stranger and sexually assaulted her. He was registered as living in South Minneapolis. He was not living with another sex offender. The offense occurred in a neighborhood a couple of miles south of the offender's residence. He has been convicted of 1st Degree CSC and recently received the statutory maximum sentence of 30 years.

j) Offender O

Released in late 1998 but immediately placed at the MSOP after being civilly committed. He was arrested for 3rd Degree CSC in mid 2001 for sexually assaulting a fellow resident of the MSOP. It appears that he was never convicted of this offense but instead was returned to MSOP where he remains today. He was incarcerated with other sex offenders at the time of his offense.

k) Offender P

Released in late 1998 at expiration of sentence. He was not referred for civil commitment. In mid 2000 he requested that his risk level be lowered but withdrew this request after finding out that the End of Confinement Review Committee (ECRC) had received a recommendation from a sex offender treatment professional that his risk level not be lowered. He was rearrested in early 2001 and convicted of 1st Degree CSC in 2001. He was registered as living in outstate Minnesota at the time of the offense. He was not living with another sex offender. The offense occurred in his house. He was allowed access to the victims by the victims' parent/family. He was sentenced to 144 months in prison and is currently at the MSOP-DOC site.

l) Offender Q

Released in late 1999. He had been referred for civil commitment, but Hennepin County determined it was unlikely they could prove that he met commitment criteria. He was reincarcerated on three occasions after violating the conditions of his release. His most recent release was in early 2002, and his sentence expired the following month. Later that same month he was arrested after having accosted a female stranger and attempted to kidnap and possibly sexually assault her. The offense occurred near downtown Minneapolis; he was registered as living in North Minneapolis at the time of the offense. He has been convicted of 4th Degree CSC but has not yet been sentenced. The Hennepin County Attorney is preparing to ask the judge to sentence this offender to more than the 10-year statutory maximum sentence for 4th Degree CSC by recommending that he be sentenced under the Patterned Sex Offender statute.

m) Offender R

Released as a level two offender in late 1999, but due to his extensive history (more than 20 sex offense convictions, all for indecent exposure, mostly misdemeanors and gross misdemeanors), he was warned by the ECRC that any violation, especially for a new sex-related offense, would likely result in an increase in his risk level. He was not referred for civil commitment, as courts have on more than one occasion rejected commitment of offenders whose history is exclusively "hands-off" sex offending. His sentence expired

in late December, but he had already been arrested five months earlier for another Indecent Exposure offense against children. At the time he was registered as residing in Northeast Minneapolis. He was not living with another sex offender at the time of the offense. The offense occurred in Fridley, approximately four miles from his residence. He was sentenced to 16 months in prison for Attempted 5th Degree CSC and was assigned risk level three in early 2001. He was released in mid 2001. He was going to appeal his risk level but was again arrested for a gross misdemeanor exposure and was confined in the Hennepin County Workhouse until late 2002. Since that time he has returned to his Northeast Minneapolis address.

This examination of level three re-offenders does not reveal a negative effect related to a level three offender living with another sex offender. In fact, supervision agents in both Hennepin and Ramsey County have noted benefits from having more than one level three offender living in one location. Closer supervision is possible because travel time between offenders is reduced. Also, level three offenders who live with other level three offenders experience more visits from a supervising agent because agents for both offenders visit the same property. Finally, offenders tend to inform on each other when supervision restrictions are violated or crimes are committed. There is one case described above of an offender who re-offended by downloading child pornography from a Web TV service that was discovered only after the offender's roommate (a sex offender) told his therapist about the existence of the unapproved Web TV equipment in the house.

Voluntary relocations of neighborhood residents have not been evident, but real estate agents report that sale of properties are limited by any negative information about a neighborhood. This may involve the perception of a high concentration of level three offenders but can also include information that suggests a neighborhood is, in general, a high-crime area in which gang activities are prevalent and drug dealing takes place on street. Discussions with real estate agents indicated that the presence of level three sex offenders tends to have the greatest effect on prospective buyers with young children.

At a December 2002 community meeting, residents of the Phillips neighborhood in South Minneapolis expressed frustration with the concentration of sex offenders in their neighborhood. Many stated that their neighborhood is always first to get treatment centers and housing for social problems. The concentration of sex offenders is just one of many concentration issues for these residents. An additional problem expressed was that once a neighborhood develops a reputation for being a focus area for this type of housing and treatment, it is difficult to maintain housing and economic stability.

This meeting was attended by residents of both the Phillips and Jordan neighborhoods as well as members of the Minneapolis City Council and Minnesota Legislature. Representatives from the Department of Corrections (DOC), Hennepin County Community Corrections, and

the Minneapolis Police Department were present to explain the roles of their organizations in fulfilling responsibilities under the community notification law and to listen to the concerns of residents. A map was produced detailing residency patterns of all offenders on probation and supervised release in Minneapolis that revealed a similarity to the residency patterns of level three offenders as displayed in Appendix B-3.

Based on the examination of level three re-offenders, there were no examples that residential proximity to a park or school was a contributing factor in any of the sexual re-offenses noted above. Enhanced safety due to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact. The two level three offenders described above whose re-offenses took place near parks both drove from their residences to park areas that were several miles away. Because neither was under supervision, there were no supervision conditions that would prohibit them from driving near parks. Based on these cases, it appears that a sex offender attracted to such locations for purposes of committing a crime is more likely to travel to another neighborhood in order to act in secret rather than in a neighborhood where his or her picture is well known.

4. ***Efforts to mitigate the concentration of the offenders, especially with regard to proximity to schools.***

According to Minnesota Statute §244.052, subdivision 4a, "the agency responsible for the offender's supervision shall take into consideration the proximity of the offender's residence to that of other level three offenders and proximity to schools and, to the greatest extent feasible, shall mitigate the concentration of level three offenders and concentration of level three offenders near schools." Because of limited placement options, rarely does a supervising agency have a choice between two separate placements for an offender that would allow mitigation of the concentration of level three offenders near schools or other level three offenders to be taken into consideration. Mitigation of concentration of and proximity to schools can be a factor if two essentially equal placement options are available. If on an individual basis supervision restrictions preclude location near schools, then that is taken into account as a high priority factor. So far, there has not been one example of a level three offender re-offending at a nearby school.

5. ***Likely effects of a policy requiring that offenders live a certain distance from schools.***

Residential choices are already limited under current statutes that do not prohibit level three offenders from living near schools. Additional restrictions would severely affect already meager placement choices. Minneapolis and St. Paul have a well-disbursed system of neighborhood schools that would create a restriction on the majority of residential property in both cities. (See Appendices C-1 and C-2 for a map of Minneapolis that indicates areas in which residence of level three offenders would be prohibited if a 1,500-foot restriction were to become law.) Having such restrictions in the cities of Minneapolis and St. Paul would likely force level three offenders to move to more rural areas that would not contain nearby schools and parks but would pose other problems, such as a high concentration of offenders with no ties to the community; isolation; lack of work, education, and treatment options; and an increase in the distance traveled by agents who supervise offenders. Again, no evidence points to any effect on offense rates of school proximity residential restrictions.

6. ***Likely effects of a policy requiring that offenders not live within a certain distance of each other.***

In Minneapolis, St. Paul, and Rochester there are some concentrated areas where offenders live together or in the same building. Of the 50 level three offenders living in Hennepin County as of December 31, 2002, 30 lived in just three zip codes. A proximity restriction would mean that 15 to 20 of these offenders would have to relocate or face being sanctioned under the law. Given the current difficulty that a single offender has in finding placement, it is highly likely that many of these offenders would become transient, which would severely restrict an agent's ability to closely supervise their activities.

7. ***Restricted zones that would result if a 1,500-foot proximity restriction were adopted in relation to schools, parks, and other offenders.***

Adoption of a 1,500-foot restriction would exclude every residential area of Minneapolis and St. Paul with minor exceptions. (See map of Minneapolis school and park zones, Appendices C-1, C-2, and C-3). Again, the well-disbursed location of schools and parks in both cities would lead to overlapping restriction zones that essentially forbid any residential options in either city.

8. ***Policies adopted by other states relating to the mitigating concentration of sex offenders.***

Iowa and Alabama are two states with general proximity restrictions on the location of sex offenders (see Appendices E and F).

Alabama originally set a 2,000-foot proximity restriction from schools. This was amended in 2001 to a 1,000-foot restriction, as of July 1, 2002. It appears that this law has not yet been enforced.

Iowa adopted Senate File 2197 in May 2002 with an effective date of July 1, 2002. The law includes a 2,000-foot proximity restriction from schools and child care facilities for any offender who offended against a minor. This has severely restricted residential options, especially in urban areas. In October 2002, the first charge under this law was made. The offender was living within 2,000 feet of a school and several registered child care centers.

Additional information on Minneapolis child care centers is attached (Appendix D).

Other states have held to the position that, except for court-ordered restrictions, the state has no authority to impose residency or proximity restrictions.

Findings

1. Proximity restrictions have been adopted in other states, but there has been little experience with actual implementation of these laws. Two states, Alabama and Iowa, recently enacted or revised proximity restrictions. In October 2002, Iowa had the first charge against an offender for violating their law. This is considered a test case for the restrictions.

2. Proximity restrictions would severely limit already scarce residential options for level three offenders.

3. There is no evidence in Minnesota that *residential* proximity to schools or parks affects re-offense. Thirteen level three offenders released between 1997 and 1999 have been rearrested for a new sex offense since their release from prison, and in none of the cases has residential proximity to schools or parks been a factor in the re-offense.

4. There is no evidence that concentration of level three sex offenders increases the likelihood of reoffense within the community. Four of the 13 level three reoffenders were living with other sex offenders at the time of their re-arrest. However, in three of these cases, the sex offenders were living together while in county jail, civilly committed, or in a halfway house. In the fourth instance, a level three offender re-offended while he was living with a level two sex offender. This offender provided information to his therapist, which eventually led to the re-arrest of the level three offender for a child pornography offense.

5. Information on sex offenders has a negative effect on the perception of safety in a neighborhood. Increased information on sex offenders has a negative effect on property values. Increased residential concentration of level three offenders – in addition to other negative neighborhood issues such as crime, housing deterioration, environmental hazards, and traffic problems – expands that negative effect.

6. Proximity restrictions will have the effect of restricting level three offenders to less populated areas, with fewer supervising agents and fewer services for offenders (i.e., employment, education, and treatment). The result of proximity restrictions would be to limit most level three offenders to rural, suburban, or industrial areas.

Recommendations

1. **Since blanket proximity restrictions on *residential* locations of level three offenders do not enhance community safety, the current offender-by-offender restrictions should be retained.** Proximity restrictions, based on circumstances of an individual offender, serve as a valuable supervision tool. Continued use – through extension of conditional release and specific release conditions and restrictions – is appropriate. Most of these supervision proximity restrictions address the issue of the offender associating or interacting with children or minors, rather than where the offender resides.

2. **Public notification of residential locations of level three offenders serves a valuable service and should continue.** Community residents with this knowledge are able to determine what level of interaction they feel is acceptable for their family safety. The information raises awareness, dispels rumors, and allows greater knowledge of safety issues.

3. **A legislative hearing on the expansion of housing options should be held.** Appropriate housing is the key to dispersal and successful placement of the sex offender population. A legislative hearing to address all the issues related to housing of released level three sex offenders would prove valuable. The DOC is currently conducting an interagency work group on offender housing. Included in this group's study are the unique challenges of finding housing options for level three offenders. Options under exploration are public/private partnerships, charitable and nonprofit efforts, changes in policy, and other outreach programs

4. **Explore various housing options.** The interagency work group on offender housing sponsored by the DOC is approaching the need for offender housing through several methods. These methods include identifying ways to assist offenders in becoming more attractive tenants, as well as identifying ways to encourage and assist landlords in providing housing to offenders. Also, the work group is identifying various models of existing housing programs that may be adaptable to address the housing needs of offenders as they transition from prison to the community. Approaches such as master leases and "three-quarter way" houses seem appropriate for the offender population for several reasons – among them the flexibility to expect many offenders to reach and maintain housing self-sufficiency fairly soon after release.

   The population that presents the most daunting housing issues is sex offenders who are identified as levels two and three through the community notification process. At present, no special solutions have been identified for this population.

   Although the work group has not completed its task the time of this report, the following recommendations are offered:

   a) **Increase the number and capacity of halfway houses.** In some cases the needs of the offender and public safety are best served when the offender transitions to the community through the highly structured environment of a halfway house. Current halfway house resources are inadequate to meet the number of offenders who need services. Also, there are regions of the state that have no halfway house resources.

   b) **Provide funding to establish "three-quarter way" houses.** These houses provide another step in a continuum of housing options. Three-quarter way houses provide affordable housing for offenders and a positive supportive community within the house. There is no staff on the premises, but some degree of monitoring of the house is done by off-site staff. Such a facility also allows for an increased level of community supervision by agents, law enforcement, and the public. Most often these houses are expected to be nearly financially self-sufficient after an initial start-up period.

   c) **Provide funding for scattered site lease programs.** Housing for offenders can be economically provided by contracting with housing programs. Housing programs can lease properties from owners and sublease to offenders. Included in this plan is the expectation that the offender is assessed payment on a sliding fee schedule. It is also an expectation that the offender will assume responsibility for all housing expenses soon after release.

d) **Increase funding of the emergency housing fund.** Some offenders are released to regions of the state in which there is no housing program available. Increased funds in this account will allow the DOC to provide assistance to an offender in meeting housing expenses during transition. Repayment would be assessed on a sliding fee schedule.

e) **Evaluate the feasibility of building and operating regional correctional centers.** These centers would provide a comprehensive set of correctional services. The services may range from probationary supervision, an alternative to incarceration for short-term offenders, and supervision services for offenders on release from state correctional facilities. The services would include housing for some offenders.

Appendix A

Minnesota Sessions Laws 2002
CHAPTER 385-S.F.No. 3172
Sec. 10. [REPORT.]
(a) By January 1, 2003, the commissioner of corrections must report to the chairs and ranking minority members of the house and senate committees with jurisdiction over criminal justice policy and finance on the issues outlined in paragraph (b). In developing the report, the commissioner must consult with representatives of local corrections agencies in noncommunity corrections act counties, community corrections act counties, and county probation officer counties. The commissioner may also consult other interested parties.

(b) The commissioner of corrections must report on the following issues involving level III sex offenders:
(1) a detailed explanation of how offenders re-enter the community after being released from prison, specifically focusing on how housing and jobs are found and the role that state and local corrections agents play in helping an offender find housing and jobs, including anecdotal evidence;
(2) the statewide locations and concentrations of the offenders;
(3) the effects of having the offenders living in close proximity to one another, specifically including the effects of offenders living within 1,500 feet of one another, including the effect on offense rates and voluntary relocation of neighborhood residents;
(4) efforts under Minnesota Statutes, section 244.052, subdivision 4a, that have been undertaken by local and state corrections agencies to mitigate the concentration of the offenders, especially with regard to the proximity of the offenders to schools;
(5) the likely effects of a policy requiring that offenders live a certain distance from schools;
(6) the likely effects of a policy requiring that offenders not live within a certain distance of each other;
(7) the restricted zones that would result in the cities of Minneapolis and St. Paul if a 1,500 foot proximity restriction was adopted in relation to schools, parks, and other offenders, with detailed maps; and
(8) policies adopted by other states relating to mitigating the concentration of sex offenders.

Minnesota Statutes, Section 244.052

Subd. 4a. **Level III offenders; location of residence.**
(a) When an offender assigned to risk level III is released from confinement or a residential facility to reside in the community or changes residence while on supervised or conditional release, the agency responsible for the offender's supervision shall take into consideration the proximity of the offender's residence to that of other level III offenders and proximity to schools and, to the greatest extent feasible, shall mitigate the concentration of level III offenders and concentration of level III offenders near schools.

Appendix B-1

County Locations of Level Three Offenders **December 31, 2002**
(see attached maps)

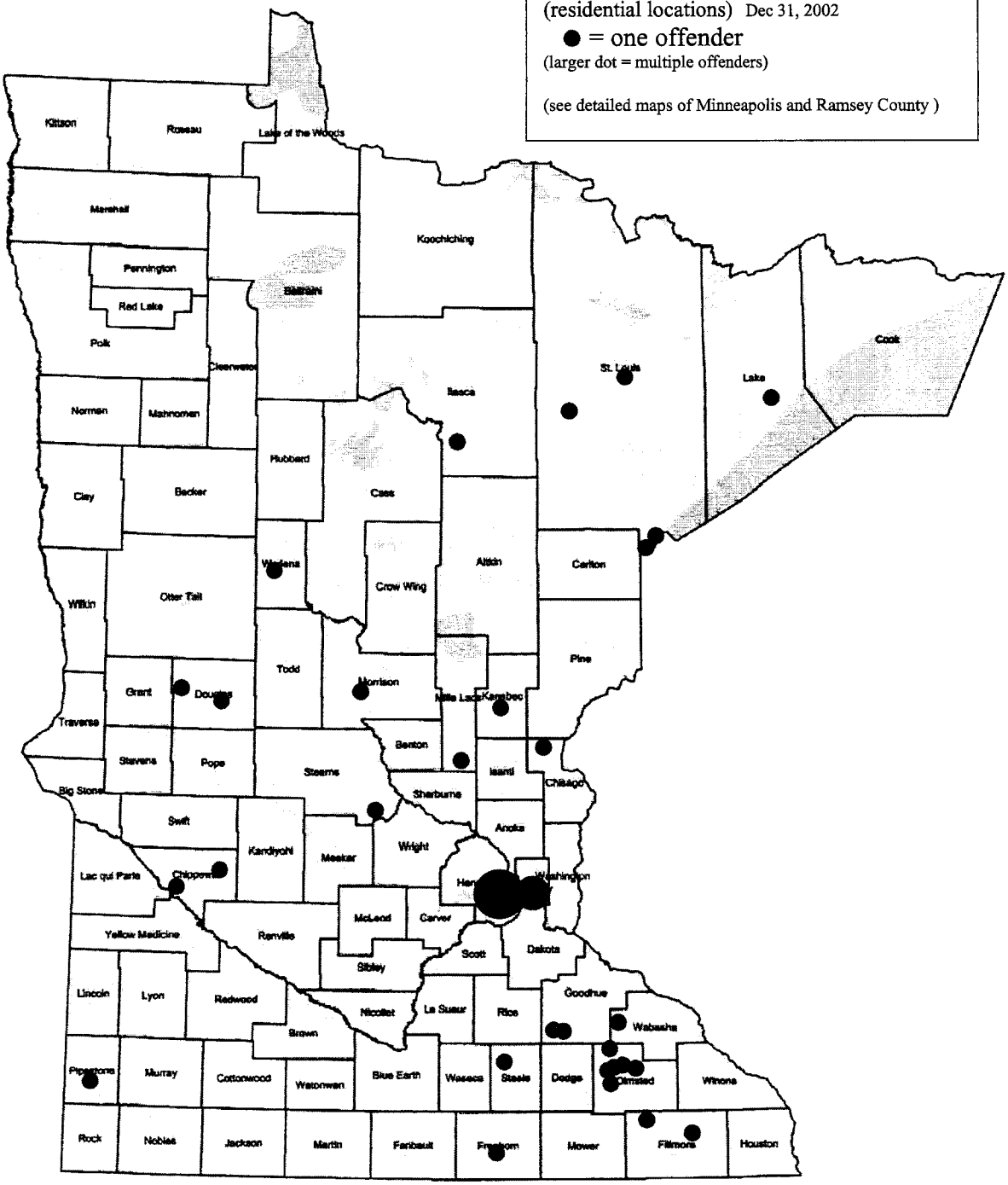
County	Number of Level Three Offenders
Hennepin	50 (45 in Minneapolis)
Ramsey	14 (12 in St. Paul)
Becker	2
Chippewa	2
Chisago	1
Clearwater	1
Douglas	2
Fillmore	2
Freeborn	1
Goodhue	2
Itasca	1
Kanabec	1
Lake	1
Mille Lacs	1
Morrison	1
Olmsted	6
Pipestone	1
St. Louis	4
Stearns	1
Steele	1
Wabasha	1
Wright	1
Total	97

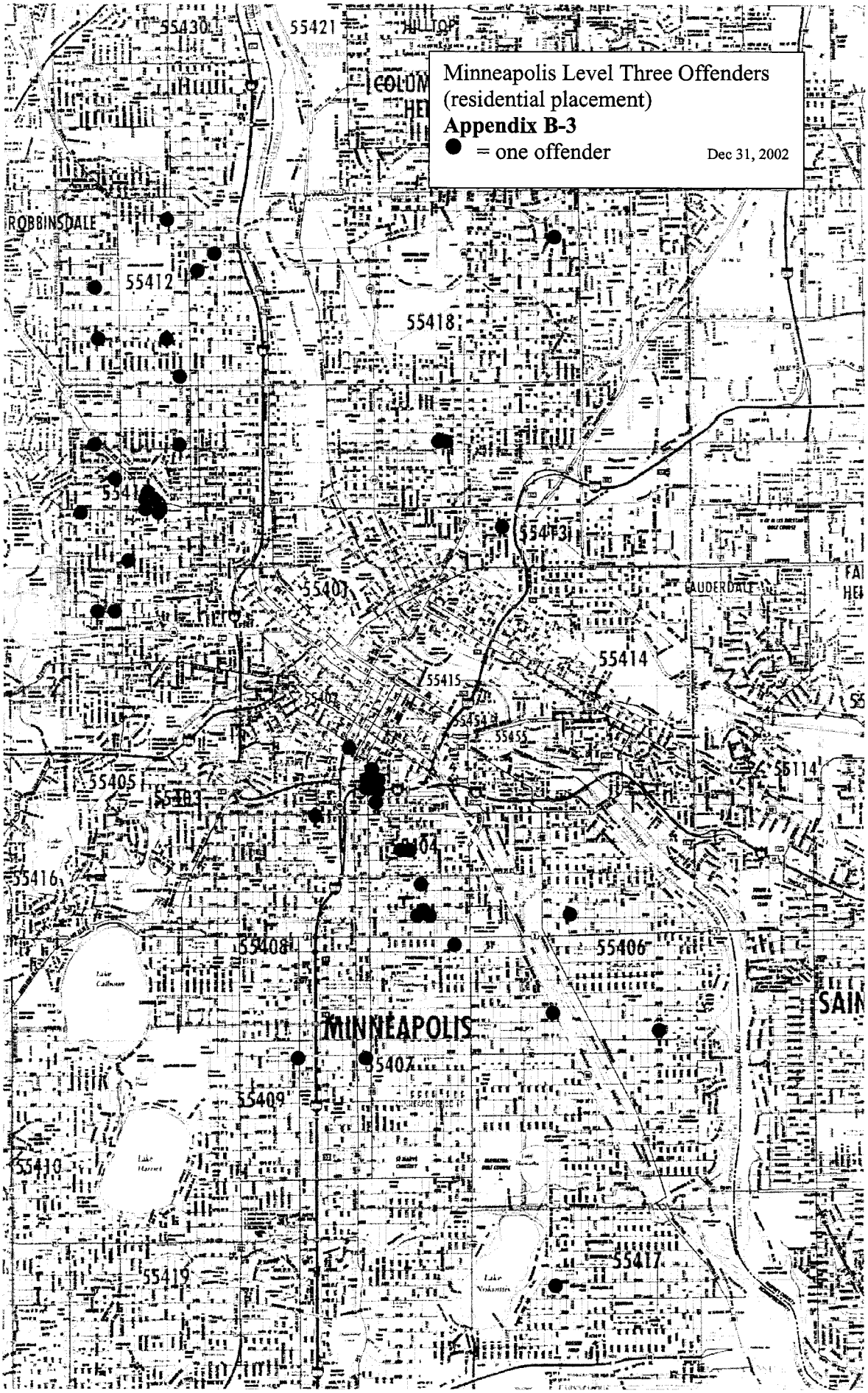
The following Minnesota map shows the location of each level three offender living in a residential setting. Each small dot denotes one level three offender. The larger dots in Minneapolis and St. Paul refer to larger populations of level three offenders. Detailed maps of each location within those two cities are attached.

Appendix B-2

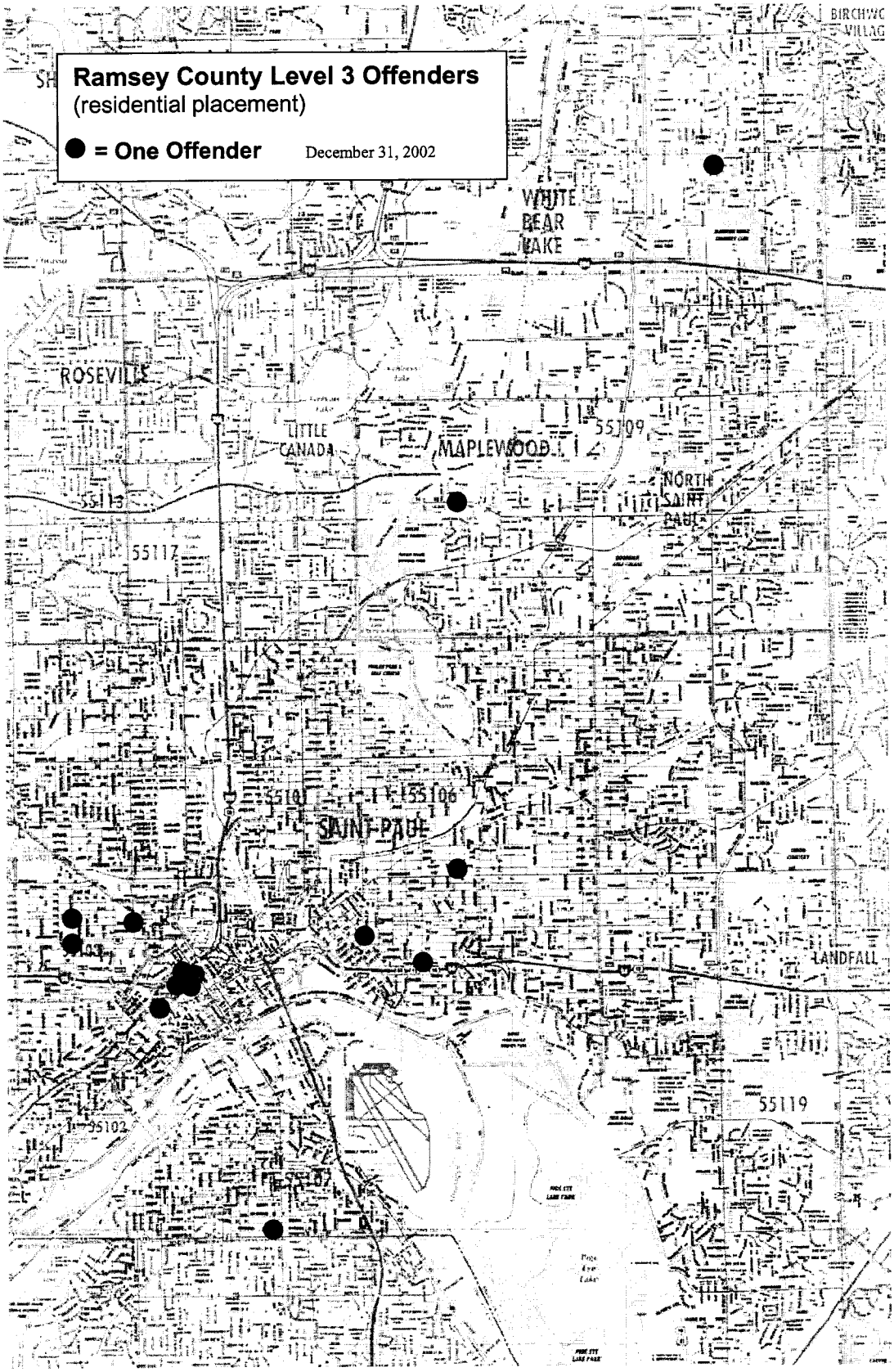
Location of Level Three Offenders in Minnesota
(residential locations) Dec 31, 2002
● = one offender
(larger dot = multiple offenders)

(see detailed maps of Minneapolis and Ramsey County)




Minneapolis Level Three Offenders
(residential placement)
Appendix B-3
● = one offender
Dec 31, 2002
ROBBINSDALE
55412
55418
55401
55414
55415
55405
55416
55408
55406
MINNEAPOLIS
55407
55409
55410
55419
55417
55421

Appendix B-4


Ramsey County Level 3 Offenders
(residential placement)
● = One Offender
December 31, 2002
WHITE BEAR LAKE
ROSEVILLE
LITTLE CANADA
MAPLEWOOD
55109
NORTH SAINT PAUL
55113
55117
55106
SAINT PAUL
LANDFALL
55119
55102

1,500' Restricted Proximity Zones around Minneapolis Public and Private Schools

The attached map (Appendix C-2) shows those areas that would be restricted from level three residence under a 1500' proximity restriction. A clear definition of what constitutes the beginning of the zone is necessary for further detail. Proximity to the school could be the actual building, school property, or a further defined "school zone" similar to that used in defining a "drug-free school." The zones on this map are based on distance from the school property, although surveys would be necessary to precisely define the zone for each individual school.

November 1, 2002

Number of Minneapolis public schools.....136
Number of Minneapolis non-public schools..... 30

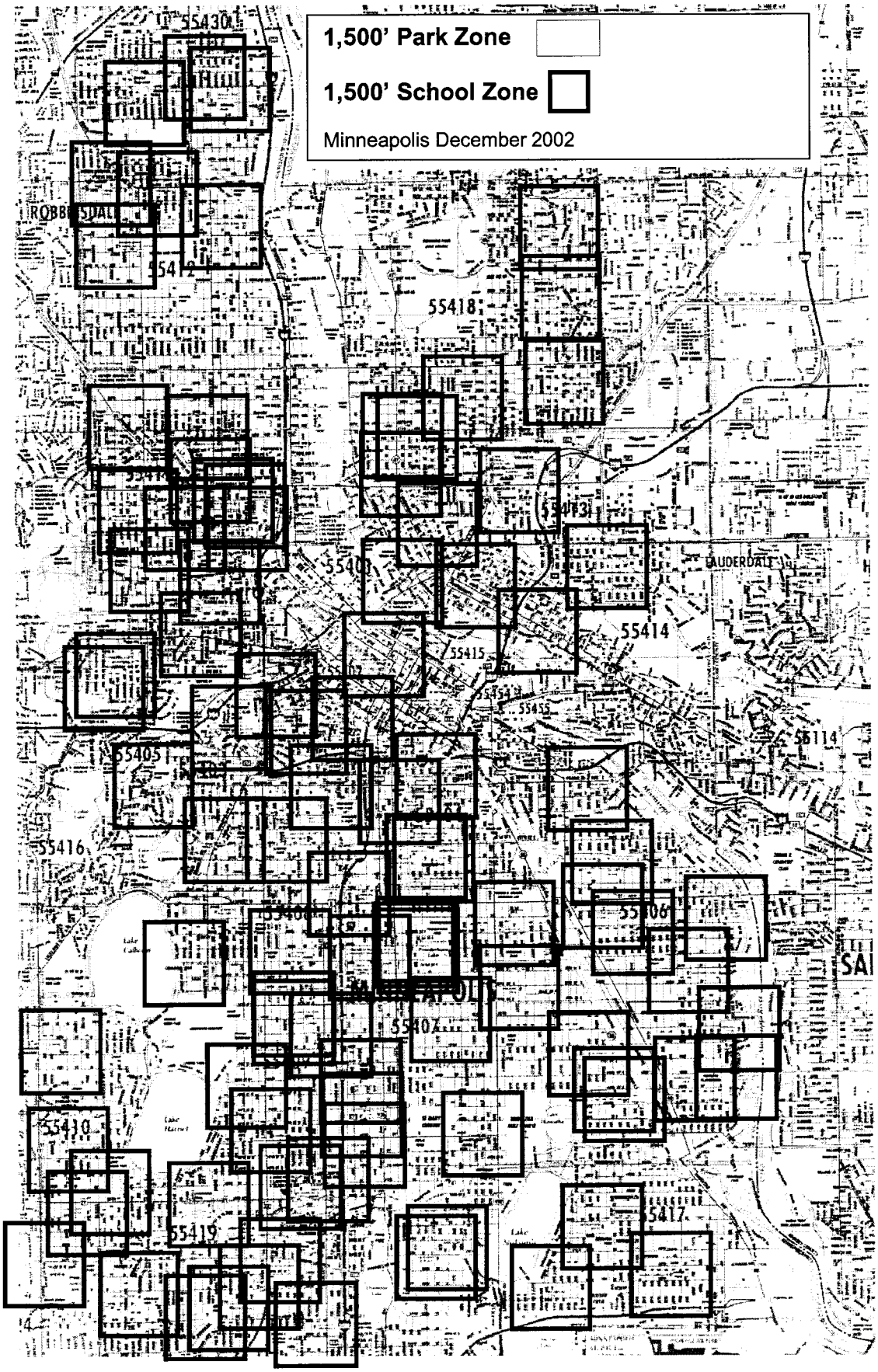
1,500' Restricted Proximity Zones around Minneapolis parks

Park zones are shaded (Appendix C-2).

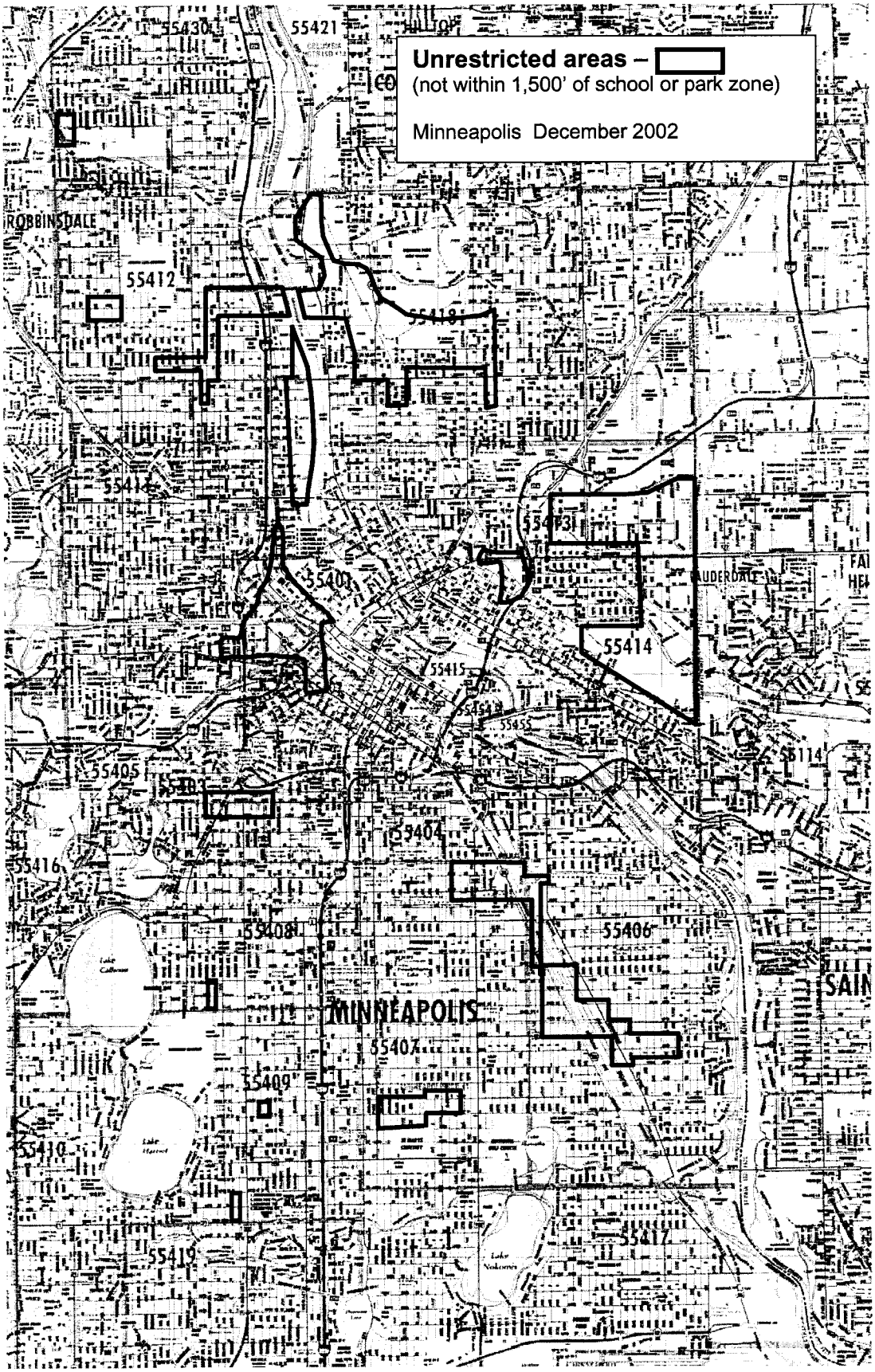
Unrestricted Zones

Appendix C-3 shows those areas that do not fall within either a school or a park zone. These would be areas eligible for residency by level three offenders.

Appendix C-2


1,500' Park Zone
1,500' School Zone
Minneapolis December 2002
55430
55418
55414
55415
55405
55416
55410
55419
55417
LAUDERDALE

Appendix C-3


Unrestricted areas –
(not within 1,500' of school or park zone)
Minneapolis December 2002
55421
55430
ROBBINSDALE
55412
55418
55414
55415
55405
55404
55416
55408
55406
MINNEAPOLIS
55407
55409
55410
55419
55417
55114

Appendix D

1,500' Restricted Proximity Zones around Minneapolis Day Care Facilities

Child Care Center Facilities registered with the Minnesota Department of Human Services as of November 1, 2002

Minneapolis.....132

These facilities are spread throughout the city. Restriction zones would be similar in number and extent as those around schools. Many of the zones would overlap each other and those surrounding schools and parks. Additional areas would also fall under restriction, solely based on proximity to a child care facility. In addition, there are 527 licensed in-home day cares. Not included in this number are legally unlicensed in-home day cares (those not required to be licensed or registered).

Appendix E

Code of Alabama § 15-20-26. >Adult criminal sex offender -- Prohibited residence locations, etc.

(a) Unless otherwise exempted by law, no adult criminal sex offender shall be allowed to establish a residence or accept employment within 1,000 feet of the property on which any school or child care facility is located.

(b) Unless otherwise exempted by law, no adult criminal sex offender shall be allowed to establish a residence or any other living accommodation within 1,000 feet of the property on which any of his or her former victims, or the victims' immediate family members reside.

(c) No adult criminal sex offender shall be allowed to establish a residence or any other living accommodation where a minor resides. Notwithstanding the foregoing, an adult criminal sex offender may reside with a minor if the adult criminal sex offender is the parent of the minor, unless one of the following conditions applies:

(1) The adult criminal sex offender's parental rights have been or are in the process of being terminated as provided by law.

(2) Any minor or adult child of the adult criminal sex offender was a victim of a criminal sex offense committed by the adult criminal sex offender.

(d) No adult criminal sex offender shall be permitted to willfully or knowingly come within 100 feet of any of his or her former victims, except as elsewhere provided by law, or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim.

(e) Changes to property within 1,000 feet of an adult criminal sex offender's registered address which occur after an adult criminal sex offender establishes residency or accepts employment shall not form the basis for finding that a criminal sex offender is in violation of the residence or employment restrictions of this article.

(f) An adult criminal sex offender who knowingly violates the provisions of this section shall be guilty of a Class C felony.

Effective July 1, 2002

Appendix F

SENATE FILE 2197 STATE OF IOWA Effective July 1, 2002

AN ACT

PROHIBITING A REGISTERED SEX OFFENDER FROM RESIDING NEAR A SCHOOL OR CHILD CARE FACILITY, AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 692A.1, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. "Child care facility" means as defined in section 237A.1.

Sec. 2. Section 692A.5, subsection 1, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Inform the person, if the person's residency is restricted under section 692A.2A, that the person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility.

Sec. 3. NEW SECTION. 692A.2A RESIDENCY RESTRICTIONS - CHILD CARE FACILITIES AND SCHOOLS.

1. For purposes of this section, "person" means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor.

2. A person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility.

3. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor.

4. A person residing within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this section if any of the following apply:

a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.

b. The person is subject to an order of commitment under chapter 229A.

c. The person has established a residence prior to the effective date of this Act or a school or child care facility is newly located on or after the effective date of this Act.

d. The person is a minor or a ward under a guardianship.

Appendix G

From The Gazette, Cedar Rapids, Iowa
http://www.crgazette.com/go_article/0,1336,42140%252D1,00.html?cks=0

Offender charged for living by Coralville school, By Erin Jordan

Wednesday, October 02, 2002, 11:39:08 PM

CORALVILLE -- A 21-year-old Coralville man is the first person in Iowa to be charged under a new Iowa law that prohibits convicted sex offenders from living within 2,000 feet of a school or day-care center.

Michael James Roe Jr., convicted of sex offenses in 1998 and 2000, was accused Wednesday of living in a residence prohibited for a convicted sex offender and tampering with records.

A law signed May 9 says sex offenders may be charged with an aggravated misdemeanor if found living within the 2,000-foot radius of a school or day-care provider.

Johnson County Attorney J. Patrick White said charges filed against Roe may become a test case for defense attorneys who want to challenge the law, which, when implemented July 1, made most of Iowa City and Coralville off limits to sex offenders.

"Even if we think it's a bad law, we can't ignore what the Legislature has done," White said about filing the charge.

Roe, convicted of assault with intent to commit sexual abuse in 1998 and indecent contact with a child in 2000, is accused of living at 406 Third Ave., which is within blocks of Coralville Central Elementary School and several registered day-care centers, said Coralville police Lt. Ron Wenman.

"After he registered, we made him aware he was living in a prohibited area," Wenman said. So Roe re-registered at 210 E. Ninth St., Apt. 14, police said. However, he kept living at the Third Avenue home, the Johnson County District Court criminal complaint filed against Roe states.
Police learned Roe was still living at the Third Avenue home while investigating other matters, Wenman said. Roe's father, Michael Roe Sr., 45, was charged with assault last week, and Roe's mother, Sara Roe, 44, was charged with drug possession Monday.

Coralville police talked with White before filing charges against the younger Roe, Wenman said.
White said Roe's case is one of several he has discussed with local law enforcement, but the first to result in charges.

Bob Brammer, spokesman for the Iowa Attorney General's Office, said he is not aware of any other charges in Iowa under the new sex offender law.

Amending law White fears the law may be unconstitutional and has talked with legislators, as recently as last week, about amending the law or shortening the 2,000-foot no-reside zone.
"The disappointing part of this is some legislators knew it (the law) was flawed and that someone would challenge it, but they voted for it anyway," White said.

Lawmakers have also told White it may be tough to amend the law because legislators will not want to be labeled "soft on sex offenders," White said.

"This is a very disappointing approach to legislating," he said.

White said law enforcement agencies have discretion in enforcing laws. But local agency heads agree, he said, they do not want someone to be injured by a convicted sex offender because the offender is living in a forbidden area.

"In the meantime, it is law under the state of Iowa."

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SEXUAL PREDATOR CASES

Including:

Milks v. STATE of Florida
Supreme Court of Florida
Feb. 3, 2005

STATE of Iowa v. Seering
Supreme Court of Iowa
July 29, 2005

Doe v. Miller
United States Court of Appeals, Eighth Circuit
April 29, 2005

Doe v. Moore
United States Court of Appeals, Eleventh Circuit
June 6, 2005

H

Briefs and Other Related Documents

Supreme Court of Florida.
Everett Ward MILKS, Petitioner,
v.
STATE of Florida, Respondent.
State of Florida, Appellant,
v.
Ferman Carlos Espindola, Appellee.
Nos. SC03-1321, SC03-2103.

Feb. 3, 2005.

Background: In two cases, convicted sex offenders were adjudicated sexual predators subject to the registration and notification requirements under the Sexual Predators Act. Both offenders appealed. In *Milks v. State*, 848 So.2d 1167, the Second District Court of Appeal affirmed, but in *Espindola v. State*, 855 So.2d 1281, the Third District Court of Appeal reversed and certified conflict.

Holdings: The Supreme Court, Bell, J., held that:
(1) due process did not require evidentiary hearing to determine whether convicted sex offenders subject to sexual predator classification presented danger to community, and
(2) adjudication as sexual predator subject to Act's requirements based solely on qualifying conviction did not violate separation of powers doctrine.
Decision of Second The District Court of Appeal approved; decision of Third District Court of Appeal reversed.

Anstead, J., filed opinion concurring in part and dissenting in part in which Pariente, C.J., and Quince, J., concurred.

West Headnotes

[1] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[1] Mental Health 469(4)
257Ak469(4) Most Cited Cases
Due process did not require evidentiary hearing to determine whether convicted sex offenders adjudicated sexual predators presented danger to community, under Sexual Predators Act; only fact material to subjecting sex offender to Act's registration and public notification requirements was qualifying conviction. U.S.C.A. Const.Amend. 14; West's F.S.A. Const. Art. 1, § 9; West's F.S.A. § 775.21.

[2] Constitutional Law 52
92k52 Most Cited Cases

[2] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Sexual predator classification subjecting convicted sex offender to registration and public notification requirements under Sexual Predators Act based solely on qualifying conviction for enumerated sex offense did not violate separation of powers doctrine by allegedly wresting from courts discretion to determine whether offender should be declared sexual predator; rather, Act was permissible exercise of public-policy-making function of legislature. West's F.S.A. § 775.21.
***925** James Marion Moorman, Public Defender and Anthony C. Musto, Special Assistant Public Defender, Tenth Judicial Circuit, Bartow, FL, for Petitioner.

Charles J. Crist, Jr., Attorney General and Christopher M. Kise, Solicitor General, Tallahassee, FL; Robert J. Krauss, Chief Assistant Attorney General and Katherine V. Blanco, Senior Assistant Attorney General, Tampa, FL, for Respondent.

Charles J. Crist, Jr., Attorney General and Christopher M. Kise, Solicitor General, Tallahassee, FL, and Richard L. Polin, Criminal Appeals Bureau Chief, Miami, FL, for Appellant.

Bennett H. Brummer, Public Defender and John Eddy Morrison, Assistant Public Defender, Eleventh Judicial Circuit, Miami, FL, for Appellee.

BELL, J.

We have before us two cases challenging the constitutionality of the Florida Sexual Predators Act, section 775.21, Florida Statutes (2003). In *Milks v. State*, 848 So.2d 1167 (Fla. 2d DCA 2003), the Second District Court of Appeal declared the Act constitutional, rejecting procedural-due-process and separation-of-powers challenges. In *Espindola v.*

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State, 855 So.2d 1281 (Fla. 3d DCA 2003), the Third District Court of Appeal declared the Act unconstitutional on procedural-due-process grounds. [FN1] We approve the decision of the Second District in *Milks* and reverse the decision of the Third District in *Espindola*. We hold that the Act does not violate procedural due process or separation of powers and, as against these challenges, is constitutional. We decline at this time to consider the substantive-due-process and equal-protection challenges briefed by the parties but not addressed by the district courts below.

FN1. We have jurisdiction under article V, section 3(b)(1) and (3) of the Florida Constitution.

I. BACKGROUND

The Florida Sexual Predators Act lists certain offenses (and combinations of offenses) and mandates that a person convicted of any such offense be designated a "sexual predator." *See* § 775.21(4)(a)(1), Fla. Stat. (2003) (sexual predator criteria); § 775.21(5), Fla. Stat. (2003) (designation). Once designated as such, a "sexual predator" is subject, among other things, to the Act's registration and public-notification requirements. § 775.21(6), Fla. Stat. (2003) (registration); § 775.21(7), Fla. Stat. (2003) (public notification). The Act neither provides for any predesignation (or preregistration or pre-public-notification) hearing on the issue of an offender's actual dangerousness, nor does it provide the trial court with any discretion on the matter. If a person has been convicted of an enumerated offense, he must be designated by the court as a "sexual predator," and he is automatically subject to the Act's requirements. [FN2]

FN2. The 1995 version of the Act, the first version to include a public-notification provision, did provide for a pre-public-notification "dangerousness" hearing. Before one designated as a "sexual predator" could be subject to the 1995 Act's public-notification requirements, the circuit court would have to determine by a preponderance of the evidence that "the sexual predator poses a threat to the public" and that "notice to the community where the sexual predator temporarily or permanently resides is necessary to protect public safety." § 775.225, Fla. Stat. (1995). The Legislature's 1996 revisions, however, removed the pre-public-notification "dangerousness" hearing and made public notification dependent only on one's designation as a sexual predator, *see* § 775.21(7), Fla. Stat. (Supp.1996), which itself did not require a finding of "dangerousness," only the existence of a qualifying conviction (or combination of convictions).

***926** In *Milks v. State*, 848 So.2d 1167 (Fla. 2d DCA 2003), the Second District declared the Act constitutional. The court rejected Milks' separation-of-powers challenge, citing *Kelly v. State*, 795 So.2d 135 (Fla. 5th DCA 2001) (rejecting separation-of-powers challenge to the Act), and *State v. Cotton*, 769 So.2d 345 (Fla.2000) (rejecting separation-of-powers challenge to the Prison Releasee Reoffender Punishment Act). *See Milks*, 848 So.2d at 1169. The Second District also rejected Milks' procedural-due-process challenge. Citing *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003), the court held that "due process did not entitle the defendant to a hearing to establish whether he or she was dangerous, as that fact was not material under the statute." *Milks*, 848 So.2d at 1169.

In *Espindola v. State*, 855 So.2d 1281 (Fla. 3d DCA 2003), the Third District declared the Act unconstitutional on procedural-due-process grounds. "[I]n the absence of a provision allowing for a hearing to determine whether the defendant presents a danger to the public sufficient to require registration and public notification," *id.* at 1290, the Third District held that the Act "fails to provide minimal procedural due process." *Id.* at 1282. Relying on the statement of legislative findings contained in the Act, which state, among other things, that sexual predators "present an extreme threat to the public safety," § 775.21(3)(a), Fla. Stat. (2003), justifying the Act's registration and notification requirements, § 775.21(3)(b), Fla. Stat. (2003), the Third District concluded that "the determination of 'dangerousness' is of import to [the Act]," and, consequently, the Act's "total failure to provide for a judicial hearing on the risk of the defendant's committing future offenses[ ] makes it violative of procedural due process." *Espindola*, 855 So.2d at 1290. Because it concluded that "dangerousness" was a material element under the Act, the Third District held that *Doe* was not controlling. *Id.*

II. DISCUSSION

A. Procedural Due Process

[1] Espindola and Milks argue that the Act violates their rights to procedural due process. *See* U.S. Const. amend. XIV, § 1 ("No State shall ... deprive any person of life, liberty, or property, without due

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process of law."); art. I, § 9, Fla. Const. ("No person shall be deprived of life, liberty, or property without due process of law...."). This claim is based on the fact that the Act does not provide any procedure for determining in individual cases whether or not a person with an Act-qualifying conviction actually presents a danger to the community that would justify the imposition of the Act's requirements, particularly the Act's registration and public-notification requirements. The United States Supreme Court rejected an identical challenge to Connecticut's sex offender law in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003), and we see no reason why the same result is not mandated here.

***927** In *Doe*, the United States Supreme Court considered a procedural-due-process challenge to Connecticut's sex offender law, which "applies to all persons convicted of criminal offenses against a minor, violent and nonviolent sexual offenses, and felonies committed for a sexual purpose." 538 U.S. at 4, 123 S.Ct. 1160. The federal circuit court held that Connecticut's Act "violated the Due Process Clause because officials did not afford registrants a predeprivation hearing to determine whether they are likely to be 'currently dangerous.' " *Id.* at 4, 123 S.Ct. 1160 (quoting *Doe v. Department of Public Safety*, 271 F.3d 38, 46 (2d Cir.2001)). The Supreme Court, noting that "Connecticut ... has decided that the registry requirement shall be based on the fact of previous conviction, not the fact of current dangerousness," reversed the circuit court "because due process does not require the opportunity to prove a fact [e.g., current dangerousness] that is not material to the State's statutory scheme." *Doe*, 538 U.S. at 4, 123 S.Ct. 1160. The Court went on to explain that

> the fact that respondent seeks to prove--that he is not currently dangerous-- is of no consequence under Connecticut's Megan's Law.... [T]he law's requirements turn on an offender's conviction alone--a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest. No other fact is relevant to the disclosure of registrants' information....
>
> In short, even if respondent could prove that he is not likely to be currently dangerous, Connecticut has decided that the registry information of *all* sex offenders--currently dangerous or not--must be publicly disclosed.... [A]ny hearing on current dangerousness [would be] a bootless exercise.

Id. at 7-8, 123 S.Ct. 1160 (citations omitted).

The same analysis applies here. [FN3] Just as the Connecticut Legislature did, the Florida Legislature has decided that the Act's designation, registration, and public-notification requirements, as well as the Act's other provisions, such as its employment restrictions, "shall be based on the fact of previous conviction, not the fact of current dangerousness." *Id.* at 4, 123 S.Ct. 1160. [FN4] To provide Espindola and Milks with hearings at which they could contest the fact of current dangerousness would be pointless. Even if they could ***928** prove that they present absolutely no threat to the public safety, the Act would still require that they be designated as "sexual predators," that they register, and that the public be notified. As the Court held in *Doe*, "due process does not require the opportunity to prove a fact [here, that one is not dangerous] that is not material to the State's statutory scheme." 538 U.S. at 4, 123 S.Ct. 1160. [FN5] The only material fact under Florida's statutory scheme, just as under Connecticut's, is the fact of a previous conviction--all of the burdens imposed by the Act, from the designation as a "sexual predator" to the registration and public-notification requirements to the employment restrictions, flow from the fact of a previous conviction--and both Espindola and Milks received "a procedurally safeguarded opportunity" to contest that fact. *Id.* at 7, 123 S.Ct. 1160. That is all that procedural due process requires. [FN6]

FN3. In *Doe*, the Court assumed (without deciding) that the Connecticut Act implicated constitutionally protected liberty interests. 538 U.S. at 7, 123 S.Ct. 1160. The question of procedural due process (or, for that matter, substantive due process) does not arise, of course, unless governmental action implicates a constitutionally protected interest. But the Court found it unnecessary to decide whether the Act implicated constitutionally protected liberty interests because even assuming that it did, the Act provided constitutionally adequate procedures. *Id.* Although it is also unnecessary for us to decide the issue, for the same reasons the Court in *Doe* found it unnecessary, we have in fact already held that the Florida Sexual Predators Act implicates constitutionally protected liberty interests. In *State v. Robinson*, 873 So.2d 1205 (Fla.2004), we applied the so-called "stigma-plus" test of *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976), and held that the Act implicates the constitutionally protected liberty interest in one's reputation. *Robinson*, 873 So.2d at

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1213-14. The only question, therefore, is whether the Act provides constitutionally adequate procedures before depriving a person of this constitutionally protected interest. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989). As we will explain below, the answer to this question is "yes, it does."

FN4. *See supra* note 2 (noting that the 1996 version of the Act removed the pre-public-notification "dangerousness" hearing and made public notification, as well as designation and registration, dependent only on the fact of a previous conviction). The Third District attempted to distinguish Florida's Act from Connecticut's, and thereby take Florida's Act outside the scope of *Doe*, by emphasizing the express legislative findings contained in Florida's Act. The Florida Legislature found, among other things, that sexual predators "present an extreme threat to the public safety," § 775.21(3)(a), Fla. Stat. (2003), and that this threat justified the Act's registration and public-notification requirements. § 775.21(3)(b), Fla. Stat. (2003). The Third District is simply incorrect in concluding that these legislative findings make "dangerousness" a material fact under the Act. The Act's substantive provisions clearly make the Act's requirements turn only on the fact of previous conviction, not the fact of dangerousness. In fact, the 1996 version of the Act *eliminated* the pre-public-notification "dangerousness" hearing and made the public-notification provision apply automatically upon designation and registration, which themselves applied automatically upon the fact of previous conviction. *See Robinson*, 873 So.2d at 1212 ("Under the Act, the *sole* criterion for determining whether a defendant must be designated a 'sexual predator' is whether the defendant was convicted of a qualifying offense."). The legislative findings on which the Third District relied do not make any of the Act's provisions turn on a finding of dangerousness. Quite to the contrary, those findings serve as the Legislature's asserted justification for *not* requiring individualized findings of dangerousness before applying the Act's provisions, that is, for treating as a class those convicted of certain crimes and applying the Act's requirements to them all.

FN5. Whether the statutory scheme *must* make "dangerousness" a material factor (before the State may apply any or all of the Act's provisions, or, as the dissent suggests, before the State may designate a person as a "sexual *predator* " rather than merely a "sexual offender") is a question of *substantive* due process. The substantive-due-process issue and possible equal-protection issues were not addressed by either district court below, and for this reason we do not consider them here. We express no opinion as to the merits of any of these possible claims.

FN6. The dissent attempts to distinguish Florida's Act from Connecticut's, and thereby take Florida's Act outside the scope of *Doe*, by noting that Florida's Act designates a person convicted of an Act-qualifying crime as a "sexual predator," whereas Connecticut's Act employs the term "sexual offender." But in the context of our procedural-due-process analysis, this distinction is immaterial. (We express no opinion as to whether this creates a substantive due process problem. *See supra* note 5.) Regardless of the term employed, the requirements that one be designated as such, and then subject to registration and public notification, implicate the constitutionally protected interest in one's reputation. We do not think the dissent is suggesting that no due process protections would apply if the Act simply used the term "offender" rather than "predator." So the question, either way, is whether the person (whether he be designated a "sexual predator" or a "sexual offender") has been afforded a constitutionally safeguarded opportunity to the contest the facts which the State must prove before depriving him of his liberty interest in his reputation. Because all the State must prove under the Act is whether the person has been convicted of an Act-qualifying offense, both Espindola and Milks have been afforded constitutionally adequate procedures.

B. Separation of Powers

[2] The Act vests no discretion in the trial courts with respect to determining ***929** whether the Act

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should apply to a particular qualifying offender. *See* § 775.21(4)(a)(1), Fla. Stat. (2003); *Robinson*, 873 So.2d at 1212 ("Under the Act, the *sole* criterion for determining whether a defendant must be designated a 'sexual predator' is whether the defendant was convicted of a qualifying offense."). Espindola and Milks argue that this lack of discretion renders the Act violative of the Florida Constitution's separation-of-powers provision. They rely on Judge Padavano's concurring opinion in *State v. Curtin*, 764 So.2d 645 (Fla. 1st DCA 2000), where he suggested the possible constitutional infirmity because the statute "appears to 'wrest from [the] courts the final discretion' to decide whether an offender should be declared a sexual predator." *Id.* at 648 (Padavano, J., concurring) (alteration in original) (quoting *State v. Benitez*, 395 So.2d 514, 519 (Fla.1981)).

We reject this argument. Although it is argued that the Act "wrest[s] from [the] courts the final discretion to decide whether an offender should be declared a sexual predator," *Curtin*, 764 So.2d at 648 (Padavano, J., concurring) (internal quotation marks omitted), this is not a constitutional infirmity. The Act is an exercise of the public-policy-making function of the Legislature to declare that persons who have been convicted of certain offenses should be designated as "sexual predators" and should be subjected to the registration, public-notification, and other requirements of the Act. It seems apparent that the real objection to the Act is that it "creates an inflexible rule that will stigmatize some offenders who are not within the three distinct classes of offenders the Legislature targeted in section 775.21(3)(a)." *Id.* The Act's inflexibility might well be a shortcoming, but it is not a separation-of-powers problem.

III. CONCLUSION

For the reasons expressed above, we approve the decision of the Second District in *Milks* and reverse the decision of the Third District in *Espindola.*

It is so ordered.

WELLS, LEWIS, and CANTERO, JJ., concur.

ANSTEAD, J., concurs in part and dissents in part with an opinion, in which PARIENTE, C.J., and QUINCE, J., concur.

ANSTEAD, J., concurring in part and dissenting in part.

I cannot agree with the majority that the Third District in *Espindola* has erroneously misconstrued the provisions of Florida's Sexual Predator Act in distinguishing Florida's Act from the Connecticut Sexual Offender Registration Act approved by the U.S. Supreme Court in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003).

What the majority fails to confront are not only the express legislative findings contained in Florida's Act concerning future dangerousness, but more importantly, the Act's explicit adoption of the term "sexual predator" rather than "sexual offender" in its registration scheme. It is one thing to provide the public with public information about sexual offenders, but quite another to tell the public that the State has determined that certain persons are "sexual predators." It is pure sophistry to suggest that these actions are the same. [FN7]

> FN7. The majority also fails to set out the facts in *Espindola.* Those facts clearly demonstrate a substantial issue as to whether Espindola should be classified as a "sexual predator."

***930** Obviously, no one's popularity is going to be enhanced by having his or her name appear on a list of sexual offenders. But, as the U.S. Supreme Court has noted in *Doe*, that listing simply comes with having been convicted of a sexual offense. While it is true that many will conclude that any person convicted of a sexual offense will *always* be dangerous, that will be an individual determination based on accurate information. For that reason, I agree with the majority and the U.S. Supreme Court in *Doe* that states have broad authority to provide this information to the public. That is what Connecticut did, and the U.S. Supreme Court correctly approved that action.

However, it is a far different matter when the State decides to classify certain individuals as "sexual predators" and to disseminate information about those "predators" to the public. Under such a scheme, no individual determination of dangerousness need be made because the State has already done that for us. And, of course, no one would challenge the State's determination of "predator" status. The public has a right to rely on the accuracy of that determination and will do so. No reasonable person would take the chance not to rely on such determination. It is in making this irrefutable conclusion that someone is a "sexual predator" without affording that someone an opportunity to

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object that Florida's Act runs afoul of constitutional due process protections.

As noted above, unlike the sex offender registration laws in some other states, Florida's Act designates offenders not merely as "sex offenders," but as "sexual predators." Common sense tells us that there is a clear difference between an "offender" and a "predator." For example, *Merriam-Webster's Collegiate Dictionary,* 917 (10th ed.1994), defines "predator" as "one that preys, destroys, or devours." Other reliable authorities contain similar definitions. Accordingly, by notifying the public as to the presence of "sexual predators," Florida's Act goes well beyond merely listing persons who have previously been convicted of a sex offense. In actual effect, by designating these offenders as "sexual predators," the State is clearly stating that the predator is dangerous and the public should beware.

Due Process

The United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. In examining a procedural due process claim, a court first must determine whether a State action impacts a citizen's liberty or property interest, and second, whether the procedures provided by the State to challenge that action are adequate. *Kentucky Dep't of Corrections v. Thompson,* 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989).

For example, Espindola contends that the Florida Sexual Predators Act interferes with his constitutionally protected liberty interests in reputation. He claims that the Act, by publicly designating him as a "sexual predator," injures his reputation and defames him. To determine whether his interests rise to the level of constitutionally protected liberty interests, the U.S. Supreme Court has ruled that we must apply the so-called "stigma-plus" test, which requires a showing not only of governmental action sufficiently derogatory to injure a person's reputation (i.e., "stigma") but also some tangible and material state-imposed burden or alteration of the individual's legal status. *See Paul v. Davis,* 424 U.S. 693, 701, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976) (holding that "reputation ***931** alone, apart from some more tangible interests ... is [n]either 'liberty' [n]or 'property' by itself sufficient to invoke the procedural protection of the Due Process Clause").

In *State v. Robinson,* 873 So.2d 1205 (Fla.2004), this Court has already applied the "stigma-plus" test to the Florida Sexual Predators Act, found that the Act did implicate a constitutionally protected liberty interest in reputation, and found the Act unconstitutional as applied. *Robinson,* 873 So.2d at 1214 ("We ... hold that the designation as a sexual predator constitutes a deprivation of a protected liberty interest."). [FN8] We concluded that being "designat[ed] as a 'sexual predator' certainly constitutes a stigma. No one can deny that such a designation affects one's good name and reputation." *Robinson,* 873 So.2d at 1213 (footnote omitted). [FN9]

FN8. In *Robinson,* this Court held that application of the Act to a person convicted of a crime that concededly involved no sexual component violated substantive due process. 873 So.2d at 1217.

FN9. *See also Fullmer v. Michigan Dep't of State Police,* 207 F.Supp.2d 650, 659 (E.D.Mich.2002) (plaintiff met first prong of "stigma plus" due to stigma associated with being falsely labeled as a danger to the community when registry included both currently dangerous offenders and those who are not likely to become dangerous again); *Doe # 1 v. Williams,* 167 F.Supp.2d 45, 51 (D.D.C.2001) ("It is beyond dispute that public notification pursuant to the [District of Columbia sex offender law] results in stigma."); *Doe v. Pryor,* 61 F.Supp.2d 1224, 1231 (M.D.Ala.1999) ("While it might seem that a convicted felon could have little left of his good name, community notification ... will inflict a greater stigma than would result from conviction alone" because "[n]otification will clearly brand the plaintiff as a 'criminal sex offender' ... a 'badge of infamy' that ... strongly implies that he is a likely recidivist and a danger to his community."); *Doe v. Pataki,* 3 F.Supp.2d 456, 468 (S.D.N.Y.1998) (because information required by the New York State Sex Offender Registration Act "is likely to carry with it shame, humiliation, ostracism, loss of employment and decreased opportunities for employment, perhaps even physical violence, and a multitude of other adverse consequences ... there is no genuine dispute that the dissemination of the information contemplated by the Act to the community at large is potentially harmful to plaintiffs' personal reputations.").

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In Robinson, we also held that some harm beyond reputational stigma alone must be demonstrated to invoke procedural due process concerns. *See* Robinson, 873 So.2d at 1213. "[T]o establish [a] depriv[ation] of a liberty interest in reputation sufficient to implicate the procedural protection of the due process clause, [one] must show stigma plus the alteration or extinguishment of some other right or status." Doe v. Pryor, 61 F.Supp.2d 1224, 1231 (M.D.Ala.1999); *see also* Doe v. Dep't of Pub. Safety, 271 F.3d 38, 56 (2d Cir.2001) ("[One] establishes a 'plus' factor for purposes of the Paul v. Davis 'stigma plus' test only if he or she points to an indicium of material government involvement unique to the government's public role that distinguishes his or her claim from a traditional ... defamation suit."), *rev'd on other grounds,* Connecticut Dep't of Pub. Safety v. Doe, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003). Again, however, we have already answered this question in the affirmative in Robinson where, after finding that Florida's Act imposed a stigma on those designated as "sexual predators," the Court held that the Act also created three plus factors--i.e., "additional limitations [that] implicate more than merely a stigma to one's reputation," 873 So.2d at 1214:

> We believe the Act imposes more than a stigma.... [U]nder the Act, a person designated a sexual predator is subject to life-long registration requirements. *See* § 775.21(5), Fla. Stat. (Supp.1998). ***932** Further, as another court has noted, "[t]hese statutes create no mere informational reporting requirement, the violation of which is punished with a small fine." Giorgetti v. State, 821 So.2d 417, 422 (Fla. 4th DCA 2002), *approved,* 868 So.2d 512 (Fla.2004). To the contrary, the failure of a designated sexual offender to comply with these and other requirements of the Act constitutes a third-degree felony. § 775.21(10). Moreover, a designated sexual predator is prohibited from seeking certain tort remedies, *see* § 775.21(9), and from working "where children regularly congregate." § 775.21(10)(b).

Robinson, 873 So.2d at 1213. [FN10]

> FN10. *See also* Doe v. Dep't of Pub. Safety, 271 F.3d 38, 56-57 (2d Cir.2001) (holding that the "extensive and onerous" registration requirements imposed by Connecticut's sex offender law "constitute a 'plus' factor" because "[t]hose obligations (1) alter [one's] legal status and (2) are 'governmental in nature' insofar as they could not be imposed by a private actor ... and therefore differentiate the plaintiff's complaint from a traditional defamation claim"), *rev'd on other grounds,* Connecticut Dep't of Pub. Safety v. Doe, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003); Doe v. Pryor, 61 F.Supp.2d 1224, 1231-32 (M.D.Ala.1999) ("[Alabama's] Community Notification Act deprives the plaintiff of rights previously held under State law. By virtue of having been deemed a 'criminal sex offender' within the meaning of the Act, the plaintiff no longer has the right to establish a new residence without giving prior notice to government officials. He no longer has the right to live and work within 1,000 feet of a school or childcare facility.... These additional deprivations therefore suffice to establish the 'plus' part of the stigma-plus test.") (citations omitted); Doe v. Pataki, 3 F.Supp.2d 456, 468 (S.D.N.Y.1998) ("[T]he registration provisions of the Act place a 'tangible burden' on plaintiffs, potentially for the rest of their lives.... In light of these requirements placed on registrants, there can be no genuine dispute that registration alters the legal status of all convicted sex offenders subject to the Act for a minimum of ten years and, for some, permanently. These requirements obviously encroach on the liberty of convicted sex offenders, and, therefore, they suffer a tangible impairment of a right in addition to mere harm to reputation.").

Since Robinson has established that Florida's Act implicates constitutionally protected liberty interests, the question then becomes whether the state procedures for protecting those rights are constitutionally sufficient. Kentucky Dep't of Corrections, 490 U.S. at 460, 109 S.Ct. 1904. Espindola contends, and the Third District in Espindola concluded, that the Act's failure to provide *any* procedure to contest the designation of someone as a "sexual predator" violates the right to procedural due process. *See* Espindola, 855 So.2d at 1290 ("[The] total failure to provide for a judicial hearing on the risk of the defendant's committing future offenses makes it violative of procedural due process and therefore unconstitutional.").

In Doe, the United States Supreme Court considered a similar procedural due process challenge to Connecticut's sex offender law. Importantly, the Connecticut Act simply requires the registration of certain sex offenders *without* designating them as

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"sexual predators." The Supreme Court upheld the Connecticut Act and distinguished its provisions from other cases where the Court had held that due process requires a hearing before some specific classification or designation is made. The Court noted that "Connecticut ... has decided that the registry requirement shall be based on the fact of previous conviction, not the fact of current dangerousness.... We therefore reverse the judgment of the Court of Appeals because due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme." *Doe*, 538 U.S. at 4, 123 S.Ct. 1160.

***933** However, as the Third District in *Espindola* has explicitly noted, *Doe* is not controlling here because Connecticut's Act differs from Florida's in that Connecticut's "makes no determination that an offender is dangerous, [while Florida's] *specifically* provides that sexual predators 'present an extreme threat to the public safety.' " *Espindola*, 855 So.2d at 1290 (quoting § 775.21(3)(a), Fla. Stat. (1999)). Therefore, the Third District held that "the determination of 'dangerousness' is of import to [the Florida Sexual Predators Act], and ... the State's reliance on [*Doe*] is misplaced." *Id.* In other words, Connecticut's Act simply designates offenders to be what they obviously are, "sexual offenders," while Florida's Act goes further and designates those offenders as "sexual predators," a designation that may or may not be warranted, depending on the circumstances of each designation.

Conclusion

Florida, like Connecticut, has decided that the public must have access to information about all convicted sex offenders, currently dangerous or not, and that those convicted sex offenders must face certain sanctions. That is not a problem. However, unlike Connecticut, Florida has not stopped there. Rather, Florida has gone further and decided it would also classify such persons as "sexual predators." It is this additional classification that invokes due process concerns. Under *Robinson*, Espindola and Milks have demonstrated that the Florida Sexual Predators Act implicates their constitutionally protected liberty interests, triggering due process protections. Further, because Florida's Act automatically designates them as "sexual predators," they must be provided with a fair opportunity to contest that fact, if we are to honor the principles of procedural due process guaranteed by the United States Constitution.

Finally, because I conclude that the flaw in Florida's statutory scheme is the use of the word "predator," I would accept the State's invitation to excise the word "predator" from Florida's sexual offender registration scheme and uphold the Act as excised. [FN11] However, if we do not take this ***934** action, I would affirm the holding in *Espindola* that the Act violates the defendants' rights to due process in not allowing them to contest being classified as a "predator."

FN11. On this point I agree with the opinion of Judge Cope in the Third District:

I agree with the majority opinion that the use of the term "predator" renders the statute constitutionally infirm. In this respect, the Florida statute differs from the statutes construed by the United States Supreme Court in *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), and *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003).

I disagree with the majority on the remedy. In my view, it is possible to sever the unconstitutional portion of the statute from the remainder.

The Florida Supreme Court has said:

In resolving the issue of severability, this Court has consistently applied the tests set forth in *Cramp v. Board of Public Instruction of Orange County*, 137 So.2d 828 (Fla.1962):

When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Smith v. Department of Insurance, 507 So.2d 1080, 1089-90 (Fla.1987) (citations omitted).

"The *Cramp* test is a well established component of Florida law. It has been applied repeatedly in countless Florida cases...." *Schmitt v. State*, 590 So.2d 404, 415 (Fla.1991) (citation and footnote omitted).

Further:

[S]everability does not always depend on the

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inclusion of a severability clause in a legislative enactment. Such a clause only buttresses the case for severability. If the four parts of the *Cramp* test are met, severability can occur whether or not the enactment contains a severability clause. *Schmitt*, 590 So.2d at 415 n. 12.

Looking at the statute as a whole, the statute accomplishes the following main objectives:

(a) Registration of offenders;

(b) Disclosure of an offender's location and prior criminal record on the Florida Department of Law Enforcement website and through community notification; and

(c) Labeling certain offenders as "predators." Item (c) is constitutionally infirm, but items (a) and (b) are valid.

Under the *Cramp* test, the first question is whether the unconstitutional provisions can be separated from the remaining valid provisions. *Cramp*, 137 So.2d at 830. The answer is yes. The website contains a listing of sex offenders under Florida's various statutes on the subject. *See* § § 775.21, 943.0435, 944.607, Fla. Stat. All criminal history information is reported in the same format, with the exception that those who qualify as predators under section 775.21 carry the designation "predator" in red letters on the summary page listing the various offenders. The term appears again on the individual history page. The term "predator" can be excised while leaving the remaining information about the offender and his criminal record intact. The website and other public notification materials can substitute a neutral term, such as "sexual offender," or "criminal history information," in place of the stricken term.

Similarly, the statute contains regulations for the registration of offenders who meet the statutory criteria. *See* § 775.21(6), Fla. Stat. The registration requirements remain enforceable. In entering an adjudication under this statute, the court should simply adjudicate that the offender qualifies under section 775.21, Florida Statutes, rather than adjudicating the offender to be a "sexual predator."

The second question under *Cramp* is whether the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void. 137 So.2d at 830. Again, the answer is yes. The thrust of the statute is to require offender registration and to make offender criminal record information available to the public through the internet and otherwise. These purposes can be accomplished even if the "predator" label is stricken.

The third question under *Cramp* is whether the good and bad features are not so inseparable in substance that it can be said the Legislature would have passed the one without the other. 137 So.2d at 830. There is no doubt that the Legislature would have passed this statute regardless of whether the term "predator" was included.

The fourth question under *Cramp* is whether an act complete in itself remains after the invalid provisions are stricken. Again, the answer is yes. The statute adequately defines who is covered, what registration procedures must be followed, and what mechanism is created for public disclosure. The only modification relates to the use of the term "predator."

The State argues that the statute should be upheld in its entirety under *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe*, but the State is incorrect. The Alaska and Connecticut statutes at issue in those cases did not use the term "predator" or any other terminology suggesting that the offender is a present danger to the public.

I would urge the Florida Legislature to revisit the statute at its earliest opportunity. By adjusting the terminology, the constitutional defect in this statute can be corrected and the statute brought into compliance with *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe*.

Espindola v. State, 855 So.2d 1281, 1291-92 (Fla. 3d DCA 2003) (Cope, J., concurring in part and dissenting in part).

894 So.2d 924, 30 Fla. L. Weekly S55

Briefs and Other Related Documents (Back to top)

• 2003 WL 23306523 (Appellate Petition, Motion and Filing) Amended Jurisdictional Brief of Respondent (Sep. 2003)

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Supreme Court of Iowa.
STATE of Iowa, Appellant,
v.
Keith Frederick SEERING, Appellee.
No. 03-0776.

July 29, 2005.

Background: Convicted sex offender moved to dismiss charge that he violated statute that prohibited such offenders from living within 2000 feet of an elementary or secondary school or child care facility on the grounds that statute was unconstitutional. The District Court, Washington County, Lucy J. Gamon, J., found the statute to be unconstitutional. State appealed.

Holdings: The Supreme Court, Cady, J., held that:
(1) statute did not violate substantive due process;
(2) statute did not violate procedural due process;
(3) statute did not violate ex post facto clause;
(4) statute did not violate offender's right against self-incrimination; and
(5) two-year sentence for violating statute did not constitute cruel and unusual punishment.
Reversed and remanded.

Wiggins, J., concurred in part and dissented in part in an opinion joined by Lavorato, C.J.

West Headnotes

[1] **Criminal Law** 1139
110k1139 Most Cited Cases
The Supreme Court reviews constitutional challenges to a statute de novo.

[2] **Constitutional Law** 48(1)
92k48(1) Most Cited Cases
Statutes are cloaked with a presumption of constitutionality.

[3] **Constitutional Law** 48(3)
92k48(3) Most Cited Cases
The challenger of a statute must prove the unconstitutionality of the statute beyond a reasonable doubt; the challenger must refute every reasonable basis upon which the statute could be found to be constitutional.

[4] **Constitutional Law** 48(1)
92k48(1) Most Cited Cases
If the statute is capable of being construed in more than one manner, one of which is constitutional, the Supreme Court must adopt that construction.

[5] **Criminal Law** 1178
110k1178 Most Cited Cases
Sex offender waived on appeal his prior constitutional arguments challenging statute that prohibited such offenders from living within 2000 feet of an elementary or secondary school or child care facility based on overbreadth, vagueness, equal protection, and bills of attainder, where he failed to present such arguments on appeal. Rules Civ.Proc., Rule 6.14(1)(*c*).

[6] **Criminal Law** 1030(2)
110k1030(2) Most Cited Cases
Sex offender failed to preserve on appeal his constitutional challenge to statute that prohibited such offenders from living within 2000 feet of an elementary or secondary school or child care facility based on his right to travel and his fundamental family rights, where such arguments were not presented in the district court.

[7] **Constitutional Law** 251.2
92k251.2 Most Cited Cases
Substantive due process under the due process clauses of the State and federal constitutions prevents the government from interfering with rights implicit in the concept of ordered liberty. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[8] **Constitutional Law** 255(1)
92k255(1) Most Cited Cases
Procedural due process under the due process clauses of the State and federal constitutions, acts as a constraint on government action that infringes upon an individual's liberty interest, such as the freedom from physical restraint. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[9] **Constitutional Law** 252.5
92k252.5 Most Cited Cases
If a fundamental right is implicated in reviewing a statute on substantive due process grounds, the court applies strict scrutiny analysis, which requires a determination of whether the government action

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infringing the fundamental right is narrowly tailored to serve a compelling government interest. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[10] Constitutional Law 251.3
92k251.3 Most Cited Cases
If a fundamental right is not implicated in reviewing a statute on substantive due process grounds, a statute need only survive a rational basis analysis, which requires the court to consider whether there is a reasonable fit between the government interest and the means utilized to advance that interest. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[11] Constitutional Law 46(1)
92k46(1) Most Cited Cases
The Supreme Court has a duty to avoid constitutional questions not necessary to the resolution of an appeal.

[12] Constitutional Law 46(2)
92k46(2) Most Cited Cases
Constitutional claims involving fundamental rights must identify the claimed right with accuracy and specificity so that the Supreme Court's analysis proceeds on appropriate grounds.

[13] Constitutional Law 252.5
92k252.5 Most Cited Cases
Only fundamental rights and liberties which are deeply rooted in this nation's history and tradition and implicit in the concept of ordered liberty qualify for protection under substantive due process. U.S.C.A. Const.Amend. 14; I.
C.A. Const. Art. 1, § 9.

[14] Constitutional Law 82(6.1)
92k82(6.1) Most Cited Cases
Although freedom of choice in residence is of keen interest to any individual, it is not a fundamental interest entitled to the highest constitutional protection.

[15] Constitutional Law 274(2)
92k274(2) Most Cited Cases
An interest in choice of residency is entitled to only rational basis review for purposes of substantive due process. U.S.C.A. Const.Amend. 14; I. C.A. Const. Art. 1, § 9.

[16] Constitutional Law 251.3
92k251.3 Most Cited Cases
The rational basis standard for substantive due process claims requires a consideration of whether there is a reasonable fit between the government interest and the means utilized to advance that interest. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[17] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[17] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Statute that prohibited sex offenders from living within 2000 feet of an elementary or secondary school or child care facility as applied to sex offender did not violate offender's substantive due process rights regarding freedom of choice in residence; under the rational basis standard, there was a reasonable fit between the government interest in preventing recidivism by sex offenders and the means utilized to advance that interest. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9; Iowa Code section 692A.2A.

[18] Constitutional Law 255(1)
92k255(1) Most Cited Cases

[18] Constitutional Law 278(1)
92k278(1) Most Cited Cases
A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty or property interest. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[19] Constitutional Law 254.1
92k254.1 Most Cited Cases

[19] Constitutional Law 277(1)
92k277(1) Most Cited Cases
The first step in any procedural due process inquiry is the determination of whether a protected liberty or property interest is involved; such liberty interests have their source in the Federal Constitution and include such things as freedom from bodily restraint, the right to contract, the right to marry and raise children, and the right to worship according to the dictates of a person's conscience, while protected property interests are created and their dimensions are defined not by the Constitution but by an independent source such as state law. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[20] Constitutional Law 251.5
92k251.5 Most Cited Cases
Upon determining that a protected interest is involved, a court undertakes an analysis that balances three factors to determine what process is due: (1) the

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private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[21] Constitutional Law 251.6
92k251.6 Most Cited Cases
At the very least, procedural due process requires notice and opportunity to be heard in a proceeding that is adequate to safeguard the right for which the constitutional protection is invoked. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[22] Constitutional Law 251.5
92k251.5 Most Cited Cases
No particular procedure violates due process merely because another method may seem fairer or wiser. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[23] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[23] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Statute that prohibited sex offenders from living within 2000 feet of an elementary or secondary school or child care facility did not violate offender's procedural due process rights; the statute offered no exemptions and the residency restriction was based solely on a person's status as a convicted sex offender, and thus, offender was not entitled to a hearing before he was charged with violating statute to attempt to persuade the court that the statute should not have applied to him. I.C.A. § 692A.2A.

[24] Constitutional Law 255(5)
92k255(5) Most Cited Cases
States are not barred by principles of procedural due process from making classifications between sex offenders and others. U.S.C.A. Const.Amend. 14; I.C.A. Const. Art. 1, § 9.

[25] Constitutional Law 197
92k197 Most Cited Cases
The ex post facto prohibition in the state and federal constitutions extends only to cases criminal in nature even where the civil consequences are serious in nature. U.S.C.A. Const. Art. 1, § 10, cl. 1; I.C.A. Const. Art. 1, § 21.

[26] Constitutional Law 197
92k197 Most Cited Cases
In deciding whether a statute violates the ex post facto clause by imposing prohibited punishment, the first task is to consider the intent of the legislature; if the statute is intended to impose criminal punishment, then the legislative intent controls, and the law is considered to be punitive, but if
the law was intended to be civil and nonpunitive, then the court looks to see if it is nevertheless so punitive either in purpose or effect as to negate the nonpunitive intent. U.S.C.A. Const. Art. 1, § 10, cl. 1; I.C.A. Const. Art. 1, § 21.

[27] Constitutional Law 203
92k203 Most Cited Cases

[27] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Statute that prohibited sex offenders from living within 2000 feet of an elementary or secondary school or child care facility did not impose criminal punishment for purposes of the ex post facto clauses of the state and federal constitutions; the statute was designed to protect the health and safety of children, and, although the statute imposed an affirmative disability on sex offenders, the disabling nature of the statute was not absolute. U.S.C.A. Const. Art. 1, § 10, cl. 1; I.C.A. Const. Art. 1, § 21; I.C.A. § 692A.2A.

[28] Constitutional Law 197
92k197 Most Cited Cases
A statute is not punitive for purposes of the ex post facto clause merely because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance. U.S.C.A. Const. Art. 1, § 10, cl. 1; I.C.A. Const. Art. 1, § 21.

[29] Constitutional Law 203
92k203 Most Cited Cases

[29] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Even if statute that prohibited sex offenders from living within 2000 feet of an elementary or secondary school or child care facility was penal in nature, the statute did not punish conduct that occurred prior to the statute's enactment or increase punishment for a crime after its commission in violation of the ex post facto clause; while punishment under the statute was

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based partially on the offender's status as a convicted sex offender, the status itself was not the impetus for punishment, nor was the punishment based on the prior offense. U.S.C.A. Const. Art. 1, § 10, cl. 1; I.C.A. Const. Art. 1, § 21; I.C.A. § 692A.2A.

[30] Witnesses 293.5
410k293.5 Most Cited Cases

[30] Witnesses 297(1)
410k297(1) Most Cited Cases
The Fifth Amendment privilege against self-incrimination allows a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. U.S.C.A. Const.Amend. 5.

[31] Criminal Law 393(1)
110k393(1) Most Cited Cases
The State cannot compel testimony by threatening to inflict potent sanctions unless the Fifth Amendment privilege against self-incrimination is surrendered. U.S.C.A. Const.Amend. 5.

[32] Criminal Law 393(1)
110k393(1) Most Cited Cases

[32] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Statute that prohibited sex offenders from living within 2000 feet of an elementary or secondary school or child care facility did not violate offender's Fifth Amendment right against self-incrimination; there was nothing in the residency restriction that compelled a sex offender to be a witness against himself. U.S.C.A. Const.Amend. 5; I.C.A. § 692A.2A.

[33] Sentencing and Punishment 1482
350Hk1482 Most Cited Cases

[33] Sentencing and Punishment 1520
350Hk1520 Most Cited Cases

[33] Sentencing and Punishment 1522
350Hk1522 Most Cited Cases
Punishment may be cruel and unusual under the state and federal constitutions because it inflicts torture, is otherwise barbaric, or is so excessively severe it is disproportionate to the offense charged. U.S.C.A. Const.Amend. 8; I. C.A. Const. Art. 1, § 17.

[34] Sentencing and Punishment 1483
350Hk1483 Most Cited Cases
If a punishment falls within the parameters of a statutorily prescribed penalty, it generally does not constitute cruel and unusual punishment under the state and federal constitutions. U.S.C.A. Const.Amend. 8; I.C.A. Const. Art. 1, § 17.

[35] Sentencing and Punishment 1482
350Hk1482 Most Cited Cases
Only extreme sentences that are grossly disproportionate to the crime conceivably violate the Eighth Amendment prohibition against cruel and unusual punishment. U.S.C.A. Const.Amend. 8.

[36] Constitutional Law 70.1(10)
92k70.1(10) Most Cited Cases
While the Supreme Court provides the legislature substantial deference in
setting the penalty for crimes, it is within its power to determine whether the term of imprisonment imposed is grossly disproportionate to the crime charged.

[37] Mental Health 433(2)
257Ak433(2) Most Cited Cases

[37] Sentencing and Punishment 1507
350Hk1507 Most Cited Cases
Two-year sentence for violating statute that prohibited sex offenders from living within 2000 feet of an elementary or secondary school or child care facility did not constitute cruel and unusual punishment in violation of the Eighth Amendment; the punishment was in appropriate proportion with the crime. U.S.C.A. Const.Amend. 8; I.C.A. Const. Art. 1, § 17; I.C.A. § 692A.2A.

***659** Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellant.

Eric D. Tindal of Nidey Pederson Erdahl & Tindal, Williamsburg, for appellee.

Catherine K. Levine, Des Moines, for amicus curiae Iowa Civil Liberties Union.

CADY, Justice.

In this appeal, we consider the constitutionality of Iowa's statutory prohibition against convicted sex offenders living within two thousand feet of an elementary or secondary school or child care facility. The appellee, a convicted sex offender, brought a successful constitutional challenge to the statute in

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the district court. The State appeals from the district court's ruling. For the reasons that follow, we reverse and remand this case for further proceedings consistent with this opinion.

I. Background Facts and Proceedings.

In October 2000, Keith Frederick Seering was convicted of lascivious conduct with a minor in violation of Iowa Code section 709.14 (1999) after committing numerous sexually abusive acts against his teenaged daughter. Seering was given a suspended sentence and placed on probation. His probation was later revoked, and he was placed in a halfway house in Iowa City to complete his sentence. After being released in August 2002, he moved to Riverside, where his wife and daughter were residing with family friends.

Shortly after his arrival in Riverside, Seering went to the county sheriff's office to register himself as a sex offender at his new address. *See* Iowa Code § § 692A.2-.3 (2003) (defining persons required to register and describing the sex offender registration process). While there, an officer told Seering that he was "99.99 percent sure that [Seering] was going to be within a two thousand-foot buffer rule of at least a day care, if not a school." The "buffer rule" mentioned by the officer is a two-thousand-foot residency restriction imposed by Iowa Code section 692A.2A. This statute prohibits a person who has committed a sexually violent offense or other crime against a minor from residing within two thousand feet of an elementary or secondary school or child care center. [FN1] ***660***Id.* § 692A.2A. Seering informed the officer that he was hoping to find a new home in Johnson County and would soon move from Riverside.

FN1. Iowa Code section 692A.2A (2003) provides:
692A.2A Residency Restrictions--child care facilities and schools. 1. For purposes of this section, "*person* " means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor.
2. A person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility.
3. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor.
4. A person residing within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this section if any of the following apply:
a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
b. The person is subject to an order of commitment under chapter 229A.
c. The person has established a residence prior to July 1, 2002, or a school or child care facility is newly located on or after July 1, 2002.
d. The person is a minor or a ward under a guardianship.

After his conversation with Seering, the officer asked a county employee to prepare a map of Washington County showing the areas where Seering or another offender could live without violating the statute. The officer then met again with Seering and showed him the map, which indicated limited areas where Seering could live in compliance with the residency restriction. The officer also warned Seering that he had one more week to move to an unrestricted area or he would face charges under the statute. *See id.* § 692A.2A(3) (making a violation of the residency restriction an aggravated misdemeanor).

A few weeks later, the officer went to the Riverside address to determine whether Seering had moved. The owner of the residence told the officer that Seering was still living in the home. When confronted with this information, Seering claimed he was actually living out of his car. After finding no evidence to substantiate Seering's claim, the officer arrested him for violating the residency restriction.

In October 2002, Seering returned to the sheriff's office to register a new address in Johnson County. This address was an abandoned farm property. Seering, his wife, and his daughter had parked a fold-down camper on the property and were living together in the camper. The family had a history of struggling to maintain a steady residence, even before the residency restriction, due to their lack of sufficient finances. However, the residency restriction made it more difficult to live together and forced them to move to the farm property. Shortly after moving onto the property, the property owner

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demanded the Seerings move.

On February 10, 2003, Seering filed a motion to dismiss the criminal charge against him relating to the residency restriction. Seering contended the residency restriction statute was unconstitutional because it violated his state and federal constitutional rights related to ex post facto laws, substantive and procedural due process, vague and overbroad laws, equal protection, cruel and unusual punishment, and bills of attainder.

On April 3, the district court issued its ruling on Seering's motion. The court determined the residency restriction statute was unconstitutional on substantive and procedural due process, ex post facto, self-incrimination, and cruel and unusual punishment grounds. It rejected Seering's arguments that the residency restriction impinged rights related to overbreadth or bills of attainder.

The State appeals from the district court's ruling granting Seering's motion to dismiss, asserting error on each of the district court's conclusions. For the reasons ***661** that follow, we reverse and remand this case for further proceedings consistent with this opinion.

II. Standard of Review.

[1][2][3][4] Our review of constitutional claims related to statutes is well established:

> We review constitutional challenges to a statute de novo. In doing so, we must remember that statutes are cloaked with a presumption of constitutionality. The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt. Moreover, "the challenger must refute every reasonable basis upon which the statute could be found to be constitutional." Furthermore, if the statute is capable of being construed in more than one manner, one of which is constitutional, we must adopt that construction.

State v. Hernandez-Lopez, 639 N.W.2d 226, 233 (Iowa 2002) (citations omitted); *accord Santi v. Santi,* 633 N.W.2d 312, 316 (Iowa 2001).

III. Preservation of Error.

There have been several constitutional claims made throughout the proceedings in this case. Ultimately, many of these claims are not viable on appeal because they were not properly preserved or presented for our review.

In his original motion to dismiss, Seering contended the residency restriction statute violated his state and federal constitutional rights relating to ex post facto laws, substantive and procedural due process, vague and overbroad laws, equal protection, cruel and unusual punishment, and bills of attainder. In its appellate brief, the State presented arguments on each of the issues raised by Seering, as well as an argument relating to self-incrimination, apparently based on the district court's discussion of the issue. In his appellate brief, however, Seering reasserted only his claims based on substantive and procedural due process, ex post facto laws, self-incrimination, and cruel and unusual punishment. He also raised a new claim related to free association between family members. In addition, the Iowa Civil Liberties Union, as amicus curiae, presented a brief asserting and explaining why Iowa Code section 692A.2A infringes on Seering's "fundamental right to travel." In sum, eleven discrete constitutional claims have been raised in one form or another at various points in these proceedings. However, several of these claims have not been properly preserved or presented for our review.

[5][6] Seering chose not to present arguments on appeal relating to his prior-claimed constitutional interests pertaining to overbreadth, vagueness, equal protection, or bills of attainder. In the absence of an argument on these allegations, we deem them waived. *See* Iowa R.App. P. 6.14(1)(*c*); *see also Bennett v. MC No. 619, Inc.,* 586 N.W.2d 512, 521 (Iowa 1998). Moreover, Seering admits that the free association claim "was not specifically pled to the District Court," but argues such a claim "is inherent in the argument that 692A.2A unconstitutionally infringed upon Seering's fundamental family rights." Yet, our rules of preservation do not hinge on the mere entwinement of claims or the inherency of a discrete claim as part of a broader claim. *See Hernandez-Lopez,* 639 N.W.2d at 234; *see also Meier v. Senecaut,* 641 N.W.2d 532, 537 (Iowa 2002). His free association claim has not been preserved. Finally, the efforts of amicus curiae are unavailing insofar as preservation is concerned. *See Rants v. Vilsack,* 684 N.W.2d 193, 199 (Iowa 2004); *Mueller v. St. Ansgar State Bank,* 465 N.W.2d 659, 660 (Iowa 1991); ***662***Martin v. Peoples Mut. Sav. & Loan Ass'n,* 319 N.W.2d 220, 230 (Iowa 1982). For this reason, any claim of an infringement on Seering's "fundamental right to travel" has not been preserved.

Ultimately, five distinct grounds relating to the constitutionality of the statute remain viable:

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substantive and procedural due process, ex post facto, self-incrimination, and cruel and unusual punishment. "Any other issues raised by the defendant[] and not specifically addressed are also deemed unpreserved." *Hernandez-Lopez,* 639 N.W.2d at 234.

IV. Due Process.

Seering challenges the residency restriction statute on both substantive and procedural due process grounds, contending the statute is unconstitutional on its face and as applied to him. His due process claims are grounded in the guarantees of both the federal and state constitutions. U.S. Const. amends. V, XIV; Iowa Const. art. I, § 9. These due process provisions "are nearly identical in scope, import and purpose." *Hernandez-Lopez,* 639 N.W.2d at 237; *accord In re Detention of Cubbage,* 671 N.W.2d 442, 446 (Iowa 2003). Accordingly, we typically interpret both in a similar fashion. *See Hernandez-Lopez,* 639 N.W.2d at 237; *Cubbage,* 671 N.W.2d at 446. In the absence of an argument that our analysis under each should differ, we construe them similarly in this case as well. *See In re Detention of Garren,* 620 N.W.2d 275, 280 n. 1 (Iowa 2000); *see also Cubbage,* 671 N.W.2d at 446; *Hernandez-Lopez,* 639 N.W.2d at 237.

[7][8] The Due Process Clauses are understood to include two separate but related concepts. *Hernandez-Lopez,* 639 N.W.2d at 237. Both are at issue in this case. "The first, substantive due process, prevents the government from interfering with 'rights "implicit in the concept of ordered liberty." ' " *Id.* (*quoting United States v. Salerno,* 481 U.S. 739, 746, 107 S.Ct. 2095, 2101, 95 L.Ed.2d 697, 708 (1987)). Its companion concept, procedural due process, "act[s] as a constraint on government action that infringes upon an individual's liberty interest, such as the freedom from physical restraint." *Id.* at 240. We consider each of these concepts in turn.

A. Substantive Due Process.

[9][10] There are two stages to any substantive due process inquiry. The first requires a determination of "the nature of the individual right involved." *Id.* at 238. If a fundamental right is implicated, we apply strict scrutiny analysis, which requires a determination of "whether the government action infringing the fundamental right is narrowly tailored to serve a compelling government interest." *Id.* If a fundamental right is not implicated, a statute need only survive a rational basis analysis, which requires us to consider whether there is "a reasonable fit between the government interest and the means utilized to advance that interest." *Id.*

The question of what type of interest is infringed in this case presents a major divide between the parties. Launching from several state and federal precedents in the area of personal privacy and familial association, Seering argues the statute prevents an offender--specifically him and his family--from living together on their own terms, in violation of substantive due process guarantees. He points to his family's repeated efforts to find a home within the residency restriction scheme and argues the restriction is responsible for his inability to find an acceptable place to live together with his family. Ultimately, Seering identifies the fundamental right implicated in this case to be the "right to the privacy and freedom of association in one's family." He asserts this claimed ***663** right is directly affected by the statute, which infringes on "the ability to live with spouses and the right to carry on a daily routine and make basic determinations about child care."

The State responds to Seering's arguments by asserting that he has misidentified the interest at hand. It argues that it is not the familial right that is truly implicated by the statute, but rather an interest in having unrestricted choice in picking where Seering--or any offender--and, in turn, his family, lives. The State argues that this interest is not fundamental and only warrants application of rational basis scrutiny for determining whether the statute is constitutional. Moreover, the State contends that any impingement on Seering's familial interest is largely the result of his family's financial condition, not the statute. It also points out that the Seerings have actually lived together for much of the time during the proceedings in his case. The State believes that each of these factors makes it impossible for Seering to meet the high threshold for proving the statute unconstitutional. *See id.* at 233 ("The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt.").

[11][12] In presenting his arguments, Seering draws on a long line of authority confirming that the familial relationship is a fundamental liberty interest protected by both constitutions. *See, e.g., Lyng v. Castillo,* 477 U.S. 635, 638, 106 S.Ct. 2727, 2729, 91 L.Ed.2d 527, 533 (1986); *Moore v. City of East Cleveland,* 431 U.S. 494, 499, 97 S.Ct. 1932, 1935-36, 52 L.Ed.2d 531, 537 (1977); *Wisconsin v. Yoder,* 406 U.S. 205, 213-14, 92 S.Ct. 1526, 1532, 32 L.Ed.2d 15, 24 (1972); *In re K.M.,* 653 N.W.2d 602, 607 (Iowa 2002); *Santi,* 633 N.W.2d at 317; *In re*

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Bruce, 522 N.W.2d 67, 72 (Iowa 1994). It is ultimately our duty to ensure that claims that constitutional rights have been violated are properly considered. *See Cubbage*, 671 N.W.2d at 446; *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 692 (Iowa 2002); *accord Chavez v. Martinez*, 538 U.S. 760, 775-76, 123 S.Ct. 1994, 2006, 155 L.Ed.2d 984, 999 (2003) (stating Supreme Court precedents "require [] a ' "careful description" ' of the asserted fundamental liberty interest for the purposes of substantive due process analysis" (citation omitted)). This duty arises in part from our related duty to avoid constitutional questions not necessary to the resolution of an appeal. *See State v. Button*, 622 N.W.2d 480, 485 (Iowa 2001); *State v. Quintero*, 480 N.W.2d 50, 51 (Iowa 1992); *In re J.A.N.*, 346 N.W.2d 495, 498 (Iowa 1984); *accord Clinton v. Jones*, 520 U.S. 681, 690 n. 11, 117 S.Ct. 1636, 1642 n. 11, 137 L.Ed.2d 945, 958 n. 11 (1997). Both of these considerations create a general requirement that claims involving fundamental rights must identify the claimed right with accuracy and specificity so that our analysis proceeds on appropriate grounds. *Bowers*, 638 N.W.2d at 694 ("Substantive due process analysis must begin with a careful description of the asserted right."); *accord Chavez*, 538 U.S. at 775-76, 123 S.Ct. at 2006, 155 L.Ed.2d at 999. In the absence of a sufficient presentation of the claimed right, we have not hesitated in the past to reconsider and realign a party's arguments to properly address the true constitutional question presented. *See Cubbage*, 671 N.W.2d at 446; *Bowers*, 638 N.W.2d at 692. We feel it is necessary to make this adjustment in this case as well.

Both our precedents and those of the Supreme Court indicate that an alleged infringement on a familial right is unconstitutional only when an infringement has a direct and substantial impact on the familial relationship. *See Lyng*, 477 U.S. at 638, 106 S.Ct. at 2729, 91 L.Ed.2d at 533; ***664** *Zablocki v. Redhail*, 434 U.S. 374, 386-87, 98 S.Ct. 673, 681, 54 L.Ed.2d 618, 631 (1978); *Moore*, 431 U.S. at 498-99, 97 S.Ct. at 1935, 52 L.Ed.2d at 537; *Sioux City Police Officers' Ass'n v. City of Sioux City*, 495 N.W.2d 687, 696 (Iowa 1993); *City of Panora v. Simmons*, 445 N.W.2d 363, 370 (Iowa 1989); *see also Santi*, 633 N.W.2d at 317 ("[T]he right to marry and rear children without governmental interference is not unlimited."). We do not believe this impact is present in this case. While the residency restriction may impact the Seerings insofar as they cannot choose the precise location where they can establish their home, it does not absolutely prevent them from living together. In fact, the record establishes that the Seerings specifically successfully lived together through much of the proceedings in this case. These facts lie in contrast to other familial rights cases in which the challenged statute substantially and directly impacted the familial interest. *See, e.g., Zablocki*, 434 U.S. at 386-87, 98 S.Ct. at 681, 54 L.Ed.2d at 631; *Moore*, 431 U.S. at 498-99, 97 S.Ct. at 1935, 52 L.Ed.2d at 537; *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 1824, 18 L.Ed.2d 1010, 1018 (1967); *Santi*, 633 N.W.2d at 318; *see also Lyng*, 477 U.S. at 638, 106 S.Ct. at 2729, 91 L.Ed.2d at 533; *Sioux City Police Officers' Ass'n*, 495 N.W.2d at 696; *City of Panora*, 445 N.W.2d at 369-70.

Furthermore, those times during which the Seerings have been unable to live together were largely the result of circumstances outside of those created by the residency restriction. While we may be sympathetic to the difficulties created by the residency restriction for an offender and family who lack financial resources, these difficulties result from a social or political judgment that must be made by the legislature and not this court. In addition, Seering has not properly raised a claim that frames this issue as one based on monetary resources.

[13] The claim Seering has raised is, at its core, based on freedom of choice in where an offender lives and under what conditions. Thus, we must determine what level of constitutional scrutiny an alleged impingement on this interest warrants. "Neither the Supreme Court nor this court has created a clear test for determining whether an alleged right that is not specifically and constitutionally enumerated is 'fundamental.' " *Cubbage*, 671 N.W.2d at 447. However, "[o]nly fundamental rights and liberties which are ' "deeply rooted in this Nation's history and tradition" ' and ' "implicit in the concept of ordered liberty" ' qualify for such protection." *Chavez*, 538 U.S. at 775, 123 S.Ct. at 2005, 155 L.Ed.2d at 999 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 2268 138 L.Ed.2d 772, 787-88 (1997)); *see also Lawrence v. Texas*, 539 U.S. 558, 572, 123 S.Ct. 2472, 2480, 156 L.Ed.2d 508, 521 (2003) (" 'History and tradition are the starting point but not in all cases the ending point of the substantive due process inquiry.' " (Citation omitted.)). "[W]e have traditionally followed the Court's guidance in determining which rights are deemed fundamental." *Cubbage*, 671 N.W.2d at 447.

[14][15] Although freedom of choice in residence is

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of keen interest to any individual, it is not a fundamental interest entitled to the highest constitutional protection. *See* Prostrollo v. Univ. of S.D., 507 F.2d 775, 781 (8th Cir.1974). Importantly, neither this court nor the Supreme Court has ever recognized such an interest as " ' "deeply rooted in this Nation's history and tradition" ' " and " ' "implicit in the concept of ordered liberty" ' " so as to qualify for the highest constitutional protection. Chavez, 538 U.S. at 775, 123 S.Ct. at 2005, 155 L.Ed.2d at 999 (quoting ***665** Glucksberg, 521 U.S. at 721, 117 S.Ct. at 2268, 138 L.Ed.2d at 787-88); *see also* Cubbage, 671 N.W.2d at 447. For these reasons, an interest in choice of residency is entitled to only rational basis review. Hernandez-Lopez, 639 N.W.2d at 238.

[16][17] As noted, the rational basis standard requires a consideration of whether there is "a reasonable fit between the government interest and the means utilized to advance that interest." *Id.* We believe such a fit exists in this case. As numerous authorities have acknowledged, "[t]he risk of recidivism posed by sex offenders is 'frightening and high.' " Smith v. Doe, 538 U.S. 84, 103, 123 S.Ct. 1140, 1153, 155 L.Ed.2d 164, 184 (2003) (citations omitted); *see also* Cubbage, 671 N.W.2d at 445 n. 2; In re Detention of Swanson, 668 N.W.2d 570, 576 (Iowa 2003). This threat was confirmed by some of the evidence presented by the State in defending the residency restriction in the district court. It is also clear that this threat was on the collective mind of the legislature in crafting the statute. Although additional testimony revealed that the two-thousand-foot restriction was not necessarily a perfect protection against this threat, perfection is not necessary to meet the rational basis standard. *See* Bowers, 638 N.W.2d at 689; *see also* State v. Breuer, 577 N.W.2d 41, 49-50 (Iowa 1998). We believe there is "a reasonable fit between the government interest" of preventing sex offenders from reoffending and the residency restriction statute, "the means utilized to advance that interest." Hernandez-Lopez, 639 N.W.2d at 238. For this reason, under the facts of this case, the residency restriction as applied to Seering does not violate substantive due process rights. Having decided the statute is not unconstitutional as applied to this case, it is unnecessary for us to address Seering's claim that the statute is unconstitutional on its face. *See* State v. Hepburn, 270 N.W.2d 629, 631 (Iowa 1978); 1 Chester J. Antieau, *Modern Constitutional Law* § 15:36 (1969).

B. Procedural Due Process.

[18][19] "A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty or property interest." Bowers, 638 N.W.2d at 690; *accord* Hernandez-Lopez, 639 N.W.2d at 240. Accordingly, the first step in any procedural due process inquiry is the determination of "whether a protected liberty or property interest is involved." Bowers, 638 N.W.2d at 691. Such liberty interests have their source in the Federal Constitution and "include such things as freedom from bodily restraint, the right to contract, the right to marry and raise children, and the right to worship according to the dictates of a person's conscience." *Id.* Protected property interests " 'are created and their dimensions are defined' not by the Constitution but by an independent source such as state law." *Id.* (citation omitted).

[20][21][22] Upon determining that a protected interest is involved, we undertake an analysis that balances three factors to determine what process is due:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail."

Id. (quoting Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33 (1976)); *accord* Hernandez-Lopez, 639 N.W.2d at 240. At the very least, procedural ***666** due process requires "notice and opportunity to be heard in a proceeding that is 'adequate to safeguard the right for which the constitutional protection is invoked.' " Bowers, 638 N.W.2d at 691 (citation omitted); *accord* Hernandez-Lopez, 639 N.W.2d at 241. However, " '[n]o particular procedure violates [due process] merely because another method may seem fairer or wiser.' " Bowers, 638 N.W.2d at 691 (citation omitted).

[23] Seering's procedural due process argument strikes at the heart of the protections extended by this constitutional value. He contends that section 692A.2A simply "fails to provide *any* opportunity for hearing." Aside from this bare allegation, however, Seering does not explain how the factors described above apply in this case. The State counters that examining section 692A.2A and balancing the factors we have previously listed reveals the residency restriction statute does not adversely affect Seering's procedural due process rights. We agree.

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[24] At the outset, we recognize that the statute is based on a legislative classification that includes no exemptions. The statute does not contain an exemption based on difficulty of finding a suitable place to live outside the two-thousand-foot restriction. The restriction imposed is based only on status as a convicted sex offender. "States are not barred by principles of *procedural* due process' " from making classifications between sex offenders and others. *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 8, 123 S.Ct. 1160, 1162, 155 L.Ed.2d 98, 105 (2003) (quoting *Michael H. v. Gerald D.*, 491 U.S. 110, 120, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (plurality opinion)). Because there are no exemptions in the statute, Seering was not entitled to a hearing before he was charged under the statute to attempt to persuade the court that the statute should not be applied to him. *Cf. Doe v. Miller*, 405 F.3d 700, 709 (8th Cir.2005) (stating that if the restriction applies to all sex offenders, notions of procedural due process do not require a hearing for "individuals who seek to provide that they are not individually dangerous").

The crux of Seering's constitutional claims is an alleged violation of a private interest in freedom of choice in residence. While this is an important interest, it is not a fundamental one. The residency restriction became law in a public process and after appropriate consideration by the legislature and governor. In creating the restriction, the legislature had important public interests in mind. Balancing these factors, we believe Seering was entitled to minimum procedural protections. Yet, he has not even explained how the residency restriction statute, particularly in his case, results in the deprivation of these protections.

The residency restriction arises from a validly enacted statute. As a statute based on status as a convicted sex offender, the minimum protections necessary under due process would be met by the notice under the statute and the trial. Furthermore, Seering has had ample opportunity to challenge the statute in court. Ultimately, each of these factors reveals that Seering has been provided adequate notice and opportunity to be heard. He has suffered no deprivation of his procedural due process rights.

V. Ex Post Facto.

[25] Both the federal and state constitutions' Ex Post Facto Clauses " 'forbid the application of a new punitive measure to conduct already committed,' " and may also be violated " 'when a statute makes more burdensome the punishment for a crime after its commission.' " *Schreiber v. State*, 666 N.W.2d 127, 129 (Iowa 2003); ***667** *see also* U.S. Const. art. I, § 10; Iowa Const. art. I, § 21. The ex post facto prohibition extends only to "cases criminal in nature ... even where the civil consequences are 'serious' in nature." *Hills v. Iowa Dep't of Transp. & Motor Vehicle Div.*, 534 N.W.2d 640, 641 (Iowa 1995); *accord State v. Flam*, 587 N.W.2d 767, 768 (Iowa 1998) ("[T]he prohibition of ex post facto laws applies only to penal and criminal actions."). Thus, "[p]urely civil penalties ... are not subjected to such restrictions." *State v. Corwin*, 616 N.W.2d 600, 601 (Iowa 2000).

[26] In deciding whether a statute violates the Ex Post Facto Clause by imposing prohibited punishment, the first task is to consider the intent of the legislature. *Smith v. Doe*, 538 U.S. 84, 92, 123 S.Ct. 1140, 1146-47, 155 L.Ed.2d 164, 176 (2003). If the statute is intended to impose criminal punishment, then the legislative intent controls, and the law is considered to be punitive. *Id.* at 92, 123 S.Ct. at 1147, 155 L.Ed.2d at 176. If the law was intended to be civil and nonpunitive, then we look to see if it is nevertheless "so punitive either in purpose or effect as to negate" the nonpunitive intent. *Id.* (citation and quotation marks omitted).

[27] We believe the intent of our legislature in enacting section 692A.2A was not punitive. *See In re S.M.M.*, 558 N.W.2d 405, 406 (Iowa 1997) (citing *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997)). In *S.M.M.*, we specifically recognized the purpose of chapter 692A to be clear: "[T]o require registration of sex offenders and thereby protect society from those who because of probation, parole, or other release are given access to members of the public." *Id.* Thus, the restrictions of section 692A.2A are predominately clothed with the earmarks of legislation to protect the health and safety of individuals, especially children, not to impose punishment. We therefore turn to consider whether, as Seering contends, the statute is "penal or regulatory in character." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69, 83 S.Ct. 554, 567, 9 L.Ed.2d 644, 661 (1963). The factors articulated in *Kennedy* are helpful guides to determine if a statute has a punitive effect, so that the regulatory scheme under the statute intended by the legislature to be nonpunitive nevertheless imposes ex post facto punishment. *See Smith*, 538 U.S. at 97, 123 S.Ct. at 1149, 155 L.Ed.2d at 180. These factors include: whether the law has been historically and traditionally considered to be punishment, whether it

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promotes the traditional goals of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to some nonpunitive purpose, and whether it is excessive with respect to the nonpunitive purpose. *Kennedy*, 372 U.S. at 168-69, 83 S.Ct. at 567-68, 9 L.Ed.2d at 661; *see Smith*, 538 U.S. at 97, 123 S.Ct. at 1149, 155 L.Ed.2d at 180.

In first considering the history of laws that restrict residency, Seering claims section 692A.2A results in banishment. Historically, banishment has been considered to be punishment. *See id.* at 98, 123 S.Ct. at 1150, 155 L.Ed.2d at 180. Yet, while Seering may have a sense of being banished to another area of the city, county, or state, true banishment goes beyond the mere restriction of "one's freedom to go or remain where others have the right to be: it often works a destruction on one's social, cultural, and political existence." *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 897 (2d Cir.1996). Section 692A.2A, to the contrary, only restricts sex offenders from residing in a particular area. Offenders are not banished from communities and are free to engage in most community activities. The statute is ***668** far removed from the traditional concept of banishment.

We next consider whether section 692A.2A promotes the traditional goals of punishment. These goals center on deterrence and retribution. Although Seering may feel as if the restrictions and requirements impact deterrence and retribution, we recognize that many governmental programs exist that may "deter crime without imposing punishment." *Smith*, 538 U.S. at 102, 123 S.Ct. at 1152, 155 L.Ed.2d at 183. The nature of some governmental restrictions, especially those designed to protect the health and safety of children, may necessarily have some effects related to the goals of punishment. These effects, however, are secondary and largely "consistent with the regulatory objective." *Id.*

We next consider if section 692A.2A imposes an affirmative disability or restraint. The evidence in the case illustrates the difficulty that can result from the residency restrictions in obtaining housing in some communities of the state. These restrictions clearly impose a form of disability. Yet, the disabling nature of the statute is not absolute. Moreover, we are mindful of the objectives of the residency restriction under the statute and understand that a statute that imposes some degree of disability does not necessarily mean the state is imposing punishment. *Id.* at 100, 123 S.Ct. at 1151, 155 L.Ed.2d at 183.

[28] We next consider if the statute has a rational relationship to a nonpunitive purpose. This factor is important because the previous factors have disclosed the mixed effects of the residency restrictions. Clearly, the statute has some punitive impact. Yet, this factor underscores that a statute is not punitive merely "because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Id.* at 103, 123 S.Ct. at 1152, 155 L.Ed.2d at 183. We look for a rational connection, which clearly exists--to protect society.

Finally, we consider whether the statute is excessive in its goal of protecting society. While it is not easy to fully assess this factor, we are mindful that the relative gauge we use to test excessiveness includes the protection of children. In that light, we think it is more difficult to conclude that the restrictions are excessive considering the special needs of children in this particular aspect of our society and the imprecise nature of protecting children from the risk that convicted sex offenders might reoffend.

[29] Considering all these factors, we cannot conclude that the statute imposes criminal punishment under this record. Notwithstanding, even if it was sufficiently penal in nature, we do not believe the statute punishes action that has occurred prior to the statute's enactment or increases the punishment for a crime after its commission. *See Corwin*, 616 N.W.2d at 601.

An offender such as Seering does not face punishment under the statute simply because he is a convicted offender. Instead, punishment may come based only on a violation of the statute. While this punishment is based at least partially on the offender's status as an offender, the status itself is not the impetus for punishment, nor is the punishment based on the prior offense. We recently considered a similar challenge to Iowa's mandatory DNA testing statute in *Schreiber*, 666 N.W.2d at 127. That statute required "inmates that have been convicted of certain offenses to submit a blood specimen for DNA profiling." *Id.* While we concluded that statute was not punitive, we also observed, "any prison sanctions that may be applied for refusing to provide a specimen would not be ex post facto punishment because the ***669** sanctions do not enhance the sentence imposed by the court for the offense originally committed." *Id.* at 130. A similar conclusion is warranted here.

We also do not believe that the statute increases the

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punishment for a crime after its commission. *Corwin*, 616 N.W.2d at 601. While Seering's prior offenses may serve as a factual basis for application of the statute, it is the violation of the residency restriction statute itself that makes him subject to a new punishment. We have previously rejected similar ex post facto claims based on alleged increases in punishment for offenders previously convicted of offenses that make them subject to a new criminal penalty for a new statutory violation. *See State v. Swartz*, 601 N.W.2d 348, 351 (Iowa 1999) (stating that a statute pertaining to possession of a firearm by a felon "is intended to regulate a present situation that includes defendant's continuing status as a convicted felon"). The residency restriction statute makes Seering potentially subject to further criminal penalty based on his status as a sex offender, but does not "enhance the sentence imposed by the court for the offense originally committed"--namely, his prior sex offenses. *Id.* Instead, the residency restriction carries its own penalty for a violation of the statute based on conduct subsequent to the prior criminal activities of an offender.

VI. Self-incrimination.

[30][31] Pursuant to the Fifth Amendment, no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This privilege against self-incrimination "applies equally to allow a person ' "not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." ' " *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (citation omitted). The State cannot compel " ' "testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered" ' " without violating the Fifth Amendment. *Id.* at 148-49 (citation omitted).

[32] Seering contends the residency restriction statute compelled him to incriminate himself by its requirement that he register his home address, which was in a restricted area. We disagree. It is important to understand that the challenge made by Seering in this case relates to the residency restriction imposed under the statute, not the separate registration requirement under the statute. The residency restriction cannot serve to support a claim of self-incrimination because there is nothing about the restriction that compels sex offenders to be witnesses against themselves. Any constitutional infirmity with the registration requirement would not affect the constitutionality of a substantive law making certain conduct criminal. Moreover, even if we assume Seering was compelled to act in a way that incriminated him, the remedy for such an action likely would be the exclusion of his incriminating statements at a subsequent trial, not the wholesale invalidation of the restriction statute. *See Minnesota v. Murphy*, 465 U.S. 420, 426, 104 S.Ct. 1136, 1141-42, 79 L.Ed.2d 409, 418-19 (1984). Of course, we do not even need to reach this question because Seering has not been compelled in such a way that violates the Fifth Amendment. The challenge is premature.

VII. Cruel and Unusual Punishment.

[33][34][35][36] Both the federal and state constitutions prohibit the imposition of cruel and unusual punishment. U.S. Const. amend. 8; Iowa Const. art. I, § 17. "Punishment may be cruel and unusual ***670** because it inflicts torture, is otherwise barbaric, or is so excessively severe it is disproportionate to the offense charged." *State v. Cronkhite*, 613 N.W.2d 664, 669 (Iowa 2000). If a punishment "falls within the parameters of a statutorily prescribed penalty," it generally "does not constitute cruel and unusual punishment." *Id.* "Only extreme sentences that are 'grossly disproportionate' to the crime conceivably violate the Eighth Amendment." *Id.* (citations omitted). While we provide the legislature substantial deference "in setting the penalty for crimes," it is within our power "to determine whether the term of imprisonment imposed is grossly disproportionate to the crime charged." *Id.* "If it is not, no further analysis is necessary." *Id.*

We have previously acknowledged and applied three factors elucidated by the Supreme Court to determine whether a sentence is disproportionate to a crime: "(1) the gravity of the offense and harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for the commission of the same crime in other jurisdictions." *State v. Hoskins*, 586 N.W.2d 707, 709 (Iowa 1998). Seering advocates for our application of these criteria to his case and contends such an application reveals that the two-year sentence provided for in Iowa Code section 692A.2A is disproportionate and thus cruel and unusual punishment. However, we also have previously acknowledged that the viability of the factors noted in *Hoskins* has been limited by the Supreme Court's subsequent observation "that the proportionality analysis is only used 'in the rare case when a threshold comparison of the crime committed

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to the sentence imposed leads to an inference of gross disproportionality.' " *Id.* (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1005, 111 S.Ct. 2680, 2707, 115 L.Ed.2d 836, 871 (1991)); *accord State v. August*, 589 N.W.2d 740, 742-43 (Iowa 1999); *State v. Lara*, 580 N.W.2d 783, 785 (Iowa 1998). Thus, our analysis begins with applying an objective test "measuring the harshness of the penalty against the gravity of the offense." *State v. Rubino*, 602 N.W.2d 558, 564 (Iowa 1999); *accord August*, 589 N.W.2d at 743.

[37] We believe this threshold comparison in this case reveals that the two-year sentence for violating Iowa Code section 692A.2A is in appropriate proportion with the crime and thus is not cruel and unusual punishment. As noted, the residency restriction was created based on realistic concerns related to offender recidivism. Experts from both sides agreed that the mere opportunity to reoffend was often a key component of an offender's decision to reoffend. While the two-thousand-foot restriction may not be the best ultimate solution to the recidivism threat, it has been created to enforce an important state interest in protecting persons against sexual offenders. A violation of the restriction cuts to the core of this state interest and undermines public safety. For each of these reasons, we do not believe a potential two-year penalty attached to a violation of the statute is disproportionate when "measuring the harshness of the penalty against the gravity of the offense." *Rubino*, 602 N.W.2d at 564.

VIII. Conclusion.

We conclude Seering has suffered no deprivation of his federal or state constitutional rights related to substantive and procedural due process, ex post facto laws, self-incrimination, or cruel and unusual punishment. We also observe that the United States Eighth Circuit Court of Appeals recently rejected similar challenges to section 692A.2A under the Constitution of the United States. *See Doe*, 405 F.3d at 723. This opinion is consistent with our ***671** approach and supports the conclusion we reach today. We reverse and remand this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

All justices concur except WIGGINS, J., and LAVORATO, C.J., who concur specially in part and dissent in part.

WIGGINS, Justice (concurring in part and dissenting in part).

I agree with the majority's conclusions regarding the issues Seering preserved for appeal, except I would find Iowa Code section 692A.2A (2003) violates the Ex Post Facto clauses of the United States and Iowa Constitutions.

In order to determine whether section 692A.2A violates the Ex Post Facto clauses, we must first ascertain the intent of the legislature when it enacted the law. *Smith v. Doe*, 538 U.S. 84, 92, 123 S.Ct. 1140, 1146-47, 155 L.Ed.2d 164, 176 (2003). If the legislature intended to establish a statutory scheme that is civil and non-punitive, the statute is not subject to the Ex Post Facto clauses. *Id.* I agree with the majority the intent of the legislature in enacting section 692A.2A was to create a civil, nonpunitive statutory scheme for the protection of the public. Our inquiry, however, does not end with this finding.

If we find the purpose of the statute is non-punitive, we must then determine whether the statutory scheme either in purpose or effect is so punitive that it negates the State's objective to be considered as a civil limitation. *Id.* As the majority notes, we are required to analyze the five factors annunciated by the Supreme Court in *Smith* to make that determination. I dissent because my analysis of the five factors leads me to conclude section 692A.2A in purpose and effect is so punitive that it negates the State's objective to be considered as a civil limitation.

1. Has a law that restricts a person's residency been historically and traditionally considered to be punishment?

The majority concedes our society has historically considered banishment as punishment. Yet, it concludes individuals subject to section 692A.2A's residency requirements are not banished from a community but only restricted from residing in a particular area.

In discussing this factor in connection with an Alaskan sex offender law that required only registration, the Supreme Court stated:

> Some colonial punishments indeed were meant to inflict public disgrace. Humiliated offenders were required "to stand in public with signs cataloging their offenses." At times the labeling would be permanent: A murderer might be branded with a "M," and a thief with a "T." The aim was to make these offenders suffer "permanent stigmas, which in effect cast the person out of the community."

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> The most serious offenders were banished, after which they could neither return to their original community nor, reputation tarnished, be admitted easily into a new one.

Id. at 97-98, 123 S.Ct. at 1150, 155 L.Ed.2d at 180 (citations omitted). *Smith* went on to hold registration in and of itself is not banishment. *Id.* at 99, 123 S.Ct. at 1150-51, 155 L.Ed.2d at 181.

Section 692A.2A goes further than just requiring a sex offender to register. It prevents an individual from living within two-thousand feet of an elementary or secondary school or childcare center. Iowa Code § 692A.2A(2) (2003). The residency restriction imposes an onerous and intrusive obligation on a convicted sex offender, ***672** results in community ostracism, and marks the offender as a person who should be shunned by society. Accordingly, I would hold section 692A.2A effectively banishes an offender from a community. Therefore, this factor weighs in favor of finding section 692A.2A as being punitive.

2. Does section 692A.2A promote the traditional goals of punishment?

The residency restrictions of section 692A.2A are comparable to conditions of supervised release or parole. The dual purpose of a supervised release or parole is to (1) restrict and monitor the freedom of the offender and (2) act as a deterrent. The majority labels the deterrent and retribution effects as secondary and consistent with the regulatory objective of the residency requirement. Even if these effects are secondary and consistent with the regulatory objective, it still amounts to deterrence and retribution promoting the traditional aims of punishment. For this reason, I would find this factor weighs in favor of finding section 692A.2A promotes the traditional goals of punishment.

3. Does section 692A.2A impose an affirmative disability or restraint?

The majority acknowledges that section 692A.2A imposes an affirmative disability or restraint. Yet, it minimizes this factor because "the disabling nature of the statute is not absolute." When a residency restriction does not allow a family to live within walking distance of its local school, I would find the restriction imposes an affirmative disability or restraint.

4. Does section 692A.2A have a rational connection to a non-punitive purpose?

I agree with the majority the residency requirement has a rational connection to the purpose of protecting the public.

5. Is section 692A.2A excessive with respect to the nonpunitive purpose?

Although there is a rational connection to a non-punitive purpose, I do believe it is excessive. Section 692A.2A limits the residency of "a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor." Iowa Code § 692A.2A(1). It applies equally to a person convicted of admitting a minor to a premise where obscene material is exhibited in violation of section 728.3 and to a person convicted of first degree sexual abuse in violation of section 709.2. *Id.* § § 692A.1(1)(*a*), 692A.1(5)(*k*). Section 692A.2A fails to consider the seriousness of the crime, the relationship between the victim and the offender, or the risk of re-offending. By punishing all these offenders with a residency requirement without considering whether a particular offender is a danger to the general public, exceeds the non-punitive purpose of the statute. This is especially true because a sex offender is subject to the residency restrictions for the rest of the sex offender's life.

Consequently, my analysis of four of the five factors requires me to find the purpose and effect of section 692A.2A is so punitive that it negates the legislature's objective to be considered as a civil limitation. Therefore, I would affirm the district court's ruling.

LAVORATO, C.J., joins this special concurrence in part and dissent in part.

701 N.W.2d 655

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H

Briefs and Other Related Documents

United States Court of Appeals,
Eighth Circuit.
John DOE, I, on their own behalf and as representatives of the class of all sex offenders in the State of Iowa; John Doe, II, on their own behalf and as representatives of the class of all sex offenders in the State of Iowa; John Doe, III, on their own behalf and as representatives of the class of all sex offenders in the State of Iowa, Appellees,
v.
Tom MILLER, Iowa Attorney General; Appellant.
J. Patrick White, as representatives of the class of all county attorneys in Iowa; Michael Wolf, as representatives of the class of all county attorneys in Iowa, Defendants.
No. 04-1568.

Submitted: Nov. 4, 2004.
Filed: April 29, 2005.
Rehearing and Rehearing En Banc Denied June 30, 2005. [FN*]

FN* Judge Morris Sheppard Arnold, Judge Murphy, Judge Bye, Judge Melloy, and Judge Smith would grant the petition for rehearing en banc.

Background: Sex offenders brought class action challenging constitutionality of Iowa statute that prohibited person who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility. The United States District Court for the Southern District of Iowa, Robert W. Pratt, J., granted judgment for sex offenders, 298 F.Supp.2d 844. State appealed.

Holdings: The Court of Appeals, Colloton, Circuit Judge, held that:
(1) statute did not violate due process clause of Fourteenth Amendment on its face for lack of notice;
(2) statute did not foreclose opportunity to be heard;
(3) statute did not contravene principles of procedural due process;
(4) statute did not infringe upon constitutional liberty interest relating to matters of marriage and family in fashion that required heightened scrutiny;
(5) statute did not interfere with constitutional right to travel;
(6) statute did not implicate alleged right to intrastate travel;
(7) prohibition was rational way of promoting safety of children; and
(8) statute was not retroactive criminal punishment in violation of ex post facto clause.
Reversed and remanded.

Melloy, Circuit Judge, filed opinion concurring and dissenting.

West Headnotes

[1] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[1] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not violate due process clause of Fourteenth Amendment on its face for lack of notice, although some cities were unable to provide sex offenders with information about location of all schools and registered child care facilities and it was difficult to measure restricted areas, which were measured "as the crow flies" from school or child care facility. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

[2] Constitutional Law 258(2)
92k258(2) Most Cited Cases
The judicial doctrine of vagueness under the due process clause requires that a criminal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. U.S.C.A. Const.Amend 14.

[3] Criminal Law 13.1(1)
110k13.1(1) Most Cited Cases
A criminal statute is not vague on its face unless it is impermissibly vague in all of its applications; the

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possibility that an individual might be prosecuted in a particular case in a particular community despite his best efforts to comply with the restriction is not a sufficient reason to invalidate the entire statute. U.S.C.A. Const.Amend 14.

[4] Constitutional Law 257.5
92k257.5 Most Cited Cases
Entrapment.
Due process does not require that independently elected county attorneys enforce each criminal statute with equal vigor, and the existence of different priorities or prosecution decisions among jurisdictions does not violate the Constitution. U.S.C.A. Const.Amend 14.

[5] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[5] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not foreclose opportunity to be heard under due process clause of Fourteenth Amendment, although statute did not provide process for individual determinations of dangerousness; due process did not entitle any person legislatively classified as sex offender to hearing to establish fact that was not material under the state statute. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

[6] Constitutional Law 255(5)
92k255(5) Most Cited Cases
States are not barred by principles of procedural due process from drawing classifications among sex offenders and other individuals. U.S.C.A. Const.Amend 14.

[7] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[7] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not contravene principles of procedural due process under Fourteenth Amendment, since restriction applied to all offenders who had been
convicted of certain crimes against minors, regardless of what estimates of future dangerousness might have been proved in individualized hearings. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

[8] Constitutional Law 255(5)
92k255(5) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not infringe upon constitutional liberty interest relating to matters of marriage and family in fashion that required heightened scrutiny; although statute restricted location of sex offender's residence, statute did not directly regulate family relationship or prevent any family member from residing with sex offender in residence in manner consistent with statute. U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

[9] Constitutional Law 252.5
92k252.5 Most Cited Cases
Substantive due process analysis must begin with a careful description of the asserted right, for the doctrine of judicial self-restraint requires a court to exercise the utmost care whenever it is asked to break new ground in that field. U.S.C.A. Const.Amend 14.

[10] Constitutional Law 206(1)
92k206(1) Most Cited Cases

[10] Constitutional Law 207(1)
92k207(1) Most Cited Cases

[10] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[10] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not interfere with right of sex offenders to travel under substantive due process, Privileges and Immunities Clause of Article IV and Privileges or Immunities Clause of Fourteenth Amendment, since statute did not impose any obstacle to sex offender's entry into Iowa, it did not erect actual barrier to interstate movement, and it did not treat nonresidents who visited Iowa any differently than current residents or discriminate against citizens of other states who wished to establish residence in Iowa. U.S.C.A. Const. Art. 4, § 2, cl. 2; U.S.C.A. Const.Amend 14; I.C.A. § 692A.2A.

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[11] Constitutional Law 83(6)
92k83(6) Most Cited Cases

[11] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not implicate alleged right to intrastate travel, since statute did not prevent sex offender from entering or leaving any part of state, including areas within 2000 feet of a school or child care facility, and it did not erect any actual barrier to intrastate movement. I.C.A. § 692A.2A.

[12] Constitutional Law 83(1)
92k83(1) Most Cited Cases

[12] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Sex offenders, who were subject to Iowa statute that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not show that United States Constitution established right to "live where you want" that would have required strict scrutiny of state's residency restrictions, where sex offenders did not develop any argument that right to "live where you want" was deeply rooted in nation's history and tradition or that "living where you want" was implicit in concept of ordered liberty, such that neither liberty nor justice would exist if it were sacrificed. I.C.A. § 692A.2A.

[13] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, was rational way of promoting safety of children; although no scientific study supported legislature's conclusion that excluding sex offenders from residing within 2000 feet of school or child care facility was likely to enhance safety of children, state legislature had authority to make judgments about best means to protect health and welfare of its citizens in area where precise statistical data was unavailable and human behavior was necessarily unpredictable. I.C.A. § 692A.2A.

[14] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, rationally advanced legitimate governmental purpose of promoting safety of children, since convicted sex offenders had distinguishing characteristics relevant to interests that state had authority to implement, Iowa General Assembly and Governor did not act based merely on negative attitudes toward, fear of, or bare desire to harm politically unpopular group, and policymakers of Iowa were institutionally equipped to set such parameters and were entitled to employ "common sense." I.C.A. § 692A.2A.

[15] Criminal Law 393(1)
110k393(1) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, did not violate right against self-incrimination under Fifth Amendment, since statute did not require any offender to provide any information that might have been used in criminal case; although separate section of Iowa Code required sex offender to register his address with county sheriff, offenders did not challenge constitutionality of registration requirement or seek injunction against its enforcement. U.S.C.A. Const.Amends. 5, 14; I.C.A. § 692A.2A.

[16] Constitutional Law 203
92k203 Most Cited Cases

[16] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Iowa statute, that prohibited persons who had committed criminal sex offense against minor from residing within two thousand feet of school or child care facility, was not retroactive criminal punishment in violation of ex post facto clause, since statute was designed to be nonpunitive and regulatory, and sex offenders could not establish by "clearest proof" that Iowa's choice was excessive in relation to its legitimate regulatory purpose given challenge in determining precisely what distance was best suited to minimize risk to children without unnecessarily restricting sex offenders and difficult policy judgments inherent in that choice. U.S.C.A. Const. Art. 1, § 10, cl. 1; I.C.A. § 692A.2A.

[17] Constitutional Law 203
92k203 Most Cited Cases
States are prohibited by the ex post facto clause from enacting laws that increase punishment for criminal acts after they have been committed. U.S.C.A. Const.

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Art. 1, § 10, cl. 1.

[18] Constitutional Law 197
92k197 Most Cited Cases
When determining whether a state statute violates the Ex Post Facto Clause, a law is necessarily punitive if the legislature intended criminal punishment; however, if the legislature intended its law to be civil and non-punitive, only the clearest proof that the law is nonetheless so punitive either in purpose or effect as to negate the state's nonpunitive intent will transform a civil regulatory measure into a criminal penalty. U.S.C.A. Const. Art. 1, § 10, cl. 1.

[19] Constitutional Law 197
92k197 Most Cited Cases
On an Ex Post Facto Clause claim, where a legislative restriction is an incident of the state's power to protect the health and safety of its citizens, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment. U.S.C.A. Const. Art. 1, § 10, cl. 1.

[20] Constitutional Law 197
92k197 Most Cited Cases
Whether the regulatory scheme has a rational connection to a nonpunitive purpose is the most significant factor in the ex post facto analysis; a statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance. U.S.C.A. Const. Art. 1, § 10, cl. 1.

[21] Constitutional Law 197
92k197 Most Cited Cases
The Ex Post Facto Clause does not preclude a state from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences, and, therefore, the absence of a particularized risk assessment does not necessarily convert a regulatory law into a punitive measure. U.S.C.A. Const. Art. 1, § 10, cl. 1.

[22] Constitutional Law 197
92k197 Most Cited Cases
The excessiveness inquiry of ex post facto jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy, but rather an inquiry into whether the regulatory means chosen are reasonable in light of the nonpunitive objective. U.S.C.A. Const. Art. 1, § 10, cl. 1.

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Negative Treatment Reconsidered

I.C.A. § 692A.2A.

***704** Gordon Eugene Allen, argued, Des Moines, IA (Thomas J. Miller, on the brief), for appellant.

Philip B. Mears, argued, Iowa City, IA (Randall Wilson, on the brief), for appellee.

Before RILEY, MELLOY, and COLLOTON, Circuit Judges.

COLLOTON, Circuit Judge.

In 2002, in an effort to protect children in Iowa from the risk that convicted sex offenders may reoffend in locations close to their residences, the Iowa General Assembly passed, and the Governor of Iowa signed, a bill that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or a registered child care facility. The district court declared the statute unconstitutional on several grounds and enjoined the Attorney General of Iowa and the ninety-nine county attorneys in Iowa from enforcing the prohibition.

Because we conclude that the Constitution of the United States does not prevent the State of Iowa from regulating the residency ***705** of sex offenders in this manner in order to protect the health and safety of the citizens of Iowa, we reverse the judgment of the district court. We hold unanimously that the residency restriction is not unconstitutional on its face. A majority of the panel further concludes that the statute does not amount to unconstitutional *ex post facto* punishment of persons who committed offenses prior to July 1, 2002, because the appellees have not established by the "clearest proof," as required by Supreme Court precedent, that the punitive effect of the statute overrides the General Assembly's legitimate intent to enact a nonpunitive, civil regulatory measure that protects health and safety.

I.

Iowa Senate File 2197, now codified at Iowa Code § 692A.2A, took effect on July 1, 2002. It provides that persons who have been convicted of certain criminal offenses against a minor, including numerous sexual offenses involving a minor, shall not reside within 2000 feet of a school or registered child care facility. Iowa Code § 692A.2A(1)-(2). The law does not apply to persons who established a residence prior to July 1, 2002, or to schools or child

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care facilities that are newly located after July 1, 2002. *Id.* § 692A.2A(4)(c). Violations of the statute are punishable as aggravated misdemeanors. Iowa Code § 692A.2A(3). [FN1]

FN1. The text of the statute provides as follows:
692A.2A Residency restrictions--child care facilities and schools.
1. For purposes of this section, "person" means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor. 2. A person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility.
3. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor.
4. A person residing within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this section if any of the following apply:
a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.
b. The person is subject to an order of commitment under chapter 229A.
c. The person has established a residence prior to [ ] July 1, 2002, or a school or child care facility is newly located on or [after] July 1, 2002.
d. The person is a minor or a ward under a guardianship.
Iowa Code § 692A.2A. The term "residence" is defined as "the place where a person sleeps, which may include more than one location, and may be mobile or transitory." Iowa Code § 692A.1(8).

Almost immediately after the law took effect, three named plaintiffs--sex offenders with convictions that predate the law's effective date--filed suit asserting that the statute is unconstitutional on its face. The district court certified their action as a class action, with a plaintiff class that includes all individuals to whom Iowa Code § 692A.2A applies who are currently living in Iowa or who wish to move to Iowa, except for any person who currently is the subject of a prosecution under § 692A.2A. The named plaintiffs, identified as various "John Does," had committed a range of sexual crimes, including indecent exposure, "indecent liberties with a child," sexual exploitation of a minor, assault with intent to commit sexual abuse, lascivious acts with a child, and second and third degree sexual abuse, all of which brought them within the provisions of the residency restriction. A defendant class, including all ***706** of Iowa's county attorneys, also was certified.

During a two-day bench trial, plaintiffs presented evidence concerning the enforcement of § 692A.2A, including maps that had been produced by several cities and counties identifying schools and child care facilities and their corresponding restricted areas. After viewing these maps and hearing testimony from a county attorney, the district court found that the restricted areas in many cities encompass the majority of the available housing in the city, thus leaving only limited areas within city limits available for sex offenders to establish a residence. In smaller towns, a single school or child care facility can cause all of the incorporated areas of the town to be off limits to sex offenders. The court found that unincorporated areas, small towns with no school or child care facility, and rural areas remained unrestricted, but that available housing in these areas is "not necessarily readily available." *Doe v. Miller,* 298 F.Supp.2d 844, 851 (S.D.Iowa 2004). [FN2]

FN2. The parties presented substantial evidence concerning the effect of the statute on the availability of housing for sex offenders in Carroll County, Iowa. The district court found that 2077 of 9019 residential units in the county (23 percent) were not in restricted areas. The Carroll County Attorney testified that 1694 of the available units were in unincorporated areas of the county, and were "mainly farmhouses," but he noted that the trend toward larger farms has created some vacancies in farmhouses where the party farming the land does not live in the farmhouse. Of the remaining 383 units available in the county, the district court found that 244 were located in towns without a school or child care facility. *Doe v. Miller,* 298 F.Supp.2d at 852.

Plaintiffs also presented evidence of their individual experiences in seeking to obtain housing that complies with the 2000-foot restriction. Several of the plaintiffs, including John Does III, IV, XV, and

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XVIII, have friends or relatives with whom they would like to live, but whose homes are within 2000 feet of a school or child care facility. Many, such as John Does VII, X, XI, XII, XIII, XIV, and XVIII, live in homes that are currently compliant, either because they were established prior to July 1, 2002, or because the homes are outside the 2000-foot restricted areas. These plaintiffs, however, testified that they would like to be able to move into a restricted area. Still others, John Does II, VI, VIII, IX, XV, and XVI, are living in non-compliant residences that they wish to maintain.

Plaintiffs testified that in many cases they had a difficult time obtaining housing that was not within 2000 feet of a school or child care center. John Doe VII testified that he investigated 40 residences, but was unable to find any housing that would not place him in violation of § 692A.2A. The evidence also showed, however, that while the residency restriction may have exacerbated a housing problem for the plaintiffs, not all of their difficulty was caused by the statute. For example, John Doe II had difficulty finding housing in part because of his credit problems. John Doe XIV testified that the only available compliant housing in his hometown, Waterloo, was too expensive, so he and his wife purchased a rural home about 45 miles away. The mother of John Doe IV made efforts to help her son find housing, and she testified that she was able to find two potential residences for her son, but neither residence had any vacant units. John Doe VI was renting an apartment in compliance with § 692A.2A, but had to move out when the landlord decided that he did not want to rent to a sex offender. Similarly, John Does VIII and XI each found at least one possible compliant apartment, but their applications were denied because of their ***707** criminal records. In apparent contrast to this testimony from the plaintiffs, Dudley Allison, a parole and probation officer, testified that while the statute made it more difficult for sex offenders to find housing, "virtually everyone" among the covered parolees and probationers whom he supervised between July 2002 and July 2003 was able to locate housing in compliance with the statute. (T. Tr. at 285).

In addition to evidence regarding the burden that § 692A.2A places on sex offenders, both plaintiffs and defendants presented expert testimony about the potential effectiveness of a residency restriction in preventing offenses against minors. The State presented the testimony of Mr. Allison, a parole and probation officer who specialized in sex offender supervision. Allison described the process of treating sex offenders and his efforts at preventing recidivism by identifying the triggers for the original offense, and then imposing restrictions on the residences or activities of the offender. According to Allison, restrictions on the proximity of sex offenders to schools or other facilities that might create temptation to reoffend are one way to minimize the risk of recidivism. In the parole and probation context, Allison also has authority to limit offenders' activities in more specific ways, and he testified that he attempts to remove temptation by preventing offenders from working in jobs where they would have contact with potential victims or from living near parks or other areas where children might spend time unsupervised. In addition to the limits that he imposes on offenders under his supervision, Allison also testified that there is "a legitimate public safety concern" in where unsupervised sex offenders reside. In Allison's view, reoffense is "a potential danger forever."

The State also introduced the transcript of hearing testimony by Dr. William McEchron, a psychologist with a general practice that includes sex offender patients. Like Allison, Dr. McEchron testified that there is no cure for sex offenders and that "there are never any guarantees that they might not reoffend." In his view, the "biggest risk is what's going on inside the individual," but reducing the opportunity and the temptation to reoffend is extremely important to treatment. He explained that because there are "very high rates of re-offense for sex offenders who had offended against children," he believed it would be appropriate to restrict places where sex offenders might come into contact with children. He thought the appropriateness of such a restriction was "common sense," although he said there were insufficient data to know "where to draw the marks." Dr. McEchron also testified, however, that in his view, life-long restrictions like § 692A.2A do not aid in the treatment process, and could even foster negative attitudes toward authority and depression in offenders who view the law as unfair.

The plaintiffs offered the testimony of Dr. Luis Rosell, a psychologist with experience in sex offender treatment. Dr. Rosell estimated that the recidivism rate for sex offenders is between 20 and 25 percent, and like Allison and Dr. McEchron, stated his belief that the key to reducing the risk of recidivism is identifying the factors that led to the offender's original offense and then helping the offender to deal with or avoid those factors in the future. Dr. Rosell testified that reducing a specific sex offender's access to children was a good idea, and

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that "if you remove the opportunity, then the likelihood of reoffense is decreased." He did not believe, however, that "residential proximity makes that big of a difference." Moreover, Dr. Rosell thought that a 2000-foot limit was "extreme." Like Dr. McEchron, he worried that the law might be counterproductive ***708** to the offender's treatment goals by causing depression and potentially removing the offender from his "support system."

After hearing the testimony of all three experts and of the individual plaintiffs, the district court declared that § 692A.2A was unconstitutional on several grounds, to wit: that it was an unconstitutional *ex post facto* law with respect to offenders who committed an offense prior to July 1, 2002; that it violated the plaintiffs' rights to avoid self-incrimination because, coupled with registration requirements elsewhere in Chapter 692A, it required offenders to report their addresses even if those addresses were not in compliance with § 692A.2A; that it violated procedural due process rights of the plaintiffs; and that it violated the plaintiffs' rights under the doctrine of substantive due process, because it infringed fundamental rights to travel and to "privately choose how they want to conduct their family affairs," and was not narrowly tailored to serve a compelling state interest. Although the district court believed the law was punitive, the court rejected the plaintiffs' final argument that the law imposed cruel and unusual punishment in violation of the Eighth Amendment. Having found the statute unconstitutional, the district court issued a permanent injunction against enforcement. *Doe v. Miller,* 298 F.Supp.2d at 880.

II.

[1] We first address the contention that § 692A.2A violates the rights of the covered sex offenders to due process of law under the Fourteenth Amendment. The appellees (to whom we will refer as "the Does") argue that the statute is unconstitutional because it fails to provide adequate notice of what conduct is prohibited, and because it does not require an individualized determination whether each person covered by the statute is dangerous. This claim relies on what is known as "procedural due process."

[2] The Due Process Clause provides that no State shall deprive any person of life, liberty, or property without due process of law. The requirement of "due process" has led to the judicial doctrine of vagueness, which requires that a criminal statute "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson,* 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983).

[3][4] There is no argument here that the words of the statute are unconstitutionally vague. Rather, the Does contend that they are deprived of notice required by the Constitution because some cities in Iowa are unable to provide sex offenders with information about the location of all schools and registered child care facilities, and because it is difficult to measure the restricted areas, which are measured "as the crow flies" from a school or child care facility. We disagree that these potential problems render the statute unconstitutional on its face. A criminal statute is not vague on its face unless it is "impermissibly vague in all of its applications," *Vill. of Hoffman Estates v. Flipside,* 455 U.S. 489, 497, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982), and the possibility that an individual might be prosecuted in a particular case in a particular community despite his best efforts to comply with the restriction is not a sufficient reason to invalidate the entire statute. A sex offender subject to prosecution under those circumstances may seek to establish a violation of due process through a challenge to enforcement of the statute as applied to him in a specific case. Nor do we believe that the potential for varied enforcement of the restriction, ***709** which was cited by the district court, 298 F.Supp.2d at 878, justifies invalidating the entire regulatory scheme. Due process does not require that independently elected county attorneys enforce each criminal statute with equal vigor, and the existence of different priorities or prosecution decisions among jurisdictions does not violate the Constitution.

[5][6] The Does also argue that § 692A.2A unconstitutionally forecloses an "opportunity to be heard" because the statute provides no process for individual determinations of dangerousness. This argument misunderstands the right to procedural due process. As the Supreme Court recently explained in connection with a comparable challenge to Connecticut's sex offender registration law, "even assuming, *arguendo,* that [the sex offender] has been deprived of a liberty interest, due process does not entitle him to a hearing to establish a fact that is not material under the [state] statute." *Conn. Dep't of Pub. Safety v. Doe,* 538 U.S. 1, 7, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003). States "are not barred by principles of 'procedural due process' from drawing" classifications among sex offenders and other individuals. *Id.* at 8, 123 S.Ct. 1160 (quoting

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Michael H. v. Gerald D., 491 U.S. 110, 120, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (plurality opinion)) (emphasis in original).

[7] We likewise conclude that the Iowa residency restriction does not contravene principles of procedural due process under the Constitution. The restriction applies to all offenders who have been convicted of certain crimes against minors, regardless of what estimates of future dangerousness might be proved in individualized hearings. Once such a legislative classification has been drawn, additional procedures are unnecessary, because the statute does not provide a potential exemption for individuals who seek to prove that they are not individually dangerous or likely to offend against neighboring schoolchildren. Unless the Does can establish that the *substantive* rule established by the legislative classification conflicts with some provision of the Constitution, there is no requirement that the State provide a process to establish an exemption from the legislative classification. *Id.* at 7-8, 123 S.Ct. 1160. Thus, the absence of an individualized hearing in connection with a statute that offers no exemptions does not offend principles of procedural due process.

III.

[8] The Does also assert that the residency restriction is unconstitutional under the doctrine of substantive due process. They rely on decisions of the Supreme Court holding that certain liberty interests are so fundamental that a State may not interfere with them, even with adequate procedural due process, unless the infringement is "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993). The Does argue that several "fundamental rights" are infringed by Iowa's residency restriction, including the "right to privacy and choice in family matters," the right to travel, and "the fundamental right to live where you want." The district court agreed that § 692A.2A infringed upon liberty interests that constitute fundamental rights, applied strict scrutiny to the legislative classifications, and concluded that the statute was unconstitutional.

The Does first invoke "the right to personal choice regarding the family." They cite the Supreme Court's statement in *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984), that "certain intimate human relationships must be secured against undue intrusion by the State because of the role ***710** of such relationships in safeguarding the individual freedom that is central to our constitutional scheme," and the Court's discussion of "marital privacy" in *Griswold v. Connecticut*, 381 U.S. 479, 485-86, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). They also rely heavily on the Court's decision in *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977), which held unconstitutional a zoning ordinance that defined "family" in such a way as to prohibit a grandmother and her two grandsons from living together in an area designated for "single family" dwellings. A plurality of the Court in *Moore* reasoned that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment," and concluded that the governmental interests advanced by the city were insufficient to justify an ordinance that "slic[ed] deeply into the family itself." *Id.* at 498-99, 97 S.Ct. 1932 (plurality opinion). Justice Stevens concurred in the judgment on other grounds. *Id.* at 513-21, 97 S.Ct. 1932.

[9] We do not believe that the residency restriction of § 692A.2A implicates any fundamental right of the Does that would trigger strict scrutiny of the statute. In evaluating this argument, it is important to consider the Supreme Court's admonition that " '[s]ubstantive due process' analysis must begin with a careful description of the asserted right, for '[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.' " *Flores*, 507 U.S. at 302, 113 S.Ct. 1439 (quoting *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992)). While the Court has not directed that an asserted right be defined at the most specific level of tradition supporting or denying the asserted right, *cf. Michael H. v. Gerald D.*, 491 U.S. at 127 n. 6, 109 S.Ct. 2333 (1989) (opinion of Scalia, J.), the Does' characterization of a fundamental right to "personal choice regarding the family" is so general that it would trigger strict scrutiny of innumerable laws and ordinances that influence "personal choices" made by families on a daily basis. The Supreme Court's decision in *Griswold* and the plurality opinion in *Moore* did recognize unenumerated constitutional rights relating to personal choice in matters of marriage and family life, but they defined the recognized rights more narrowly, in terms of "intimate relation of husband and wife," *Griswold*, 381 U.S. at 482, 85 S.Ct. 1678, or "intrusive regulation" of "family living arrangements." *Moore*, 431 U.S. at 499, 97 S.Ct. 1932 (plurality opinion).

Unlike the precedents cited by the Does, the Iowa

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statute does not operate directly on the family relationship. Although the law restricts where a residence may be located, nothing in the statute limits who may live with the Does in their residences. The plurality in *Moore* emphasized this distinction, observing that the impact on family was "no mere incidental result of the ordinance," because "[o]n its face [the ordinance] selects certain categories of relatives who may live together and declares that others may not." 431 U.S. at 498-99, 97 S.Ct. 1932 (plurality opinion). Thus, the reasoning of the *Moore* plurality does not require strict scrutiny of a regulation that has an incidental or unintended effect on the family, *Hameetman v. City of Chicago*, 776 F.2d 636, 643 (7th Cir.1985) (upholding requirement that firemen reside within city limits), or that "affects or encourages decisions on family matters" but does not force such choices. *Gorrie v. Bowen*, 809 F.2d 508, 523 (8th Cir.1987) (upholding regulation requiring that applications for public assistance for dependent children include siblings living in same ***711** household). Similarly, the Court in *Griswold* disclaimed authority to determine "the wisdom, need, and propriety" of all laws that touch social conditions, but held unconstitutional a state statute that "operate[d] directly on an intimate relation of husband and wife." 381 U.S. at 482, 85 S.Ct. 1678.

While there was evidence that one adult sex offender in Iowa would not reside with his parents as a result of the residency restriction, that another sex offender and his wife moved 45 miles away from their preferred location due to the statute, and that a third sex offender could not reside with his adult child in a restricted zone, the statute does not directly regulate the family relationship or prevent any family member from residing with a sex offender in a residence that is consistent with the statute. We therefore hold that § 692A.2A does not infringe upon a constitutional liberty interest relating to matters of marriage and family in a fashion that requires heightened scrutiny.

[10] The Does also assert that the residency restrictions interfere with their constitutional right to travel. The modern Supreme Court has recognized a right to interstate travel in several decisions, beginning with *United States v. Guest*, 383 U.S. 745, 757-58, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966), and *Shapiro v. Thompson*, 394 U.S. 618, 629-30, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Court subsequently explained that the federal guarantee of interstate travel "protects interstate travelers against two sets of burdens: 'the erection of actual barriers to interstate movement' and 'being treated differently' from intrastate travelers." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 277, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993) (quoting *Zobel v. Williams*, 457 U.S. 55, 60 n. 6, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982)). Most recently, the Court summarized that the right to interstate travel embraces at least three different components: "the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Saenz v. Roe*, 526 U.S. 489, 500, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999).

Although the district court, like some other courts, considered the first component of a right to interstate travel under the rubric of "substantive due process," the Supreme Court has not identified the textual source of that component. The Court has observed that the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State," and suggested that this right "may simply have been 'conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.' " *Id.* at 501 & n. 3, 119 S.Ct. 1518 (quoting *Guest*, 383 U.S. at 758, 86 S.Ct. 1170). The latter two components of the right identified in *Saenz* arise from the Privileges and Immunities Clause of Article IV, § 2, and the Privileges or Immunities Clause of the Fourteenth Amendment. *Id.*

The Does argue that § 692A.2A violates this right to interstate travel by substantially limiting the ability of sex offenders to establish residences in any town or urban area in Iowa. They contend that the constitutional right to travel is implicated because the Iowa law deters previously convicted sex offenders from migrating from other States to Iowa. The district court agreed, reasoning that the statute "effectively bans sex offenders from residing in large sections of Iowa's towns and cities." 298 F.Supp.2d at 874.

***712** We respectfully disagree with this analysis. The Iowa statute imposes no obstacle to a sex offender's entry into Iowa, and it does not erect an "actual barrier to interstate movement." *Bray*, 506 U.S. at 277, 113 S.Ct. 753 (internal quotation omitted). There is "free ingress and regress to and from" Iowa for sex offenders, and the statute thus does not "directly impair the exercise of the right to free interstate movement." *Saenz*, 526 U.S. at 501, 119 S.Ct. 1518. Nor does the Iowa statute violate principles of equality by treating nonresidents who

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visit Iowa any differently than current residents, or by discriminating against citizens of other States who wish to establish residence in Iowa. We think that to recognize a fundamental right to interstate travel in a situation that does not involve any of these circumstances would extend the doctrine beyond the Supreme Court's pronouncements in this area. That the statute may deter some out-of-state residents from traveling to Iowa because the prospects for a convenient and affordable residence are less promising than elsewhere does not implicate a fundamental right recognized by the Court's right to travel jurisprudence. [FN3]

> FN3. In its analysis of the right to interstate travel, the district court also expressed concern that a sex offender might be compelled to avoid Iowa altogether, lest he establish an unlawful residence by "unwittingly falling asleep" at a location within 2000 feet of a school or child care facility. 298 F.Supp.2d at 875. The court stated that "[l]iteral application of the Act would result in the great majority of the State's hotels and motels being restricted to traveling sex offenders," and that "community centers such as homeless shelters and missions will most likely be unavailable to sex offenders because of location.". *Id.* This led the court to conclude that "sex offenders would appear to be able to travel to Iowa freely only so long as they do not stop." *Id.*
> We question whether these concerns are even applicable to the plaintiffs, given that the plaintiff class was defined as those sex offenders "currently living" in Iowa or "might wish to live" in Iowa, not vacationers or cross-country travelers. *Id.* at 847. In any event, the Does do not rely on these factual assertions in defending the judgment of the district court, and we do not find evidence in the record that would support a specific finding about the proximity of hotels, motels, homeless shelters, and missions throughout Iowa to schools and child care facilities.

[11] The Does also assert that § 692A.2A infringes upon a fundamental constitutional right to *intra* state travel. The Supreme Court has not decided whether there is a fundamental right to intrastate travel, *see Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 255-56, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), although it observed long ago that under the Articles of Confederation, state citizens "possessed the fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom." *United States v. Wheeler*, 254 U.S. 281, 293, 41 S.Ct. 133, 65 L.Ed. 270 (1920). During the same era, the Court also commented that "the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty ... secured by the 14th Amendment," *Williams v. Fears*, 179 U.S. 270, 274, 21 S.Ct. 128, 45 L.Ed. 186 (1900), but as the Third Circuit observed, "[i]t is unclear whether the travel aspect of cases like *Fears* can be severed from the general spirit of *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905), now thoroughly discredited, that was so prominent in the substantive due process analysis of that period." *Lutz v. City of York*, 899 F.2d 255, 266 (3d Cir.1990).

Some of our sister circuits have recognized a fundamental right to intrastate ***713** travel in the context of a "drug exclusion zone" that banned persons from an area of a city for a period of time, *Johnson v. City of Cincinnati*, 310 F.3d 484, 496-98 (6th Cir.2002), an ordinance that outlawed "cruising" and thus limited the ability of persons to drive on certain major public roads, *Lutz*, 899 F.2d at 268, and a law that created a durational residency requirement as a condition of eligibility for public housing. *King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646, 647-48 (2d Cir.1971). The Second Circuit, for example, reasoned that it would be "meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state." *Id.* at 648; *see also Johnson*, 310 F.3d at 497 n. 4; *Lutz*, 899 F.2d at 261. Other decisions have held that there is *no* fundamental right to intrastate travel in the context of a bona fide residency requirement imposed as a condition of municipal employment. *Andre v. Bd. of Trs. of Maywood*, 561 F.2d 48, 52-53 (7th Cir.1977); *Wardwell v. Bd. of Educ.*, 529 F.2d 625, 627 (6th Cir.1976); *Wright v. City of Jackson*, 506 F.2d 900, 901- 02 (5th Cir.1975); *see also Doe v. City of Lafayette*, 377 F.3d 757, 770-71 (7th Cir.2004) (en banc) (holding that city's ban of sex offender from all public parks did not implicate fundamental right to intrastate travel, where offender was "not limited in moving from place to place within his locality to socialize with friends and family, to participate in gainful employment or to go to the market to buy food and clothing"); *Hutchins v. District of*

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Columbia, 188 F.3d 531, 538-39 (D.C.Cir.1999) (en banc) (holding that there is no fundamental right for juveniles to be in a public place without adult supervision during curfew hours).

We find it unnecessary in this case to decide whether there is a fundamental right to intrastate travel under the Constitution, because assuming such a right is recognized, it would not require strict scrutiny of § 692A.2A. The district court and the Does cite the Sixth Circuit's decision in *Johnson* for the proposition that there is a fundamental right to intrastate travel. Accepting that view for purposes of analysis, we believe that any fundamental right to intrastate travel would likely be "correlative" to the right to interstate travel discussed in *Saenz, see Johnson,* 310 F.3d at 497 n. 4, or would consist of a "right to travel locally through public spaces and roadways." *Id.* at 498. Therefore, the Iowa statute would not implicate a right to intrastate travel for the same reasons that it does not implicate the right to interstate travel. The Iowa residency restriction does not prevent a sex offender from entering or leaving any part of the State, including areas within 2000 feet of a school or child care facility, and it does not erect any actual barrier to intrastate movement. In this sense, the Iowa law is comparable to the municipal residency requirements that have been held to implicate no fundamental right to intrastate travel in *Andre, Wardwell* and *Wright,* and less restrictive on freedom of movement than the ban on access to public parks upheld under rational basis review in *Doe v. City of Lafayette.* By contrast, the decisions finding infringement of a fundamental right to intrastate travel have involved laws that trigger concerns not present here--interference with free ingress to and egress from certain parts of a State (*Johnson* and *Lutz*) or treatment of new residents of a locality less favorably than existing residents (*King*).

[12] The Does also urge that we recognize a fundamental right "to live where you want." This ambitious articulation of a proposed unenumerated right calls to mind the Supreme Court's caution that we should proceed with restraint in the area ***714** of substantive due process, because "[b]y extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action." *Washington v. Glucksberg,* 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). Some thirty years ago, our court said "we cannot agree that the right to choose one's place of residence is necessarily a fundamental right," *Prostrollo v. Univ. of S.D.,* 507 F.2d 775, 781 (8th Cir.1974), and we see no basis to conclude that the contention has gained strength in the intervening years. The Supreme Court recently has restated its reluctance to "expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended," *Glucksberg,* 521 U.S. at 720, 117 S.Ct. 2258 (quoting *Collins,* 503 U.S. at 125, 112 S.Ct. 1061), and the Does have not developed any argument that the right to "live where you want" is "deeply rooted in this Nation's history and tradition," *id.* at 721, 117 S.Ct. 2258 (quoting *Moore,* 431 U.S. at 503, 97 S.Ct. 1932 (plurality opinion)) or "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if [it] were sacrificed." *Id.* (quoting *Palko v. Connecticut,* 302 U.S. 319, 325, 326, 58 S.Ct. 149, 82 L.Ed. 288 (1937)). We are thus not persuaded that the Constitution establishes a right to "live where you want" that requires strict scrutiny of a State's residency restrictions.

[13] Because § 692A.2A does not implicate a constitutional liberty interest that has been elevated to the status of "fundamental right," we review the statute to determine whether it meets the standard of "rationally advancing some legitimate governmental purpose." *Flores,* 507 U.S. at 306, 113 S.Ct. 1439. The Does acknowledge that the statute was designed to promote the safety of children, and they concede that this is a legitimate state interest. They also allow that perhaps "certain identifiable sex offenders should not live right across the street from a school or perhaps anywhere else where there are children." (Appellees' Br. at 51). The Does contend, however, that the statute is irrational because there is no scientific study that supports the legislature's conclusion that excluding sex offenders from residing within 2000 feet of a school or child care facility is likely to enhance the safety of children.

We reject this contention because we think it understates the authority of a state legislature to make judgments about the best means to protect the health and welfare of its citizens in an area where precise statistical data is unavailable and human behavior is necessarily unpredictable. Although the Does introduced one report from the Minnesota Department of Corrections finding "no evidence in Minnesota that residential proximity of sex offenders to schools or parks affects reoffense," this solitary case study--which involved only thirteen reoffenders released from prison between 1997 and 1999--does not make irrational the decision of the Iowa General Assembly and the Governor of Iowa to reach a different predictive judgment for Iowa. As the district

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court observed, twelve other States have enacted some form of residency restriction applicable to sex offenders. [FN4] There can be ***715** no doubt of a legislature's rationality in believing that "[s]ex offenders are a serious threat in this Nation," and that "[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault." *Conn. Dep't of Pub. Safety,* 538 U.S. at 4, 123 S.Ct. 1160 (alterations in original) (quoting *McKune v. Lile,* 536 U.S. 24, 32-33, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002) (plurality opinion)). The only question remaining is whether, in view of a rationally perceived risk, the chosen residency restriction rationally advances the State's interest in protecting children.

FN4. *See* Ala.Code § 15-20-26(a) ("Unless otherwise exempted by law, no adult criminal sex offender shall establish a residence or accept employment within 2,000 feet of the property on which any school or child care facility is located."); Ark.Code Ann. § 5-14-128(a) ("It shall be unlawful for a sex offender who is required to register ... and who has been assessed as a Level 3 or Level 4 offender to reside within two thousand feet (2000') of the property on which any public or private elementary or secondary school or daycare facility is located."); Cal.Penal Code § 3003(g) ("[A]n inmate who is released on parole for any violation of [sections prohibiting lewd or lascivious acts, or continued sexual abuse of a child] shall not be placed or reside ... within one one-quarter mile of any public or private school."); Fla. Stat. Ann. § 947.1405(7)(a)(2) ("Any inmate convicted of [certain sexual crimes against minors] and ... subject to conditional release supervision ... [is prohibited from] living within 1,000 feet of a school, day care center, park, playground, designated public school bus stop or other place where children regularly congregate."); Ga.Code Ann. § 42-1-13(b) ("No individual required to register ... shall reside within 1,000 feet of any child care facility, school, or area where minors congregate."); 720 Ill. Comp. Stat. § 5/11-9.3(b-5) ("It is unlawful for a child sex offender to knowingly reside within 500 feet of a school building ..."); Ky.Rev.Stat. Ann. § 17.495 ("No registrant ... who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility."); La.Rev.Stat. § 14:91.1(A)(2) ("Unlawful presence of a sexually violent predator is ... the physical residing of a sexually violent predator within one thousand feet of any public or private, elementary or secondary school, a day care facility, playground, public or private youth center, public swimming pool, or free standing video arcade facility."); Ohio Rev.Code Ann. § 2950.031(A) ("No person who has been convicted of ... either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises."); Okl. Stat. tit. 57, § 590 ("It is unlawful for any person registered pursuant to the Oklahoma Sex Offenders Registration Act to reside within a two thousand-foot radius of any public or private school site or educational institution."); Or.Rev.Stat. § 144.642(1)(a) (Rules for post-prison supervision or parole "shall include ...a general prohibition against allowing a sex offender to reside near locations where children are the primary occupants or users."); Tenn.Code Ann. § 40-39- 211(a) ("No sexual offender, ... or violent sexual offender, ... shall knowingly reside or work within one thousand feet (1,000') of the property on which any public school, private or parochial school, licensed day care center, or any other child care facility is located.").

[14] We think the decision whether to set a limit on proximity of "across the street" (as appellees suggest), or 500 feet or 3000 feet (as the Iowa Senate considered and rejected, *see* S. Journal 79, 2d Sess., at 521 (Iowa 2002)), or 2000 feet (as the Iowa General Assembly and the Governor eventually adopted) is the sort of task for which the elected policymaking officials of a State, and not the federal courts, are properly suited. The legislature is institutionally equipped to weigh the benefits and burdens of various distances, and to reconsider its initial decision in light of experience and data accumulated over time. The State of Alabama, for example, originally adopted a residency restriction of 1000 feet, but later increased the distance to 2000 feet, Ala.Code § 15-20-26(a); *see also* 2000 Ala. Acts 728, § 1; 1999 Ala. Acts 572, § 3, while the

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Minnesota legislature apparently followed the recommendation of the State's Department of Corrections that no blanket proximity restriction should be adopted. (Appellee's App. at 338). Where individuals in a group, such as convicted sex offenders, have "distinguishing ***716** characteristics relevant to interests the State has authority to implement, the courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be pursued." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441-42, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).

The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group. *Cf. Cleburne*, 473 U.S. at 448, 105 S.Ct. 3249; *Dep't of Agric. v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973). Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of reoffense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who "cross over" to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of reoffense against children. One expert in the district court opined that it is just "common sense" that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense. (Appellant's App. at 165). The policymakers of Iowa are entitled to employ such "common sense," and we are not persuaded that the means selected to pursue the State's legitimate interest are without rational basis.

IV.

[15] The Does next argue that the residency restriction, "in combination with" the sex offender registration requirements of § 692A.2, unconstitutionally compels sex offenders to incriminate themselves in violation of the Fifth and Fourteenth Amendments. The district court concluded that a sex offender who establishes residence in a prohibited area must either register his current address, thereby "explicitly admit[ting] the facts necessary to prove the criminal act," or "refuse to register and be similarly prosecuted." 298 F.Supp.2d at 879. The court then held that § 692A.2A "unconstitutionally requires sex offenders to provide incriminating evidence against themselves," and enjoined enforcement of the residency restriction on this basis as well.

We disagree that the Self-Incrimination Clause of the Fifth Amendment renders the residency restriction of § 692A.2A unconstitutional. Our reason is straightforward: the residency restriction does not compel a sex offender to be a witness against himself or a witness of any kind. The statute regulates only where the sex offender may reside; it does not require him to provide any information that might be used against him in a criminal case. A *separate* section of the Iowa Code, § 692A.2, requires a sex offender to register his address with the county sheriff. The Does have not challenged the constitutionality of the registration requirement, or sought an injunction against its enforcement, and whatever constitutional problem may be posed by the registration provision does not justify invalidating the residency restriction.

None of the authorities cited by the Does supports invalidation of a substantive rule of law because a reporting or registration requirement allegedly compels a person in violation of that substantive rule to incriminate himself. The Supreme Court held in ***717***Marchetti v. United States*, 390 U.S. 39, 88 S.Ct. 697, 19 L.Ed.2d 889 (1968), and *Grosso v. United States*, 390 U.S. 62, 88 S.Ct. 709, 19 L.Ed.2d 906 (1968), that a gambler was privileged under the Fifth Amendment not to register his occupation as one in the business of accepting wagers, not to pay the required occupational tax, and not to pay a wagering excise tax, because these submissions would create a real and appreciable hazard of self-incrimination for the gambler. The Court never suggested, however, that the Self-Incrimination Clause prevented the government from criminalizing wagering or gambling. Similarly, in *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969), the Court's holding that a plea of self-incrimination was a complete defense in a prosecution for non-compliance with provisions requiring payment of a tax on marijuana imported into the United States did not imply that state laws prohibiting the possession of marijuana were somehow unconstitutional. *Id.* at 29, 89 S.Ct. 1532. And in *Albertson v. Subversive Activities Control Board*, 382 U.S. 70, 86 S.Ct. 194, 15 L.Ed.2d 165 (1965), where the Court held unconstitutional under the Fifth Amendment a requirement that members of the Communist Party file a registration statement with the Attorney General, it was never intimated that

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the registration requirement rendered unconstitutional Section 4(a) of the Subversive Activities Control Act, under which Albertson might have been prosecuted as a result of the registration.

Even had the Does challenged the sex offender registration statute, moreover, we believe that a self-incrimination challenge to the registration requirements would not be ripe for decision. Unlike *Albertson,* where the petitioners had asserted the privilege against self-incrimination on multiple occasions, the Attorney General of the United States had rejected their claims, and specific orders requiring the petitioners to register had been issued, 382 U.S. at 75, 86 S.Ct. 194, the process with respect to enforcement of the Iowa sex offender registration statute in conjunction with the residency restriction is far less developed. The record does not show whether any of the plaintiffs has registered with the county sheriff an address that is prohibited by § 692A.2A, whether any of the county attorneys or the Attorney General would seek to use registration information to further a criminal prosecution for violation of the residency restriction (rather than merely as a regulatory mechanism to bring sex offenders into compliance with the statute), [FN5] or whether the prosecuting authorities would recognize a refusal to register as a valid assertion of the privilege against self-incrimination (and thus decline to prosecute a sex offender for failing to register a prohibited residence).

> FN5. There is evidence in the record that some Iowa law enforcement authorities, rather than immediately file charges against an offender found to be residing in a restricted zone, have withheld charges while the offender sought housing in an unrestricted area. (T. Tr. at 229).

We think that under these circumstances, a self-incrimination challenge to the registration statute would be premature. *See Communist Party v. Subversive Activities Control Bd.,* 367 U.S. 1, 106-10, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961); *cf Selective Serv. Sys. v. Minn. Pub. Interest Research Group,* 468 U.S. 841, 858, 104 S.Ct. 3348, 82 L.Ed.2d 632 (1984). If and when there is a prosecution for violation of the residency restriction in which the prosecution makes use of a sex offender's registration, a prosecution for failure to register a prohibited address, or some other basis such as in *Albertson* to say that the ***718** dispute is ripe, then the self-incrimination issue will be joined. It would then be appropriate to consider such questions as whether the registration requirement as applied falls under the rule of cases such as *Marchetti* and *Albertson,* where the Fifth Amendment was held to prohibit incriminating registration or reporting requirements directed at persons "inherently suspect of criminal activities," *Albertson,* 382 U.S. at 79, 86 S.Ct. 194, or whether the public need for information about convicted sex offenders and the noncriminal regulatory purpose for securing the information might permit enforcement of the requirement consistent with the Fifth Amendment. *Cf. Baltimore City Dep't of Soc. Servs. v. Bouknight,* 493 U.S. 549, 557-59, 110 S.Ct. 900, 107 L.Ed.2d 992 (1990); *California v. Byers,* 402 U.S. 424, 431-34, 91 S.Ct. 1535, 29 L.Ed.2d 9 (1971) (plurality opinion); *id.* at 457-58, 91 S.Ct. 1535 (Harlan, J., concurring in the judgment). At this point, we conclude that the Does' self-incrimination claim is both misdirected and premature.

V.

[16][17][18] A final, and narrower, challenge advanced by the Does is that § 692A.2A is an unconstitutional *ex post facto* law because it imposes retroactive punishment on those who committed a sex offense prior to July 1, 2002. The *Ex Post Facto* Clause of Article I, Section 10 of the Constitution prohibits the States from enacting laws that increase punishment for criminal acts after they have been committed. *See generally Calder v. Bull,* 3 U.S. 386, 390, 3 Dall. 386, 1 L.Ed. 648 (1798) (Chase, J., seriatim). In determining whether a state statute violates the *Ex Post Facto* Clause by imposing such punishment, we apply the framework outlined in *Smith v. Doe,* 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), where the Supreme Court considered an *ex post facto* challenge to an Alaska statute requiring sex offenders to register. Under that framework, we must first "ascertain whether the legislature meant the statute to establish 'civil' proceedings." *Id.* (internal quotation omitted). If the legislature intended criminal punishment, then the legislative intent controls the inquiry and the law is necessarily punitive. *Id.* If, however, the legislature intended its law to be civil and nonpunitive, then we must determine whether the law is nonetheless "so punitive either in purpose or effect as to negate" the State's nonpunitive intent. *Id.* (internal quotations and citations omitted). "[O]nly the clearest proof" will transform what the legislature has denominated a civil regulatory measure into a criminal penalty. *Id.*

[19] The district court found that in passing the residency restriction of § 692A.2A, the Iowa General Assembly intended to create "a civil, non-punitive

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statutory scheme to protect the public." 298 F.Supp.2dat 868. The Does do not dispute this conclusion on appeal, and we agree that the legislature's intent was not punitive. Although Iowa Code § 692A.2A does not contain any clear statement of purpose, the residency restriction is codified as part of Chapter 692A, together with a registration system that the Supreme Court of Iowa has declared to have a purpose of "protect[ing] society" and to be a nonpunitive, regulatory law. *In Interest of S.M.M.*, 558 N.W.2d 405, 408 (Iowa 1997); *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997). "[W]here a legislative restriction is an incident of the State's power to protect the health and safety of its citizens, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment." *Smith v. Doe*, 538 U.S. at 93-94, 123 S.Ct. 1140 (quoting ***719***Flemming v. Nestor*, 363 U.S. 603, 616, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960)) (internal marks omitted). We believe the available evidence leads most naturally to the inference that the restrictions in § 692A.2A are intended, like the restrictions elsewhere in the same chapter, to protect the health and safety of Iowa citizens. Therefore, we conclude that the purpose of the Iowa General Assembly in passing this law was regulatory and non-punitive.

We must next consider whether the Does have established that the law was nonetheless so punitive in effect as to negate the legislature's intent to create a civil, non-punitive regulatory scheme. In this inquiry, we refer to what the Supreme Court described in *Smith v. Doe* as "useful guideposts" for determining whether a law has a punitive effect. In analyzing the effect of the Alaska sex offender registration law, the Court in *Smith* pointed to five factors drawn from *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), as particularly relevant: whether the law has been regarded in our history and traditions as punishment, whether it promotes the traditional aims of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to a nonpunitive purpose, and whether it is excessive with respect to that purpose. *Smith v. Doe*, 538 U.S. at 97, 123 S.Ct. 1140. These factors are "neither exhaustive nor dispositive," *id.* (quotation omitted), and while we consider them as an aid to our analysis, we bear in mind that the ultimate question always remains whether the punitive effects of the law are so severe as to constitute the "clearest proof" that a statute intended by the legislature to be nonpunitive and regulatory should nonetheless be deemed to impose *ex post facto* punishment.

Turning first to any historical tradition regarding residency restrictions, the Does argue that § 692A.2A is the effective equivalent of banishment, which has been regarded historically as a punishment. *See Smith v. Doe*, 538 U.S. at 98, 123 S.Ct. 1140. Banishment has been defined as " 'punishment inflicted on criminals by compelling them to quit a city, place, or country for a specified period of time, or for life,' " *United States v. Ju Toy*, 198 U.S. 253, 269-70, 25 S.Ct. 644, 49 L.Ed. 1040 (1905) (Brewer, J., dissenting) (quoting *Black's Law Dictionary*), or "expulsion from a country." *Black's Law Dictionary* 154, 614 (8th ed.2004). The Supreme Court most recently explained that banished offenders historically could not "return to their original community," and that the banishment of an offender "expelled him from the community." *Smith v. Doe*, 538 U.S. at 98, 123 S.Ct. 1140; *see also Fong Yue Ting v. United States*, 149 U.S. 698, 730, 13 S.Ct. 1016, 37 L.Ed. 905 (1893) (holding that order of deportation is "not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment").

While banishment of course involves an extreme form of residency restriction, we ultimately do not accept the analogy between the traditional means of punishment and the Iowa statute. Unlike banishment, § 692A.2A restricts only where offenders may reside. It does not "expel" the offenders from their communities or prohibit them from accessing areas near schools or child care facilities for employment, to conduct commercial transactions, or for any purpose other than establishing a residence. With respect to many offenders, the statute does not even require a change of residence: the Iowa General Assembly included a grandfather provision that permits sex offenders to maintain a residence that was established prior to July 1, 2002, even if that residence is within 2000 feet of a school or child care facility. Iowa Code ***720** § 692A.2A(4)(c). The district court, moreover, found that residency restrictions for sex offenders "are relatively new and somewhat unique," 298 F.Supp.2d at 849 n. 4, and as with sex offender registration laws, which also were of "fairly recent origin," *Smith v. Doe*, 538 U.S. at 97, 123 S.Ct. 1140 (internal quotation omitted), this novelty "suggests that the statute was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing." *Id.* We thus conclude that this law is unlike banishment in important respects, and we do not believe it is of a type that is traditionally punitive.

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The second factor that we consider is whether the law promotes the traditional aims of punishment--deterrence and retribution. *Smith v. Doe,* 538 U.S. at 102, 123 S.Ct. 1140. The district court found that the law was both deterrent and retributive, and thus weighed this factor in favor of its finding that the law was punitive. We agree with the district court that the law could have a deterrent effect, but we do not agree that the deterrent effect provides a strong inference that the restriction is punishment. The primary purpose of the law is not to alter the offender's incentive structure by demonstrating the negative consequences that will flow from committing a sex offense. The Iowa statute is designed to reduce the likelihood of reoffense by limiting the offender's temptation and reducing the opportunity to commit a new crime. We observe, moreover, that the Supreme Court has cautioned that this factor not be over-emphasized, for it can "prove[ ] too much," as "[a]ny number of governmental programs might deter crime without imposing punishment." *Id.*

The statute's "retributive" effect is similarly difficult to evaluate. For example, while the Ninth Circuit found punishment where the length of sex offender reporting requirements corresponded to the degree of wrongdoing rather than the extent of the risk imposed, *Doe I v. Otte,* 259 F.3d 979, 990 (9th Cir.2001), *rev'd sub nom. Smith v. Doe,* 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003), the Supreme Court disagreed, and instead emphasized that the reporting requirements were "reasonably related to the danger of recidivism" in a way that was "consistent with the regulatory objective." *Smith v. Doe,* 538 U.S. at 102, 123 S.Ct. 1140. While any restraint or requirement imposed on those who commit crimes is at least potentially retributive in effect, we believe that § 692A.2A, like the registration requirement in *Smith v. Doe,* is consistent with the legislature's regulatory objective of protecting the health and safety of children.

The next factor we consider is whether the law "imposes an affirmative disability or restraint." Imprisonment is the "paradigmatic" affirmative disability or restraint, *Smith v. Doe,* 538 U.S. at 100, 123 S.Ct. 1140, but other restraints, such as probation or occupational debarment, also can impose some restriction on a person's activities. *Id.* at 100-01, 123 S.Ct. 1140. While restrictive laws are not necessarily punitive, they are more likely to be so; by contrast, "[i]f the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Id.* at 100, 123 S.Ct. 1140. For example, sex offender registration laws, requiring only periodic reporting and updating of personal information, do not have a punitive restraining effect. *Id.* at 102, 123 S.Ct. 1140. At the same time, civil commitment of the mentally ill, though extremely restrictive and disabling to those who are committed, does not necessarily impose punishment because it bears a reasonable relationship to a "legitimate nonpunitive objective," namely protecting the public from mentally unstable ***721** individuals. *Hendricks,* 521 U.S. at 363, 117 S.Ct. 2072.

Iowa Code § 692A.2A is more disabling than the sex offender registration law at issue in *Smith v. Doe,* which had not "led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords." 538 U.S. at 100, 123 S.Ct. 1140. Although the Does did not present much evidence about housing within restricted areas that would have been available to them absent the statute, they did show that some sex offenders would have lived with spouses or parents who owned property in the restricted zones, and some sex offenders were living in residences within restricted areas that were permitted under the statute's "grandfather" provision. The residency restriction is certainly less disabling, however, than the civil commitment scheme at issue in *Hendricks,* which permitted complete confinement of affected persons. In both *Smith* and *Hendricks,* the Court considered the degree of the restraint involved in light of the legislature's countervailing nonpunitive purpose, and the Court in *Hendricks* emphasized that the imposition of an affirmative restraint "does not inexorably lead to the conclusion that the government has imposed punishment." 521 U.S. at 363, 117 S.Ct. 2072 (internal quotation omitted). Likewise here, while we agree with the Does that § 692A.2A does impose an element of affirmative disability or restraint, we believe this factor ultimately points us to the importance of the next inquiry: whether the law is rationally connected to a nonpunitive purpose, and whether it is excessive in relation to that purpose.

[20] This final factor--whether the regulatory scheme has a "rational connection to a nonpunitive purpose"--is the "most significant factor" in the *ex post facto* analysis. *Smith v. Doe,* 538 U.S. at 102, 123 S.Ct. 1140. The requirement of a "rational connection" is not demanding: A "statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Id.* at 103, 123 S.Ct. 1140. The district court found "no doubt"

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that § 692A.2A has a purpose other than punishing sex offenders, 298 F.Supp.2d at 870, and we agree. In light of the high risk of recidivism posed by sex offenders, *see Smith v. Doe*, 538 U.S. at 103, 123 S.Ct. 1140, the legislature reasonably could conclude that § 692A.2A would protect society by minimizing the risk of repeated sex offenses against minors.

[21] The district court nonetheless concluded that the statute is excessive in relation to this purpose, because the law applies "regardless of whether a particular offender is a danger to the public." 298 F.Supp.2d at 871. The absence of a particularized risk assessment, however, does not necessarily convert a regulatory law into a punitive measure, for "[t]he *Ex Post Facto* Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." *Smith v. Doe*, 538 U.S. at 103, 123 S.Ct. 1140. The Supreme Court over the years has held that restrictions on several classes of offenders are nonpunitive, despite the absence of particularized determinations, including laws prohibiting the practice of medicine by convicted felons, *Hawker v. New York*, 170 U.S. 189, 197, 18 S.Ct. 573, 42 L.Ed. 1002 (1898), laws prohibiting convicted felons from serving as officers or agents of a union, *De Veau v. Braisted*, 363 U.S. 144, 160, 80 S.Ct. 1146, 4 L.Ed.2d 1109 (1960) (plurality opinion); *id.* at 160-61, 80 S.Ct. 1146 (opinion of Brennan, J.), and of course laws ***722** requiring the registration of sex offenders. *Smith v. Doe*, 538 U.S. at 106, 123 S.Ct. 1140.

In this case, we conclude that a categorical rule is consistent with the legislature's regulatory purpose and not "excessive" within the meaning of the Supreme Court's decisions. While the Does argue that the legislature must tailor restrictions to the individual circumstances of different sex offenders, we view this position as inconsistent with the Supreme Court's direction that the "excessiveness" prong of the *ex post facto* analysis does not require a "close or perfect fit" between the legislature's nonpunitive purpose and the corresponding regulation. The evidence presented at trial suggested that convicted sex offenders as a class were more likely to commit sex offenses against minors than the general population. Dr. McEchron indicated that "there are never any guarantees that [sex offenders] won't reoffend," (Appellant's App. at 162), and Mr. Allison testified that "any sex offender is always going to be of some concern forever." (T. Tr. at 279).

More specifically, in Allison's view, even an offender who committed a crime involving an older victim, such as statutory rape, would be of concern around a day care or elementary school, although the concern may be reduced, (T. Tr. at 278), and Dr. Rosell testified that while he believed that a sex offender who committed an offense with a 14 or 15-year-old victim was likely to stay in that age range, there also was no way to predict whether a sex offender would "cross over" in selecting victims from adults to children or males to females. (Appellee's App. at 149, 184). Dr. Rosell was less than definitive about the degree to which sex offenders' future behavior was predictable and avoidable; while he personally did not believe residential proximity made "that big of a difference," he agreed that "what works in criminal justice is imprecise at best," and testified that "[t]here is always a risk" of reoffense. (Appellee's App. at 193, 195, 190). In view of the higher-than-average risk of reoffense posed by convicted sex offenders, and the imprecision involved in predicting what measures will best prevent recidivism, we do not believe the Does have established that Iowa's decision to restrict all such offenders from residing near schools and child care facilities constitutes punishment despite the legislature's regulatory purpose.

[22] The Does also urge that the law is excessive in relation to its regulatory purpose because there is no scientific evidence that a 2000-foot residency restriction is effective at preventing sex offender recidivism. "The excessiveness inquiry of our *ex post facto* jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy," but rather an inquiry into "whether the regulatory means chosen are reasonable in light of the nonpunitive objective." *Smith v. Doe*, 538 U.S. at 105, 123 S.Ct. 1140. In this case, there was expert testimony that reducing the frequency of contact between sex offenders and children is likely to reduce temptation and opportunity, which in turn is important to reducing the risk of reoffense. None of the witnesses was able to articulate a precise distance that optimally balanced the benefit of reducing risk to children with the burden of the residency restrictions on sex offenders, and the Does' expert acknowledged that "[t]here is nothing in the literature that has addressed proximity." (Appellee's App. 198; *accord id.* at 41, 47-48 (testimony of Dr. McEchron)). As even Dr. Rosell admitted, we just "don't know" that the Iowa Legislature "isn't ahead of the curve." (*Id.* at 198).

***723** We believe the legislature's decision to select a

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2000-foot restriction, as opposed to the other distances that were considered and rejected, is reasonably related to its regulatory purpose. Given the challenge in determining precisely what distance is best suited to minimize risk to children without unnecessarily restricting sex offenders, and the difficult policy judgments inherent in that choice, we conclude that the Does have not established the "clearest proof" that Iowa's choice is excessive in relation to its legitimate regulatory purpose, such that a statute designed to be nonpunitive and regulatory should be considered retroactive criminal punishment. [FN6]

FN6. In view of our conclusion that the statute is not punitive, it follows that the law is not a "cruel and unusual punishment" in violation of the Eighth Amendment. *See Smith v. Doe,* 538 U.S. at 97, 123 S.Ct. 1140 (explaining that factors used in determining whether law is punishment for *ex post facto* purposes "have their earlier origins in cases under the Sixth and Eighth Amendments"); *Trop v. Dulles,* 356 U.S. 86, 94-99, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion). Even assuming that § 692A.2A were punitive, we would agree with the district court that the law is neither barbaric nor grossly disproportionate to the offenses committed by the Does. We therefore reject the Eighth Amendment argument urged by the appellees as an alternative ground for affirming the district court.

* * * * * *

The judgment of the district court is reversed, and the case is remanded with directions to enter judgment in favor of the defendants.

MELLOY, Circuit Judge, concurring and dissenting.

I join in the majority's opinion, sections I through IV. However, I dissent as to section V because I believe section 692A.2A is an unconstitutional ex post facto law.

The U.S. Constitution prohibits states from passing ex post facto laws. U.S. Const. art. I, § 10, cl. 1. " 'Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed,' " is an ex post facto law. *Stogner v. California,* 539 U.S. 607, 612, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003) (quoting *Calder v. Bull,* 3 U.S. 386, 390, 3 Dall. 386, 1 L.Ed. 648 (1798)).

As set out by the majority, the fundamental question the Court must decide is whether the residency requirement amounts to punishment. We do so by first asking whether the legislature intended the statute to be punitive. If the answer is in the affirmative, that ends our inquiry, and we find the legislation to be an ex post facto law. However, if the legislature intended the statute to be nonpunitive, "we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil." *Smith v. Doe,* 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003) (internal quotations and citation omitted). I agree with the majority that the purpose of section 692A.2A is to protect the public. This purpose is nonpunitive, so we must determine if the statute "is so punitive either in purpose or effect as to negate the State's intention to deem it civil." *Id.*

I also agree with the majority that the factors outlined in *Smith* should guide our analysis. However, I part ways with the majority as to how some of the individual factors should be examined and as to the final outcome of the multi-factor analysis.

1. Have measures like the residency restriction historically been regarded as punishment?

The majority concedes that banishment has historically been regarded as punishment, ***724** but points out how the residency restriction differs from banishment. The majority concludes that section 692A.2A is not the type of law that has historically been regarded as punishment. I would find that, although section 692A.2A does not amount to full banishment, it sufficiently resembles banishment to make this factor weigh towards finding the law punitive.

The district court made the following factual findings on the availability of housing:

> [S]ex offenders are completely banned from living in a number of Iowa's small towns and cities. In the state's major communities, offenders are relegated to living in industrial areas, in some of the cities' most expensive developments, or on the very outskirts of town where available housing is limited. Although some areas are completely unrestricted, these are either very small towns without any services, or farmland.

* * * * * *

In larger cities such as Des Moines and Iowa City,

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the maps show that the two thousand foot circles cover virtually the entire city area. The few areas in Des Moines, for instance, which are not restricted, include only industrial areas or some of the city's newest and most expensive neighborhoods. In smaller towns that have a school or childcare facility, the entire town is often engulfed by the excluded area. In Johnson County alone, the towns of Lone Tree, North Liberty, Oxford, Shueyville, Solon, Swisher and Tiffin are wholly restricted to sex offenders under § 692A.2A. Unincorporated areas and towns too small to have a school or childcare facility remain available, as does the country, but available housing in those areas is not necessarily readily available.

These findings are not clearly erroneous and should therefore be upheld. *See* Fed.R.Civ.P. 52(a). In its findings, the district court demonstrated how difficult it is for sex offenders to find legal housing in many communities in Iowa due to the housing restriction. It is common that offenders may not return to live in the community they lived in before incarceration, the place where their families live, and/or the place they find work. There are so few legal housing options that many offenders face the choice of living in rural areas or leaving the state. The difficulty in finding proper housing effectively prevents offenders from living in many Iowa communities. This effectively results in banishment from virtually all of Iowa's cities and larger towns.

In *Smith,* the Supreme Court drew a distinction between Alaska's sex offender registry and colonial punishments such as shaming, branding, and banishment. The Court found that the registry merely involved "dissemination of information," whereas the colonial punishments "either held the person up before his fellow citizens for face-to-face shaming or *expelled him from the community.*" *Smith,* 538 U.S. at 98, 123 S.Ct. 1140 (emphasis added). It described the aim of these colonial punishments as making "offenders suffer permanent stigmas, which in effect cast the person out of the community." *Id.* (internal quotation and citation omitted). The residency requirement is a permanent stigma as well as a law that effectively casts the person out of the community. Further, *Smith* also described as banishment situations in which individuals "could neither return to their original community nor, reputation tarnished, be admitted easily into a new one." *Id.* Under this phrasing, section 692A.2A fits the description of banishment.

***725** Of course, the residency restriction does not prevent offenders from living in every community, nor from visiting communities in which they are not allowed to live. In this way, the law differs from complete banishment. However, preventing offenders from making a home in many Iowa communities after they have served their sentence does have substantial similarity to banishment. To the extent that offenders are effectively banished from their desired places of residence, I would find this factor weighs in favor of finding section 692A.2A punitive.

2. Does the residency restriction promote traditional aims of punishment?

The residency restriction serves a traditional aim of punishment: deterrence. The majority attempts to minimize the deterrent effect of the statute by arguing that the statute does not increase the negative consequences for an action, but merely reduces the opportunity for that action to occur. In my view, this distinction is not important. One major reason we use the punishments we do, such as imprisonment, is to reduce the likelihood of future crimes by depriving the offender of the opportunity to commit those crimes. There is clearly a deterrent purpose at work in section 692A.2A, thus the measure promotes a traditional aim of punishment.

3. Does the residency restriction impose an affirmative disability or restraint?

The majority acknowledges that the residency requirement imposes an affirmative disability or restraint, and I agree. It restricts offenders from living in certain areas. Offenders that live within the restricted areas face criminal penalties. In this way, the restraint differs greatly from the sex offender registry in *Smith.* The Court in that case pointed out that offenders were "free to change ... residences." *Smith,* 538 U.S. at 100, 123 S.Ct. 1140. The Court also noted that there was no evidence that the measure disadvantaged the offenders in finding housing. *Id.* I would find that the affirmative disability or restraint intrinsic in the residence requirement distinguishes it from the sex offender registry in *Smith* and weighs in favor of finding the law punitive.

4. Does the residency restriction have a rational connection to a nonpunitive purpose?

I agree with the majority that section 692A.2A has a rational connection to the nonpunitive purpose of protecting the public. *See In Interest of S.M.M.,* 558 N.W.2d 405, 408 (Iowa 1997).

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5. Is the residency restriction excessive?

Though I believe a rational connection exists between the residency restriction and a nonpunitive purpose, I would find that the restriction is excessive in relation to that purpose. The statute limits the housing choices of all offenders identically, regardless of their type of crime, type of victim, or risk of re-offending. The effect of the requirement is quite dramatic: many offenders cannot live with their families and/or cannot live in their home communities because the whole community is a restricted area. This leaves offenders to live in the country or in small, prescribed areas of towns and cities that might offer no appropriate, available housing. In addition, there is no time limit to the restrictions.

Also, the residency restriction applies to plaintiffs who are not the most serious sex offenders. There is no doubt a class of offenders that is at risk to re-offend and for whom such a restriction is reasonable. ***726** However, the restriction also applies to John Doe II, who pleaded guilty to third degree sexual abuse for having consensual sex with a fifteen-year-old girl when he was twenty years old. The restriction applies to John Doe VII, who was convicted of statutory rape under Kansas law. His actions which gave rise to this conviction would not have been criminal in Iowa. The restriction applies also to John Doe XIV, who pleaded guilty to a serious misdemeanor charge in 1995 after he exposed himself at a party at which a thirteen-year-old girl was present. John Doe XIV was nineteen at the time of his offense. The actions of these and other plaintiffs are serious, and, at least in most cases, illegal in this state. However, the severity of residency restriction, the fact that it is applied to all offenders identically, and the fact that it will be enforced for the rest of the offenders' lives, makes the residency restriction excessive.

In my view, four factors weigh in favor of finding the statute punitive, while only one weighs in favor of finding the statute nonpunitive. The analysis leads me to the conclusion that the residency restriction is punitive. Because the imposition of the residency requirement " 'changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed,' " *Stogner*, 539 U.S. at 612, 123 S.Ct. 2446 (quoting *Calder*, 3 U.S. at 390, 3 Dall. 386, 1 L.Ed. 648), I would find Section 692A.2A is an unconstitutional ex post facto law that cannot be applied to persons who committed their offenses before the law was enacted.

405 F.3d 700

Briefs and Other Related Documents **(Back to top)**

- 04-1568 (Docket) (Mar. 10, 2004)

- 2004 WL 2758312 (Appellate Brief) Appellant's Brief and Argument (2004)

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Briefs and Other Related Documents

United States Court of Appeals,
Eleventh Circuit.
John DOE, I, John Doe, II, John Doe, III, John Doe, IV, et al., Plaintiffs-Appellants,
v.
James T. MOORE, in his official capacity as Commissioner of the Florida Department of Law Enforcement, Secretary for the Department of Corrections, by serving James Crosby in his official capacity as Secretary of the Florida Department of Corrections, Fred O. Dickinson, III., in his official capacity as Executive Director of the Florida Department of Highway Safety and Motor Vehicles, Edward Bieluch, Sheriff, in his official capacity as Sheriff of Palm Beach County and as class defendant for all other similar local law enforcement officers in the State of Florida, Defendants-Appellees.
No. 04-10279.

June 6, 2005.

Background: Florida sex offenders filed class action challenging constitutionality of Florida's sex offender registration/notification scheme and DNA collection statute. The United States District Court for the Southern District of Florida, No. 02-80934-CV-DTKH, Daniel T.K. Hurley, J., granted the state's motion to dismiss, and sex offenders appealed.

Holdings: The Court of Appeals, Birch, Circuit Judge, held that:
(1) registration/notification scheme of Florida's Sex Offender Act did not violate sex offenders' substantive due process rights;
(2) Florida's various classifications and sub-classifications for sex offender registration were constitutional under the Equal Protection Clause;
(3) Sex Offender Act did not unreasonably burden sex offenders' right to travel; and
(4) claim that Florida Sex Offender Act violated Florida's separation of powers doctrine was barred by Eleventh Amendment; and
(5) DNA collection statute did not give rise to substantive due process rights.
Affirmed.

West Headnotes

[1] Mental Health 469(2)
257Ak469(2) Most Cited Cases
When a person is convicted of kidnapping, false imprisonment, or luring or enticing a child into a dwelling or conveyance, there must be a sexual component shown in addition to the predicate offense before designating that person as a sex offender under Florida law. West's F.S.A. § 943.0435.

[2] Mental Health 469(2)
257Ak469(2) Most Cited Cases
When the crime is kidnapping, false imprisonment, or luring or enticing a child into a dwelling or conveyance, the person is not a sex offender under Florida law if they are the parent of the child. West's F.S.A. § 943.0435(1)(a)(1).

[3] Constitutional Law 252.5
92k252.5 Most Cited Cases
Substantive component of due process protects fundamental rights that are so implicit in the concept of ordered liberty that neither liberty nor justice would exist if they were sacrificed; fundamental rights protected by substantive due process are protected from certain state actions regardless of the procedures the state uses. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law 252.5
92k252.5 Most Cited Cases
When a state enacts legislation that infringes fundamental rights, courts will review the law under a strict scrutiny test and uphold it under due process clause only when it is narrowly tailored to serve a compelling state interest. U.S.C.A. Const.Amend. 14.

[5] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[5] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Rights of Florida sex offenders to refuse registration

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of his or her personal information with Florida law enforcement and prevent publication of that information on Florida's Sexual Offender/Predator website were not fundamental constitutional rights for substantive due process purposes. U.S.C.A. Const.Amend. 14; West's F.S.A. § 943.0435.

[6] Constitutional Law 255(5)
92k255(5) Most Cited Cases

[6] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Registration/notification scheme of Florida's Sex Offender Act was rationally related to a legitimate government interest in protecting citizens from criminal activity, and therefore did not violate sex offenders' substantive due process rights. U.S.C.A. Const.Amend. 14; West's F.S.A. § 943.0435.

[7] Constitutional Law 242.1(5)
92k242.1(5) Most Cited Cases
Sex offenders in general were not considered a suspect class for equal protection purposes; nor were sub-classes of sex offenders based on parental relationship to victim, status of offender as a minor, insanity or civil commitment of the offender, and release of offender from supervision prior to enactment of Florida's Sex Offender Act. U.S.C.A. Const.Amend. 14; West's F.S.A. § 943.0435.

[8] Constitutional Law 213.1(2)
92k213.1(2) Most Cited Cases
A statute is considered constitutional under the rational basis test for equal protection violation when there is any reasonably conceivable state of facts that could provide a rational basis for it. U.S.C.A. Const.Amend. 14.

[9] Constitutional Law 242.1(5)
92k242.1(5) Most Cited Cases

[9] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Florida's various classifications and sub-classifications for sex offender registration were rationally related to a legitimate governmental purpose and, therefore, were constitutional under the Equal Protection Clause; Sex Offender Act could properly treat sex offenders different from other felons in the length of time they were required to register and the penalties associated with failure to register, and Act could permissibly distinguish crimes committed by the parents of victims, those acquitted by insanity or civilly committed, and those committed by persons 18 years old and younger from sex offenders in general, and could properly exempt sex offenders from registration who had been released from supervision prior to the enactment of the statute. U.S.C.A. Const.Amend. 14; West's F.S.A. § 943.0435.

[10] Constitutional Law 83(4.1)
92k83(4.1) Most Cited Cases
Mere burdens on a person's ability to travel from state to state are not necessarily a violation of their constitutional right to travel.

[11] Constitutional Law 83(4.1)
92k83(4.1) Most Cited Cases
Right to travel protects a person's right to enter and leave another state, the right to be treated fairly when temporarily present in another state, and the right to be treated the same as other citizens of that state when moving there permanently. West's F.S.A. § 943.0435.

[12] Constitutional Law 83(4.1)
92k83(4.1) Most Cited Cases

[12] Mental Health 433(2)
257Ak433(2) Most Cited Cases
Florida Sex Offender Act's requirement that sex offenders notify Florida law enforcement in person when they change permanent or temporary residences did not unreasonably burden their right to travel.

[13] Federal Courts 269
170Bk269 Most Cited Cases
Claim that Florida Sex Offender Act violated Florida's separation of powers doctrine by effectively nullifying prior judicial findings that certain sex offenders were not apt to re-offend or engage in criminal conduct was barred by Eleventh Amendment since review of such claim would directly impact the state. U.S.C.A. Const.Amend. 11.

[14] Federal Courts 269
170Bk269 Most Cited Cases
Eleventh Amendment immunity includes a federal suit against state officials on the basis of state law when the relief sought and ordered has an impact directly on the state itself. U.S.C.A. Const.Amend. 11.

[15] States 191.6(1)
360k191.6(1) Most Cited Cases
A state's waiver of its sovereign immunity must be unequivocally expressed.

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[16] Federal Courts 613
170Bk613 Most Cited Cases
Eleventh Amendment jurisdictional questions can be raised for the first time on appeal. U.S.C.A. Const.Amend. 11.

[17] Federal Courts 265
170Bk265 Most Cited Cases
Eleventh Amendment acts as a jurisdictional bar for any such suit against the state, even under supplemental jurisdiction. U.S.C.A. Const.Amend. 11.

[18] Constitutional Law 319.5(1)
92k319.5(1) Most Cited Cases

[18] Searches and Seizures 78
349k78 Most Cited Cases
Florida's DNA collection statute, which required administrative regulations be in place within 180 days of the enactment of a statute requiring such rules, did not give rise to substantive due process rights. U.S.C.A. Const.Amend. 14; West's F.S.A. § 120.54(1)(b).

[19] Constitutional Law 254.1
92k254.1 Most Cited Cases
Implementation of nuanced state administrative laws does not by itself raise a liberty interest for constitutional due process review. U.S.C.A. Const.Amend. 14.

[20] Constitutional Law 252.5
92k252.5 Most Cited Cases
State-created procedural rights that do not guarantee a particular substantive outcome are not protected by due process, even where such procedural rights are mandatory. U.S.C.A. Const.Amend. 14.

***1339** Cindy E. D'Agostino, Law Office of Cindy E. D'Agostino, Barbara Jean Scheffer, Mitchell J. Beers, P.A., Palm Beach Gardens, FL, for Plaintiffs-Appellants.

Jason Vail, Tallahassee, FL, Fred H. Gelston, Fred H. Gelston, P.A., West Palm Beach, FL, for Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida.

Before BIRCH, KRAVITCH and CUDAHY [FN*], Circuit Judges.

FN* Honorable Richard D. Cudahy, Circuit Judge for the United States Court of Appeals for the Seventh Circuit, sitting by designation.

BIRCH, Circuit Judge:

In this putative class action, initiated by ten John Does and one Jane Doe (collectively "Appellants") on behalf of themselves and others similarly situated, we determine whether Florida's sex offender registration/notification scheme ("Sex Offender Act") and DNA collection statute ("DNA Statute"), codified in relevant parts at Fla. Stat. § § 943.043, .0435, .325, 944.606, violate the Appellants' constitutional right to due process, equal protection, travel, separation of powers, and freedom from *ex post facto* legislation. The ***1340** district court granted the state's motion to dismiss because the Sex Offender Act and the DNA Statute did not offend any provision of the Constitution. We AFFIRM.

I. BACKGROUND

In response to the 1994 abduction, rape, and murder of a seven-year-old girl, Megan Kanka, by her neighbor, a convicted sex offender, Congress along with all 50 states enacted laws requiring sex offenders to register their residence with local law enforcement. *See Smith v. Doe*, 538 U.S. 84, 89-90, 123 S.Ct. 1140, 1145, 155 L.Ed.2d 164 (2003). Concerned by Megan's murder and the high number of repeat sex offenders, states enacted these laws for the purpose of notifying the public about local sex offenders and to aid law enforcement in identifying and locating potential suspects in local sex-related crimes. *See Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4, 123 S.Ct. 1160, 1163, 155 L.Ed.2d 98 (2003).

[1][2] The Sex Offender Act requires any sex offender to register with the local sheriff's office within 48 hours of their release from custody or relocation to a permanent or temporary residence in Florida. Fla. Stat. § 943.0435(2). The Sex Offender Act defines a sex offender as a person who "has been [c]onvicted of committing, or attempting, soliciting, or conspiring to commit, any of the [following] criminal offenses ... in this state or similar offenses in another jurisdiction:" kidnapping of a child; false imprisonment of a child under the age of 13; luring or enticing a child under 12 into a structure, dwelling or conveyance for an unlawful purpose; sexual battery; procuring child prostitution; lewd and lascivious offenses committed upon or in the presence of a person under 16; lewd and lascivious

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battery, molestation, or conduct; lewd and lascivious offenses committed in the presence of an elderly person, battery, and molestation; promoting a sexual performance by a child; showing obscene material to a minor; possessing child computer pornography; transmitting child pornography; buying or selling a minor with knowledge the minor will be portrayed as engaging or appearing to engage in sex acts. § 943.0435(1)(a)(1). [FN1] Further, anyone moving to Florida who has been convicted of similar crimes or has been designated as a sex offender in another state will also be considered a sex offender in Florida. § 943.0435(1)(a)(2)-(3).

> FN1. When a person is convicted of kidnapping, false imprisonment, or luring or enticing a child into a dwelling or conveyance, there must be a sexual component shown in addition to the predicate offense before designating that person as a sex offender. *See Raines v. State*, 805 So.2d 999, 1003 (Fla.Dist.Ct.App.2001). Moreover, when the crime is kidnapping, false imprisonment, or luring or enticing a child into a dwelling or conveyance, the person is not a sex offender if they are the parent of the child. § 943.0435(1)(a)(1).

Upon registering with the local sheriff's office, a sex offender must provide the following:

> name, date of birth, social security number, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, occupation and place of employment, address of permanent or legal residence or address of any current temporary residence, ... date and place of each conviction, and a brief description of the crime or crimes committed by the offender.

§ 943.0435(2). Within 48 hours of his or her contact with the sheriff's office, the sex offender must "report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles" where he or she must identify themselves as a sex offender, obtain a driver's license or identification card, and submit to a photograph ***1341** and fingerprinting. § 943.0435(3). The Department of Highway Safety and Motor Vehicles ("DHSMV") will then send the photograph and any further information to the Department of Law Enforcement ("DLE") for public notification by publication to, among other things, the internet. § 943.0435(4).

If a sex offender changes residence, he or she must report to the DHSMV within 48 hours to obtain an updated driver's license or identification card. *Id.* When a sex offender moves out of Florida, he or she is required to notify the local sheriff's office 48 hours before leaving and give the address of his or her intended residence out of state. § 943.0435(7).

A sex offender must comply with the registration statutes for life. The sex offender, however, may be relieved of his or her registration obligation if he or she is pardoned or petitions a court 20 years after release from custody or supervision and, among other things, the court finds them to not be "a current or potential threat to public safety." § 943.0435(11).

The DNA Statute requires any person who is convicted of certain crimes and is incarcerated or on supervisory release to submit two blood or tissue samples for DNA testing. § 943.325(1)(a). Results of the testing identifying the person are kept on file with the DLE and used by law enforcement for identification in subsequent crimes. The crimes that currently require DNA collection are sexual battery, lewdness and indecent exposure, murder, aggravated battery, burglary, carjacking, home invasion robbery, robbery, robbery by sudden snatching, aggravated child abuse, aggravated abuse of an elderly or disabled person, and any felony involving the use of a firearm. § 943.325(1)(b). [FN2]

> FN2. Those convicted of any felony offense will be required to submit to DNA testing beginning in July 2005. § 943.325(1)(b)(4).

Here, Appellants allege in their complaint that they are all Florida residents required by Florida law to register as sex offenders and all have their photographs and identifying information posted on Florida's sex offender website. Further, the complaint alleges that five of the Appellants have "been found by their respective trial courts not to be likely to reoffend." Eight were required to submit blood or tissue samples for DNA analysis. Appellants filed their case in the district court seeking relief from the registration requirements. They claimed that the state violated substantive due process by infringing their liberty interest in good reputation, their right to travel, privacy, employment, and freedom of religious association. Further, they claimed the acts are unconstitutional on equal protection grounds because they have greater post-release reporting burdens than other convicted felons. The Appellants also argued that the acts violated the separation of powers doctrine because they nullify judicial sentencing. Finally, they argued that the acts were an unconstitutional impairment of contract

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because they altered plea bargains made by sex offenders who were sentenced prior to their enactment.

On 15 December 2003, the district court dismissed all of Appellants' claims. The court held that no fundamental rights protected by the United States Constitution had been affected by the Sex Offender Act, therefore the court would only apply a rational basis test to the substantive due process claims. The court concluded that the Sex Offender Act was rationally related to a legitimate government end. Similarly, the court applied the rational basis test to the equal protection claims of impermissible treatment of those in the sex ***1342** offender classification. The court again concluded that the Sex Offender Act's separate classification did not violate the Constitution. Further, the court dismissed Appellants' claims for separation of powers and impairment of contract, finding no violation of the constitutional provisions. Finally, the court found no constitutional error in Florida's DNA Statute and upheld its validity with little discussion.

II. DISCUSSION

The Appellants appeal arguing that the district court erred when it dismissed their complaint. We review this motion to dismiss order *de novo* and view all factual allegations in the complaint as true and in a light most favorable to the Appellants. *See Spain v. Brown & Williamson Tobacco Corp.*, 363 F.3d 1183, 1187 (11th Cir.2004). In order to succeed on a 42 U.S.C. § 1983 claim, the Appellants must show, among other things, that there was a violation of a right secured by the Constitution or federal law. *See Skinner v. City of Miami*, 62 F.3d 344, 347-48 (11th Cir.1995). Here, they argue that the complaint states a sufficient § 1983 claim that the Sex Offender Act violates their constitutional rights to due process, equal protection, travel and separation of powers, and that the DNA Statute violates their constitutional rights to separation of powers, due process and to be free of ex post facto legislation. We do not agree.

A. Sex Offender Act

1. Due Process Claims

The United States Constitution guarantees that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. This provision has been interpreted to have both a procedural and substantive component when reviewing state action. The more common procedural component guarantees that a state will not deprive a person of life, liberty, or property without some form of notice and opportunity to be heard. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct. 2633, 2648-49, 159 L.Ed.2d 578 (2004). Here, the Appellants do not directly claim a procedural due process violation and we will not consider one since that path has been foreclosed by the Supreme Court's decision in *Connecticut Department of Public Safety*, where the Court upheld a similar Connecticut sex offender registration statute against claims of procedural due process violations. [FN3] 538 U.S. at 7-8, 123 S.Ct. at 1164-65.

FN3. Appellants argue that the Sex Offender Act violates substantive due process by creating an irrebuttable presumption of dangerousness. Though they strain to place their argument in terms of substantive due process we find their argument closely resembles the procedural due process argument proposed in *Connecticut Department of Public Safety*, 538 U.S. 1, 6, 123 S.Ct. 1160, 1163, 155 L.Ed.2d 98. There, the sex offenders argued that they have a procedural due process right to demonstrate they are not "currently dangerous" because the sex offender registration requirement implied that they were dangerous. *Id.* Although the Second Circuit Court of Appeals agreed with that argument and held there was a due process violation, the Supreme Court reversed, holding that no liberty interest was implicated because the Connecticut statute turned "on an offender's conviction alone" and dangerousness "is of no consequence under" the law. *Id.* at 6-7, 123 S.Ct. 1160. Similarly, the Sex Offender Act here does not turn on the dangerousness of the offender, merely the fact that he or she was convicted.

[3][4] Instead, the Appellants argue that the Sex Offender Act violates substantive due process. This substantive component protects fundamental rights that are so "implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed." *See* ****1343****Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937); *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir.1994) (*en banc*). Fundamental rights protected by substantive due process are protected from certain state actions regardless of the procedures the state uses. *See Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 2268, 138 L.Ed.2d 772 (1997); *McKinney*, 20 F.3d at 1556. When a

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state enacts legislation that infringes fundamental rights, courts will review the law under a strict scrutiny test and uphold it only when it is "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993). The Supreme Court has recognized that fundamental rights include those guaranteed by the Bill of Rights as well as certain "liberty" and privacy interests implicit in the due process clause and the penumbra of constitutional rights. *See Glucksberg*, 521 U.S. at 720, 117 S.Ct. at 2267; *Paul v. Davis*, 424 U.S. 693, 712-13, 96 S.Ct. 1155, 1166, 47 L.Ed.2d 405 (1976). These special "liberty" interests include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Glucksberg*, 521 U.S. at 720, 117 S.Ct. at 2267 (citations omitted). The Court, however, is very reluctant to expand substantive due process by recognizing new fundamental rights, explaining:

> we "have always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court.

Glucksberg, 521 U.S. at 720, 117 S.Ct. at 2267-68 (citations omitted).

We must analyze a substantive due process claim by first crafting a "careful description of the asserted right." *Flores*, 507 U.S. at 302, 113 S.Ct. at 1447; *accord Glucksberg*, 521 U.S. at 720-21, 117 S.Ct. at 2268. Second, we must determine whether the asserted right is "one of 'those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.' " *Williams v. Attorney Gen. of Alabama*, 378 F.3d 1232, 1239 (11th Cir.2004) (quoting *Glucksberg*, 521 U.S. at 720-21, 117 S.Ct. at 2268), *cert. denied*, *Williams v. King*, --- U.S. ----, 125 S.Ct. 1335, 161 L.Ed.2d 115 (2005).

a. Careful Description

[5] The Appellants appear to make broad claims that the Sex Offender Act infringes their liberty and privacy interests, particularly Appellants assert that the Sex Offender Act infringes their "rights to family association, to be free of threats to their persons and members of their immediate families, to be free of interference with their religious practices, to find and/or keep any housing, and to a fundamental right to find and/or keep any employment." Appellants' Br. at 6 (citations omitted). Despite Appellants' broad framing of their rights in this case, however, we must endeavor to create a more careful description of the asserted right in order to analyze its importance.

Although the Supreme Court has recognized fundamental rights in regard to some special liberty and privacy interests, ***1344** it has not created a broad category where any alleged infringement on privacy and liberty will be subject to substantive due process protection. *See Paul*, 424 U.S. at 713, 96 S.Ct. at 1166 (noting that personal privacy rights protected by substantive due process "must be limited to those which are 'fundamental' or 'implicit in the concept of ordered liberty' "). Further, in order to trigger substantive due process protection the Sex Offender Act must either directly or unduly burden the fundamental rights claimed by Appellants. *See Maher v. Roe*, 432 U.S. 464, 473-74, 97 S.Ct. 2376, 2382, 53 L.Ed.2d 484 (1977) (holding that the substantive due process clause "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy"); *see also Paul P. v. Verniero*, 170 F.3d 396, 405 (3rd Cir.1999) (holding that the indirect effects caused by a sex offender registration statute are "too substantially different from the government actions" in prior case law "to fall within the penumbra of constitutional privacy protection."). Thus, a careful description of the fundamental interest at issue here allows us to narrowly frame the specific facts before us so that we do not stray into broader "constitutional vistas than are called for by the facts of the case at hand." *Williams*, 378 F.3d at 1240. [FN4] To do so we use the Sex Offender Act itself to define the scope of the claimed fundamental right. *Id.* at 1241. After reviewing the provisions of the Sex Offender Act and the briefs, the right at issue here is the right of a person, convicted of "sexual offenses," to refuse subsequent registration of his or her personal information with Florida law enforcement and prevent publication of this information on Florida's Sexual Offender/Predator website.

FN4. We do not suggest that cases involving other privacy interests or burdens on those

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interests are irrelevant to our decision in this case. Rather, we conclude that first we must quantify the claimed right in narrow terms before analyzing its historical importance in the second prong where discussion of prior case law is more appropriate.

b. History and Tradition

With this description, we now ask whether this right is " 'deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.' " *Id.* at 1239. We conclude that it is not.

The circuit courts that have considered this substantive due process argument regarding sex offender registries have upheld such registration and publication requirements finding no constitutional infirmities. *See, e.g., Doe v. Tandeske,* 361 F.3d 594, 597 (9th Cir.2004) (per curiam) ("Persons who have been convicted of serious sex offenses do not have a fundamental right to be free from ... registration and notification requirements ...."); *Gunderson v. Hvass,* 339 F.3d 639, 643 (8th Cir.2003) (sex offender registration statute did not infringe the fundamental right to a presumption of innocence); *Paul P.,* 170 F.3d at 404, 405 (holding that sex offender registration did not infringe fundamental right of family relationships, and although the registration of offenders home address invaded the fundamental right to privacy, the state had a compelling interest to prevent future sex offenses). [FN5] In *Paul P.,* the court held that the indirect effects of members of the public on the offender's relationship with his family did not rise ***1345** to the infringement of a fundamental right by the state. 170 F.3d at 405. As the court conceded, even if the effect of registration places a constitutionally recognizable claim on the offender's family relationships, it did not fall under a fundamental right classification because the sex offender statute did "not restrict plaintiffs' freedom of action with respect to their families and therefore does not intrude upon the aspect of the right to privacy that protects an individual's independence in making certain types of important decisions." *Id.*

FN5. The Eighth Circuit has further held constitutional an Iowa statute banning sex offenders from living within 2000 feet of a school or child care facility, which was argued on similar substantive due process and right to travel grounds. *See generally Doe v. Miller,* 405 F.3d 700 (8th Cir.2005).

Furthermore, in *Paul v. Davis* the Supreme Court determined that there was no fundamental right to prevent the public disclosure of a person's arrest for shoplifting. 424 U.S. at 713, 96 S.Ct. at 1166. In *Paul,* local police departments distributed fliers to area stores alerting them to possible shoplifters during the holiday shopping season. *Id.* at 694-95, 96 S.Ct. at 1157. The fliers contained the mug shot and name of the plaintiff in the case who had been arrested for and charged with shoplifting. *Id.* at 695, 96 S.Ct. at 1158. At the time of the flyer distribution, however, he had not been convicted of the crime, and shortly thereafter the charge was dismissed. *Id.* at 696, 96 S.Ct. at 1158. The Supreme Court refused to extend substantive due process protection to the publication of official acts like arrest records, noting that the right claimed was "far afield" of its previous decisions that limited a state's power to regulate private conduct. *Id.* at 713, 96 S.Ct. at 1166. [FN6]

FN6. The Court noted previous decisions recognized limitations on state regulatory power in areas regarding "marriage, procreation, contraception, family relationships, and child rearing and education." *Id.*

Though the Supreme Court has not addressed whether substantive due process invalidates sex offender registration statutes, *see Connecticut Dep't of Public Safety,* 538 U.S. at 8, 123 S.Ct. at 1165, we can find no history or tradition that would elevate the issue here to a fundamental right. In fact, the case law we have found supports the contrary conclusion. We can certainly understand how a person may be shunned by a person or group that discovers his past offense. However, a state's publication of truthful information that is already available to the public does not infringe the fundamental constitutional rights of liberty and privacy. Therefore, we do not review the statute with strict scrutiny, but only under a rational basis standard.

c. Rational Basis

When a statute does not implicate fundamental rights, we must ask whether it is "rationally related to legitimate government interests." *Glucksberg,* 521 U.S. at 728, 117 S.Ct. at 2271. The rational basis standard is "highly deferential" and we hold legislative acts unconstitutional under a rational basis standard in only the most exceptional circumstances. *Williams v. Pryor,* 240 F.3d 944, 948 (11th Cir.2001).

[6] Here, the state articulates its reasoning for the

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Sex Offender Act as "protect[ing] the public from sexual abuse." Appellee's Br. at 32. The state argues that the public can use the registration "to determine whether any sex offenders live in their neighborhood, make an individual assessment of the risk, and take any precautions appropriate under the circumstances." *Id.* at 33. We agree with the state that the Sex Offender Act meets the rational basis standard. It has long been in the interest of government to protect its citizens from criminal activity and we find no exceptional circumstances in this case to invalidate the law. We join with other courts, *see, e.g.,* Gunderson, 339 F.3d at 643-44, in holding that the Sex Offender ***1346** Act is rationally related to a legitimate government interest. Thus, Appellants' substantive due process argument fails.

2. Equal Protection Claim

Group classification by legislative act will be analyzed under a strict scrutiny if the classification infringes fundamental rights or concerns a suspect class. *See* City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). Because we have found no fundamental rights are at stake or unduly burdened in the preceding section, we must now determine whether the Sex Offender Act involves a suspect class. If not, we review the constitutionality of the classification under a rational basis test. *Id.* at 442, 105 S.Ct. at 3255.

[7] We recognize that the Supreme Court has designated several classifications as suspect and subject to heightened scrutiny under the Equal Protection Clause. They include classifications regarding "race, alienage, national origin, gender, or illegitimacy." *Haves v. City of Miami,* 52 F.3d 918, 921 (11th Cir.1995). Here, Appellants argue that the Sex Offender Act impermissibly treats sex offenders differently from other felony offenders and that it arbitrarily assigns different registration requirements to sub-classes of sex offenders based on parental relationship to victim, status of offender as a minor, insanity or civil commitment of the offender, and release of offender from supervision prior to enactment of the statute. Since sex offenders are not considered a suspect class in general, *see* United States v. LeMay, 260 F.3d 1018, 1030 (9th Cir.2001), and the various sub-classifications presented by the Appellants do not implicate a suspect class, we review those classifications under a rational basis test asking whether they are "rationally related to a legitimate governmental purpose." City of Cleburne, 473 U.S. at 446, 105 S.Ct. at 3258.

[8] A statute is considered constitutional under the rational basis test when "there is any reasonably conceivable state of facts that could provide a rational basis for" it. *FCC v. Beach Communications,* 508 U.S. 307, 313, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211 (1993). The Supreme Court in *Beach Communications* noted that:

> Where there are plausible reasons for Congress' action, our inquiry is at an end. This standard of review is a paradigm of judicial restraint. The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.
>
> On rational-basis review, a classification in a statute ... comes to us bearing a strong presumption of validity, and those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it. Moreover, because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. Thus, the absence of legislative facts explaining the distinction on the record, has no significance in rational-basis analysis. In other words, a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data.

Id. at 313-15, 113 S.Ct. at 2101-02 (citations and punctuation omitted). "Almost every statute subject to the very deferential rational basis ... standard is found to ***1347** be constitutional." *Williams,* 240 F.3d at 948.

[9] Based on this standard, we find no constitutional infirmity here. First, Appellants argue that the Sex Offender Act impermissibly treats sex offenders different from other felons in the length of time they are required to register and the penalties associated with failure to register. Appellants' Br. at 33-34. The Sex Offender Act requires a lifetime registration requirement for sex offenders, who may petition a court to avoid registration only after 20 years. *Id.* Conversely, other felons are subjected to only a five-year registration period with automatic removal of that requirement after the five years. *Id.;* Appellee's Br. at 45. The state argues that the purpose of the distinction "is based on an assessment of the likelihood of sex offenders re-offending over time at a high rate." Appellee's Br. at 45. The increased

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reporting requirements based on evidence of increased recidivism among a class of felons is rationally related to the state's interest in protecting its citizens from criminal activity. *See Smith,* 538 U.S. at 102, 123 S.Ct. at 1152 (noting that the broad categories of a sex offender registration statute "and the corresponding length of the reporting requirement, are reasonably related to the danger of recidivism").

Second, Appellants argue that the Sex Offender Act impermissibly distinguishes crimes committed by the parents of victims-such as kidnaping, false imprisonment, or luring or enticing a child into a dwelling or conveyance-from the same crimes committed by non-parents of the victim. The state argues that the distinction is based on the fact that these crimes committed by parents are typically a result of domestic disputes and exemption of the parents recognizes that fact. We can find no reason why such a designation is not rationally related to the state's interest in protecting the public from sexual abuses, especially when such offenses do not themselves have a sexual component and parents may still have to register as sex offenders if they are convicted of further crimes, such as sexual battery. [FN7]

> FN7. It is also important to note here that Florida case law at least limits application of the Sex Offender Act when a person convicted of these crimes was not also convicted of some sexual component. *Raines,* 805 So.2d at 1003.

Third, Appellants argue that those found not guilty of sex offenses by reason of insanity or those civilly committed that are prone to sexual deviance are not required to register as sex offenders. The state reasons that the insanity classification is rationally related to the legitimate purpose of criminal deterrence. Because a criminally insane or civilly committed offender would not appreciate the deterrent factor, there is no need to require them to register. Further, the state argues that those acquitted by insanity or civilly committed are by definition not convicted of a sex offense under the statute. Considering these stated objectives and the reasoning of other courts that note a state can distinguish between those civilly committed and convicted sex offenders, *see Thielman v. Leean,* 282 F.3d 478, 485 (7th Cir.2002), the insanity classification meets the rational basis test.

Fourth, Appellants argue the Sex Offender Act impermissibly distinguishes between a person 18 years old and younger from those 19 and older by requiring only a ten-year registration period for the younger offenders. *See* § 943.0435(11)(b). The state argues this distinction is based on a finding that minors are "less able to control their behavior than adults, but that they can be expected to gain more self-control and to act responsibly as they mature." Appellee's Br. at 46. Such a distinction ***1348** is supported by the countless criminal laws that distinguish the acts of minors from the acts of adults. The state's objective to focus on a class of offenders that are particularly dangerous or likely more dangerous is rational, and extensive "courtroom factfinding" that questions legislative determinations is not permissible here. *Beach Communications,* 508 U.S. at 315, 113 S.Ct. at 2102.

Fifth, Appellants argue that the state improperly exempted sex offenders from registration who had been released from supervision prior to the enactment of the statute. The state argues that this classification hinged on the expense and futility of attempting to locate and register past sex offenders. Because this class of past offenders have been released from supervision, it would be difficult to locate them and further drain resources dedicated to protecting the public from sex offenders in general. State budget concerns and resource allocation are legitimate government interests, *see Rodriguez v. Cook,* 169 F.3d 1176, 1181 (9th Cir.1999) ("Budgetary concerns are a legitimate governmental interest ...."), and reducing extraneous costs that can provide only moderate success in registering past sex offenders is rationally related to that interest. While Appellants may argue that this distinction is unfair, that is not for us to determine once we hold that there is a rational basis for that distinction.

Thus, Florida's various classifications and sub-classifications for sex offender registration are rationally related to a legitimate governmental purpose and, therefore, constitutional under the Equal Protection Clause. We will not substitute our judgment on when and where to make such distinctions for that of the Florida legislature. *See Beach Communications,* 508 U.S. at 316, 113 S.Ct. at 2102 ("Such scope-of-coverage provisions are unavoidable components of most economic or social legislation.").

3. Right to Travel

[10][11] Next, Appellants argue that the Sex Offender Act infringes their fundamental right to travel under the United States Constitution.

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However, mere burdens on a person's ability to travel from state to state are not necessarily a violation of their right to travel. *See Saenz v. Roe,* 526 U.S. 489, 499, 119 S.Ct. 1518, 1524, 143 L.Ed.2d 689 (1999) (noting a statute cannot " 'unreasonably burden' " the right to travel). In the predominant case law, the right to travel protects a person's right to enter and leave another state, the right to be treated fairly when temporarily present in another state, and the right to be treated the same as other citizens of that state when moving there permanently. *Id.* at 500, 119 S.Ct. at 1525.

[12] Here, however, the Appellants do not argue that they were treated differently because they were a new or temporary resident to Florida or that they were not allowed to enter and leave another state. Rather, they argue that it is inconvenient to travel from their permanent residence because the Sex Offender Act requires them to notify Florida law enforcement in person when they change permanent or temporary residences. [FN8] Though we recognize this requirement is burdensome, we do not hold it is unreasonable by constitutional standards, especially in light of the reasoning behind such registration. The state has a strong interest in preventing future sexual offenses and alerting local ***1349** law enforcement and citizens to the whereabouts of those that could reoffend. Without such a requirement, sex offenders could legally subvert the purpose of the statute by temporarily traveling to other jurisdictions for long periods of time and committing sex offenses without having to notify law enforcement. The state has drawn a line for temporary and permanent relocation, and we hold this requirement does not unreasonably burden the Appellants' right to travel.

> FN8. Temporary residence includes "a place where the person routinely abides, lodges or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence, including any out-of-state address." Fla. Stat. § 775.21(2)(g).

4. Separation of Powers

[13] Appellants also claim that the Sex Offender Act violates Florida's separation of powers doctrine. They claim that the Sex Offender Act effectively nullifies prior judicial findings that certain Appellants are not apt to re-offend or engage in criminal conduct. Furthermore, they claim the Sex Offender Act undermines judicial sentencing duties. Appellants' claim, however, runs afoul of another important constitutional doctrine-the Eleventh Amendment.

[14][15][16][17] The Eleventh Amendment prevents suits in federal court against an unconsenting state by its citizens or citizens of other states. *See Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 100, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984). This immunity includes "a federal suit against state officials on the basis of state law ... when ... the relief sought and ordered has an impact directly on the State itself." *Id.* at 117, 104 S.Ct. at 917. Appellants' argue that the state's immunity has been waived because it was not raised as a defense in the district court. A state's waiver of its sovereign immunity, however, must be "unequivocally expressed," *see id.* at 99, 104 S.Ct. at 907, and Eleventh Amendment jurisdictional questions can be raised for the first time on appeal, *see Patsy v. Bd. of Regents,* 457 U.S. 496, 515 n. 19, 102 S.Ct. 2557, 2568, 73 L.Ed.2d 172 (1982). The Eleventh Amendment acts as a jurisdictional bar for any such suit against the state, even under supplemental jurisdiction. *See Pennhurst,* 465 U.S. at 121, 104 S.Ct. at 919. Accordingly, we cannot decide an issue of state law that is denied to us by the Constitution and not waived by the state. [FN9]

> FN9. Even if we could assert jurisdiction, Appellants' substantive argument is not compelling. Florida courts and other courts across the country have upheld similar attacks to statutes that label sex offenders or require their registration. *See Kelly v. State,* 795 So.2d 135, 137 (Fla.Dist.Ct.App.2001) (holding that mandatory sexual predator designation did not violate state separation of powers); *see also Herreid v. State,* 69 P.3d 507, 509 (Alaska Ct.App.2003) (holding sex offender registration did not violate separation of powers because requirement was regulatory in nature).

Thus, we find no constitutional defects with Florida's Sex Offender Act. Appellants' arguments that the Sex Offender Act violates the doctrines of due process, equal protection, travel, and separation of powers are not viable in this instance.

B. DNA Statute

[18] Appellants next make a terse argument that Florida's DNA Statute violates the federal and state constitutional doctrines of due process and separation of powers. [FN10] For the reasons that follow, we disagree.

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FN10. While Appellants raise the issue that the DNA Statute violates the ex post facto clause of the Constitution, they fail to support their claim with substantive argument. On appeal, we require appellants to not only state their contentions to us, but also to give "the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Fed. R.App. P. 28(a)(9)(A). Appellants' cursory restatement of the issues fails to raise the issue sufficiently for discussion here and is deemed abandoned. *See* *Love v. Deal*, 5 F.3d 1406, 1407 n. 1 (11th Cir.1993).

***1350** 1. Due Process

[19][20] First, Appellants ask us to enforce Fla. Stat. § 120.54(1)(b), which requires administrative regulations be in place within 180 days of the enactment of a statute requiring such rules. While the issue of whether such rules are not in place is in serious doubt, *see* Fla. Admin. Code Ann. r. 11D-6.001, 6.003, the implementation of nuanced state administrative laws does not by itself raise a liberty interest for constitutional due process review. *See* *Tony L. v. Childers*, 71 F.3d 1182, 1185 (6th Cir.1995). "State-created procedural rights that do not guarantee a particular substantive outcome are not protected by the Fourteenth Amendment, even where such procedural rights are mandatory." *Id.* Section 120.54(1)(b) merely gives direction and procedural deadlines to state agencies; it does not grant substantive rights to the Appellants.

2. Separation of Powers

Second, Appellants assert a separation of powers claim under the Florida constitution because the DNA Statute divested them of their right to challenge the collection and use of a DNA sample. As we stated previously in regard to the Sex Offender Act, however, we will not interpret state law against state officials when such review directly impacts the state. *See* *Pennhurst*, 465 U.S. at 117, 104 S.Ct. at 917. Thus, Appellants' final argument fails.

III. CONCLUSION

Appellants' challenge to the Florida Sex Offender Act and DNA Statute was dismissed by the district court for failure to raise issues of federal constitutional concern. This appeal alleges that those Florida laws violate due process, equal protection, right to travel, and separation of powers doctrines. As we have explained, the motion to dismiss was correctly granted. Accordingly, the motion to dismiss granted by the district court is AFFIRMED.

410 F.3d 1337, 18 Fla. L. Weekly Fed. C 597

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TAB B

COMMENTARY AND HISTORICAL NOTES

This document provides historical notes citing changes made to the 1968 Florida Constitution through the 2004 General Election, however, the document provides commentary to these changes through the 1998 General Election by William A. Buzzett and Deborah K. Kearney. The source of this commentary, West's Florida Constitution Annotated, has not been updated since 1998.

ARTICLE I – DECLARATION OF RIGHTS

Section 2. Basic Rights
COMMENTARY TO 1974 AND 1998 AMENDMENTS

<1974 Amendment>

<(1974 Senate Joint Resolution 917)>

The classification of "physical handicap" was added to the protected classes listed in this section, thereby providing that governmental classifications based upon a person's physical handicap would be subject to strict scrutiny. In 1974, fifteen states had enacted laws to prohibit discrimination against disabled persons. Only Illinois had provided this protection in its constitution.

< (1998 Constitution Revision Commission Revision 9)>

Three changes were made to Article I, section 2 by 1998 Revision 9. The term "female and male alike" was added after and modifies the term "natural persons;" "national origin" was added to the listing of protected classes; and the term "physical handicap" was changed to "physical disability."
In adding the term "female and male alike," the Commission's intent was to secure equality for women in the Constitution. Florida had failed to pass the Equal Rights Amendment proposed for the United States Constitution, as well as the so-called "little equal rights proposal" offered by the 1977-1978 Constitution Revision Commission.
As initially filed, the proposal would have added the term "sex" to the listing of protected classes. Questions arose as to whether that proposal could lead Florida courts to require recognition of same-sex marriages. An opinion of the Supreme Court of Hawaii, *Baehr v. Lewin*, 852 P. 2d 44 (Haw. 1993), had interpreted Hawaii's constitutional prohibition against discrimination "because of sex" to require strict scrutiny of Hawaii's marriage statute limiting marriages to heterosexual unions. On remand, the trial court struck the statute. *Baehr v. Miike*, 1996 WL 694235 (Hawai'i Cir.Ct.).
To address these concerns, the following statement of intent was placed into the Journal of the Constitution Revision Commission:
The intent of ... [this proposal], as adopted, was to affirm explicitly that all natural persons, female and male alike, are equal before the law. The proposal as adopted is not intended, and should not be construed, to confer any right to same-sex marriages in this state. Many in the body were concerned that the proposal as it was originally proposed, if adopted by the people, would have opened the door to same-sex marriages in Florida. That was not an acceptable result to many members of the Commission. Consequently, the purpose of amending the original proposal and adopting it in its amended form was to assure that the proposal would not be deemed in any way to countenance same-sex marriages.
The addition of "national origin" to the listing of protected classes will require strict scrutiny of classifications based upon the place of a person's birth, ancestry or ethnicity. The amendment was not intended to protect illegal immigrants from federal immigration laws.

The change in terminology from "physical handicap" to "physical disability" was not intended to make a substantive change, but was simply a recognition that many disabled persons regard the term "handicap" as derogatory.

HISTORICAL NOTES

Amendment Notes:

The amendment proposed by S.J.R. No. 917, as approved by the electors at the November, 1974, general election, prohibited discrimination because of physical handicap.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 4. Freedom of speech and press
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 13)>

The word "his" was deleted before the word "sentiments." This change was a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and was not intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 8. Right to bear arms
COMMENTARY TO 1990 AMENDMENT

<1990 Amendment>

<(1989 Senate Joint Resolution 43)>

Subsections (b), (c), and (d) were added in 1990 to establish a 3-day waiting period between the date of purchase and the date of delivery at retail of a handgun. The amendment contains an exception for persons holding a concealed weapon permit and an exception for persons who trade in another handgun. The placement of this amendment on the ballot by the Legislature was in response to the filing of an initiative petition by "Cool It, Florida!," which proposed a 7-day "cooling off period." The Legislature's effort began with a joint resolution similar to the initiative and would have created a 7-day waiting period. The Legislature amended the joint resolution to create a 5-day waiting period, and finally passed the measure with a 3-day waiting period. After passage of the joint resolution, the petition drive was abandoned.

HISTORICAL NOTES

Amendment Notes:

S.J.R. No. 43 of the 1989 Regular Session, which was approved by voters at the November, 1990, general election, provided for a three-day waiting period for handgun purchases.

Section 9. Due Process
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 13)>

The word "himself" was replaced by the word "oneself." This change was a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and was not intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

The 1998 amendment to this section was proposed by the Constitutional Revision Commission and was approved by voters at the Nov. 3, 1998, general election.

Section 12. Searches and seizures
COMMENTARY TO 1982 AMENDMENT

<1982 Amendment>

<(1982 House Joint Resolution 31-H)>

The 1982 amendment added the sentence: "This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." And, the phrase "if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution," was added to modify the exclusionary rule statement.
The exclusionary rule, which holds that evidence obtained in violation of a person's right to be secure against unreasonable searches and seizures is inadmissible as evidence, was recognized by Florida courts in 1927, *Gildrie v. State*, 113 So. 704 (Fla. 1927), and was first placed in the state constitution in its 1968 revision.
From the mid-1970's to the early 1980's, federal courts began developing a good faith exception to the exclusionary rule such that evidence could be admitted when an officer reasonably and in good faith believed the search or seizure was lawful. *See, e.g.*, *Stone v. Powell*, 428 U. S. 465 (1976); *Michigan v. DeFillippo*, 443 U. S. 31 (1979); *United States v. Williams*, 622 F. 2d 830 (5th Cir. 1980). In a series of state cases, Florida courts rejected the opportunity to adopt a good faith exception, finding that the citizens of Florida provided themselves with greater protection from governmental intrusion than that afforded by the federal constitution. *State v. Sarmiento*, 397 So. 2d 643 (Fla. 1981); *Hoberman v. State*, 400 So. 2d 758 (Fla. 1981). In response, the governor, attorney general, state prosecutors, and the law enforcement community supported a joint resolution in the 1982 Regular Session, which would have engrossed a good faith exception onto the constitutional exclusionary rule. Significant opposition precluded its passage in the regular session.
In Special Session H, the "conformity" language that was ultimately adopted was presented as a compromise and was approved for ballot placement. Opponents filed suit to enjoin the amendment from

appearing on the ballot, asserting that the ballot summary was misleading and did not fully advise the electors of its effect. *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982). The Florida Supreme Court allowed the measure to remain on the ballot and it was adopted.

HISTORICAL NOTES

Amendment Notes:

H.J.R. No. 31-H proposed an amendment to this section of the constitution, adopted by the electorate at the November 1982 general election which provides that the right to be free from unreasonable searches and seizures shall be construed in conformity with the 4th Amendment to the United States Constitution and to provide that illegally seized articles or information are inadmissible if decisions of the United States Supreme Court make such evidence inadmissible.

[Provision for conformity with Fourth Amendment and decisions of the United States Supreme Court was subsequently added.]

Section 14. Pretrial release and detention
COMMENTARY TO 1968 REVISION

<(1982 House Joint Resolution 43-H)>

The term "pretrial release" was substituted for "bail." The primary thrust of the amendment was to give judges the ability to deny pretrial release in a far greater number of circumstances than had previously been the case. Prior to the amendment, bail could be denied only when a person was charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt evident or the presumption great. Those grounds remain a part of the section, albeit relocated. In addition, as amended, courts may impose "reasonable conditions" on pretrial release and may deny pretrial release if no conditions can reasonably assure the protection of the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.
The 1977-1978 Constitution Revision Commission addressed the issue of bail in its recommendation that judges first determine whether release on one's own recognizance would be adequate to secure the person's appearance at trial and then consider monetary bail when no other method is adequate. While non-monetary bail was not precluded under the 1968 version of this section, the practice at the time the amendment was considered was to require the posting of monetary bail. This practice had an adverse effect on indigents who could reasonably be expected to appear for trial, and worsened the overcrowding problems faced by the jails and prisons. The amendment proposed by the 1977- 1978 Constitution Revision Commission failed to pass.
The successful 1982 amendment began as a recommendation of the Governor's Task Force on Criminal Justice Reform and was strongly supported by the governor, attorney general, state prosecutors, the law enforcement community, and the state Chamber of Commerce. A companion statute was adopted to take effect upon passage of the amendment. That statute spelled out procedures for denial of bail and the types of charges upon which denial of bail could be based. See § 907.041, Fla. Stat. A number of prison overcrowding measures were also passed in the same special session of the Legislature. *See, e.g.*, 82-395, 82- 396 and 82-411, Laws of Florida (1982)).

HISTORICAL NOTES

Amendment Notes:

Prior to the amendment effective January 1, 1983, this section provided:

"Until adjudged guilty, every person charged with a crime or violation of municipal or county ordinance shall be entitled to release on reasonable bail with sufficient surety unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great."

H.J.R. No. 43-H proposed an amendment to this section of the constitution adopted by the electorate at the November, 1982 general election effective January 1, 1983, to provide that a person charged with a crime or a violation of a municipal or county ordinance, other than a capital offense or an offense punishable by life imprisonment, shall be entitled to release before trial unless enumerated conditions indicate that the person should be detained.

Section 16. Rights of accused and victims
COMMENTARY TO 1988 AND 1998 AMENDMENTS

<1988 Amendment>

<(1987 Senate Joint Resolution 135)>

Subsection (b) was added to give constitutional recognition to the rights of crime victims, including the next of kin of a homicide victim. Victims' rights include the right to be informed, to be present, and to be heard, when relevant, at all crucial stages of criminal proceedings. These rights are subordinate to the rights of the accused to the extent they would interfere with the accused's rights.
The impetus for this amendment came from a movement for a victims' rights amendment to the United States Constitution, recommended in 1982 by the President's Task Force on Victims of Crime. The language was patterned after a draft of the National Organization for Victim Assistance. Florida was the first state to have a victims' rights clause in its constitution.

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 13)>

The revision struck the words "against him" in the first sentence and reworded a subsequent sentence as a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and were not intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

Amendment to this section proposed by 1987, S.J.R. No. 135, was adopted by the electorate at the general election of November 8, 1988. The amendment added subsec. (b) relating to rights of crime victims.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 17. Excessive punishments
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1998 House Joint Resolution 3505)>

This amendment engrossed the death penalty into the Florida Constitution for the first time. It authorizes the death penalty as a punishment for crimes designated as capital crimes by the Legislature.
The prohibition against cruel *or* unusual punishment is changed to a prohibition against cruel *and* unusual punishment. This change conforms the prohibition with the parallel statement in the federal constitution. It also raises the bar on the part of a defendant by requiring proof of both prohibitions rather than one or the other. Decisions construing the prohibition against cruel or unusual punishment must be made in conformity with decisions of the United States Supreme Court on the parallel language. Thus, the amendment adds a second instance wherein the citizens have directed our courts to construe state constitutional provisions in accord with the United States Supreme Court based upon parallel federal statements. *See*, Article I, § 12.
The amendment also allows the Legislature to provide for any method of execution not prohibited by the United States Constitution. Changes in the method of execution may be applied retroactively. Should the method of execution be held invalid, sentences of death will remain in force until a valid method of execution is enacted.
This amendment was proposed in the wake of challenges to the use of electrocution as the method of execution in Florida. After Florida's electric chair malfunctioned for a second time, causing burns to the condemned, a claim was made that this method of execution constitutes cruel or unusual punishment. *Jones v. State*, 701 So. 2d 76 (Fla. 1997). The *Jones* sentence was upheld in a 4-3 decision. The Legislature wished to ensure that should electrocution be held unconstitutional sometime in the future, death sentences would not be commuted to life sentences, as happened in 1972. *See, e.g.*, *Furman v. Georgia*, 408 U. S. 238 (1972); *Anderson v. State*, 267 So. 2d 8 (Fla. 1972).

HISTORICAL NOTES

Amendment Notes:

The 1998 proposed amendment was approved by voters at the November 3, 1998, general election.

Section 18. Administrative penalties
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 13)>

Since early statehood, Florida's militia has had the authority to order confinement in a properly convened court-martial proceeding. § 250.35(4), Fla. Stat. Article X, section 2, like its predecessors, expressly states that "[t]he ... disciplining of the militia ... may be provided for by law." *See*, Art. XIV, § 2, Fla. Const. (1885); Art. XI, § 2, Fla. Const. (1868). However, in *dicta*, the First District Court of Appeal questioned the viability of Section 250.35(4), Florida Statutes, because of Article I, section 18's prohibition on administrative agencies from imposing sentences of imprisonment. *Waterman v. State*, 654 So. 2d 150 (Fla. 1st DCA 1995).
The 1998 amendment addresses this concern and clarifies the authority of the Department of Military Affairs to impose sentences of imprisonment in court-martial actions, in accordance with general law. By

the language of the amendment, the Department of Military Affairs is expressly excepted from the prohibition against the imposition of sentences by administrative agencies found in this section.

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 23. Right of privacy
COMMENTARY TO 1980 ADDITION AND 1998 AMENDMENT

<(1980 Committee Substitute for House Joint Resolution 387)>

Section 23 was added to the Florida Constitution in 1980 to provide a state right of privacy, requiring the state to justify the reasonableness of intrusions upon personal privacy. This right is subordinate to conflicting provisions of the constitution through its clause "... except as otherwise provided herein." Particularly, Section 23 was designed to avoid an adverse effect on law enforcement by not implicating the search and seizure law. In addition, the section explicitly states that it is not intended to limit the public records and open meetings laws that, at the time, were purely a matter of general law.
The individual's right of privacy evolved from a dissenting opinion authored by Justice Brandeis in 1928. *Olmstead v. U.S.* 277 U. S. 438 (1928). In *Griswold v. Connecticut*, 381 U. S. 479 (1965), a majority of the United States Supreme Court first recognized the right of privacy as one necessarily emanating from other specifically stated rights. The so-called "Griswold Constellation" of cases defines the reaches of the right of privacy. The cases generally focus on three areas of privacy: Decisional autonomy: *Roe v. Wade*, 410 U. S. 1113 (1973); *Doe v. Bolton*, 410 U. S. 179 (1973); *Loving v. Virginia*, 388 U. S. 1 (1967); *Griswold, supra.*; *Pierce v. Society of Sisters*, 268 U. S. 510 (1975); Government surveillance: *Katz v. U.S.*, 389 U.S. 347 (1967); Government collection of information: *Whalen v. Roe*, 429 U. S. 589 (1977); *Nixon v. Administrator of General Services*, 433 U. S. 425 (1977); *Stanley v. Georgia*, 394 U. S. 557 (1969); *California Bankers Ass'n v. Schultz*, 416 U. S. 21 (1974).
By 1967, it became clear that the United States Supreme Court considered the protection of a person's privacy rights as largely dependent upon the law of the individual states. *Katz, supra*. The Florida Supreme Court subsequently made it clear that Florida had no general state constitutional right of privacy. *Laird v. State*, 342 So. 2d 962 (Fla. 1977).
Prior to Florida's privacy amendment, Alaska, California, and Montana had adopted freestanding constitutional rights of privacy, and other states provided similar statutory protections. Alaska courts construed that state's privacy amendment quite expansively, while California courts focused on tracking the federal decisions. The courts in most states interpreted their state privacy rights, whether constitutional or statutory, in keeping with the determinations of the federal courts.
The 1977-1978 Constitution Revision Commission proposed a privacy amendment (which failed to be adopted) substantially identical to that which ultimately passed in 1980.

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 13)>

The term "his private life" was changed to "the person's private life." This change was a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and was not intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

The addition of this section was proposed by C.S. for H.J.R. No. 387, as approved by the electors at the November, 1980, general election.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 24. Access to public records and meetings
COMMENTARY TO 1992 ADDITION

<(1992 Committee Substitute for Committee Substitute for House Joint Resolutions 1727, 863, and 2035)>

Florida's public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

The amendment makes clear that all branches of state government and all local governments, and all officers, agencies, boards, and employees, are made subject to the open meetings and public records requirements of Article I, Section 24.

Subsection (a) ensures the right of public access to any public record not exempted in the manner set out in the amendment, made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf.

Subsection (b) requires that all meetings of any collegial public body of the executive branch or collegial bodies of local governments, at which official acts are to be taken or at which business of the entity is to be transacted or discussed, must be open and noticed to the public. On the contrary, legislative meetings are open and noticed as provided in Article III, Section 4(e), which operates quite differently. As to the executive branch and local government collegial bodies, any gathering of two or more members to discuss a matter that may foreseeably come before that body, is considered a public meeting and must be noticed and open. Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973). On the other hand, Article III, Section 4(e) requires that only legislative committees, subcommittees, and conference committees must be open and noticed. *Prearranged* meetings between *more than two* members of the Legislature (or between the governor, the president of the senate or the speaker of the house), "the purpose of which is to agree upon formal legislative action" must be *reasonably* open to the public. Notice is not required.

Subsection (c) grants the Legislature the power to enact general laws governing the enforcement of this section and to enact exemptions to the requirements for public access. Any law creating an exemption: (1)

must state with specificity the public necessity justifying the exemption; (2) may be no broader than necessary to accomplish the stated purpose of the exemption; and (3) may contain no other subject except exemptions and provisions governing the enforcement of this section and must relate to a single subject. Laws governing the enforcement of this section include those relating to maintenance, control, destruction, disposal and disposition of public records. The Legislature is authorized to enforce the section as it applies to the Legislature, through adoption of its own rules. This is an important distinction, as the courts will not become involved in interpreting and enforcing the internal activities of the Legislature. See e.g., *Moffit v. Willis*, 459 So. 2d 1018 (Fla. 1984).
Subsection (d) represents a savings clause so that all exemptions to the public records and open meetings laws in force on July 1, 1993, the effective date of the amendment, remain in effect until they are repealed. Likewise, court rules in effect on that date remain in effect until repealed.

HISTORICAL NOTES

Amendment Notes:

The addition of this section was proposed by the committee substitute for the committee substitute for H.J.R. Nos. 1727, 863 and 2035, and was adopted at the general election held November 3, 1992.

For effective date of Const.Art. 1, § 24, see Const.Art. 12, § 20.

Section 25. Taxpayers' Bill of Rights
COMMENTARY TO 1992 ADDITION

<(1992 Taxation and Budget Reform Commission Revision 2)>

This section requires the Legislature to adopt a Taxpayers' Bill of Rights in clear, understandable, non-technical language. The Taxation and Budget Reform Commission, which placed the amendment on the ballot, provided suggested language to be incorporated into the Taxpayers' Bill of Rights in its report of December 1991 entitled *Florida's Fiscal Future: Balancing Needs and Taxes*. In the Commission's accompanying Resolution, it based this recommendation for a Bill of Rights on the fact that the administration of the state tax system is "highly dependent on the voluntary compliance of taxpayers," yet the tax laws are "scattered throughout the Florida Statutes and are generally in technical language."
The Legislature enacted the Taxpayers' Bill of Rights in 1992. See § 213.015, Fla. Stat.; Ch. 92-315, Laws of Fla. (1992).

HISTORICAL NOTES

Amendment Notes:

The addition of this amendment was proposed by the Taxation and Budget Reform Commission under authority of Const.Art. 11, § 6, and was adopted at the general election held November 3, 1992.

This section, relating to taxpayers' rights, was originally designated as § 24, but was redesignated as § 25 due to the addition of another § 24, relating to access to public records and meetings.

Section 26. Claimant's right to fair compensation

Added by citizen initiative, general election, Nov. 2, 2004.

ARTICLE II – GENERAL PROVISIONS

Section 5. Public officers
COMMENTARY TO 1988 AND 1998 AMENDMENTS

<1988 Amendment>

<(1988 House Joint Resolution 1616)>

The office of Taxation and Budget Reform Commissioner is added to the listing of public offices not subject to the prohibition against dual office-holding. Without this exemption, no state, county, or municipal officer would be eligible for appointment to the Taxation and Budget Reform Commission without giving up the pre-existing office.

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 13)>

Subsection (b) is changed from "until his successor qualifies" to "until a successor qualifies." This change was a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and was not intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

1988, H.J.R. No. 1616 proposed an amendment to subd. (a) of this section of the constitution adopted by the electorate at the November 8, 1988, general election, to provide for the taxation and budget reform commission.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 7. Natural resources and scenic beauty
COMMENTARY TO 1996 AND 1998 AMENDMENTS

<1996 Amendment>

<(1996 Initiative Petition)>

Subsection (b) was added by this citizen initiative to specify that polluters in the Everglades Agricultural Area (EAA) are primarily responsible for the costs of abating the pollution they cause within the Everglades Protection Area or the Everglades Agricultural Area. These two areas are defined by statute. § 373.4592, Fla. Stat.
This measure began as a portion of an initiative headed for the 1994 ballot. The 1994 proposal established a trust for restoration of the Everglades, levied a 1¢ per pound fee on raw sugar to fund the trust, and imposed responsibility on polluters to cover cleanup costs. That 1994 initiative violated single- subject requirements, as well as suffered from a misleading ballot summary, and was stricken from the ballot. *In re Advisory Opinion to the Attorney General-Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994). In 1996, the same committee, known as "Save Our Everglades," separated the various aspects of the Everglades cleanup program by filing three individual initiative petitions. The petition that added subsection (b) was

known as "Polluter Pays." Opponents of the Everglades amendments focused their energies on defeating Amendment 5, which imposed the penny sales tax on raw sugar. Amendment 5 was defeated, but the other two segments of the overall program passed. Thus, polluters within the EAA are responsible for the cost of abatement of the pollution they cause, *Advisory Opinion to the Governor--1996 Amendment 5 (Everglades)*, 706 So.2d 278 (Fla.1997), but this responsibility is not met through the payment of a constitutionally-imposed penny per pound levy.

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 5)>

Subsection (a) was amended to add "conservation and protection of natural resources" to the listing of those things for which the Legislature is required to make adequate provision by law. This addition was largely viewed by the Commission as an aspirational goal and a statement that Floridians find conservation and protection of their natural resources important responsibilities of the state.
The Commission's initial proposals on this subject took the form of an "environmental bill of rights" and were designed to grant a broad right of standing to enforce constitutional environmental goals. Substantial amendment pared the measure into a form mandating that the Legislature adequately address the conservation and protection of Florida's natural resources. Commissioners understood that a direction to the Legislature to make "adequate provision" by law had never been interpreted to mandate any particular law, simply that there be some reasonable level of legislative action. *See also* the similar mandate in Art. IX, § 1. In other words, the Legislature is empowered to determine, within reason, what is adequate.

HISTORICAL NOTES

Amendment Notes:

The 1996 amendment was proposed by initiative petition and was approved by voters at the November 5, 1996, general election.

The Florida Supreme Court, in an advisory opinion to the Governor dated Nov. 26, 1997, stated, in part:

"In conclusion, we answer your inquiries by finding that (1) Amendment 5 [par. (b) of this section] is not self-executing; (2) the amendment requires implementing legislation, notwithstanding the existence of the Everglades Forever Act; and (3) the words 'primarily responsible' require those in the EAA [Everglades Agricultural Area] who cause water pollution in the EPA [Everglades Protection Area] or EAA to bear the costs of abating that pollution."

The 1998 amendment was proposed by Constitution Revision Commission and was approved by voters at the November 3, 1998, general election.

Section 8. Ethics in government
COMMENTARY TO 1976 ADDITION AND 1998 AMENDMENT

<(1976 Initiative)>

In 1976, the electorate adopted this ethics in government amendment. The amendment represents the first successful attempt to amend the constitution by citizen initiative. The amendment, codified in article II, section 8 provides that:
(1) elected constitutional officers, candidates for such offices, and other designated persons must file full and public disclosure of their financial interests

(2) all campaign finances are subject to public disclosure
(3) persons who breach the public trust are liable to the public
(4) public officers or employees convicted of felonies involving breach of the public trust shall forfeit public retirement or pension
(5) members of the Legislature and other statewide officers shall not represent persons for compensation before the governmental body for which they are an officer for a 2-year period.
In addition, the amendment created an independent commission to investigate and make public reports and required a code of ethics be established by general law.
The schedule contained in the amendment provides clear guidelines for financial disclosure until changed by general law. The schedule required (1) disclosure of net worth and identifying each asset and liability in excess of $1000, and (2) filing a copy of income tax returns or a statement revealing each source of income which exceeds $1000.

<1998 Amendment>

<(1998 Constitution Revision Commission Revisions 8 and 13)>

Subsection (g) was created by Revision 13 of the 1997-1998 Constitution Revision Commission by moving the language found in Article III, section 18 to Article II, section 8. The Commission recommended the move in order to consolidate matters relating to ethics in government under one section of the constitution. The amendment offered by the Commission did not affect the substance of the subsection because no portion of the text was altered. The previous subsections (g) and (h) were relettered as subsections (h) and (i).
Subsection (i)(1) (previously subsection (h)(1), was amended by Revision 8 of the 1997-1998 Constitution Revision Commission by replacing all references to the "secretary of state" with "custodian of state records." This amendment was required in order to conform terms in accordance with the restructure of the Florida Cabinet. (For full discussion of cabinet restructure, see Commentary to 1998 Amendments to Article IV, section 4).

HISTORICAL NOTES

Amendment Notes:

The addition of this section was proposed by initiative.

The Florida Constitution Revision Commission proposed the 1998 amendments to this section, which were approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 9. English is the official language of Florida
COMMENTARY

<(1988 Initiative)>

This section establishes English as the official language of the State of Florida. The Legislature is given the power to enforce this section by "appropriate legislation." Prior to its adoption, this initiative was largely denounced by most elected officials; however, the electorate embraced the concept, giving it more favorable votes than any other measure on the 1988 ballot.

Because this amendment is not self-executing, its full effect is left to be developed by the Legislature. In reviewing the validity of the ballot measure, the Florida Supreme opined that the amendment did not require the Legislature to enact implementing legislation. *In re Advisory Opinion to the Attorney General--English--The Official Language of Florida*, 520 So.2d 11 (Fla. 1988).
In the year after the amendment was adopted, the governor, and not the Legislature, moved to implement the substance of the amendment. On January 9, 1989, before the Legislature had an opportunity to meet and consider any implementing legislation, Governor Bob Martinez, Florida's first Hispanic governor, issued an executive order declaring English the official language of the State of Florida. The governor directed that "all official records, reports, and proceedings required by law to be maintained by state or local governments shall be in the English language."

HISTORICAL NOTES

Amendment Notes:

The addition of this section, adopted November 8, 1988, was proposed by initiative.

ARTICLE III - LEGISLATURE

Section 3. Session of the legislature
COMMENTARY TO 1990, 1994, AND 1998 AMENDMENTS

<1990 Amendment>

<(1989 Committee Substitute for Senate Joint Resolution 380)>

Subsection (b) was amended to advance the starting date of the 60-day legislative session in odd-numbered years from the first Tuesday after the first Monday in April to the first Tuesday after the first Monday in March of 1991 and then to February by the year 1992. Based on the 1990 amendment, regular sessions occurring after 1992 would use the new schedule and run from February to April rather than the previous schedule, which ran from April to June. The purpose of this change was to allow more time between the conclusion of the legislative session and the beginning of the fiscal year (July 1), thereby allowing state agencies, departments, and subdivisions more time to make budgetary plans and prepare for the next fiscal year.
Subsection (b) was also amended to change the opening date for sessions in even-numbered years from April to February [and continued to allow the Legislature the opportunity to change the date by general law]. The purpose for this change was to allow the Legislature to begin its work early in the year of reapportionment, knowing that reapportionment typically extends to multiple special sessions and is subject to extensive judicial review.

<1994 Amendment>

<(1994 Senate Joint Resolution 2606)>

Subsection (b). The 1994 amendment shifted the starting date of the regular session in odd-numbered years from the first Tuesday after the first Monday in February to the first Tuesday after the first Monday in March. The amendment also changed the starting date for sessions in even-numbered years to the first Tuesday after the first Monday in March. The provision allowing the Legislature to change the opening date in even-numbered years is maintained to accommodate the need for an earlier start in reapportionment years.

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 8)>

Subsection (f). Incorporating the recommendations of the 1997-1998 Constitution Revision Commission, three changes were made to subsection (f). Each change reflected the Commission's commitment to make the constitution gender neutral. None of the changes were intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

S.J.R. No. 380 of the 1989 regular session, which was approved by voters at the November, 1990, general election, changed the dates for regular sessions.

S.J.R. 2606 of the 1994 regular session, which was approved by voters at the November, 1994, general election, changed the month of the convening date of regular sessions from February to March.

The 1994 amendment to this section was approved by voters at the November 8, 1994, general election.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 4. Quorum and procedure
COMMENTARY TO 1990 AMENDMENT

<1990 Amendment>

<(1990 Senate Joint Resolutions 1990 and 2)>

The amendment expands the ability to require roll call votes from that right existing only in full session of either house, to questions put in legislative committees and subcommittees. Further, the amendment codifies rules of the Senate and House of Representatives regarding legislative public meetings.
Subsection (c) extends to members of the Legislature the right to obtain roll call votes in committee and subcommittee meetings at the request of any two members of the committee or subcommittee. The existing right to request a roll call vote in proceedings of the full chamber upon the request of five members remains unaffected.
Subsection (e) requires that all legislative committee and subcommittee meetings are open to the public. Prearranged gatherings with more than two legislators or meetings between the governor, the president of the Senate or the speaker of the House of Representatives for the purpose of agreeing upon formal legislative action are public meetings. The definition of "formal legislative action" was not provided in the constitution but was left to legislative rule. The amendment leaves each house of the Legislature as the "sole judge for the interpretation, implementation, and enforcement" of this section. As such the Legislature is insulated from any judicial enforcement of this section.
Prior to 1990, the only constitutional requirement for legislative meetings to be open to the public was found in subsection (b) of this section, which provides that "sessions of each house shall be public, except sessions of the senate when considering appointment to or removal from public office." There were no constitutional requirements that committee or subcommittee meetings be open to the public. Senate and House rules provided that committee meetings were open to the public subject to the chair's authority to maintain order and decorum. 1989 Senate Rules 2.13, 2.6, 2.8 and 13.3. 1989 House Rules 6.25, 6.17-6.19.
During the 1989 regular session, in response to the public's growing dissatisfaction with legislative decisions being made outside of open meetings, the Senate refined its open meetings rule to provide that all meetings at which legislative business is discussed among two or more senators shall be open to the public. A meeting between two senators to exchange information, where the purpose is not to agree on final action to be taken at a subsequent meeting, is excepted. 1989 Senate Rule 1.43.

HISTORICAL NOTES

Amendment Notes:

The amendment proposed by S.J.R. Nos. 1990 & 2, which was approved by voters at the November, 1990, general election, added the second sentence to subsec. (c), and added subsec. (e).

Section 7. Passage of bills
COMMENTARY TO 1980 AMENDMENT

<1980 Amendment>

<(1980 Senate Joint Resolution 1349)>

The amendment modifies the requirement that every bill must be read three times in each house by allowing publication of the title of the bill in the journal of the respective house to satisfy the first of three required readings. Other than this modest change streamlining the reading requirement, the process of considering bills by the Legislature has not been altered by this amendment. The Legislature is still required to read bills a second and third time and such bills are still subject to amendment, debate, and roll call vote.

HISTORICAL NOTES

Amendment Notes:

The amendment proposed by S.J.R. No. 1349, as approved by the electors at the November, 1980, general election, added the proviso in the second sentence relating to publication in the journal satisfying the requirement of the first reading.

Section 8. Executive approval and veto
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1998 Constitution Revision Commission Revisions 8 and 13)>

Subsection (a) is amended to remove all gender specific language as it related to the governor. This amendment was non-controversial and followed the consistent mandate of the Commission to update the language of the constitution by replacing gender-specific language with gender-neutral language. The change was not intended to have any substantive effect.
Subsection (b) is also made gender-neutral. The change was not intended to have any substantive effect. Subsection (b) is also amended to clarify the process for considering legislative overrides of gubernatorial vetoes. Revision 13 provides that the originating house may consider a vetoed measure for re-enactment at any special session up to the next regular session or during that next regular session.
Prior to the adoption of Revision 13, the constitution was silent with respect to the appropriate time for the Legislature to consider an override. Except for the language requiring the secretary of state to present the veto message to the Legislature, no process was provided. As a result of this silence, the Legislature and the Governor had differing opinions regarding the timeframe in which to consider a veto override. The issue came to a head during the 1997 legislative session when the Governor vetoed two bills. At an intervening special session the bills were presented to the House of Representatives but the House decided not to reconsider the bills during the special session. During the 1998 regular session, the House of Representatives and the Senate voted to override the Governor's vetoes. The Governor took the position that the Legislature was required to take up the issue of the vetoed bills at the 1997 special session or lose its power to override. The Legislature was of the opinion that it could act upon a vetoed bill at any time, notwithstanding when it was presented. In *Chiles v. Phelps*, 714 So.2d 453 (Fla. 1998), the Supreme Court agreed with the House and concluded that because there was no express requirement in the constitution that the Legislature take up a veto message during the session at which the measure is presented, it could consider the bill at the next regular session.

Revision 13 also clarified the secretary of state's roll in the override process. The last sentence of subsection (b) was amended to include the phrase "whichever occurs first." Based on this amendment the secretary of state must present a veto message to the originating house at the next regular session or special session, whichever occurs first.

HISTORICAL NOTES

Amendment Notes:

The Florida Constitution Revision Commission proposed the 1998 amendments to this section, which were approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 16. Legislative apportionment
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1998 Constitution Revision Commission Revision 8)>

Subsections (b) and (f) were amended by Revision 8 of the 1997-1998 Constitution Revision Commission to replace all references to the "secretary of state" with "custodian of state records." This amendment was required in order to conform terms in accordance with the restructure of the Florida Cabinet. (For full discussion, see Commentary to 1998 Amendments to Article IV, section 4).

HISTORICAL NOTES

Amendment Notes:

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 17. Impeachment
COMMENTARY TO 1988 AND 1998 AMENDMENTS

<1988 Amendment>

<(1987 Senate Joint Resolution 459)>

The first sentence of subsection (a) was amended by a joint resolution to add county court judges to the list of state officers subject to impeachment. The purpose of the amendment was to treat all justices and judges, including county court judges, equally with respect to discipline and removal.
Prior to the 1988 amendment, county court judges were subject to removal by two other constitutional methods. Either the governor could suspend the county judge with a determination on removal or

reinstatement by the Senate or the judicial qualifications commission could investigate and the supreme court could remove the county judge.
[Note: The 1988 amendment neglected to address a related provision found in Article V, section 12 (g) that provided that the power of "removal [by the judicial qualifications commission] was alternative and cumulative to the power of impeachment and to the power of suspension by the governor." Because the governor's power of suspension is limited by Article IV, section 7 to state officers "not subject to impeachment" and because the 1988 amendment subjected county court judges to impeachment, the governor no longer retained the power to suspend county court judges. As such, that portion of section 12(g) relating to the governor's suspension powers was no longer applicable. The 1996 Article V Task Force, a 23-member group established by the Florida Legislature, recognized this contradiction and it was corrected by a 1996 amendment to Article V. (For full discussion of Article V Amendments see 1996 Commentary)]

<1998 Amendments>

<(1998 Constitution Revision Commission Revision 13)>

Subsection (b) was amended by the 1997-1998 Constitution Revision Commission to remove "he" and insert "the governor." This amendment was consistent with the Commission's overall philosophy to make the constitution gender neutral. None of the changes to subsection (b) were intended to have any substantive effect.
Subsection (c) was amended by the 1997-1998 Constitution Revision Commission to remove "him" and insert "the chief justice." This amendment was consisted with the Commission's overall philosophy to make the constitution gender neutral. None of the changes to subsection (c) were intended to have any substantive effect.

HISTORICAL NOTES

Amendment Notes:

Amendment to this section proposed by 1987, S.J.R. No. 459, was adopted by the electorate at the general election of November 8, 1988. The amendment provides for the impeachment of county court judges.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 19. State Budgeting, Planning & Appropriations Processes
COMMENTARY TO 1992 ADDITION

<(1992 Taxation and Budget Reform Commission Revision 1)>

Section 19 makes a significant impact on state appropriation and budgeting and was clearly the heart of the work product of the first Taxation and Budget Reform Commission. Besides the many important changes and safeguards established here, the amendment has codified a relatively obscure area of state governance into the text of the Constitution where it can be more easily found and, one hopes, digested.

HISTORICAL NOTES

Amendment Notes:

The addition of this section was proposed by the Taxation and Budget Reform Commission under

authority of Const.Art. 11, § 6, and was adopted at the general election held November 3, 1992.

Numerous trust funds scheduled for termination pursuant to subsec. (f) of this section have been re-created or extended by the Legislature. For a partial listing of such trust funds, see Laws 1994, c. 94-1 through c. 94-68, enacted at the Second Regular Session of the Thirteenth Legislature, Laws 1995, c. 95-3 through c. 95-100, enacted at the First Regular Session of the Fourteenth Legislature, and Laws 1996, c. 96-1 through c. 96-105 and c. 96-110 through c. 96-144, enacted at the Second Regular Session of the Fourteenth Legislature.

The Florida Constitution Revision Commission proposed the 1998 amendments to this section, which were approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

ARTICLE IV - EXECUTIVE

Section 1. Governor
COMMENTARY TO 1992 AND 1998 AMENDMENTS

<1992 Amendment>

<(1992 Taxation and Budget Reform Commission Revision 1)>

Subsection (a) was amended by adding the statement that "[t]he governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state." In the Resolution it adopted to document its intent, the Taxation and Budget Reform Commission stated:
The Commission found that the Florida Constitution vests supreme executive authority in the Governor; yet, the Governor's budget authority has been restricted by statute. The Commission intends that, as chief administrative officer of the state, the governor is to be responsible for the planning and budgeting of the state. This role is distinctive from the Legislature's responsibility to appropriate funds of the state. In developing the Recommended Budget that is submitted to the Legislature, the Governor should be able to review and recommend revisions to the budget requests of the legislative and judicial branches according to the same process used for the executive branch. The Commission intends that the Governor shall be able to modify the legislative budget requests of agencies and departments under the Governor's direct supervision before those "independent judgment" legislative budget requests go to the Legislature. In the area of planning, the Governor shall be responsible for reviewing the state planning document biennially and recommending revisions to the Legislature. The Commission further intends that the Governor will review the agency and department planning documents to determine consistency with the state planning document.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

Gender-specific references were removed as a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and were not intended to have any substantive effect.

HISTORICAL NOTES

The 1992 amendment, which added the last sentence of subsec. (1)(a), was proposed by the Florida Tax and Budget Reform Commission.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 2. Lieutenant governor
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

Gender specific references were removed as a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and were not intended to have any substantive effect.

HISTORICAL AND STATUTORY NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 3. Succession to office of governor; acting governor
COMMENTARY TO 1998 AMENDMENTS

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revisions 8 and 13)>

Subsection (b) was changed effective January 7, 2003, when the cabinet restructure takes effect, (see Art. IV, § 4), and was required by the reduction in the number of cabinet members from six to three. The amendment reduced the number of cabinet members required to move to have the governor suspended due to incapacity from four to three. It therefore requires cabinet unanimity. The number of cabinet members required in order to restore capacity is likewise changed from four to three.
Revision 13 removes gender-specific references as a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral and was not intended to have any substantive effect.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 4. Cabinet
COMMENTARY TO 1984, 1986, AND 1998 AMENDMENTS

<1984 Amendment>

<(1983 House Joint Resolution 435)>

The subsection describing the duties of the treasurer was amended to delete a requirement that the comptroller's order to disburse state funds be countersigned by the governor. The amendment further specified that state funds may be disbursed by electronic means or any other transfer medium.
The purpose of these changes was to accommodate the direct deposit of state employee salaries and retirement benefits. The legislature had enacted general law to authorize electronic deposits (§ 17.075, Fla. Stat. (1977) and § 17.076, Fla. Stat. (1978)); however, the attorney general advised that the constitution appeared to require a paper transaction through its requirement for countersignature. *Letter from Atty. Gen. to Senator W. D. Childers, April 17, 1981.*

<1986 Amendment>

<(1985 House Joint Resolution 386)>

The subsection denoting the power and duties of the attorney general was amended to create the office of statewide prosecutor. The jurisdiction of this office is limited to the prosecution of crimes committed in, or which affect, two or more of the judicial circuits of the state. The statewide prosecutor is appointed by the attorney general from at least three names submitted by the supreme court judicial nominating commission. The legislature is authorized to enact general law relating to the statewide prosecutor's jurisdiction and is authorized to change the method of appointment. See § 16.56, Fla. Stat., for a list of the types of crimes for which the statewide prosecutor may take jurisdiction.

The creation of the position of statewide prosecutor was initially recommended by the Governor's Commission on the Statewide Prosecution Function. The Commission recommended vesting statewide prosecutorial authority in a deputy attorney general jointly appointed by the attorney general and governor. The Senate's proposal established the position within the attorney general's office and clarified that the attorney general was authorized to prosecute in the state's trial courts, then allowed the attorney general to delegate this authority to a statewide prosecutor. The House proposal went through many changes, beginning with a statewide prosecutor appointed by the governor, then simply asserting that the attorney general possessed the authority to prosecute in the trial courts statewide, with a later amendment authorizing delegation by the attorney general to a statewide prosecutor. The joint resolution was ultimately resolved in conference committee, where the conferees agreed upon establishing the office of statewide prosecutor to be appointed by the attorney general from nominees submitted by the supreme court judicial nominating commission.

<1998 Amendments>

<(1997-1998 Constitution Revision Commission Revisions 8 and 13)>

The 1998 revisions reduced the number of cabinet officers from six to three-- attorney general, chief financial officer and commissioner of agriculture. The constitutional powers and duties of the comptroller and treasurer were combined to create the office of chief financial officer. The education commissioner becomes an officer appointed by the reconstructed state board of education. *See*, Art. IX, s. 2, Fla. Const. It was left to legislative determination how the office of secretary of state would be created and filled. To clarify that the secretary of state was no longer to be a constitutional officer, the term was changed throughout the constitution to "custodian of state records." Since the governor and cabinet together make an even number of four, provision was made that in the case of a tie vote, the side on which the governor votes would prevail.

Without going so far as to prohibit the practice, the amendment was intended to discourage the use of the cabinet form of governance except in a few specified areas in which the Constitution Revision Commission believed the public particularly desired collegial policy-making. These included administration of a state law enforcement agency, title to state lands, some environmental issues, and investment of the state retirement fund. For this reason, four existing ex officio boards were engrossed into the constitution as boards to be headed by the governor and cabinet or some cabinet members. The trustees of the internal improvement trust fund, the land acquisition trust fund, and the department of law enforcement are headed by the governor and cabinet. The state board of administration is comprised of the governor, the chief financial officer, and the attorney general--a change necessitated by the merging of the fiscal officers, since the state board of administration was previously comprised of the governor, comptroller and treasurer.

The changes made by Revision 8 represent one of the most significant changes in the structure of the executive branch since the groundwork was laid for Florida's unique cabinet system in the 1885 Constitution. The Commission focused on strengthening the governor's powers in order to enhance efficiency and accountability and to give the governor a greater degree of the authority that the public believes the office carries.

Revision 13 removed gender-specific references and was not intended to have any substantive effect.

HISTORICAL NOTES

Amendment proposed by 1983 H.J.R. No. 435, which was approved by the electors at the November, 1984, general election, inserted in subsec. (e), the second sentence for the words "countersigned by the governor. The governor shall countersign as a ministerial duty subject to original mandamus."

The amendment proposed by 1985 H.J.R. No. 386, as approved by the electors at the November, 1986, general election, added the second through fourth sentences to subsec. (c).

The 1998 amendments to this section were proposed by the Constitution Revision Commission and were approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 5. Election of governor, lieutenant governor and cabinet members; qualifications; terms
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 11)>

Subsection (a). Revision 11 adds the language: "In primary elections, candidates for the office of governor may choose to run without a lieutenant governor candidate" and deletes language that had required a joint ticket in party primaries as well as in the general election. The Commission intended that the gubernatorial candidate would have the choice of whether the lieutenant governor running mate will file for qualification for ballot position during the regular qualifying period or at a later time after the primary but before the general election. This change was intended to give candidates for governor more flexibility in choosing a running mate, including the ability to select a primary election opponent.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 7. Suspensions; filling office during suspensions
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 11)>

The term "secretary of state" was changed to "custodian of state records." This amendment was required in order to conform terms in accordance with the restructure of the Florida Cabinet. (For full discussion, see Commentary to 1998 Amendments to Article IV, section 4).

HISTORICAL NOTES

The 1998 amendments to this section were proposed by the Constitution Revision Commission and were

approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 8. Clemency
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 8)>

Subsection (a) was revised to require two members of the cabinet, rather than three, to approve the governor's grant of full or conditional pardon, restoration of civil rights, commutation of punishment or remission of fines and forfeitures. This change was required by the reduction in the number of cabinet members.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 9. Fish and wildlife conservation commission
COMMENTARY TO 1974 AND 1998 AMENDMENTS

<1974 Amendment>

<(1973 Committee Substitute for House Joint Resolution 637)>

The 1974 amendment made appointees to the Game and Fresh Water Fish Commission subject to Senate confirmation.
Where previously the Commission was granted all "non-judicial power" with respect to wild animal life and fresh water aquatic life, under the amended provision, the Commission was instead granted the "regulatory and executive powers" over those areas. Therefore, the Commission continued to exercise the full executive power in its areas of jurisdiction, but the legislative power was divided so that the legislature retained the appropriations power and the Commission exercised the legislative regulatory power. The purpose of the amendment was to remove from the Commission the power to make its own appropriations. The Commission had been supported through the license fees it imposed. The license fees, however, were insufficient to fully fund operations and appropriations from the state's General Revenue Fund were needed. The argument was successfully made that if general revenue dollars supported the operations, the agency should come under the planning and budgeting procedures applicable to other executive agencies. License fees for taking wild animal life and fresh water aquatic life continue to be dedicated for these purposes, but are now required to be appropriated by the legislature. At the same time, the legislature was authorized to enact laws in aid of the commission and in the areas of planning, budgeting, personnel management and purchasing.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 5)>

The Fish and Wildlife Conservation Commission was created by merging the Game and Fresh Water Fish Commission with the Marine Fisheries Commission for the purpose of unifying the state's natural resources conservation efforts. The new commission was granted regulatory and executive authority over wild animal life and fresh water aquatic life that had previously been exercised by the Game and Fresh Water Commission. It will also exercise regulatory and executive authority over marine life, which had been administered by the Marine Fisheries Commission and the Governor and Cabinet.

Of the many changes on the 1998 ballot, this proposal was one of the most widely supported by both the Constitution Revision Commission and the public. A citizen initiative on this subject had gained wide popularity and support; however, the petition was blocked from ballot placement by the Florida Supreme Court. *Advisory Opinion to the Attorney General Re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351 (Fla. 1998). The Court held that the ballot summary for the initiative did not adequately state the substance of the amendment. *Id.*

Wider acceptance of unification of the conservation agencies resulted by the proposal's handling and amendment through the deliberative constitution revision process. Most notably, in response to objections to adding jurisdiction to an agency that is not subject to the Administrative Procedures Act (APA) when exercising constitutional jurisdiction, the Commission added a provision that requires the Fish and Wildlife Conservation Commission to establish procedures to ensure adequate due process in exercising its functions. Further, any functions delegated by the legislature will be subject to the APA. Several conservation programs were not addressed in the proposal but were left for the legislature to determine the administering entity-- namely, the Florida Marine Patrol, certain research facilities, and manatee and marine sea turtle programs. The language that specifically transfers jurisdiction is found in Section 23 of Article XII (Schedule). This schedule also sets out the procedure for merging the two commissions into one 7-member board.

HISTORICAL NOTES

The amendment proposed by committee substitute for H.J.R. No. 637, approved by the electors at the November, 1974, general election, made the appointment of game commission members subject to senate approval, provided that the commission's planning, personnel, purchasing and budgeting shall be as provided by law, and provided that the legislature could appropriate funds to the commission.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Section 10. Attorney General
COMMENTARY

<(1986 House Joint Resolution 71)>

This section was added to direct the attorney general to seek an advisory opinion from the justices of the Supreme Court on the issue of the validity of any circulated initiative petition. The Court is directed to provide that interested persons be heard and to render its written opinion expeditiously. (The same resolution adds Article V, section 3(b)(10), which sets out the jurisdiction of the court to render an advisory opinion to the attorney general in this circumstance).

This amendment was prompted by two 1984 decisions of the Supreme Court which struck initiatives from the ballot after those initiatives had secured the requisite signatures for ballot placement. *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984); *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984). It was felt that

fairness dictated that ballot sponsors be able to obtain an opinion with regard to the technical requirements prior to going to the great effort and expense of collecting all of the necessary signatures for ballot placement.

HISTORICAL NOTES

The addition of this section adopted Nov. 4, 1986, was proposed by 1986 H.J.R. No. 71.

Section 11. Department of Veterans Affairs
COMMENTARY

<(1988 Committee Substitute for House Joint Resolution 290)>

This section authorized the legislature to establish a Department of Veterans Affairs, notwithstanding the 25-department limit in Article IV, Section 6.
Prefatory language of the resolution adopted by the voters discloses that, due to the reorganization of the executive branch in 1969, the former Department of Veterans Affairs was lowered in status to a division of the Department of Administration. Services to veterans were "scattered among three different state agencies and the sixty-seven virtually autonomous boards of county commissioners." The purpose of this amendment was to allow for comprehensive policy setting and for the consolidation of operations in the area of veterans affairs.

HISTORICAL NOTES

1988, H.J.R. No. 290 proposed addition of this section of the constitution adopted by the electorate at the November 8, 1988, general election.

Section 12. Department of Elderly Affairs
COMMENTARY

<(1988 Committee Substitute for House Joint Resolution 290)>

This section authorized the legislature to establish a Department of Elderly Affairs. At the time this amendment was considered, the administration of federal aging programs was assigned to the Department of Health and Rehabilitative Services. Twelve states had separate departments to administer aging issues. Interestingly, and unlike the similar grant of authority in article IV, section 11 for a department of veterans affairs, this section requires that administration of the department of elderly affairs must comply with article IV, section 6. That section requires that the administration of departments must be placed under "the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor."

HISTORICAL NOTES

1988, H.J.R. No. 290 proposed addition of this section of the constitution adopted by the electorate at the November 8, 1988, general election.

Section 13. Revenue Shortfalls
COMMENTARY

<1992 Amendment>

<(1992 Taxation and Budget Reform Commission Revision 1)>

In order to maintain a balanced budget as required by Article VII, Section 1(d), Section 13 authorizes the governor and cabinet to establish any necessary budget reductions in the event of revenue shortfalls. This had been the practice for many decades; however, in 1991, the Florida Supreme Court held that the statute unlawfully delegated legislative authority to the governor and cabinet. *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260 (Fla. 1991).

The Taxation and Budget Reform Commission's Resolution adopted to document its findings and intent indicates that it was the clear intent to reverse the *Chiles* decision:

...[F]or many years, the governor and Cabinet have acted quickly and effectively to balance the state budget by reducing state spending in the event of revenue shortfalls. This has been viewed positively by the financial markets of the nation, because some states have months of political debate before reaching legislative agreement on ways to cut spending or increase revenue....

This section requires that budget reductions be established consistent with the agency planning documents, which "shall include a prioritized listing of ... possible reduction in the event of revenue shortfalls.... " The Taxation and Budget Reform Commission goes on to state that:

The Governor and Cabinet shall also use any criteria which may be provided by the Legislature to determine budget reductions in the event of a revenue shortfall. It is the intent of the Commission that all three branches of government be subject to budget reductions in the event of revenue shortfalls. The Governor and Cabinet shall fairly and responsibly determine budget reductions in accordance with the priorities and responsibilities of the state, which were addressed by the General Appropriations Act.

It is the intent of the Commission that the executive branch, which bears the brunt of the most criticism in times of revenue shortfalls, should have the authority to take positive steps to alleviate that shortfall. The Legislature has a constitutional responsibility to appropriate funds, and the Commission does not intend that the Legislature shall be prevented from meeting in special session to address any revenue shortfall even if the governor and Cabinet have acted.

HISTORICAL NOTES

The addition of this section, adopted Nov. 3, 1992, was proposed by the Florida Taxation and Budget Reform Commission.

ARTICLE V - JUDICIARY

Section 1. Courts
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

Organization of Courts. In 1972, Senate Joint Resolution 52-D streamlined the court system by vesting judicial power of the state in a supreme court, district courts of appeal, circuit courts, and county courts. In addition, it dramatically reorganized the trial court by consolidating the 14 different types of trial courts into a two-tier trial court system consisting of circuit courts and county courts. Equally significant, the resolution eliminated municipal courts and justices of the peace. To ensure the integrity of this simpler structure of the courts in Florida, the resolution explicitly prohibited the establishment of additional courts by the state, any political subdivision, or any municipality.
Appellate Districts. The 1972 Senate Joint Resolution directed the Legislature to divide the state into appellate districts. The joint resolution did not mandate a specific number of appellate districts but left that matter to the discretion of the Legislature as growth dictated. Article V, section 5(1) of the 1885 Constitution, as revised in 1956, also provided for the creation of appellate districts but mandated a minimum of two districts. In 1960 and 1965 this section was amended, each time adding an additional district.
Judicial Circuits. The 1972 Senate Joint Resolution directed the Legislature to divide the state into judicial circuits following county lines. Unlike similar provisions found in earlier constitutions, references to a specific number of circuits were omitted, thereby allowing the Legislature to address this matter by general law as needed. The new Article V, section 1 was similar to Article V, section 6 of the Constitution of 1885, as revised in 1956, except that the earlier section provided for the establishment of "not more than twenty judicial circuits each composed of a county or contiguous counties and of not less than fifty thousand inhabitants ... except that the county of Monroe shall constitute one of the circuits."

<1988 Amendment>

<(1988 House Joint Resolution 1608)>

In response to a growing need for assistance to the judiciary with matters involving civil traffic infractions, House Joint Resolution 1608 authorized the legislature to create a system of civil traffic hearing officers.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

Revision 13 amended Article V, section 1, as it related to military courts-martial. The revision codified current practice by permitting the legislature to authorize military courts-martial to be conducted by military judges of the Florida National Guard. The revision also mandated that all direct appeals be made to the First District Court of Appeal. The purpose of centralizing military appeals in one appellate court was to allow that court an opportunity to develop a greater degree of expertise in military legal matters, thereby ensuring greater consistency in those decisions.

HISTORICAL NOTES

1988, H.J.R. No. 1608 proposed an amendment to this section of the constitution adopted by the electorate at the November 8, 1988, general election, to provide for civil traffic hearing officers.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Former § 1 of Article 5, adopted in 1956, set forth the types of courts in which the judicial power of Florida was vested.

Section 2. Administration; practice and procedure
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

Subsection (a). In 1972, the rulemaking authority of the supreme court was moved from section 3 to section 2(a). Senate Joint Resolution 52-D reaffirmed the supreme court's authority to adopt rules for the practice and procedure of all courts. The resolution added a new sentence that authorized the repeal of such rules by general law enacted by two-thirds vote of the membership of each house of the legislature. This section originated in a 1956 amendment to Article V (Article V, section 3) of the 1885 Constitution that provided that the practice and procedures of all courts shall be in accordance with the rules adopted by the supreme court. The amendment provided a statewide uniformity of procedures in all state, county, and municipal courts and allowed the supreme court a great measure of legislative power.
Subsection (b) relates to the method of selecting the chief justice of the supreme court and the temporary assignment of judges.
Article V, section 2 originated from the 1956 revision to the 1885 Constitution (Article V, section 4(3)) which provided that the chief justice shall be selected by a majority of the members of the court.
In addition to the method of selecting the chief justice, section 2(b) also authorized the chief justice to make temporary assignments of justices and judges to courts for which the judge or justice is qualified. The word "temporary" has been the center of dispute and the subject of intense litigation over the years. The seminal case relating to the temporary assignment of judges is *Payret v. Adams*, 500 So.2d 136 (Fla.1986), which involved a challenge to a county court judge acting as a full-time circuit court judge. In response to a certified question, the supreme court held that a county court judge may not be indefinitely assigned to serve as a circuit court judge. In addition to responding to the certified question, the supreme court promulgated guidelines to chief judges relating to full-time and part-time assignment of county court judges serving as circuit court judges. Subsequent to *Payret*, a series of challenges have been generated alleging that the spirit of *Payret* continues to be violated because county court judges serve consecutive temporary terms as circuit court judges. *See Wallace v. State*, 609 So.2d 64 (Fla. 4th DCA 1992)(assigning county court judges to continual and repeated six-month intervals creates a permanent part-time circuit court judge and possibly violates the constitution); *William v. State*, 596 So.2d 791 (Fla. 4th DCA 1992)(successive "temporary" assignments of county court judges for periods of 5 months and 29 days circumvents the spirit of *Payret* and results in a circuit court that is presided over by a county court judge).
The 1956 revision to the 1885 Constitution (Article V, section 2) contained a similar provision relating to "temporary" assignment. The section authorized the chief justice of the supreme court to make temporary assignments of justices of the supreme court to district courts of appeal and to circuit courts; judges of the district courts of appeal and circuit courts to the supreme court, the district courts of appeal or the circuit courts; and judges of other courts, with the exception of municipal courts, to any equal or lesser court. This section also provided that retired justices or judges, according to the same procedure, may be assigned with their consent to judicial services.

Subsection (c) provided the method of selecting the chief judge of each district court of appeal. The subsection also clarified that the chief judge serves as the chief administrator of the court, therefore ensuring the efficient administration of each district court.
Subsection (d). This section provided the method of selecting the chief judge of each circuit. The subsection also clarified that the chief judge serves as the chief administrator of the court, therefore ensuring efficient administration on a local level.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

Subsection (a). Revision 13 amended subsection 2(a) by requiring the supreme court to adopt rules allowing state appellate courts to request advisory opinions relating to military law from the Federal Court of Appeals for the Armed Forces. This amendment would allow Florida courts to take advantage of a procedure used by other states, thereby allowing decisions that are consistent with other jurisdictions operating under the Uniform Code of Military Justice.
Subsection (b). The 1997-1998 Constitution Revision Commission removed all gender-specific language contained in this section and replaced it with gender-neutral language.

HISTORICAL NOTES

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Former § 2 of Article 5, adopted in 1956, related to administration of courts, and provided that the chief justice of the supreme court could temporarily assign justices of the supreme court to other courts.

Section 3. Supreme court
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

Subsection (a) originated from the 1956 revision to the 1885 Constitution (Article V, section 4(a)), and provided that the supreme court shall be composed of seven justices. Subsection (a) further provided that five justices constituted a quorum and the concurrence of four justices was necessary for a decision.
Subsection (b) established the jurisdiction of the supreme court.
Subsection (c) was taken verbatim from the Constitution of 1885, as amended in 1956 (Article V, section 4(4)), and provided that the supreme court shall appoint a clerk and a marshal to serve at the pleasure of the court and to perform duties directed by the court. The subsection further provided that the marshal shall have the power to execute process throughout the state and may deputize the sheriff or deputy sheriff in any county for the same purpose. This subsection was new to the 1956 revision of Article V of the Constitution of 1885.

<1976 Amendment>

<(1976 Committee Substitute for Senate Joint Resolutions 49 and 81)>

Section (a) was amended to require that every appellate district be represented by at least one justice who resided in the district at the time of appointment or election. Prior to this amendment, no earlier

constitution required that a justice reside in a particular appellate district prior to appointment or election to the bench. The purpose of the residency requirement was to ensure that all geographic regions of Florida were represented on the supreme court.

<1980 Amendment>

<(1979 Senate Joint Resolution 20-C)>

Subsection (b)(1). This amendment reduced the jurisdiction of the supreme court to cases involving new law, the death penalty, constitutional questions, conflicts between district courts of appeal, bond validations, cases validating state statutes, and certain cases certified by the district court of appeals. This amendment represents a departure from the existing jurisdiction of the supreme court which was essentially an appellate court of last resort. Under this amendment, the district courts of appeal, except in the enumerated cases, are the court of final appeal.

<1986 Amendment>

<(1986 House Joint Resolution 71)>

Subsection (b)(10). This subsection was new in 1986 and provided the supreme court with jurisdiction to render an advisory opinion to the attorney general regarding the validity of citizen's initiative petitions. This amendment to the constitution was made simultaneous to the creation of Article IV, section 10, which directed the attorney general to seek such an advisory opinion. No similar provision existed in earlier constitutions.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

Subsection (a). The 1997-98 Constitution Revision Commission removed all gender-specific language contained in this section and replaced it with gender-neutral language.

HISTORICAL NOTES

The amendment proposed by committee substitute for S.J.R. Nos. 49 and 81, approved by the electors at the November, 1976, general election interpolated the first sentence of subsec. (a).

The amendment proposed by S.J.R. No. 20-C and approved by the electors at the March 11, 1980 special election, rewrote subsec. (b) which prior thereto provided:

"**Jurisdiction.**--The supreme court:

"(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from orders of trial courts and decisions of district courts of appeal initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the state or federal constitution.

"(2) When provided by general law, shall hear appeals from final judgments and orders of trial courts imposing life imprisonment or final judgments entered in proceedings for the validation of bonds or certificates of indebtedness.

"(3) May review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, that passes upon a question certified by a district court of appeal to be of great public

interest, or that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law, and any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the supreme court; and may issue writs of certiorari to commissions established by general law having statewide jurisdiction.

"(4) May issue writs of prohibition to courts and commissions in causes within the jurisdiction of the supreme court to review, and all writs necessary to the complete exercise of its jurisdiction.

"(5) May issue writs of mandamus and quo warranto to state officers and state agencies.

"(6) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

"(7) Shall have the power of direct review of administrative action prescribed by general law."

The amendment proposed by 1986 H.J.R. No. 71, as approved by the electors at the November, 1986 general election, added subsec. (b)(10).

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Former § 3 of Article 5, adopted in 1956, provided that practice and procedure in all courts was governed by rules adopted by the supreme court.

Section 8. Eligibility
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

The 1972 amendment established Article V, section 8, which provided the qualifications for justices and judges in Florida. In addition to mandatory retirement and residency requirements, section 8 also addressed experience requirements. This resolution provided that justices of the supreme court and judges of the district courts of appeal must have been members of the bar of Florida for no less than ten years. Likewise, the resolution addressed minimum eligibility requirements for circuit court judges and provided that such judges must have a minimum five years' membership in the bar of Florida.
Regarding county court judges, the resolution required that county judges must simply be members of the Florida Bar, unless this requirement is changed by general law. The schedule to article V preserved the right to non-lawyer judges in counties having a population of 40,000 or less, unless changed by general law.

<1984 Amendment>

<(1984 House Joint Resolution 37)>

With one exception, House Joint Resolution 37 raised the minimum qualifications for a candidate for county court judge from simple membership in the bar of Florida to five years' membership in the bar of Florida. The exception provided that the qualifications of those candidates residing in counties with populations of 40,000 would remain at simple membership in the bar of Florida, unless changed by general law. The legislature also addressed the issue of non-lawyer judges and provided that those who

were in office as of July 1, 1978 in a county with a population of 40,000 or less and who had taken a 3-year law training course were qualified to run for re-election. (section 34.021, Florida Statutes).

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

The 1997-98 Constitution Revision Commission removed all gender specific language from this section and replaced it with gender neutral language.

HISTORICAL NOTES

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Laws 1972, c. 72-150, § 1, provided:

"Any judge of any existing separate juvenile court on February 1, 1972, who is not a member of the bar of Florida, shall be eligible to seek election as county court judge of his respective county."

Amendment proposed by H.J.R. No. 37, as approved by the electors at the November, 1984, general election, in the fifth sentence substituted "No person is eligible for the office of a county court judge unless he is, and has been for the preceding five years" for "A county court judge must be", and added the sixth sentence.

Former § 8 of Article 5, adopted in 1956, related to county courts.

See, now, Art. 5, § 6.

Former §§ 13 and 13A of Article 5 related to eligibility requirements for justices and judges.

Section 10. Retention, election and terms
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

County Court Judges. Article V, section 10 is a restatement of Article V, section 7 of the 1885 Constitution, as amended in 1956, which provided that county judges would be elected by the qualified electors in each county. The term of office for county judges was set at four years.
Circuit Court Judges. Article V, section 10 is a restatement of Article V, section 15 of the 1885 Constitution, as amended in 1956, and provided that circuit judges would be elected by the qualified electors in their respective judicial circuit. Article V, section 1 provided that the state would be divided into judicial circuits following county lines. The term of office for circuit judges was set at six years.
Judges of the District Court. Article V, section 10 is a restatement of Article V, section 15 of the Constitution of 1885, as amended in 1956. The section provides that "judges [of the district courts of appeal] shall be elected by vote of the qualified electors within the territorial jurisdiction of their respective courts." Pursuant to Article V, section 1, the state shall be divided into appellate court districts. The term of office for judges of the district court of appeal is six years.

The district courts of appeal were created in 1956 with the adoption of the complete revision of Article V of the 1885 Constitution. Section 5 provided for the division of the state into four or more appellate districts with at least three judges in each district. Section 16 provided that the term of a district court judge would be six years. Section 15 provided for the staggering of terms of district court judges. According to section 15, appellate judges would be elected in separate groups designated as "A," "B," and "C" to be elected for staggered terms of six years.

Justices of the Supreme Court. Article V, section 10 is a restatement of Article V, section 15 of the 1885 Constitution, as amended in 1956. Section 10 provides that "justices _shall be elected by vote of the qualified electors within the territorial jurisdiction of their respective courts." The term of office for justices of the supreme court is six years.

The 1885 Constitution, as amended in 1956 (Article V, section 16), provided that justices of the supreme court would be elected to staggered terms so that every two years there would be at least two justices elected and in one two-year period three justices would be elected.

<1976 Amendment>

<(1976 Committee Substitute for Senate Joint Resolutions 49 and 81)>

In 1976, Committee Substitute for Senate Joint Resolutions 49 and 81 introduced the concept of merit selection and retention to Florida. The resolution altered the system of selecting and retaining justices of the supreme court and judges of the district courts of appeal from one involving a general election by the voters (electorate) to one of appointment by the governor and subsequent retention elections by the electorate within the territorial jurisdiction of the respective courts. Under the system of merit selection and retention, when a vacancy occurs on the supreme court or the district courts of appeal, candidates submit their applications to the appropriate judicial nominating commission. The nominating commissions, in turn, interview candidates and submit names to the governor for consideration. The governor then must fill the vacancy from the names submitted by the nominating commission.

At the next general election that is at least one year after the justice's or judge's appointment, the justice or judge stands for a retention election. The retention election poses the simple question "Shall the justice or judge be retained in office?" If the answer is yes, the justice or judge will serve a six-year term; if the answer is no, a vacancy is created and it will be filled through the nominating commission process.

<1998 Amendments>

<(1997-1998 Constitution Revision Commission Revisions 7 and 13)>

Selection of Trial Judges. The 1997-98 Constitution Revision Commission returned to the issue of merit selection and retention by allowing merit selection and retention at the trial level by local option. Pursuant to Revision 7, circuits and counties will choose the method of selecting their trial judges. The revision provides for a mandatory election during the general election in the year 2000. During that election, the voters in every circuit and county in Florida will determine whether they want to maintain a system of non-partisan elections of trial judges or switch to a system of merit selection and retention. The revision also provides that if a vote to exercise the option fails, such option shall not again be put to a vote of the electorate until the expiration of at least two years. The revision further provides that a circuit or county can subsequently opt to return to judicial elections of its trial judges by a vote of the electorate.

County Court Judges' Terms. Revision 7 changed the term of office of county court judges from four years to six years. This change made the term of office of county court judges consistent with all other judges or justices.

Gender Neutral Constitution. Revision 13 removed all gender specific language from this section and replaced it with gender neutral language.

HISTORICAL NOTES

The amendment proposed by committee substitute for S.J.R. Nos. 49 and 81, approved by the electors at the November, 1976, general election, rewrote the section.

The Florida Constitution Revision Commission proposed the 1998 amendment to this section, which was approved by voters at the November 3, 1998, general election.

Former § 10 of Article 5, adopted in 1956, related to a court of record in Escambia County.

Former § 15 of Article 10 related to election of judges, and former § 16 of Article 10 related to terms of office of certain judges.

Section 11. Vacancies
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

Subsection 11(a) provides that the governor shall fill each judicial vacancy which arises for a reason other than expiration of a term of office from "one of not fewer than three persons" nominated by the appropriate judicial nominating commission. The section provides that nominations shall be made within thirty days from the occurrence of the vacancy unless extended by the governor. It also provides that the governor must make the appointment within sixty days after the nominations have been certified to the governor.
Subsection (b) established the twenty-six judicial nominating commissions-one for the supreme court, one for each of the five district courts of appeal, and one for each of the twenty circuits. The purpose of the commissions is to advertise judicial vacancies, accept and screen applicants to fill those vacancies, and recommend to the governor at least three nominees for each judicial vacancy. The section further provides that the judicial nominating commissions shall be established by general law.

<1976 Amendment>

<(1976 Committee Substitute for Senate Joint Resolutions 49 and 81)>

The 1976 amendment created a new subsection (a) which required the governor to fill each judicial vacancy on the supreme court or the district courts of appeal from one of "three persons nominated" by the appropriate nominating commission. Prior to this amendment, the nominating commission could forward three or more persons for any judicial vacancy. This amendment was part of a comprehensive amendment that provided that justices of the supreme court and judges of the district courts of appeal would be subject to merit selection and retention. The section also provided that the term of the appointment ends on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment.
The resolution also moved the previously-existing subsection (a), re-lettered it as subsection (b), and amended it to provide that the term of appointment for trial judges shall expire on the first Tuesday after the first Monday following the next primary and general election. It provided that with regard to circuit and county court judges, the judicial nominating commission shall forward "no fewer than three names" to the governor.

<1984 Amendment>

<(1984 House Joint Resolution 1160)>

In 1984, House Joint Resolution 1160 amended Article V, section 11(d) to require uniform rules of procedure for judicial nominating commissions at each level of the court system. The section further provided that such rules may be repealed by a majority vote of each house of the legislature or by a vote of the supreme court with five of the justices concurring.
The revision also provided that the proceedings and records of the commissions are open to the public, except that the deliberations of the commissions shall be private. The significance of this portion of the revision was to require all interviews and meetings of the commission to be accessible to the public (except deliberations). Attempts to open the deliberation portion of the process to the public have been met with resistance from many who believe it would have a chilling effect on the commission members' candor in discussing judicial candidates. Supporters of removing the confidentiality requirement have argued that the deliberations of the judicial nominating commissions should be open to the public to avoid the use of hearsay and rumors and to assure that the selection process is free of personal bias.

<1996 Amendment>

<(1996 Committee Substitute for Senate Joint Resolution 978)>

Committee Substitute for Senate Joint Resolution 978, a recommendation of the Article V Task Force, amended subsections (a) and (b) of section 11 by requiring the number of nominees offered by the judicial nominating commissions to be the same regardless of the level of court being served-"not less than three nor more than six." The Article V Task Force concluded that because the function of the judicial nominating commissions, regardless of the level of court served, is to screen applicants and recommend nominees for judicial vacancies, the commissions should be subject to the same procedure.

<1998 Amendments>

<(1997-1998 Constitution Revision Commission Revisions 7 and 13)>

Judicial Vacancies. Revision 7 required a technical amendment to subsection (a) to accommodate the governor's use of merit selection of trial judges in instances in which a circuit or county has elected to use that system.
Gender Neutral Constitution. Revision 13 removed all gender-specific language contained in this section and replaced it with gender-neutral language.

HISTORICAL NOTES

The amendment proposed by committee substitute for S.J.R. Nos. 49 and 81, approved by the electors at the November, 1976, general election interpolated subsec. (a), designated the last two sentences of subsec. (a) as subsec. (c), redesignated subsecs. (a) and (b) as subsecs. (b) and (d), substituted "on a circuit court or on a county court" for "in judicial office" in subsec. (b) and substituted "shall" for "must" in the second sentence of subsec. (c).

The amendment proposed by H.J.R. No. 1160, as approved by the electors at the November, 1984, general election, in subsec. (d), added the second, third and fourth sentences.

S.J.R. No. 978 of the 1996 Second Regular Session, which authorized judicial nominating commissions to

recommend from three to six persons to fill a court vacancy, was approved by voters at the November 6, 1996, general election.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Former § 11 of Article 5, adopted in 1956, related to courts of justices of the peace and to constables.

Section 12. Discipline; removal and retirement
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

Senate Joint Resolution 52-D created a thirteen person Judicial Qualifications Commission (JQC). The purpose of the JQC was to receive complaints relating to all judges--justices and judges alike and, if necessary, to conduct hearings and make recommendations to the supreme court for "discipline by appropriate reprimand, removal for failure to perform duties, or involuntary retirement for permanent disability."
The JQC is composed of six judges-two judges of the district courts of appeal, two circuit court judges, and two county court judges; two electors who are members of the Florida Bar selected by the governing body of the bar; and five electors, who have never held judicial office or been members of the bar of Florida, who shall be appointed by the governor. Members of the JCQ serve staggered six-year terms. By a two-thirds vote of the JQC it may recommend discipline to the supreme court. The court may reprimand or remove the offending judge.
Senate Joint Resolution 52-D required that the supreme court adopt rules of procedure regulating the proceedings of the JQC, the filling of vacancies, and temporary replacement of members who are incapacitated.
The current JQC system is a direct product of article V, section 17A of the 1885 Constitution, as amended in 1958. Section 17A established a nine-person Judicial Qualifications Commission to recommend the "removal, discipline, or retirement" of state judges. For the purposes of that section, "state judges" included justices of the supreme court, judges of the district courts of appeal, and circuit court judges. Unlike the current JQC, the commission established in 1958 [section 17A] did not have jurisdiction over county court judges. Rather, county court judges were subject to suspension by the governor and removal by the senate or impeachment. Impeachment was also applicable for the other members of the judiciary.

<1974 Amendment>

<(1974 House Joint Resolution 3911)>

The 1974 amendment made four significant changes to Article V, section 12 relating to (1) the jurisdiction of the JQC, (2) the rules and procedures of the JQC, (3) the records of the JQC, and (4) the accessibility of information to the JQC.
Jurisdiction. The amendment expanded the jurisdiction of the JQC by granting it authority to investigate offenses by judges occurring prior to their present term of office (as far back as November 1, 1966). The revision was in direct response to the case of *Turner v. Earle*, 295 So.2d 609 (Fla. 1974), in which the supreme court held that a circuit judge could not be disciplined or removed from office as a circuit judge for misconduct committed in a different office. The court noted that the office in question, judge of the criminal court of record, was not an office within the jurisdiction of the JQC and that the judge may not be removed for misconduct that he committed in another public office.

Rules and Procedure. Regarding rules and procedures of the JQC, Article V, section 12(d) replaced the existing section (c) and authorized the JQC to adopt its own rules of procedure.
Confidentiality of Proceedings. The amendment expanded the opportunity for the public to monitor the work of the JQC by allowing the record of the JQC to be made public after the JQC made a recommendation of public reprimand or removal of any judge. The amendment also provided that if the JQC recommends temporary suspension (interim suspension) of a justice or judge while charges are pending, all proceedings before the commission and all hearings shall be made public.
Records. Article V, section 11(e) was created relating to the records of the commission and the investigatory power of the JQC. The section specifically gave the legislature access to the JQC's records for the purpose of the impeachment or suspension of a judge. The section reciprocated by providing that the JQC shall have access to information from all executive, legislative, and judicial agencies in the course of its investigations.

<1976 Amendment>

<(1975 House Joint Resolution 1709)>

Confidentiality of Proceedings. The 1976 amendment modified the confidentiality requirement (Article V, section 12(d)) relating to the proceedings of the JQC and provided that upon a finding of probable cause, all proceedings shall be made public. Prior to the adoption of this amendment, actions of the JQC were public only upon the supreme court's temporary suspension of a judge (while charges were pending) or upon a recommendation of discipline or removal. This amendment greatly opened the JQC process to the public by allowing public proceedings at a much earlier stage in the process (the probable cause stage rather than final determination stage).
Grounds for Removal. The grounds for removing a justice or judge were broadened by providing that "[m]alafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office." Prior to this revision, Article V, section 12(f) provided only that a justice or judge could be removed for "willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary."
Conflict of Interest. A new subsection (h) was created to address the issue of the conflict that occurs when a justice of the supreme court is the subject of an investigation by the JQC. Because the supreme court has veto power over the rules of the JQC, appoints members to the JQC, and has final judgment over the recommendations of the JQC, it has an inherent conflict of interest when one of its members is the subject of the proceedings of the JQC. As a result, this amendment provided that when a justice of the supreme court is the subject of a JQC action, all members of the court are automatically disqualified with respect to such proceeding, and the seven most senior chief judges of the judicial circuits shall serve on the supreme court.
Section 17A of the Constitution of 1885, as amended in 1956, also addressed conflicts of interest in the JQC process. Subsection (3) provided "[a] justice or judge shall be disqualified in any proceeding involving his own discipline, retirement, or removal."

<1996 Amendment>

<(1996 Committee Substitute for Senate Joint Resolution 978)>

Committee Substitute for Senate Joint Resolution 978 was a product of the Article V Task Force. The Task Force recommended bifurcating the existing judicial qualifications commission into an investigative panel and an adjudicative panel, broadening the sanctions available to the JQC and the supreme court, expanding the jurisdiction of the JQC, and allowing the supreme court to depart from recommendations made by the JQC.

Broadening Sanctions. The 1996 amendment broadened the sanctions available to the supreme court by defining "discipline" to include "reprimand, fine, suspension with or without pay, and lawyer discipline." Prior to the amendment, the supreme court was limited to imposing only two sanctions against a judge: (1) reprimand or (2) removal. Members of the public and members of the Article V Task Force found the choice of penalties inadequate and suggested that some intermediate remedies should be developed.
Expanding jurisdiction of the JQC. The jurisdiction of the JQC was broadened to allow continued jurisdiction for up to one year following the service of a judge. Prior to this change, the JQC had jurisdiction over sitting judges and over actions that occurred prior to service in a judicial office as early as the date of 1966. The Article V Task Force expressed concern that under the current JQC process, the JQC lost jurisdiction over a judge who resigned in the face of an allegation and that the judge was insulated from further investigation or sanctions. Senate Joint Resolution 978 was fashioned after the American Bar Association model and provided the disciplinary body with continued jurisdiction over the former judge so long as the complaint is filed within one year after the judge has left the bench.
Bifurcated JQC. The membership of the JQC was expanded from 13 to 15 and bifurcated into (1) an investigative/probable cause panel and (2) an adjudicative panel. Prior to the adoption of the amendment, the JQC was a unified body that acted as the investigator, the prosecutor, and the adjudicator. The Article V Task Force received mixed comments relating to the structure and effectiveness of the JQC under that system. Many asserted that there was a perceived unfairness in a system that combined the functions of investigation, prosecution, hearing, and decision-making into one single process. Those same critics asserted that once the JQC had been exposed to all the investigative information and it determined probable cause to file formal charges, it would be difficult for the same commission to act as a neutral adjudicative body.
As a result of public testimony received, the Task Force recommended a bifurcated JQC. The recommendation was modeled after a recommendation by the American Bar Association. Under this approach, which was incorporated into Committee Substitute for Senate Joint Resolution 978, the JQC would be divided into panels, (1) an investigative panel and (2) a hearing panel, and no member of one panel would be involved in the decisions of the other panel. Rotation of JQC members between the panels is allowed as long as the same member does not serve on both panels in the same case. The rotation of the membership ensures that during their tenure, all members of the JQC will be involved in both the investigation of complaints and the hearing of charges.
Vote to Recommend Discipline. The threshold vote required for the JQC to make a recommendation of discipline to the supreme court was reduced from a two-thirds vote to a simple majority of the hearing panel. This change represented a departure from Florida's former requirement, the ABA model, and the recommendation of the Article V Task Force, all of which recommended a two-thirds vote for a recommendation of discipline. Recommendations of removal or involuntary retirement, however, still require a two-thirds vote of the hearing panel.
Supreme Court Departure from Recommendations of the JQC. The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the JQC (Article V, section 12(c)(1)). Prior to the adoption of the amendment, the supreme court could accept, reject, or impose a lesser sanction against a judge. The supreme court, however, was not authorized to impose harsher penalties. The Article V Task Force embraced a proposal by the American Bar Association that allowed the supreme court, in addition to accepting or rejecting proposals from the JQC, the opportunity to modify the recommendations to impose a harsher penalty than what the JQC recommended.
Costs. Subsection (c)(2) was created to authorize the supreme court to award costs to the prevailing party in a judicial disciplinary proceeding. This amendment was not a recommendation of the Article V Task Force.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 7)>

Revision 7 corrected an error in the schedule to section 12 regarding the bifurcation of the JQC. The schedule failed to reference all fifteen members of the JQC and would not have allowed an orderly and complete transition from a thirteen member JQC to a fifteen member JQC.

HISTORICAL NOTES

The amendment proposed by H.J.R. No. 3911, approved by the electors at the November, 1974, general election, rewrote subsec. (a) which prior thereto provided only for the composition of the commission, added provisions now contained in subsecs. (c) to (e) and deleted provisions formerly contained in subsec. (c) which read: "The supreme court shall adopt rules regulating proceedings of the commission, the filing of vacancies by the appointing authorities and the temporary replacement of disqualified or incapacitated members. After a recommendation of removal of any justice or judge, the record of the proceedings before the commission shall be made public."

The amendment proposed by H.J.R. No. 1709, approved by the electors at the November, 1976, general election rewrote subsecs. (d) and (e), inserted "demonstrating a present unfitness to hold office" in the first sentence and interpolated the second sentence of subsec. (f), and added subsec. (h).

S.J.R. No. 978 of the 1996 Second Regular Session, which restructures the Judicial Qualifications Commission and provides for additional sanctions for judicial misconduct, was approved by voters at the November 5, 1996, general election.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Former § 12 of Article 5, adopted in 1956, related to the establishment, jurisdiction, etc., of juvenile courts.

See, now, generally, Art. 5, §§ 5, 7.

Former §§ 17 and 17A of Article 5 related to the retirement, suspension, and removal of judges.

Section 19. Judicial officers as conservators of the peace
COMMENTARY

<1972 Adoption>

<(1971 Senate Joint Resolution 52-D)>

Article V, section 19 originated from Article V, section 25 of the 1885 Constitution, as amended in 1956, which provided that all judicial officers shall be conservators of the peace. Similar provisions can be found in the original Constitution of 1885 (Article V, section 36), the Constitution of 1865 (Article V, section 16), the Constitution of 1861 (Article V, section 14), and the Constitution of 1838 (Article V, section 14).

HISTORICAL NOTES

Former § 19 of Article 5, adopted in 1956, related to judicial salaries and expenses.

See, now, Art. 5, § 14.

Former § 25 of Article 5 provided that judicial officers were conservators of the peace.

Section 20. Schedule to Article V

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Former § 20 of Article 5, adopted in 1956, related to the style of process to be used in prosecutions by the state of Florida.

Former § 26 of Article 5 was a schedule.

21. Repealed effective Jan. 1, 1973

HISTORICAL NOTES

Article 5, which was adopted at a special election on March 14, 1972, and which was effective Jan. 1, 1973, replaced former Article 5 which was repealed. See Art. 5, § 20.

Former § 21 of Article 5, adopted in 1956, related to referees.

22. Repealed effective Jan. 1, 1973

HISTORICAL NOTES

Article 5, which was adopted at a special election on March 14, 1972, and which was effective Jan. 1, 1973, replaced former Article 5 which was repealed. See Art. 5, § 20.

Former § 22 of Article 5, adopted in 1956, provided that the number of jurors to be used in trials could be fixed by law, but could not be less than six.

23. Repealed effective Jan. 1, 1973

HISTORICAL NOTES

Article 5, which was adopted at a special election on March 14, 1972, and which was effective Jan. 1, 1973, replaced former Article 5 which was repealed. See Art. 5, § 20.

Former § 23 of Article 5, adopted in 1956, related to the admission and discipline of attorneys.

See, now, Art. 5, § 15.

24. Repealed effective Jan. 1, 1973

HISTORICAL NOTES

Article 5, which was adopted at a special election on March 14, 1972, and which was effective Jan. 1, 1973, replaced former Article 5 which was repealed. See Art. 5, § 20.

Former § 24 of Article 5, adopted in 1956, provided that any law reducing the number of judges of any court would not shorten the term of any judge then in office.

See, now, Art. 5, § 9.

25. Repealed effective Jan. 1, 1973

HISTORICAL NOTES

Article 5, which was adopted at a special election on March 14, 1972, and which was effective Jan. 1, 1973, replaced former Article 5 which was repealed. See Art. 5, § 20.

Former § 25 of Article 5, adopted in 1956, provided that all judicial officers in the state were conservators of the peace.

See, now, Art. 5, § 19.

26. Repealed effective Jan. 1, 1973

HISTORICAL NOTES

Article 5, which was adopted at a special election on March 14, 1972, and which was effective Jan. 1, 1973, replaced former Article 5 which was repealed. See Art. 5, § 20.

Former § 26 of Article 5, adopted in 1956, provided a schedule regarding the effective date of former Article 5.

See, now, Art. 5, § 20.

ARTICLE VI – SUFFRAGE AND ELECTIONS

Section 1. Regulation of elections
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 11)>

Prior to the 1998 revision, the regulation of elections was left almost exclusively to general law. Revision 11 restrains the legislature from placing greater requirements on candidates to have their names placed on the ballot based upon their status as independent or minor party candidates. The last clause of the section was added as follows: "; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters."
This ballot access revision was brought forward through a tremendous level of public input and upon the recognition that Florida had the most restrictive ballot access laws in the nation. At the time of its passage, a candidate from the Republican or Democratic Party could *either* pay a filing fee *or* obtain petition signatures equal in number to three percent of those voting in the last general election who were registered in the candidate's party. In contrast, an independent candidate or a candidate of a minor party was required to pay the filing fee (or file an oath of undue burden) *and* obtain petition signatures equal to three percent of *all* those voting in the last general election.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 2. Electors
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 11)>

Revision 11 made two changes to this section--changing the voting age from twenty-one to eighteen and deleting the residence requirement for voting of one year in the state and six months in a county. Both changes are in the nature of technical amendments that conform Florida's constitutional requirements to the United States Constitution and federal case law.
The 26th Amendment to the United States Constitution, ratified on July 1, 1971, provides that citizens of the United States who are eighteen or older shall not be denied the right to vote on account of age. In *Dunn v. Blumstein*, 405 U. S. 330 (1972), the United States Supreme Court held that durational residency requirements for the purpose of being able to vote are unconstitutional.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 4. Disqualifications
COMMENTARY TO 1992 AMENDMENT

<1992 Amendment>

<(1992 Initiative)>

A 1992 initiative petition created subsection (b), which limits the number of consecutive terms that may be served by Florida representatives and senators, the lieutenant governor, cabinet officers, and United States Representatives and Senators. An officer could not run for the same office that had been held by that officer for eight consecutive years, or for which the officer would have served eight consecutive years but for resignation. In other words, an officer cannot simply resign sometime short of the full term in order to qualify for re-election.
The Supreme Court advised that the initiative complied with the technical requirements for ballot placement. *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991). The Court did not address the various constitutional challenges that were made; namely, whether "the proposed amendment unconstitutionally restricts First Amendment rights and [whether] the limitation on the terms of federal legislators violates the Supremacy Clause of the United States Constitution." *Id.* at 227.
In his dissent, Justice Overton urged that the conflict between the initiative and article I, sections 2 and 3 of the United States Constitution, which establish the qualifications for United States representatives and senators, should be addressed. *Id.* at 229-230. Justice Kogan dissented on the ground that the purpose of the single-subject requirement was violated by requiring the public to have no choice but to vote together on term limits of both state officers and federal officers, as the considerations are substantially different. *Id.* at 232.
The United States Supreme Court addressed the validity of state laws limiting the terms of members of Congress in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115. S.Ct. 1842, 131 L.Ed.2d 881 (1995).

HISTORICAL NOTES

The amendment by Initiative Petition approved by voters at the Nov. 3, 1992, general election, which added subsec. (b) relating to term limits, provided, in part:

"(2) This amendment shall take effect on the date it is approved by the electorate, but no service in a term of office which commenced prior to the effective date of this amendment will be counted against the limit in the prior sentence.

"(3) If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application. The people of Florida declare their intention that persons elected to offices of public trust will continue voluntarily to observe the wishes of the people as stated in this initiative in the event any provision of this initiative is held invalid."

Amendment Notes:

House Joint Resolution 1177, which was filed in the office of the Secretary of State on June 9, 2005, rewrote this section, which formerly read:

"(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

"(b) No person may appear on the ballot for re-election to any of the following offices:

"(1) Florida representative,

"(2) Florida senator,

"(3) Florida Lieutenant governor,

"(4) any office of the Florida cabinet,

"(5) U.S. Representative from Florida, or

"(6) U.S. Senator from Florida

"if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years."

Section 5. Primary, general, and special elections
COMMENTARY TO 1992 AND 1998 AMENDMENTS

<1992 Amendment>

<(1992 Senate Joint Resolution 162)>

The 1992 amendment added the sentence: "A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law."
Since 1976, the Governor has been authorized to suspend municipal elections by executive order in the case of an emergency. § 101.75(2), Fla. Stat. (1977). A change in the case of a general election could only be made by constitutional amendment in light of existing language in Article VI, section 7, which requires the general election to be held on the first Tuesday after the first Monday in November of each even-numbered year.
The Elections Emergency Act represents the implementing legislation to this amendment, and was passed in the same 1992 legislative session. §§ 101.731-101.734, Fla. Stat. This legislation specifies that the Governor may suspend or delay any election upon issuance of an executive order declaring a state of emergency or impending emergency. § 101.733(1), Fla. Stat. Further, the Governor, in consultation with the Secretary of State, shall reschedule the suspended or delayed election within 10 days. § 101.733(2), Fla. Stat.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 11)>

In 1998, subsection (b) was added to allow all registered electors to vote in a primary election where all of the candidates for the office have the same party affiliation and where the winner will not be opposed in the general election. The amendment was proposed by the Constitution Revision Commission in an effort to address the low numbers of Florida voters who participate in elections. The Commission found that, prior to the amendment, in counties where a large majority of registered voters is registered with one political party, an election was often won at the primary level. Members of the minority party, as well as members of minor parties and those with no party affiliation, would not have the opportunity to participate in the electoral process.

HISTORICAL NOTES

S.J.R. No. 162, which inserted the second sentence, was approved by voters at the general election held November 3, 1992.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 7. Campaign spending limits and funding of campaigns for elective state-wide office
COMMENTARY

<(1997-1998 Constitution Revision Commission Revision 11)>

Section 7 was added in 1998 to ensure that campaign spending limits and public funding of campaigns for elective statewide offices were retained.
The Florida Elections Campaign Financing Act, adopted in 1986, established a procedure for partial public funding of campaigns for statewide office (governor/lieutenant governor and cabinet officers) for candidates who voluntarily limit campaign expenditures. §§ 106.30-106.36, Fla. Stat. At the time the Constitution Revision Commission was meeting, a number of legal challenges had been made to the Florida Elections Campaign Financing Act and strong sentiments existed in some quarters to repeal the statute. *Mortham v. Milligan, et al.*, 704 So. 2d 152 (Fla. 1st DCA 1997); *Chiles v. Dept. of State, Division of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998).
Initial proposals before the Constitution Revision Commission would have proposed increased extending spending limits and extended public funding to elections for legislators. As finally proposed, the Commission's recommendation simply maintained the *status quo* by requiring the retention of the existing campaign financing act or a similar general law that provides public funds to those statewide candidates who limit their campaign expenditures.

HISTORICAL NOTES

The 1998 adoption of this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

ARTICLE VII – FINANCE AND TAXATION

Section 1. Taxation; appropriations; state expenses; state revenue limitation
COMMENTARY TO 1994 AMENDMENT

<1994 Amendment>

<(1994 Committee Substitute for Committee Substitute for House Joint Resolution 2053)>

Subsection (e) was added to this section to place a limit on growth in state revenues. Revenue collections from taxes, licenses, fees and charges for services are limited to the prior year's revenue collections, plus growth based on the average growth rate in personal income for the most recent 20 calendar quarters. Collections exceeding the limitation are required to be transferred to the Budget Stabilization Fund until such time that the fund reaches ten percent of the General Revenue Fund. Thereafter, all excess collections must be refunded to taxpayers. The maximum revenues allowed under this provision may be increased by the legislature only if (1) the action is taken in a separate bill that contains no other subject; (2) the specific dollar amount by which revenues will be increased is set forth in the bill; (3) passage is by at least a two-thirds vote of the legislature; and (4) the final vote is not taken until after a 72-hour cooling-off period between the third reading of the bill and the final vote.
By general law the legislature established the criteria for withdrawing money from the Budget Stabilization Fund, which include only (1) offsetting a deficit in the General Revenue Fund or (2) providing for an emergency. § 216.222, Fla. Stat.
A schedule was adopted that made the amendment first applicable for Fiscal Year 1995-1996. Art. XII, s. 21, Fla. Const.
It should be noted that at the time the legislature was considering this amendment on limiting growth in state revenues in 1994, there were a number of citizen initiative petitions circulating on related subjects. One required an extraordinary two-thirds vote of the legislature in order to pass new taxes or fees; another would have required voter approval for all new or increased taxes; a third removed the single-subject requirement on initiatives that limit the government from raising revenue. Ultimately, the first two initiatives were stricken from the ballot by the Florida Supreme Court. *Advisory Opinion to the Attorney General Re Tax Limitation, et al.*, 614 So. 2d 486 (Fla. 1994). The latter was approved for ballot placement and passed. See Art. XI, § 3, Fla. Const.

HISTORICAL NOTES

H.J.R. 2053 of the 1994 regular session, which was approved by voters at the Nov. 8, 1994, general election, added subsec. (e), which limits state revenues.

Section 3. Taxes; exemptions
COMMENTARY TO 1980, 1988, 1992 AND 1998 AMENDMENTS

<1980 Amendments>

<(1980 House Joint Resolution 9-E and House Joint Resolution 15-E)>

Subsection (c) was added by 1980 SJR 9-E, to authorize counties and municipalities, upon approval by local referendum, to adopt ordinances allowing for the grant of community and economic development ad valorem tax exemptions to new and expanding businesses. Any such ordinances expire after a 10-year period and renewal must also be by referendum. General law defines and implements many portions of

this amendment, including defining new businesses and expansions, the amount of the exemption, the period of time for the exemption, and the requirements of the referendum.
Subsection (d) was added by 1980 HJR 15-E, to authorize ad valorem tax exemptions for renewable energy source devices and for the real property on which such a device is installed and operated. The particulars are established by general law, but the amendment requires that (1) the value of the exemption may not exceed the original cost of the device and (2) the time fixed for receiving the exemption does not exceed ten years. Article XII, section 19 establishes a January 1, 1981 effective date for this subsection.

<1988 Amendment>

<(1988 Committee Substitute for Senate Joint Resolutions 318 and 356)>

The 1988 amendment added to subsection (b) the words "or widower," enlarging the categories of persons entitled to the exemption from taxation that the legislature was authorized to grant to widows, to the blind and to the totally and permanently disabled. See Commentary for this subsection (b), *infra.*

<1992 Amendment>

<(1992 Senate Joint Resolution 152)>

This amendment added subsection (e), which authorizes counties and municipalities to grant ad valorem tax exemptions to owners of historic properties engaged in the rehabilitation or renovation of the properties in accordance with historic preservation guidelines.
The amount of the exemption, limits on the amount, requirements for eligibility, and the period of time for which an exemption could be granted, are established by general law. *See* §§ 196.1997 and 196.1998, Fla. Stat. Implementation requires adoption of a local ordinance, which may dictate such matters as the number, type, and location of eligible properties.
The genesis of this amendment was a report of the Historic Preservation Incentives Task Force of the Florida Department of State. The Task Force recommended ad valorem tax abatement as the most effective form of financial incentive to improve the economic environment for historic preservation in Florida. At the request of the Task Force, a study by the Government Finance Research Center was commissioned. The study made specific recommendations with regard to the level of tax abatement that would optimize historic preservation yet not unduly burden the tax base of the local government. The recommendation was a 100% abatement for ten years for income-producing properties and a 100% abatement for five years for residential, owner-occupied property.

<1998 Amendment>

<(1998 House Joint Resolution 969)>

The 1998 amendment deleted from subsection (e) the requirement that owners of historic property be *engaged* in the rehabilitation or renovation of the property. *See also*, Art. VII, s. 4(d) (derived from the same House Joint Resolution), which declared that local governments may be authorized by general law to assess historic property solely on the basis of character or use; and Art. XII, s. 22, which sets January 1, 1999 as the effective date of these changes.

HISTORICAL NOTES

The amendment proposed by S.J.R. No. 9-E, as approved by the electors at the October 7, 1980, special election, added subsec. (c) pertaining to economic development tax exemptions.

The amendment proposed by S.J.R. No. 15-E, as approved by the electors at the October 7, 1980, special election, added subsec. (c) [now designated as subsec. (d)] pertaining to renewable energy source device exemption.

1988, S.J.R. Nos. 318 & 356 proposed an amendment to this section of the constitution adopted by the electorate at the November, 1988, general election, to provide property tax exemption to widowers in subsec. (b).

The amendment proposed by S.J.R. No. 152, approved by the electors at the November 3, 1992, general election, added subsec. (e).

Present subsec. (d), originally designated (c) by S.J.R. 15-E, 1980, was redesignated (d) by the division of statutory revision in order to avoid confusion with subsection (c) as contained in S.J.R. 9-E, 1980.

H.J.R. 969 of the 1997 Regular Session proposed an amendment to subsec. (e) of this section relating to assessment of historic properties which was approved at the November, 1998, general election.

For effective date of 1997, H.J.R. 969, see Const. Art. 12, § 22.

The Florida Constitution Revision Commission proposed the 1998 amendment to subsec. (a) and the adoption of subsecs. (f) and (g), but these changes were not approved by voters at the November, 1998, general election.

Section 4. Taxation; assessments
COMMENTARY TO 1980, 1988, 1992 AND 1998 AMENDMENTS

<1980 Amendment>

<(1980 Senate Joint Resolution 12-E)>

Subsection (b) was amended to expand the legislature's authority with regard to its treatment of tangible personal property held for sale as stock in trade and livestock. Prior to the amendment, the legislature was authorized to establish such property at a specified percentage of its value. In light of the 1980 change, such property also "may be classified for tax purposes, or may be exempted from taxation."

<1988 Amendment>

<(1987 House Joint Resolution 214)>

The 1988 change amended subsection (a) by adding "land producing high water recharge to Florida's aquifers" to the types of property for which assessment may be made solely on the basis of its character or use. It was estimated that approximately 15% of the state constitutes areas of high recharge, principally in inland central and northern Florida.

<1992 Amendment>

<(1992 Initiative)>

This citizen's initiative added subsection (c). While the ballot title was "Homestead Valuation Limitation," it was popularly called "Save Our Homes." Pursuant to this change, in the year following its effective date, all homestead properties were to be assessed at just value. After that base year, the assessed

value of homestead property may not increase more than the lower of 3% of the prior year's assessment or the percentage change in the CPI, as more specifically delineated in the terms of subsection (c). The effective date of the amendment was January 5, 1993, making the base year 1994, with 1995 as the year limitations would first be imposed. *Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994).
When ownership of homestead property changes, the property is assessed at just value, as of January 1 of the following year, then becomes again subject to the limitations herein. Improvements, additions, reductions, and other changes to the homestead may be treated as provided in general law, so long as after the adjustment, the property, including the change, is assessed in accordance with the limitations of this subsection.

<1998 Amendments>

<(1997 House Joint Resolution 969 and 1997-1998 Constitution Revision Commission Revision 13)>

Joint Resolution 969 provided an exception from the requirement that all property be assessed at its just value (fair market value) by allowing the legislature to authorize county and municipal governments to adopt ordinances whereby historic property may be assessed solely on the basis of its character or use. The change made by Revision 13 was technical and simply corrected the spelling of the word "purposes" in subsection (b).

HISTORICAL NOTES

The amendment proposed by S.J.R. No. 12-E, as approved by the electors at the October 7, 1980, special election, added ", may be classified for tax purposes, or may be exempted from taxation" at the end of subsec. (b).

Amendment to this section proposed by 1987, H.J.R. No. 214, was adopted by the voters at the general election of November 8, 1988. The amendment inserted ", land producing high water recharge to Florida's aquifers" in subsec. (a).

The 1992 amendment, which was proposed by Initiative Petition, added subsec. (c).

The amendment proposed by H.J.R. 969 of the 1997 Regular Session corrected the spelling of "purposes" in subsec. (b), and added subsec. (d). It was approved by voters at the Nov. 3, 1998, general election.

Section 5. Estate, inheritance and income taxes
COMMENTARY TO 1971 AMENDMENT

<1971 Amendment>

<(1971 House Joint Resolution 7-B)>

House Joint Resolution 7-B paved the way for a corporate income tax by specifically limiting the income tax immunity of section 5 to "natural persons." Corporate entities thus became amenable to the imposition of income taxes by the legislature. The amendment caps the corporate income tax level at five percent, or at a greater rate as provided by three-fifths vote of the membership of each house of the legislature. This proposal was championed by Governor Reubin Askew who based his campaign for governor on his "Fair Share Tax Program."

HISTORICAL NOTES

Amendment proposed by H.J.R. No. 7-B was approved by voters at the November, 1971, election.

Section 6. Homestead exemptions
COMMENTARY TO 1980, AND 1998 AMENDMENTS

<1980 Amendment>

<(1979 Senate Joint Resolution 1-B)>

Subsection (c) was amended by increasing the homestead exemption for ad valorem school millage to the first $25,000 of the assessed value of a homestead estate.
Subsection (d) permitted the legislature, by general law, to provide "renters, who are permanent residents," ad valorem tax relief from school district levies.

<1980 Amendment>

<(1980 Senate Joint Resolution 4-E)>

Subsection (c) clarified that the exemption found in subsection (c) can be increased if the property owner is not entitled to the exemption found in subsection (d).
Subsection (d) was amended to create a new section (d) establishing a schedule to raise the ad valorem homestead exemption, other than for the school districts' levy, to a maximum of $25,000.
Subsection (e) moved the previous section (d) to a new section (e) and broadened the ad valorem tax relief for renters to include all ad valorem tax levies rather than just ad valorem tax relief from school district levies.

<1998 Amendment>

<(1998 House Joint Resolution 3151)>

Subsection (f). The 1998 amendment created subsection (f), which authorized the legislature to allow counties and municipalities to adopt ordinances that grant an additional homestead tax exemption not greater than $25,000 to persons 65 years or older whose annual household income is $20,000 or less.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

The 1997-98 Constitution Revision Commission removed all gender-specific language contained in this section and replaced it with gender-neutral language.

HISTORICAL NOTES

The amendment proposed by S.J.R. 1-B and approved by the electors at the March 11, 1980 special election inserted in subsec. (c) "shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies", and added subsec. (d) [now subsec. (e)].

The amendment proposed by S.J.R. No. 4-E, as approved by the electors at the October 7, 1980, special election, added "and if the owner is not entitled to the exemption provided in subsection (d)" at the end of subsec. (c), interpolated a new subsec. (d), redesignated former subsec. (d) as subsec. (e), and substituted

at the end of the first sentence to subsec. (e) "all ad valorem tax" for "school district" preceding "levies".

The 1998 amendment to subsec. (b) of this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The addition of subsec. (f) was also approved by voters at the November 3, 1998, general election.

Section 8. Aid to local governments
COMMENTARY TO 1980 AMENDMENT

<1980 Amendment>

<(1980 Senate Joint Resolution 4-E)>

The 1980 amendment added the sentence which states: "These conditions may include the use of relative ad valorem assessment levels determined by a state agency designated by general law."
This provision was adopted in the wake of a strong push for full-value assessment, particularly to assist school funding. Its terms are applied in the complex computations involved in the Florida Education Finance Program for public school funding. In order to fairly establish the required local effort portion of the funding formula, an equalization factor is applied to the assessment rolls of each district to accommodate the variation in assessment levels among districts. See § 236.081(4)(c), Fla. Stat. (1998). Basically, if a school district's level of assessment is below the state average, the millage rate is adjusted upward and conversely, if the school district's level of assessment is above the state average, the millage rate is adjusted downward.

HISTORICAL NOTES

The amendment proposed by S.J.R. No. 4-E, as approved by the electors at the October 7, 1980, special election, added the second sentence.

Section 9. Local taxes
COMMENTARY TO 1976 AMENDMENT

<1976 Amendment>

<(1975 Senate Joint Resolution 1061)>

The language relating to millage caps for water management purposes was added by the 1976 amendment. Prior to the amendment, there existed two special districts created for water management purposes which had taxing authority established by general law: (1) the Central & Southern Florida Flood Control District and (2) the Southwest Florida Water Management District. Pursuant to Article VII, Section 9(b) of the 1968 Constitution, special districts could impose taxes only if authorized by law *and* by referendum. The Central & Southern Flood Control District and the Southwest Florida Water Management District, however, could impose taxes without referendum and this authority was grandfathered-in by Article XII, Section 15 of the 1968 Constitution.
In the early 1970's, it became clear that a comprehensive, statewide system of managing the state's water resources was necessary, whereupon the legislature divided the state into five regional water management districts. Adjustments were made to the boundaries of the pre-existing districts. It was concluded that any change to the geographical jurisdiction of the two pre-existing districts would jeopardize their ability to impose taxes without referendum. The 1976 amendment, therefore, allowed the continuance of taxing authority for the Southwest Florida Water Management District and the Central & Southern Florida Flood

Control District (later the South Florida Water Management District). The amendment also, for the first time, authorized the newer water management districts to impose taxes without voter referendum. These districts had previously been funded from state General Revenue.

HISTORICAL NOTES

The amendment proposed by S.J.R. No. 1061, approved by the electors at the March, 1976, special election, provided a ceiling ad valorem tax rate for water management purposes of not more than .05 mill in the northwest portion of the state and not more than 1 mill in the rest of the state.

A proposed amendment providing for an Everglades Sugar Fee of $.01 per pound on raw sugar grown in the Everglades Agricultural Area to raise funds for conservation and protection of natural resources in the Everglades was defeated at the November 5, 1996, general election.

Section 10. Pledging credit
COMMENTARY TO 1974 AMENDMENT

<1974 Amendment>

<(1973 House Joint Resolution 1424)>

The 1974 amendment added a fourth contingency, subsection (d), regarding this section's prohibition on lending the credit of a governmental entity. Under the amendment, there is no prohibition with regard to lending the taxing power of a governmental unit for the construction and operation of electrical energy generating or transmission facilities. This amendment was designed to reduce the costs of constructing or expanding generating and transmission operations as the interest rate on general obligation bonds is lower than on revenue bonds.

HISTORICAL NOTES

The amendment proposed by H.J.R. No. 1424, approved by the electors at the November, 1974, general election, added subsec. (d).

Section 11. State bonds; revenue bonds
COMMENTARY TO 1984 AND 1998 AMENDMENT

<1984 Amendment>

(1984 Committee Substitute for Committee Substitute for Senate Joint Resolution 612)
The 1984 amendment made several changes to the handling of general obligation and revenue bonds to improve long-range planning and coordination of fixed long-term capital needs. The amendment required legislative approval for the issuance of state general obligation and revenue bonds and otherwise made the projects eligible for general obligation bonding more specific. Rather than authorizing any "capital projects," the amendment limits pledging the full faith and credit of the state for "fixed capital outlay projects authorized by law, and purposes incidental thereto."

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revisions 8 and 13)>

A new subsection (e) was added in 1998 (the previous subsection (e) was relettered as subsection (f)). Its purpose, as set out in the Journal of the Constitution Revision Commission, was:
to create bond authority for acquisition and improvement of land, water areas, and related property interests for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation. This section, now referred to as Florida Forever, will create a new conservation land acquisition program to succeed Preservation 2000.
This section addresses the bond limitation in Article XII Section 17 which is carried forward from the 1885 Constitution. The section authorizes bonds for land acquisition and outdoor recreation development through the Land Acquisition Trust Fund as authorized in 1963 for a period of 50 years. These bonds have been used to fund the Preservation 2000 Program, Section 259.101, Fla. Stat. The ... [amendment] enlarges current authority by allowing water areas, water resource development, restoration of natural systems, and historic preservation.

HISTORICAL NOTES

The amendment proposed by S.J.R. No. 612, as approved by the electors at the November, 1984, general election, in subsec. (a), in the first sentence, substituted "fixed capital outlay projects authorized by law, and purposes incidental thereto" for "capital projects", in both the first and second sentences, deleted "(a)" following "to this subsection", and in the second sentence, inserted "excluding any tax revenues held in trust under the provisions of this constitution"; interpolated subsec. (c); redesignated former subsec. (c) as subsec. (d); in subsec. (d), substituted "fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from services other than state tax revenues" for "capital projects and shall be payable solely from funds derived from sources other than state tax revenues or rents or fees paid from state tax revenues"; and added subsec. (e).

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 14. Bonds for pollution control and abatement and other water facilities
COMMENTARY TO 1970 AND 1980 AMENDMENTS

<1970 Amendment>

<(1970 Committee Substitute for House Joint Resolutions 3853 and 4040)>

Generally, the issuance of bonds pledging the full faith and credit of the state must be approved by the voters. See, Art. VII, § 11(a), Fla. Const. This section created an exception to the general rule by allowing for the pledging of state revenues, when authorized by law, for the "construction of air and water pollution control and abatement and solid waste disposal facilities." The facilities are to be operated by a local government. Operating revenues must be the primary source of paying the bonds, and prior to issuance the state must determine that the debt service will not exceed 75% of the expected revenues pledged. Making the state secondarily liable was intended to result in the payment of lower interest rates on these bonds.
Section 14 was added in 1970 in response to the realization that Florida's environment was in dire need of the construction of pollution control and abatement facilities. At that time, it was estimated that the state needed between $10 and $20 billion for anti-pollution and sewage disposal facilities.

<1980 Amendment>

<(1980 House Joint Resolution 1471)>

The 1980 amendment added the following phrase to subsection (a): "and other water facilities authorized by general law." The purpose of this amendment was to add such things as water treatment plants and pipelines to the types of projects that may be financed through this hybrid revenue bond-general obligation bond program.

HISTORICAL NOTES

Addition proposed by C.S. for H.J.R. Nos. 3853 and 4040.

The amendment proposed by H.J.R. No. 1471, as approved by the electors at the November, 1980, general election, inserted "and other water facilities authorized by general law" in the first sentence of subsec. (a).

Section 15. Revenue bonds for scholarship loans
COMMENTARY

<1972 Amendment>

<(1971 House Joint Resolution 46-D)>

This section, added in 1972, authorized the issuance of revenue bonds for student loans, secured by receipts of principal, interest, and handling charges from loan recipients.

HISTORICAL NOTES

Addition proposed by H.J.R. 46-D.

Section 16. Bonds for housing and related facilities
COMMENTARY

<1980 Amendment>

<(1980 Senate Joint Resolution 6-E)>

Section 16 was added to authorize the issuance of revenue bonds, without a referendum, for housing and housing-related facilities. Its purpose is to provide low-interest mortgage loans to low and middle-income families. Any program enacted to implement the amendment must be self-sustaining, using loan payments and the sale or operation of the facilities to meet the bond obligations.

HISTORICAL NOTES

The addition of this section voted upon at the special election of October 7, 1980, was proposed by S.J.R. No. 6-E.

West's F. S. A. Const. Art. 7 § 16, FL CONST Art. 7 § 16

Section 17. Bonds for acquiring transportation right-of-way or for constructing bridges
COMMENTARY

(1988 Committee Substitute for Committee Substitute for Senate Joint Resolution 391)

This section was added in 1988 to authorize the issuance of general obligation bonds, without a referendum, for the acquisition of property for state roads, for the acquisition of rights-of-way for state roads, and for bridge construction. Motor fuel and special fuel taxes are the primary revenue source for meeting the bond obligations.

HISTORICAL NOTES

1988, S.J.R. No. 391 proposed adoption of this section of the constitution adopted by the electorate at the November, 1988, general election.

Section 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue
COMMENTARY

<(1989 Committee Substitute for Committee Substitute for Committee Substitute for Committee Substitute for House Joint Resolutions 139 and 40)>

This section, added in 1990, is commonly referred to as the "unfunded mandates" section. It was designed to prevent the legislature from imposing requirements on local governments without providing a means to pay for such requirements. The amendment was proposed and adopted in reaction to the growing costs absorbed by counties and municipalities for such things as growth management, environmental protection, pension benefits, and the operation of the state courts system. Because sources of revenue to local governments are limited to those allowed by law, counties and municipalities made a strong argument that mandates should not be imposed by the state without the state also providing a means to fund the costs of the mandate.
Subsection (a) defines a mandate as a general law that requires the county or municipality to spend funds or to take an action requiring the expenditure of funds. The local government is bound by a mandate only if the legislature has determined that the law fulfills and important state purpose *and* one of the other specifications of subsection (a) is met.
Subsection (b) requires an extraordinary 2/3 vote of each house of the legislature to pass any bill that results in a reduction in the authority of cities and counties to raise revenues that they possessed on February 1, 1989.
Subsection (c) also requires an extraordinary 2/3 vote of each house of the legislature to pass any bill that is anticipated to reduce the percentage of a state tax that is shared with counties and municipalities. Exceptions include enhancements enacted after February 1, 1989, state tax sources, fiscal emergencies, and circumstances where replacement revenues are supplied.
Subsection (d) provides exemptions from the provisions of this section and subsection (e) allows for legislative implementation by law.

HISTORICAL NOTES

H.J.R. Nos. 139 and 40 of the 1989 Regular Session proposed the adoption of this section of the constitution, which was ratified by the electorate at the November, 1990, general election.

ARTICLE VIII – LOCAL GOVERNMENT

Section 1. Counties
COMMENTARY TO 1974, 1984, AND 1998 AMENDMENTS

<1974 Amendment>

<(1973 House Joint Resolution 1907)>

House Joint Resolution 1907 amended section 1(c) by changing the name "tax assessor" to "property appraiser." The purpose of the name change was to more accurately reflect the duties of the office-to appraise the value of property for tax purposes rather than to determine a property owner's tax obligation. Other than changing the title of the office, the amendment did not alter the duties or responsibilities of the office.

<1984 Amendment>

<(1984 House Joint Resolution 452)>

House Joint Resolution 452 amended section 1(e) by allowing county commissions to be composed of "either five or seven members" rather than just "five members." More importantly, the section removed the requirement that county commissioners be elected at-large by the electors of the county. As a result general law now determines the election of county commissioners. Prior to the adoption of this amendment, the constitution required that commissioners reside in districts for residency purposes but be elected by the voters of the entire county.

<1998 Amendment>

(1997-98 Constitution Revision Commission Revision 8)
Revision 8 amended section 1(i) by removing the term "secretary of state" and replacing it with "custodian of state records." This amendment was part of a larger amendment (Article IV) that reorganized the executive branch and removed the Secretary of State and the Commissioner of Education from the cabinet.
1998 Amendment
(*1998 House Joint Resolution 125*)
The 1998 amendment added to the last sentence of subsection (k) the phrase "or a branch office designated by the governing body of the county for recording of instruments according to law." The purpose of the amendment was to authorize counties to provide a place, other than the county seat, where instruments can be recorded. Prior to this amendment persons could only officially record instruments in the county seat. Such a limitation was most inconvenient, especially in geographically large counties.

HISTORICAL NOTES

The amendment proposed by H.J.R. No. 1907, approved by the electors at the November, 1974, election, changed the name of the office of "tax assessor" to "property appraiser".

The amendment proposed by H.J.R. No. 452, as approved by the electors at the November, 1984, general election, in subsec. (e), inserted "or seven" in the first sentence, and substituted "as provided by law" for "by the electors of the county" in the second sentence.

The 1998 amendment to subsec. (i) of this section was proposed by the Constitution Revision

Commission and was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 5. Local option
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 12)>

Revision 12 created section 5(b) allowing counties, by option, to require a criminal history records check and a three to five-day waiting period for all firearms sales occurring on property open to public access. Holders of concealed weapons permits were exempted from this revision when purchasing a firearm. The constitutional regulation of guns in Florida began in 1990 when Floridians approved a constitutional amendment (Article I, section 8(b)) establishing a three-day waiting period between the retail purchase and delivery of any handgun. Florida's constitutional waiting period was limited, however, because handguns sold at gun shows by collectors and other nonlicensed sellers were not considered retail sales and therefore were not subject to the constitutional waiting period. Likewise, the sales of all other guns not classified as handguns were also exempted from the constitutional waiting period. Revision 12 tightened the regulation of all gun sales on property open to public access by authorizing counties, by option, to adopt local ordinances regulating such sales.

HISTORICAL NOTES

The 1998 amendment adding subsec. (b) to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 6. Schedule to Article VIII
COMMENTARY - None

ARTICLE IX - EDUCATION

Section 1. Public education
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 6)>

Revision 6 amended section 1 relating to public education by (1) making education a "fundamental value," (2) making it a paramount duty of the state to make adequate provision for the education of children, and (3) defining "adequate provisions" by requiring that the public school system be "efficient, safe, secure, and high quality."
The "fundamental value" language, new to the constitution, was codified from the language taken from the Florida Supreme Court decision in *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400 (Fla. 1996). Early proposals presented before the Constitution Revision Commission framed education in terms of being a "fundamental right." In response to concerns of commissioners that the state might become liable for every individual's dissatisfaction with the education system, the term "fundamental value" was substituted.
The "paramount duty" language represents a return to the 1868 Constitution, which provided that "[i]t is the paramount duty of the State to make ample provisions for the education of all children residing within its borders, without distinction or preference." In 1885, the "paramount duty" language was dropped from the constitution, and the governing provision merely stated that "the legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same."
The addition of "efficient, safe, secure, and high quality" represents an attempt by the 1997-98 Constitution Revision Commission to provide constitutional standards to measure the "adequacy" provision found in the second sentence of section 1. The action of the commission was in direct response to recent court actions seeking a declaration that Article IX, section 1 created a fundamental right to an adequate education, which the state had arguably violated by failing to provide sufficient resources to public education. In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400 (Fla. 1996), the court rejected the notion of a fundamental right to education and found that the issue of "adequacy" was a nonjusticiable, political question. The court found that absent definable standards to provide guidance in determining "adequacy" the court would be usurping the legislature's powers. Subsequently in *Advisory Opinion to the Attorney General Re: Requirements for Adequate Public Education Funding*, 703 So.2d 446, 449 (Fla. 1997), Justice Anstead, writing in a dissent, noted that the court would have benefited in the earlier *Coalition for Adequacy* case "if there had been an express statement in the constitution defining 'adequate provision' to guide us." In direct response to those rulings, the 1997-98 Constitution Revision Commission added "efficient, safe, secure, and high quality" as standards for determining the "adequacy" of public education. In other states, these same terms have been found to be measurable and meaningful. *(See DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997) (the court found meaningful standards within the "thorough and efficient standard" established by the Ohio Supreme Court).

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 2. State board of education
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 8)>

Revision 8 created an appointed State Board of Education in lieu of one composed of the elected governor and cabinet. Pursuant to Revision 8, the State Board will be composed of seven members appointed by the governor, subject to senate confirmation, with the duty to oversee the state's education system. The State Board will in turn appoint the Commissioner of Education.
This amendment was part of the cabinet restructure amendment. The purpose of this proposal was to place the responsibilities for the public education system with a body whose sole focus was education rather than a system in which the governor and cabinet were responsible for issues of education along with issues relating to land use, state lands, clemency, and state law enforcement. This amendment increased the governor's accountability for education policy by providing that the governor alone makes all the appointments to the State Board of Education. The effective date of this change is January 7, 2003 (Article XII, section 24).

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 4. School districts; school boards
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 11)>

Revision 11 amended section 4(a) to provide that all school board elections shall be non-partisan. This amendment was part of a larger election reform package (amending Article IV, section 5(a) and Article VI, sections 1, 2, 5, and 7) offered by the 1997-98 Constitution Revision Commission. As a result of this amendment, school board members will join judicial candidates (Article V, section 13) as Florida's only other non-partisan candidates for state office.
Prior to the adoption of revision 11, section 230.08, Florida Statutes, required partisan school board elections. In addition, except for charter counties, Article III, section 11(a)(1) of the Florida Constitution prohibited special laws pertaining to the election of officers. Therefore, only charter counties had the option of conducting nonpartisan elections of their school board members. *See Kane v. Robbins*, 556 So. 2d 1381 (Fla. 1989) (special act of legislature for nonpartisan school board elections was unconstitutional because it violated state constitution which prohibited special laws pertaining to election of officers); *County of Volusia et al. v. Quinn*, 700 So. 2d 474 (Fla. 5th DCA 1997) (county's home rule charter could constitutionally be amended to provide for nonpartisan election of school board members). *See also School Board of Palm Beach County v. Winchester*, 565 So. 2d 1350 (Fla. 1990).

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 5. Superintendent of schools
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 13)>

Revision 13 removed all gender specific language from section 5 and replaced it with gender neutral language. The revision did not alter the underlying meaning of the section.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 7. State University System

This section was added by citizen initiative and approved by the voters on November 5, 2002.

ARTICLE X - MISCELLANEOUS

Section 3. Vacancy in office
COMMENTARY TO 1998 AMENDMENT

<(1997-1998 Constitution Revision Commission Revision 13)>

Gender-specific references were removed as a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral. These changes were not intended to have any substantive effect.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 4. Homestead; exemptions
COMMENTARY TO 1972, 1984, AND 1998 AMENDMENTS

<1972 Amendment>

<(1972 House Joint Resolution 4324)>

In 1972, the following language was added to modify the prohibition on the devise of a homestead to a spouse or minor child: "except the homestead may be devised to the owner's spouse if there be no minor child." Because the purpose of the homestead exemption was to protect the spouse and minor children, it was inefficacious to preclude the devise of the homestead to the spouse when no minor children existed.

<1984 Amendment>

<(1983 House Joint Resolution 40)>

The term "natural person" was substituted for "the head of a family" so that the protection against forced sale of a homestead and the personal property exemption of up to $1000 was extended to all owners of homesteads except corporate entities.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 13)>

Gender-specific references were removed as a part of the 1997-1998 Constitution Revision Commission's effort to make the constitution gender neutral. These changes were not intended to have any substantive effect.

HISTORICAL NOTES

H.J.R. No. 4324, as approved by the electors at the November, 1972 general election, added the exception in the first sentence to subsec. (c).

Amendment proposed by 1983 H.J.R. No. 40, which was approved by the electors at the November, 1984 general election, substituted "a natural person" for "the head of a family" at the end of subsec. (a)

preceding subpar. (1).

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

Section 11. Sovereignty lands
COMMENTARY TO 1970 AMENDMENT

<1970 Amendment>

<(1970 House Joint Resolution 792)>

As originally enacted in 1968, this section allowed for the sale or private use of state sovereignty lands if authorized by law and if the sale or use was "not contrary to" the public interest. The 1970 amendment shifts the burden and requires an affirmative showing that the sale of sovereignty lands is "in the public interest." The test remains the same as to the use of sovereign lands. The amendment was designed to address the growing practice of dredging and filling submerged lands sold by the state for residential development.

HISTORICAL NOTES

The 1970 amendment was proposed by H.J.R. No. 792.

Section 14. State retirement systems benefit changes
COMMENTARY

<1976 Amendment>

<(1976 House Joint Resolution 291)>

Section 14 was added in 1976 to require that increased retirement benefits under the Florida Retirement System be made only upon a determination that the funding of the increase is actuarially sound. The measure was prompted by the 1975 passage of increased benefits for law enforcement officers and firemen which caused a substantial unfunded liability in the Florida Retirement System.

HISTORICAL NOTES

The addition of this section was proposed by H.J.R. No. 291 and approved by the electors at the November, 1976, general election.

Section 15. State operated lotteries
COMMENTARY

<(1986 Initiative Petition)>

Section 15 was added in 1986 to authorize the operation of state lotteries. The purpose of this initiative was to increase state funding for public education. In order to avoid having the initiative stricken from the ballot for violating the single subject requirement for initiatives, the measure allowed the legislature to alter the requirement that lottery proceeds be deposited into an education trust fund. The ballot proposal was challenged and upheld. *Carroll v. Firestone*, 497 So. 2d 1204 (Fla. 1986). The Florida Legislature has, to date, used all lottery proceeds to supplement education funding. Notwithstanding this fact, it has

been argued that overall funding for public education has decreased in terms of its percentage of the state budget.

HISTORICAL NOTES

The addition of this section was proposed by petition as approved by the electors at the November, 1986, general election.

Section 16. Limiting marine net fishing
COMMENTARY

<(1994 Citizen's Initiative Petition)>

This amendment limited the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of gill and other entangling nets in all Florida waters. It also prohibited the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters. Exceptions for scientific and governmental purposes are provided.
The purpose of the amendment was to protect Florida coastal waters from over fishing. This amendment is often cited as an example of a measure that would have more appropriately been addressed by general law rather than the constitution. Proponents of the measure, however, had been unsuccessful in effecting change through other avenues including the Marine Fisheries Commission and the legislature.

HISTORICAL NOTES

This section was proposed by initiative petition and was approved by voters at the November, 1994, general election.

This section took effect July 1, 1995.

Section 17. Everglades Trust Fund
COMMENTARY

<(1996 Citizen's Initiative Petition)>

Section 16 established the Everglades Trust Fund, to be administered by the South Florida Water Management District for the purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The Everglades Trust Fund may be funded through any source, including gifts and state or federal funds. Because of the single subject requirement of Article XI, section 3, a second amendment was offered (1996 Amendment 4) to provide a funding source for the trust fund. Amendment 4 provided that the South Florida Water Management District shall levy an Everglades sugar fee of one cent per pound on raw sugar grown in the Everglades Agricultural Area for the purpose of conservation and protection of natural resources and abatement of water pollution in the Everglades. As a result of an unprecedented expenditure of resources, however, the sugar fee was resoundingly defeated. Consequently, a trust fund has been created that has no predictable funding source.
A third Everglades amendment, 1996 amendment 5, amended Article II, section 7, providing that those who cause water pollution in the Everglades are primarily responsible for paying the cost of the abatement of that pollution. (See Commentary for Article II, section 7 for complete discussion).

HISTORICAL NOTES

This section was proposed by initiative petition and was approved by voters at the November 5, 1996,

general election. The constitutional amendment also provided:

"If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and effect."

Section 18. Disposition if conservation lands
COMMENTARY

<(1997-98 Constitution Revision Commission Revision 5)>

Revision 5 created section 18 relating to the management and disposition of conservation lands and provided that no state conservation lands could be sold without a minimum two-thirds vote of the state entity holding title to the land and a finding that the land was no longer required for conservation purposes. This amendment eliminated a patchwork of conflicting or inconsistent laws relating to the disposition of conservation property by providing one process and one standard for the disposition of all conservation lands regardless of who held title to the lands. The revision also provided that such conservation lands should be managed for the benefit of the people. This amendment was part of a larger revision (amending Article II, section 7(a), Article VII, section (11), and Article XII, section 22) relating to the environment.

Prior to the adoption of Revision 5, depending on which public entity held title to conservation land, there were several standards and processes for the disposition of such lands. For example, property held by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund could only be disposed of by a vote of at least five of the seven trustees (§ 253.02(2), Fla. Stat.). Because the super majority requirement was based in statute rather than in the constitution, the requirement was subject to statutory modification. In contrast, conservation lands held by the water management districts, the Game and Fresh Water Fish Commission, and the Department of Agriculture and Consumer Services operated on a different set of rules. If the property was purchased with Preservation 2000 funds, it required a finding that the property in question "no longer needs to be preserved in furtherance of the intent of the program." (§ 259.101(6)(b), Fla. Stat.). If the property was not purchased with Preservation 2000 funds, it fell outside the purview of the statute. Revision 5 removed this patchwork treatment and replaced it with a uniform constitutional standard to guide the management and disposition of conservation lands.

The requirement that these properties be managed for the benefit of the citizens of the state is similar to the public trust doctrine that applies to sovereign lands that is codified in Article X, section 11.

The 1997-98 Constitution Revision Commission issued a statement of intent that addressed Revision 5--Natural Resources and Creation of Fish and Wildlife Conservation Commission. The following represents that portion of the statement of intent that addressed Article X, section 18:

Section 4 creates Article X, section 18 to place restrictions on disposition of conservation lands. The proposal requires that when real property is held by the state and designated for natural resources conservation, that it shall be managed for the benefit of the citizens of the state and may be disposed of only by 2/3 vote of the governing body of the agency holding title after a determination that the property is no longer needed for conservation purposes.

This section is similar but different from Article X, section 11 relating to sovereign lands which creates the Public Trust doctrine for public lands. The new standard would place into the constitution the requirements of the Preservation 2000 bond program that lands acquired with such funds may only be disposed of when they are no longer required for the purposes for which they were acquired or that it "no longer needs to be preserved." Currently, statutory law also requires a vote of 5 of 7 trustees to dispose of property.

HISTORICAL NOTES

The Florida Constitution Revision Commission proposed the 1998 adoption of this section, which was approved by voters at the November 3, 1998, general election.

Section 19. High Speed Ground Transportation System - Repealed effective January 4, 2005

Repealed § 19, which related to a high speed ground transportation system, was added at the November 7, 2000 general election.

Section 20. Workplaces Without Tobacco Smoke

Added by citizen initiative, general election, Nov. 5, 2002.

Section 21. Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy

Added by citizen initiative, general election, Nov. 5, 2002.

Section 22. Parental notice of termination of a minor's pregnancy

Added by HJR 1, general election, Nov. 2, 2004.

Section 23. Slot machines

Added by citizen initiative, general election, Nov. 2, 2004.

Section 24. Florida minimum wage

Added by citizen initiative, general election, Nov. 2, 2004.

Section 25. Patients' right to know about adverse medical incidents

Added by citizen initiative, general election, Nov. 2, 2004.

Section 26. Prohibition of medical license after repeated medical malpractice

Added by citizen initiative, general election, Nov. 2, 2004.

ARTICLE XI - AMENDMENTS

Section 2. Revision commission
COMMENTARY TO 1988, 1996 AND 1998 AMENDMENTS

<1988 Amendment>

<(1988 House Joint Resolution 1616)>

In 1988, section 2(c) was amended to remove matters relating to taxation or the state budgetary process from the jurisdiction of the constitution revision commission and place them under the purview of the newly created taxation and budget reform commission. The amendment to section 2(c) was part of a larger amendment creating an independent tax and budget reform commission (Article XI, section 6). The purpose of the new commission was to provide a method to accomplish tax reform in a comprehensive and complete manner.

<1996 Amendment>

<(1996 Senate Joint Resolution 210)>

Sections 2(a) and (c) were amended by restoring the jurisdiction of the constitution revision commission to all matters relating to Florida's constitution, including tax and budget issues. Just eight years earlier, an amendment removed the review of tax and budget issues from the jurisdiction of the constitution revision commission and placed it with the taxation and budget reform commission. Subsequently, many felt that this amendment compromised the duties of the constitution revision commission because the review of matters within the constitution may inadvertently have budget or taxation ramifications. As a result of this amendment, the constitution revision commission and the taxation and budget reform commission now share jurisdiction over tax and budget matters.

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revisions 8 and 13)>

Revision 8 amended section 2(c) by removing the term "secretary of state" and replacing it with "custodian of state records." This amendment was part of a larger amendment (Article IV) that reorganized the executive branch and removed the Secretary of State and the Commissioner of Education from the cabinet.

Revision 13 amended section 2(a) by changing the starting date of the next constitution revision commission from thirty days after adjournment of the 2017 regular session of the legislature to thirty days before convening of the 2017 regular session. The purpose of this change was to provide the next commission more time to convene, organize, and conduct its affairs before submitting its proposals, if any, to the custodian of state records. Prior to the amendment, revisions proposed by the constitution revision commission were filed no later than 180 days prior to the next general election. As a result, the commission had approximately one year to perform its duties. By moving the starting date of the commission to thirty days before the beginning of the legislative session, the commission gained approximately four additional months to complete its work.

Revision 13 also removed all gender specific language contained in this section and replaced it with gender neutral language. The revision did not alter the underlying meaning of the section.

HISTORICAL NOTES

1988, H.J.R. No. 1616 proposed an amendment to this section of the constitution adopted by the electorate at the November, 1988, general election, to provide for exception in subd. (c) pertaining to matters reviewable by the taxation and budget reform commission.

1996, S.J.R. No. 210, which proposed amendments to this section changing the convening date for the commission and giving the commission authority in matters of taxes and the state's budget process, was approved by voters at the November 5, 1996, general election.

The 1998 amendments to this section were proposed by the Constitution Revision Commission and were approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 3. Initiatives
COMMENTARY TO 1972, 1994 AND 1998 AMENDMENTS

<1972 Amendment>

(1972 House Joint Resolution 2835)
Section 3 was amended to clarify that an initiative petition can revise or amend any portion or portions of the constitution so long as it embraces but one subject. Prior to the adoption of this amendment, initiative petitions were limited to only "any section of the constitution." This amendment was precipitated by *Adams v. Gunter*, 238 So.2d 824 (Fla. 1970), in which the Florida Supreme Court struck a citizen's ballot initiative because it proposed to amend more than one section of the Florida Constitution in violation section 3.

<1994 Amendment>

<(1994 Citizen's Initiative Petition)>

This amendment to section 3, the proposed revenue limits amendment, eliminated the single-subject requirement for initiatives that address limiting "the power of government to raise revenues." The amendment did not alter the single-subject requirement that was in effect for all other types of initiative petitions.

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 8)>

Revision 8 amended section 3 by removing the term "secretary of state" and replacing it with "custodian of state records." This amendment was part of a larger amendment (Article IV) that reorganized the executive branch and removed the Secretary of State and the Commissioner of Education from the cabinet. Revision 8 did not alter any other portion of the process to initiate the initiative process.

HISTORICAL NOTES

The amendment proposed by H.J.R. No. 2835, as approved by the electors at the November, 1972, general election, provided, in the first sentence, that the revision or amendment of any portion of the Constitution shall embrace our subject and matter directly connected therewith.

The 1994 amendment proposed by initiative petition and approved by voters at the Nov. 8, 1994, general election, provides that people's amendments limiting government power to raise revenue may cover multiple subjects.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 4. Constitutional convention
COMMENTARY TO 1998 AMENDMENT

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 8)>

Revision 8 amended section 4 by removing the term "secretary of state" and replacing it with "custodian of state records." This amendment was part of a larger amendment (Article IV) that reorganized the executive branch and removed the Secretary of State and the Commissioner of Education from the cabinet. Revision 8 did not alter any other portion of the process relating to elections to a constitutional convention.

HISTORICAL NOTES

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 5. Amendment or revision election
COMMENTARY TO 1988 AND 1998 AMENDMENTS

<1988 Amendment>

<(1988 House Joint Resolution 1616)>

House Joint Resolution 1616 amended section 5(a) relating to the timing of an election to consider an amendment or revision to the constitution and added reference to the taxation and budget reform commission. Prior to the amendment, section 5(a) provided that a proposed amendment or revision to the constitution shall be submitted to the electorate at the next general election held more than 90 days after the filing of a joint resolution, an initiative petition, or report of the revision commission or constitution convention. As a result of the 1988 amendment, section 5(a) now includes the report of the taxation and budget reform commission in the list of events that trigger an election on a constitutional amendment. This amendment was part of a larger amendment creating the taxation and budget reform commission (Article XI, section 6).

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revision 8)>

Revision 8 amended section 5 by removing the term "secretary of state" and replacing it with "custodian of state records." This amendment was part of a larger amendment (Article IV) that reorganized the executive branch and removed the Secretary of State and the Commissioner of Education from the elected cabinet. Revision 8 did not alter any other portion of the process relating to elections to consider amendments or revisions.

HISTORICAL NOTES

1988, H.J.R. No. 1616 proposed an amendment to this section of the constitution adopted by the electorate at the November, 1988, general election, to provide reference in subd. (a) to the taxation and budget reform commission.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 6. Taxation and budget reform commission
COMMENTARY

<(1988 House Joint Resolution 1616)>

In 1988, a 29-member taxation and budget reform commission was established. This commission was modeled after the constitution revision commission. Eleven members are appointed by the governor, none of whom may be members of the legislature; seven are appointed by the Speaker of the House of Representatives, none of whom may be members of the legislature; seven are appointed by the President of the Senate, none of whom may be members of the legislature; two non-voting members, who are members of the minority party in the house of representatives, are appointed by the Speaker of the House of Representatives; and two non-voting members, who are members of the minority party in the Senate, are appointed by the President of the Senate. Supporters of the commission believed that a constitutionally based commission would more likely bring necessary reform to Florida's tax structure. The provision specified that the commission would convene in 1990 and every 10 years thereafter. The commission was similar to the constitution revision commission in the respect that it was empowered to place revisions to the state constitution directly on the ballot. It was different from the constitution revision commission in the following respects: (1) its jurisdiction was limited to state taxation and spending matters, whereas the constitution revision commission may address any issue; (2) it met every 10 years, while the constitution revision commission meets every 20 years; and (3) its unique voting procedures were set out in the constitution, whereas the constitution revision commission has the authority to adopt its own rules.

<1998 Amendment>

<(1997-98 Constitution Revision Commission Revisions 8 and 13)>

Section 6(a). Revision 13 established the meeting date for the next taxation and budget reform commission for the year 2007. The year 2007 was selected to be exactly 10 years before the next meeting of the next constitution revision commission. Because of this amendment and the amendment to section 6(d) providing that the taxation and budget reform commission will meet every 20 years, the meetings of the constitution revision commission and the taxation and budget reform commission will be staggered so that one or the other will meet every 10 years. Prior to the adoption of Revision 13, the taxation and budget reform commission met in 1990 and every ten years thereafter.
Section 6(c). Revision 13 removed all gender specific language and replaced it with gender neutral language.
Revision 13 also simplified the voting requirement necessary for the taxation and budget reform commission to place a measure on the ballot by providing that it could adopt rules to address that matter as well as all other procedural matters of the commission. Prior to the adoption of revision 13, a proposal had to receive two-thirds vote of the members of the commission and a majority vote of the members appointed by each appointing authority before it could be placed on the ballot. Former members of the taxation and budget reform commission stated that requiring a majority vote of the appointing authorities caused a very divisive body. Members explained that the restrictive voting requirements forced them to become a caucus determined by who appointed them rather than to act as independent state officers with the duty to act in the best interest of all the people.
Section 6(d). Revision 13 provided that the taxation and budget reform commission would meet every 20 years rather than every 10 years.
Section 6(e). Revision 8 amended section 6(e) by removing the term "secretary of state" and replacing it with "custodian of state records." This amendment was part of a greater amendment (Article IV) that reorganized the executive branch and removed the Secretary of State and the Commissioner of Education from the cabinet.

HISTORICAL NOTES

1988, H.J.R. No. 1616 proposed addition of this section of the constitution adopted by the electorate at the November, 1988, general election.

The 1998 amendments to this section were proposed by the Constitution Revision Commission and were approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Section 7. Tax or fee limitation
COMMENTARY

<(1996 Citizen's Initiative Petition)>

Section 7 limited the imposition of new taxes or fees by any amendment to the constitution unless the amendment was approved by a two-thirds vote of the electorate. In 1994, this exact amendment was removed from the ballot by the Florida Supreme Court for violating the single-subject rule (Article XI, section 3). (*See Advisory Opinion to Atty. Gen. Re: Tax*, 644 So.2d 486 (Fla. 1994)). Subsequently, Article XI, section 3 was amended to exempt measures that limited the power of government to raise revenue from the single subject rule. (See Commentary for Article XI, section 3 (1994)).

HISTORICAL NOTES

This section was proposed by initiative petition and was approved by voters at the November 5, 1996, general election.

ARTICLE XII - SCHEDULE

Section 9. Bonds
COMMENTARY TO 1969, 1972, 1974, 1980, 1984, 1992 AND 1998 AMENDMENTS

<1969 Amendment>

<(1969 House Joint Resolution 1851)>

The 1969 amendment restored the authority for the issuance of revenue bonds or tax anticipation certificates which had previously existed under the authority of Section 19 of Article XII of the Constitution of 1885. This authority had been deleted in the 1968 rewrite of the constitution.

<1972 Amendment>

<(1972 Committee Substitute for House Joint Resolution 3576)>

The 1972 amendment represents a comprehensive rewrite of subsection (d) relating to school bonds. It extends authorization for the bonds from the year 2000 to the year 2007. In recognition of the 1968 constitutional change from county-based school systems to school districts, a change in terminology from "county" to "school district" was made throughout the section. Additionally, the term "Board of Public Instruction" was changed to "district school board." Junior college districts were added to the measure, thereby changing the source of funds from which capital improvements to junior colleges were financed. (Previously, junior college bonds were funded from gross receipts taxes on public utilities.) The capital outlay allowance for public schools was increased, while the required debt service coverage (the amount of revenue available from the capital outlay allotment) was reduced. The purposes for which school bonds could be issued was expanded to include remodeling, maintenance, and renovation.

<1972 Amendment>

<(1972 Committee Substitute for Senate Joint Resolution 292)>

The 1972 amendment restored the authority for the issuance of bonds for the acquisition of lands, water areas, and related resources for outdoor recreation and conservation. The measure was initially adopted in 1963 (Art. 9, § 17, Fla. Const. (1885)), but was stricken in the 1968 constitutional rewrite.

<1974 Amendment>

<(1974 Committee Substitute for House Joint Resolutions 2289 and 2984)>

The 1974 amendment substantially revised subsection (a) regarding use of the gross receipts tax on public utilities, pledging such funds to the capital outlay needs of the state's educational institutions through July 1, 2025. Authority for such bond issues had been scheduled to expire on June 30, 1975. Prior to this amendment, bonds under this section could only be used for capital outlay for universities, junior colleges, and vocational-technical schools. The amendment authorized bonds for capital outlay for kindergarten through Grade 12.
While the bonds issued pursuant to this section will be funded primarily from the gross receipts tax, they are backed by the full faith and credit of the state. Issuance requires approval of the legislature and the state board of education (governor and cabinet).
The amendment also included a "clean-up" change in subsection (d)(13), substituting the term "the state board" for "the school board" as the entity authorized to issue school bonds under that subsection.

<1980 Amendment>

<(1980 Senate Joint Resolution 824)>

The 1980 amendment made a number of changes throughout section 9. The "second gas tax" is a state levy of 2 cents per gallon made on the first sale or transfer of title of motor and special fuels. The proceeds are placed in a fund for distribution among the counties for road construction. The 40-year authorization for the tax, which would have expired in 2008, was deleted, allowing the tax to continue indefinitely. Authorized use of the funds is expanded to include road maintenance as allowed by law, in addition to acquisition and construction of roads. (It should be noted that the legislature had twice passed laws to achieve this end (Ch. 77-165, Laws of Florida and Ch. 79-357, Laws of Florida.) The Attorney General opined, in respect to the 1977 law, that the use of the word "construction" in Article XII, Section 9 was limited to the creation or building of new roads and did "not encompass the resurfacing, repair or improvement of existing roads." Op. Atty. Gen. 079- 104. The 1979 law, which defined "construction" as including resurfacing, repair or improvement of existing roads, was found by the Attorney General to be presumptively valid. Op. Atty. Gen. 079-43. The maturity date on bonds issued under this section may not exceed 40 years.

<1984 Amendment>

<(1984 Senate Joint Resolution 1157)>

The 1984 amendment made a change to subsection (a)(2) by stating that the bondable revenues under this subsection may be established by the legislature. Previously, bondable revenues were fixed as those provided and levied in Chapter 203, Florida Statutes, as of the time of adoption of the amendment. This change allows the definition of bondable gross receipt tax revenues to evolve through amendment of Chapter 203, Florida. Statutes.

<1992 Amendment>

<(1992 Taxation and Budget Reform Commission Revision 1)>

This amendment added language to subsection (a)(2)c. to authorize further uses of funds derived from the gross receipts tax. In addition to the payment for capital projects, the funds may be used to maintain, restore or repair existing public educational facilities.

<1992 Amendment>

<(1992 Senate Joint Resolution 2-H)>

The 1992 amendment made numerous revisions throughout Section 9 relating to the bonding of revenues dedicated to capital outlay for educational needs. The 50-year timetable for the gross receipts tax authority was deleted, allowing for continuous existence of that taxing authority to benefit institutions of higher learning, community colleges, vocation-technical schools, and public schools. Similarly, the changes permanently dedicate the first proceeds from the revenues from motor vehicle licenses for public schools and community colleges; this authorization had been scheduled to expire in 2008.

<1998 Amendment>

<(1997-1998 Constitution Revision Commission Revision 8)>

Subsection (c)(5) was modified by deleting the reference to Article IX, Section 16 of the Constitution of 1885, which sets out the make-up of the administration commission. Instead, the reference is to Article IV, Section 4 of the current constitution, in which the administration commission is constituted in accordance with the modified cabinet membership. Prior to January 7, 2003, the administration commission is composed of the governor, comptroller and treasurer. After that date it will be composed of the governor, chief financial officer and attorney general.

HISTORICAL NOTES

Amendments to F.S.A. Const. Art. 12, § 9 were proposed by H.J.R. No. 3576 and Committee Substitute for S.J.R. No. 292. Both proposed amendments were adopted at the general election of Nov. 7, 1972.

S.J.R. 292, as approved by the electors at the November, 1972 general election, deleted the prohibition against the issuance of revenue bonds under the authority of Const. 1885, Art. 9, § 17, so as to provide the revenue bonds, revenue certificates or other evidences of indebtedness issued hereafter be issued by the agency of the state authorized by law to do so and added the subsec. designated by the division of statutory revision as subsec. (g).

H.J.R. 3576, as approved by the electors at the November, 1972 general election, provided that part of the revenue derived from licensing of motor vehicles shall be used for capital outlay and debt service school purposes and prescribed the methods of distribution and use thereof and added subsec. (f).

The amendment proposed by committee substitute for H.J.R. Nos. 2289 and 2984, approved by the electors at the November, 1974, general election, rewrote subsec. (a) to provide for continuation of the school construction program at area vocational-technical centers, community colleges, and universities, and to extend the program to include the K-12 public schools, supported by bonds payable from the gross receipts taxes, pledging the full faith and credit of the state, and corrected language in subsec. (d).

The amendment proposed by S.J.R. No. 824, as approved by the electors at the November, 1980, general election, deleted "for a period of forty consecutive years" at the end of the first sentence to subsec. (c) (1), inserted "and for road maintenance as authorized by law" at the end of the fourth sentence of subsec. (c) (5), and rewrote the last two sentences of subsec. (c) (5).

The amendment proposed by S.J.R. No. 1157 as approved by the electors at the November, 1984, election, in the second paragraph of subsec. (a)(2), substituted "pursuant to the provisions of chapter 203, Florida Statutes (hereinafter called "gross receipt taxes"), as in existence as of the date of the adoption of this amendment or as such chapter is amended from time to time" for "as of the time of adoption of this subsection (a)(2) in chapter 203, Florida Statutes (hereinafter called 'gross receipt taxes')".

The 1992 amendment proposed by S.J.R. No. 2-H, which was approved by the electors at the November 3, 1992, general election, continued indefinitely the dedication of gross receipts taxes to fund construction of educational facilities, continued indefinitely the dedication of some motor vehicle license taxes to fund construction of educational facilities, and removed certain interest and maturity restrictions on education bond refunding.

The 1992 amendment proposed by the Taxation and Budget Reform Commission under authority of Const. Art. 6, § 11, and adopted at the general election held November 3, 1992, allowed moneys in the capital outlay fund to be used for maintaining, restoring, or repairing existing public educational facilities.

The 1998 amendment to this section was proposed by the Constitution Revision Commission, and it was

approved by voters at the November 3, 1998, general election.

The 1998 amendments by the Constitution Revision Commission relating to executive branch reform take effect January 7, 2003, "but shall govern with respect to the qualifying for and the holding of primary elections in 2002".

Constitution of 1885, art. 4, § 24; art. 8, § 10A et seq.; art. 9; art. 12, § 17 et seq.; art. 20 § 1 provided for issuance of evidences indebtedness by a public body, or provided revenue for payment of indebtedness.

Section 18. Bonds for housing and related facilities
COMMENTARY

<(1980 Senate Joint Resolution 6-E)>

Senate Joint Resolution 6-E established the effective date for the amendment to section 16 of Article VII (bonds for housing and related facilities) and provided that it takes effect upon approval by the electorate. Without this joint resolution, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL NOTES

The addition of section 18 adopted October 7, 1980, was proposed by S.J.R. No. 6-E.

Section 19. Renewable energy source property
COMMENTARY

<(1980 Senate Joint Resolution 15-E)>

Senate Joint Resolution 15-E established the effective date of the amendment to section 3 of Article VII (exemption for renewable energy source) and provided that it takes effect on January 1, 1981. Without this joint resolution, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL NOTES

The addition of this section, now designated as § 19, which was adopted October 7, 1980, was proposed by S.J.R. No. 15-E.

Section 20. Access to public records
COMMENTARY

<(1992 Committee Substitute for Committee Substitute for House Joint Resolutions 1727, 863, and 2035)>

This joint resolution established the effective date of the amendment to section 24 of Article I (access to public records) and provided that it takes effect on July 1, 1993. Without the joint resolution, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL AND STATUTORY NOTES

The addition of this section was proposed by committee substitute for H.J.R. Nos. 1727, 863 and 2035, and adopted at the general election held November 3, 1992.

Section 21. State revenue limitation
COMMENTARY

<(1994 House Joint Resolution 2053)>

This joint resolution established the effective date of the amendment to section 1 of Article VII (state revenue limitation) and provided that it takes effect on January 1, 1995. It also clarified that the amendment is applicable to the state fiscal year 1995-96. Without the joint resolution, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL NOTES

The addition of this section, which was proposed by H.J.R. 2053 of the 1994 regular session, was approved by voters at the November, 1994, general election.

Section 22. Historic property exemption and assessment
COMMENTARY

<(1997 House Joint Resolution 969)>

This joint resolution established the effective date of the amendment to sections 3 and 4 of Article VII (historic property exemption and assessment) and provided that it takes effect on January 1, 1999. Without the joint resolution, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL NOTES

This section was proposed by 1997, H.J.R. 969, and was approved by voters at the November 3, 1998, general election.

Section 23. Fish and wildlife conservation commission
COMMENTARY

<(1997-98 Constitution Revision Commission Revision 5)>

This amendment is part of the larger amendment that merged the game and freshwater fish commission and the marine fisheries commission into the newly created Fish and Wildlife Conservation Commission (Article IV, section 9). The amendment provides for an orderly transition from the existing commissions to the new Fish and Wildlife Conservation Commission. Specifically, it provides for the initial membership of the commission, and the jurisdiction of the commission.
In addition, it provides for an effective date of July 1, 1999. Without the amendment, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL NOTES

The 1998 addition of this section was proposed by the Constitution Revision Commission and was

approved by voters at the November 3, 1998, general election.

This section, originally designated as section 22 by Revision No. 5 of the Constitution Revision Commission, 1998, was redesignated as section 23 in order to avoid confusion with section 22 created by H.J.R. 969, 1997.

Section 24. Executive branch reform
COMMENTARY

<(1997-98 Constitution Revision Commission Revision 8)>

This amendment is part of the larger amendment that reformed the executive branch (Article IV). This amendment sets the effective of the amendment for January 7, 2003. Without the amendment, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."
In addition, the amendment provides for the substitution of the term "custodian of state records" for secretary of state throughout the constitution.

HISTORICAL NOTES

The 1998 adoption of this section was proposed by the Constitution Revision Commission and was approved by voters at the November 3, 1998, general election.

This section, originally designated as section 22 by Revision No. 8 of the Constitution Revision Commission, 1998, was redesignated as section 24 in order to avoid confusion with section 22 created by H.J.R. 969, 1997.

Section 25. Schedule to Article V Amendment
COMMENTARY

<(1997-98 Constitution Revision Commission Revision 7)>

This amendment established the schedule of the amendment to section 14 of Article V (Article V Costs). It also sets the effective of the amendment for January 7, 2003. Without this amendment, Article XI, section 5(c) would have controlled, and the amendment would have taken effect "on the first Tuesday after the first Monday in January following the election."

HISTORICAL NOTES

The 1998 adoption of this section was proposed by the Constitution Revision Commission and was approved by voters at the November 3, 1998, general election.

This section, originally designated as section 22 by the Constitution Revision Commission, 1998, was redesignated as section 25 in order to avoid confusion with section 22 created by H.J.R. 969, 1997.

Section 26. Term limits; effective date and application
HISTORICAL AND STATUTORY NOTES

Amendment Notes:

HJR 1177, which was filed in the office of the Secretary of State on June 9, 2005, created this section.

Green:	Legislative Amendment
Yellow:	1998 Constitution Revision Commission
Blue:	1992 Taxation and Budget Reform Commission:
Grey:	Citizens' Initiative
Clear:	Original language of the Constitution of 1968 or Art. V adopted in 1973.

Note: provisions removed from the Constitution of 1968 are not shown.

Preamble

We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

Article I. Declaration of Rights

§ 1. Political power

All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.

§ 2. Basic rights

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprive d of any right because of race, religion, national origin, or physical disability.

§ 3. Religious freedom

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

§ 4. Freedom of speech and press

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for

defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

§ 5. Right to assemble

The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.

§ 6. Right to work

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

§ 7. Military power

The military power shall be subordinate to the civil.

§ 8. Right to bear arms

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

§ 9. Due process

No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

§ 10. Prohibited laws

No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

§ 11. Imprisonment for debt

No person shall be imprisoned for debt, except in cases of fraud.

§ 12. Searches and seizures

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

§ 13. Habeas corpus

The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

§ 14. Pretrial release and detention

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

§ 15. Prosecution for crime; offenses committed by children

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.

§ 16. Rights of accused and of victims

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

§ 17. Excessive punishments

Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

§ 18. Administrative penalties

No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.

§ 19. Costs

No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final.

§ 20. Treason

Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort, and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on confession in open court.

§ 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.

§ 22. Trial by jury

The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

§ 23. Right of privacy

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

§ 24. Access to public records and meetings

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section

4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

§ 25. Taxpayers' Bill of Rights

By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. This section shall be effective July 1, 1993.

§ 26. Claimant's right to fair compensation

(a) Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

(b) This Amendment shall take effect on the day following approval by the voters.

Article II. General Provisions

§ 1. State boundaries

(a) The state boundaries are: Begin at the mouth of the Perdido River, which for the purposes of this description is defined as the point where latitude 30° 16'53" north and longitude 87° 31'06" west intersect; thence to the point where latitude 30° 17'02" north and longitude 87° 31'06" west intersect; thence to the point where latitude 30° 18'00" north and longitude 87° 27'08" west intersect; thence to the point where the center line of the Intracoastal Canal (as the same existed on June 12, 1953) and longitude 87° 27'00" west intersect; the same being in the middle of the Perdido River; thence up the middle of the Perdido River to the point where it intersects the south boundary of the State of Alabama, being also the point of intersection of the middle of the Perdido River with latitude 31° 00'00" north; thence east, along the south boundary line of the State of Alabama, the same being latitude 31° 00'00" north to the middle of the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence in a straight line to the head of the St. Marys River; thence down the middle of said river to the Atlantic Ocean; thence due east to the edge of the Gulf Stream or a distance of three geographic miles whichever is the greater distance; thence in a southerly direction along the edge of the Gulf Stream or along a line three geographic miles from the Atlantic coastline and three leagues distant from the Gulf of Mexico coastline, whichever is greater, to and through the Straits of Florida and westerly, including the Florida reefs, to a point due south of and three leagues from the southernmost point of the Marquesas Keys; thence westerly along a straight line to a point due south of and three leagues from Loggerhead Key, the westernmost of the Dry Tortugas Islands; thence westerly, northerly and easterly along the arc of a curve three leagues distant from Loggerhead Key to a point due north of Loggerhead Key; thence northeast along a straight line to a point three leagues from the coastline of Florida; thence northerly and westerly three leagues distant from the coastline to a point west of the mouth of the Perdido River three leagues from the coastline as measured on a line bearing south 0° 01'00" west from the point of beginning; thence northerly along said line to the point of beginning. The State of Florida shall also include any additional territory within the United States adjacent to the Peninsula of Florida lying south of the St. Marys River, east of the Perdido River, and south of the States of Alabama and Georgia.

(b) The coastal boundaries may be extended by statute to the limits permitted by the laws of the United States or international law.

§ 2. Seat of government

The seat of government shall be the City of Tallahassee, in Leon County, where the offices of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held; provided that, in time of invasion or grave emergency, the governor by proclamation may for the period of the emergency transfer the seat of government to another place.

§ 3. Branches of government

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

§ 4. State seal and flag

The design of the great seal and flag of the state shall be prescribed by law.

§ 5. Public officers

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

> "I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.

§ 6. Enemy attack

In periods of emergency resulting from enemy attack the legislature shall have power to provide for prompt and temporary succession to the powers and duties of all public offices the incumbents of which may become unavailable to execute the functions of their offices, and to adopt such other measures as may be necessary and appropriate to insure the continuity of governmental operations during the emergency. In exercising these powers, the legislature may depart from other requirements of this constitution, but only to the extent necessary to meet the emergency.

§ 7. Natural resources and scenic beauty

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

(Amendment to (a) is from the 1998 Constitution Revision Commission. The provision is an aspirational goal. Amendment creating (b) is from a 1996 citizens' initiative sponsored by Save Our Everglades. Another amendment proposed by the group which would have imposed a 1 cent per pound sugar tax to fund Everglades restoration failed.)

§ 8. Ethics in government

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other

than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(i) Schedule--On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds $1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to subsection (i)(1).

(3) The independent commission provided for in subsection (f) shall mean the Florida Commission on Ethics.

§ 9. English is the official language of Florida

(a) English is the official language of the State of Florida.

(b) The legislature shall have the power to enforce this section by appropriate legislation.

Article III. Legislature

§ 1. Composition

The legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district.

§ 2. Members; officers

Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house as Speaker of the House of Representatives. The senate shall designate a Secretary to serve at its pleasure, and the house of representatives shall designate a Clerk to serve at its pleasure. The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.

§ 3. Sessions of the legislature

(a) Organization sessions.--On the fourteenth day following each general election the legislature shall convene for the exclusive purpose of organization and selection of officers.

(b) Regular sessions. A regular session of the legislature shall convene on the first Tuesday after the first Monday in March of each odd-numbered year, and on the first Tuesday after the first Monday in March, or such other date as may be fixed by law, of each even-numbered year.

(c) Special sessions.

(1) The governor, by proclamation stating the purpose, may convene the legislature in special session during which only such legislative business may be transacted as is within the purview of the proclamation, or of a communication from the governor, or is introduced by consent of two-thirds of the membership of each house.

(2) A special session of the legislature may be convened as provided by law.

(d) Length of sessions. A regular session of the legislature shall not exceed sixty consecutive days, and a special session shall not exceed twenty consecutive days, unless extended beyond such limit by a three-fifths vote of each house. During such an extension no new business may be taken up in either house without the consent of two-thirds of its membership.

(e) Adjournment. Neither house shall adjourn for more than seventy-two consecutive hours except pursuant to concurrent resolution.

(f) Adjournment by Governor. If, during any regular or special session, the two houses cannot agree upon a time for adjournment, the governor may adjourn the session sine die or to any date within the period authorized for such session; provided that, at least twenty-four hours before adjourning the session, and while neither house is in recess, each house shall be given formal written notice of the governor' s intention to do so, and agreement reached within that period by both houses on a time for adjournment shall prevail.

§ 4. Quorum and procedure

(a) A majority of the membership of each house shall constitute a quorum, but a smaller number may adjourn from day to day and compel the presence of absent members in such manner and under such penalties as it may prescribe. Each house shall determine its rules of procedure.

(b) Sessions of each house shall be public; except sessions of the senate when considering appointment to or removal from public office may be closed.

(c) Each house shall keep and publish a journal of its proceedings; and upon the request of five members present, the vote of each member voting on any question shall be entered on the journal. In any legislative committee or subcommittee, the vote of each member voting on the final passage of any legislation pending before the committee, and upon the request of any two members of the committee or subcommittee, the vote of each member on any other question, shall be recorded.

(d) Each house may punish a member for contempt or disorderly conduct and, by a two-thirds vote of its membership, may expel a member.

(e) The rules of procedure of each house shall provide that all legislative committee and subcommittee meetings of each house, and joint conference committee meetings, shall be open and noticed to the public. The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

§ 5. Investigations; witnesses

Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law upon committees when the legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

§ 6. Laws

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida:".

§ 7. Passage of bills

Any bill may originate in either house and after passage in one may be amended in the other. It shall be read in each house on three separate days, unless this rule is waived by two-thirds vote; provided the publication of its title in the journal of a house shall satisfy the requirement for the first reading in that house. On each reading, it shall be read by title only, unless one-third of the members present desire it read in full. On final passage, the vote of each member voting shall be entered on the journal. Passage of a bill shall require a majority vote in each house. Each bill and joint resolution passed in both houses shall be signed by the presiding officers of the respective houses and by the secretary of the senate and the clerk of the house of representatives during the session or as soon as practicable after its adjournment sine die.

§ 8. Executive approval and veto

(a) Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, the governor shall have fifteen consecutive days from the date of presentation to act on the bill. In all cases except general appropriation bills, the veto shall extend to the entire bill. The governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates.

(b) When a bill or any specific appropriation of a general appropriation bill has been vetoed, the governor shall transmit signed objections thereto to the house in which the bill originated if in session. If that house is not in session, the governor shall file them with the custodian of state records, who shall lay them before that house at its next regular or special session, whichever occurs first, and they shall be entered on its journal. If the originating house votes to re-enact a vetoed measure, whether in a regular or special session, and the other house does not consider or fails to re-enact the vetoed measure, no further consideration by either house at any subsequent session may be taken. If a vetoed measure is presented at a special session and the originating house does not consider it, the measure will be available for consideration at any intervening special session and until the end of the next regular session.

(c) If each house shall, by a two-thirds vote, re-enact the bill or reinstate the vetoed specific appropriation of a general appropriation bill, the vote of each member voting shall be entered on the respective journals, and the bill shall become law or the specific appropriation reinstated, the veto notwithstanding.
(An amendment from the 1998 Constitution Revision Commission made the provisions gender neutral. Another amendment from the 1998 Constitution Revision Commission clarified the time period in which the Legislature must act to override a veto.)

§ 9. Effective date of laws

Each law shall take effect on the sixtieth day after adjournment sine die of the session of the legislature in which enacted or as otherwise provided therein. If the law is passed over the veto of the governor it shall take effect on the sixtieth day after adjournment sine die of the session in which the veto is overridden, on a later date fixed in the law, or on a date fixed by resolution passed by both houses of the legislature.

§ 10. Special laws

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

§ 11. Prohibited special laws

(a) There shall be no special law or general law of local application pertaining to:

(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies;

(2) assessment or collection of taxes for state or county purposes, including extension of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability;

(3) rules of evidence in any court;

(4) punishment for crime;

(5) petit juries, including compensation of jurors, except establishment of jury commissions;

(6) change of civil or criminal venue;

(7) conditions precedent to bringing any civil or criminal proceedings, or limitations of time therefor;

(8) refund of money legally paid or remission of fines, penalties or forfeitures;

(9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts;

(10) disposal of public property, including any interest therein, for private purposes;

(11) vacation of roads;

(12) private incorporation or grant of privilege to a private corporation;

(13) effectuation of invalid deeds, wills or other instruments, or change in the law of descent;

(14) change of name of any person;

(15) divorce;

(16) legitimation or adoption of persons;

(17) relief of minors from legal disabilities;

(18) transfer of any property interest of persons under legal disabilities or of estates of decedents;

(19) hunting or fresh water fishing;

(20) regulation of occupations which are regulated by a state agency; or

(21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.

(b) In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.

§ 12. Appropriation bills

Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

§ 13. Term of office

No office shall be created the term of which shall exceed four years except as provided herein.

§ 14. Civil service system

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

§ 15. Terms and qualifications of legislators

(a) Senators. Senators shall be elected for terms of four years, those from odd-numbered districts in the years the numbers of which are multiples of four and those from even-numbered districts in even-numbered years the numbers of which are not multiples of four; except, at the election next following a reapportionment, some senators shall be elected for terms of two years when necessary to maintain staggered terms.

(b) Representatives. Members of the house of representatives shall be elected for terms of two years in each even-numbered year.

(c) Qualifications. Each legislator shall be at least twenty-one years of age, an elector and resident of the district from which elected and shall have resided in the state for a period of two years prior to election.

(d) Assuming office; vacancies. Members of the legislature shall take office upon election. Vacancies in legislative office shall be filled only by election as provided by law.

§ 16. Legislative apportionment

(a) Senatorial and representative districts.-- The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state

in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

(b) Failure of legislature to apportion; judicial reapportionment.--In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the custodian of state records an order making such apportionment.

(c) Judicial review of apportionment.--Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

(d) Effect of judgment in apportionment; extraordinary apportionment session.--A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the supreme court.

(e) Extraordinary apportionment session; review of apportionment.--Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted at a regular or special apportionment session.

(f) Judicial reapportionment.--Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the custodian of state records an order making such apportionment.

§ 17. Impeachment

(a) The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal, judges of circuit courts, and judges of county courts shall be liable to impeachment for misdemeanor in office. The house of representatives by two-thirds vote shall have the power to impeach an officer. The speaker of the house of representatives shall have power at any time to appoint a committee to investigate charges against any officer subject to impeachment.

(b) An officer impeached by the house of representatives shall be disqualified from performing any official duties until acquitted by the senate, and, unless impeached, the governor may by appointment fill the office until completion of the trial.

(c) All impeachments by the house of representatives shall be tried by the senate. The chief justice of the supreme court, or another justice designated by the chief justice, shall preside at the trial, except in a trial of the chief justice, in which case the governor shall preside. The senate shall determine the time for the trial of any impeachment and may sit for the trial whether the house of representatives be in session or not. The time fixed for trial shall not be more than six months after the impeachment. During an impeachment trial senators shall be upon their oath or affirmation. No officer shall be convicted without the concurrence of two-thirds of the members of the senate present. Judgment of conviction in cases of impeachment shall remove the offender from office and, in the discretion of the senate, may include disqualification to hold any office of honor, trust or profit. Conviction or acquittal shall not affect the civil or criminal responsibility of the officer.

§ 18. Conflict of interest

A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

§ 19. State Budgeting, Planning and Appropriations Processes

(a) Annual budgeting.--Effective July 1, 1994, general law shall prescribe the adoption of annual state budgetary and planning processes and require that detail reflecting the annualized costs of the state budget and reflecting the nonrecurring costs of the budget requests shall accompany state department and agency legislative budget requests, the governor's recommended budget, and appropriation bills. For purposes of this subsection, the terms department and agency shall include the judicial branch.

(b) Appropriation bills format.--Separate sections within the general appropriation bill shall be used for each major program area of the state budget; major program areas shall include: education enhancement "lottery" trust fund items; education (all other funds); human services; criminal justice and corrections; natural resources, environment, growth management, and transportation; general government; and judicial branch. Each

major program area shall include an itemization of expenditures for: state operations; state capital outlay; aid to local governments and nonprofit organizations operations; aid to local governments and nonprofit organizations capital outlay; federal funds and the associated state matching funds; spending authorizations for operations; and spending authorizations for capital outlay. Additionally, appropriation bills passed by the legislature shall include an itemization of specific appropriations that exceed one million dollars ($1,000,000.00) in 1992 dollars. For purposes of this subsection, "specific appropriation," "itemization," and "major program area" shall be defined by law. This itemization threshold shall be adjusted by general law every four years to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics or its successor. Substantive bills containing appropriations shall also be subject to the itemization requirement mandated under this provision and shall be subject to the governor's specific appropriation veto power described in Article III, Section 8. This subsection shall be effective July 1, 1994.

(c) Appropriations review process.--Effective July 1, 1993, general law shall prescribe requirements for each department and agency of state government to submit a planning document and supporting budget request for review by the appropriations committees of both houses of the legislature. The review shall include a comparison of the major issues in the planning document and budget requests to those major issues included in the governor's recommended budget. For purposes of this subsection, the terms department and agency shall include the judicial branch.

(d) Seventy-two hour public review period.--All general appropriation bills shall be furnished to each member of the legislature, each member of the cabinet, the governor, and the chief justice of the supreme court at least seventy-two hours before final passage by either house of the legislature of the bill in the form that will be presented to the governor.

(e) Final budget report.--Effective November 4, 1992, a final budget report shall be prepared as prescribed by general law. The final budget report shall be produced no later than the 90th day after the beginning of the fiscal year, and copies of the report shall be furnished to each member of the legislature, the head of each department and agency of the state, the auditor general, and the chief justice of the supreme court.

(f) Trust funds.--

(1) No trust fund of the State of Florida or other public body may be created by law without a three-fifths (3/5) vote of the membership of each house of the legislature in a separate bill for that purpose only.

(2) State trust funds in existence before the effective date of this subsection shall terminate not more than four years after the effective date of this subsection. State trust funds created after the effective date of this subsection shall terminate not more than four

years after the effective date of the act authorizing the creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized.

(3) Trust funds required by federal programs or mandates; trust funds established for bond covenants, indentures, or resolutions, whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body; the state transportation trust fund; the trust fund containing the net annual proceeds from the Florida Education Lotteries; the Florida retirement trust fund; trust funds for institutions under the management of the Board of Regents, where such trust funds are for auxiliary enterprises and contracts, grants, and donations, as those terms are defined by general law; trust funds that serve as clearing funds or accounts for the chief financial officer or state agencies; trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and other trust funds authorized by this Constitution, are not subject to the requirements set forth in paragraph (2) of this subsection.

(4) All cash balances and income of any trust funds abolished under this subsection shall be deposited into the general revenue fund.

(5) The provisions of this subsection shall be effective November 4, 1992.

(g) Budget stabilization fund.--Beginning with the 1994-1995 fiscal year, at least 1% of an amount equal to the last completed fiscal year's net revenue collections for the general revenue fund shall be retained in a budget stabilization fund. The budget stabilization fund shall be increased to at least 2% of said amount for the 1995-1996 fiscal year, at least 3% of said amount for the 1996-1997 fiscal year, at least 4% of said amount for the 1997- 1998 fiscal year, and at least 5% of said amount for the 1998-1999 fiscal year. Subject to the provisions of this subsection, the budget stabilization fund shall be maintained at an amount equal to at least 5% of the last completed fiscal year's net revenue collections for the general revenue fund. The budget stabilization fund's principal balance shall not exceed an amount equal to 10% of the last completed fiscal year's net revenue collections for the general revenue fund. The legislature shall provide criteria for withdrawing funds from the budget stabilization fund in a separate bill for that purpose only and only for the purpose of covering revenue shortfalls of the general revenue fund or for the purpose of providing funding for an emergency, as defined by general law. General law shall provide for the restoration of this fund. The budget stabilization fund shall be comprised of funds not otherwise obligated or committed for any purpose.

(h) State planning document and department and agency planning document processes.--The governor shall recommend to the legislature biennially any revisions to the state planning document, as defined by law. General law shall require a biennial review and revision of the state planning document, shall require the governor to report to the legislature on the progress in achieving the state planning document's goals, and shall require all departments and agencies of state government to develop planning documents consistent with the state planning document. The state planning document and

department and agency planning documents shall remain subject to review and revision by the legislature. The department and agency planning documents shall include a prioritized listing of planned expenditures for review and possible reduction in the event of revenue shortfalls, as defined by general law. To ensure productivity and efficiency in the executive, legislative, and judicial branches, a quality management and accountability program shall be implemented by general law. For the purposes of this subsection, the terms department and agency shall include the judicial branch. This subsection shall be effective July 1, 1993.

Article IV. Executive

§ 1. Governor

(a) The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state.

(b) The governor may initiate judicial proceedings in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act.

(c) The governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion not earlier than ten days from the filing and docketing of the request, unless in their judgment the delay would cause public injury.

(d) The governor shall have power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion.

(e) The governor shall by message at least once in each regular session inform the legislature concerning the condition of the state, propose such reorganization of the executive department as will promote efficiency and economy, and recommend measures in the public interest.

(f) When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

§ 2. Lieutenant governor

There shall be a lieutenant governor, who shall perform such duties pertaining to the office of governor as shall be assigned by the governor, except when otherwise provided by law, and such other duties as may be prescribed by law.

§ 3. Succession to office of governor; acting governor

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during the governor's physical or mental incapacity, the lieutenant governor shall act as governor. Further succession as acting governor shall be prescribed by law. Incapacity to serve as governor may be determined by the supreme court upon due notice after docketing of a written suggestion thereof by three cabinet members, and in such case restoration of capacity shall be similarly determined after docketing of written suggestion thereof by the governor, the legislature or three cabinet members. Incapacity to serve as governor may also be established by certificate filed with the custodian of state records by the governor declaring incapacity for physical reasons to serve as governor, and in such case restoration of capacity shall be similarly established.

§ 4. Cabinet

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and securities.

(d) The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.

(e) The governor as chair, the chief financial officer, and the attorney general shall constitute the state board of administration, which shall succeed to all the power, control, and authority of the state board of administration established pursuant to Article IX, Section 16 of the Constitution of 1885, and which shall continue as a body at least for the life of Article XII, Section 9(c).

(f) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the trustees of the internal improvement trust fund and the land acquisition trust fund as provided by law.

(g) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the agency head of the Department of Law Enforcement.

§ 5. Election of governor, lieutenant governor and cabinet members; qualifications; terms

(a) At a state-wide general election in each calendar year the number of which is even but not a multiple of four, the electors shall choose a governor and a lieutenant governor and members of the cabinet each for a term of four years beginning on the first Tuesday after the first Monday in January of the succeeding year. In primary elections, candidates for the office of governor may choose to run without a lieutenant governor candidate. In the general election, all candidates for the offices of governor and lieutenant governor shall form joint candidacies in a manner prescribed by law so that each voter shall cast a single vote for a candidate for governor and a candidate for lieutenant governor running together.

(b) When elected, the governor, lieutenant governor and each cabinet member must be an elector not less than thirty years of age who has resided in the state for the preceding seven years. The attorney general must have been a member of the bar of Florida for the preceding five years. No person who has, or but for resignation would have, served as governor or acting governor for more than six years in two consecutive terms shall be elected governor for the succeeding term.

§ 6. Executive departments

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:

(a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.

(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

§ 7. Suspensions; filling office during suspensions

(a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.

(b) The senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.

(c) By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.

§ 8. Clemency

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

(b) In cases of treason the governor may grant reprieves until adjournment of the regular session of the legislature convening next after the conviction, at which session the legislature may grant a pardon or further reprieve; otherwise the sentence shall be executed.

(c) There may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law.

§ 9. Fish and wildlife conservation commission

There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general

law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

§ 10. Attorney General

Attorney General.--The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.

§ 11. Department of Veterans Affairs

The legislature, by general law, may provide for the establishment of the Department of Veterans Affairs.

§ 12. Department of Elderly Affairs

The legislature may create a Department of Elderly Affairs and prescribe its duties. The provisions governing the administration of the department must comply with Section 6 of Article IV of the State Constitution.

§ 13. Revenue Shortfalls

In the event of revenue shortfalls, as defined by general law, the governor and cabinet may establish all necessary reductions in the state budget in order to comply with the provisions of Article VII, Section 1(d). The governor and cabinet shall implement all necessary reductions for the executive budget, the chief justice of the supreme court shall implement all necessary reductions for the judicial budget, and the speaker of the house of representatives and the president of the senate shall implement all necessary reductions for the legislative budget. Budget reductions pursuant to this section shall be consistent with the provisions of Article III, Section 19(h).

Article V. Judiciary

§ 1. Courts

The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions. The legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District.

§ 2. Administration; practice and procedure

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of appeal to submit questions relating to military law to the federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(b) The chief justice of the supreme court shall be chosen by a majority of the members of the court; shall be the chief administrative officer of the judicial system; and shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

(c) A chief judge for each district court of appeal shall be chosen by a majority of the judges thereof or, if there is no majority, by the chief justice. The chief judge shall be responsible for the administrative supervision of the court.

(d) A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

§ 3. Supreme court

(a) Organization.--The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of the original

appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) Jurisdiction.--The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

(c) Clerk and marshal.--The supreme court shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

§ 4. District courts of appeal

(a) Organization.--There shall be a district court of appeal serving each appellate district. Each district court of appeal shall consist of at least three judges. Three judges shall consider each case and the concurrence of two shall be necessary to a decision.

(b) Jurisdiction.--

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

(c) Clerks and marshals.--Each district court of appeal shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the territorial jurisdiction of the court, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

§ 5. Circuit courts

(a) Organization.--There shall be a circuit court serving each judicial circuit.

(b) Jurisdiction.--The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas

corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

§ 6. County courts

(a) Organization.--There shall be a county court in each county. There shall be one or more judges for each county court as prescribed by general law.

(b) Jurisdiction.--The county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

§ 7. Specialized divisions

All courts except the supreme court may sit in divisions as may be established by general law. A circuit or county court may hold civil and criminal trials and hearings in any place within the territorial jurisdiction of the court as designated by the chief judge of the circuit.

§ 8. Eligibility

No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

§ 9. Determination of number of judges

The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the

recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

§ 10. Retention; election and terms

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) ...(name of justice or judge)... of the ...(name of the court)... be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approve a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the secretary of state a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. The terms of circuit judges and judges of county courts shall be for six years.

§ 11. Vacancies

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

(b) The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

§ 12. Discipline; removal and retirement

(a) Judicial qualifications commission.--A judicial qualifications commission is created.

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such discipline. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. The commission shall be composed of:

a. Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;

b. Four electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

c. Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(2) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a judge shall be eligible for state judicial office while acting as a member of the commission and for a period of two years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may campaign for judicial office and hold that office. The commission shall elect one of its members as its chairperson.

(3) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(4) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. The commission shall have power to issue subpoenas. Until formal charges against a justice or judge are filed by the investigative

panel with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public.

(5) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of representatives or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(b) Panels.--The commission shall be divided into an investigative panel and a hearing panel as established by rule of the commission. The investigative panel is vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel. The hearing panel is vested with the authority to receive and hear formal charges from the investigative panel and upon a two-thirds vote of the panel recommend to the supreme court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties. Upon a simple majority vote of the membership of the hearing panel, the panel may recommend to the supreme court that the justice or judge be subject to appropriate discipline.

(c) Supreme court.--The supreme court shall receive recommendations from the judicial qualifications commission's hearing panel.

(1) The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it

may order that the justice or judge be subjected to appropriate discipline, or be removed from office with termination of compensation for willful or persistent failure to perform judicial duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes with the performance of judicial duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing of a formal proceeding and upon request of the investigative panel, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

(2) The supreme court may award costs to the prevailing party.

(d) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment.

(e) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the judicial qualifications commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

(f) Schedule to section 12.–

(1) Except to the extent inconsistent with the provisions of this section, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(2) After this section becomes effective and until adopted by rule of the commission consistent with it:

a. The commission shall be divided, as determined by the chairperson, into one investigative panel and one hearing panel to meet the responsibilities set forth in this section.

b. The investigative panel shall be composed of:

1. Four judges,

2. Two members of the bar of Florida, and

3. Three non-lawyers.

c. The hearing panel shall be composed of:

1. Two judges,

2. Two members of the bar of Florida, and

3. Two non-lawyers.

d. Membership on the panels may rotate in a manner determined by the rules of the commission provided that no member shall vote as a member of the investigative and hearing panel on the same proceeding.

e. The commission shall hire separate staff for each panel.

f. The members of the commission shall serve for staggered terms of six years.

g. The terms of office of the present members of the judicial qualifications commission shall expire upon the effective date of the amendments to this section approved by the legislature during the regular session of the legislature in 1996 and new members shall be appointed to serve the following staggered terms:

1. Group I.--The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one judge from the district courts of appeal and one circuit judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 1998.

2. Group II.--The terms of five members, composed of one elector as set forth in s. 12(a)(1)c. of Article V, two members of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one circuit judge and one county judge as set forth in s. 12(a)(1)a. of Article V shall expire on December 31, 2000.

3. Group III.--The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b., one judge from the district courts of appeal and one county judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 2002.

h. An appointment to fill a vacancy of the commission shall be for the remainder of the term.

i. Selection of members by district courts of appeal judges, circuit judges, and county court judges, shall be by no less than a majority of the members voting at the respective courts' conferences. Selection of members by the board of governors of the bar of Florida shall be by no less than a majority of the board.

j. The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court.

k. The compensation of members and referees shall be the travel expenses or transportation and per diem allowance as provided by general law.

§ 13. Prohibited activities

All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.

§ 14. Funding

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts for performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

§ 15. Attorneys; admission and discipline

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

§ 16. Clerks of the circuit courts

There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all

county funds. There may be a clerk of the county court if authorized by general or special law.

§ 17. State attorneys

In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors. A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; shall be and have been a member of the bar of Florida for the preceding five years; shall devote full time to the duties of the office; and shall not engage in the private practice of law. State attorneys shall appoint such assistant state attorneys as may be authorized by law.

§ 18. Public defenders

In each judicial circuit a public defender shall be elected for a term of four years, who shall perform duties prescribed by general law. A public defender shall be an elector of the state and reside in the territorial jurisdiction of the circuit and shall be and have been a member of the Bar of Florida for the preceding five years. Public defenders shall appoint such assistant public defenders as may be authorized by law.

§ 19. Judicial officers as conservators of the peace

All judicial officers in this state shall be conservators of the peace.

§ 20. Schedule to Article V

(a) This article shall replace all of Article V of the Constitution of 1885, as amended, which shall then stand repealed.

(b) Except to the extent inconsistent with the provisions of this article, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(c) After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:

(1) The supreme court shall have the jurisdiction immediately theretofore exercised by it, and it shall determine all proceedings pending before it on the effective date of this article.

(2) The appellate districts shall be those in existence on the date of adoption of this article. There shall be a district court of appeal in each district. The district courts of appeal shall have the jurisdiction immediately theretofore exercised by the district courts

of appeal and shall determine all proceedings pending before them on the effective date of this article.

(3) Circuit courts shall have jurisdiction of appeals from county courts and municipal courts, except those appeals which may be taken directly to the supreme court; and they shall have exclusive original jurisdiction in all actions at law not cognizable by the county courts; or proceedings relating to the settlement of the estate of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate; in all cases in equity including all cases relating to juveniles; of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged; in all cases involving legality of any tax assessment or toll; in the action of ejectment; and in all actions involving the titles or boundaries or right of possession of real property. The circuit court may issue injunctions. There shall be judicial circuits which shall be the judicial circuits in existence on the date of adoption of this article. The chief judge of a circuit may authorize a county court judge to order emergency hospitalizations pursuant to Chapter 71-131, Laws of Florida, in the absence from the county of the circuit judge and the county court judge shall have the power to issue all temporary orders and temporary injunctions necessary or proper to the complete exercise of such jurisdiction.

(4) County courts shall have original jurisdiction in all criminal misdemeanor cases not cognizable by the circuit courts, of all violations of municipal and county ordinances, and of all actions at law in which the matter in controversy does not exceed the sum of two thousand five hundred dollars ($2,500.00) exclusive of interest and costs, except those within the exclusive jurisdiction of the circuit courts. Judges of county courts shall be committing magistrates. The county courts shall have jurisdiction now exercised by the county judge's courts other than that vested in the circuit court by subsection (c)(3) hereof, the jurisdiction now exercised by the county courts, the claims court, the small claims courts, the small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts and courts of chartered counties, including but not limited to the counties referred to in Article VIII, sections 9, 10, 11 and 24 of the Constitution of 1885.

(5) Each judicial nominating commission shall be composed of the following:

a. Three members appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, district or circuit;

b. Three electors who reside in the territorial jurisdiction of the court or circuit appointed by the governor; and

c. Three electors who reside in the territorial jurisdiction of the court or circuit and who are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

(6) No justice or judge shall be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. No member shall be eligible for appointment to state judicial office so long as that person is a member of a judicial nominating commission and for a period of two years thereafter. All acts of a judicial nominating commission shall be made with a concurrence of a majority of its members.

(7) The members of a judicial nominating commission shall serve for a term of four years except the terms of the initial members of the judicial nominating commissions shall expire as follows:

a. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1974;

b. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1975;

c. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1976;

(8) All fines and forfeitures arising from offenses tried in the county court shall be collected, and accounted for by clerk of the court, and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court shall be paid monthly to the county or municipality respectively. If any costs are assessed and collected in connection with offenses tried in county court, all court costs shall be paid into the general revenue fund of the state of Florida and such other funds as prescribed by general law.

(9) Any municipality or county may apply to the chief judge of the circuit in which that municipality or county is situated for the county court to sit in a location suitable to the municipality or county and convenient in time and place to its citizens and police officers and upon such application said chief judge shall direct the court to sit in the location unless the chief judge shall determine the request is not justified. If the chief judge does not authorize the county court to sit in the location requested, the county or municipality may apply to the supreme court for an order directing the county court to sit in the location. Any municipality or county which so applies shall be required to provide the appropriate physical facilities in which the county court may hold court.

(10) All courts except the supreme court may sit in divisions as may be established by local rule approved by the supreme court.

(11) A county court judge in any county having a population of 40,000 or less according to the last decennial census, shall not be required to be a member of the bar of Florida.

(12) Municipal prosecutors may prosecute violations of municipal ordinances.

(13) Justice shall mean a justice elected or appointed to the supreme court and shall not include any judge assigned from any court.

(d) When this article becomes effective:

(1) All courts not herein authorized, except as provided by subsection (d)(4) of this section shall cease to exist and jurisdiction to conclude all pending cases and enforce all prior orders and judgments shall vest in the court that would have jurisdiction of the cause if thereafter instituted. All records of and property held by courts abolished hereby shall be transferred to the proper office of the appropriate court under this article.

(2) Judges of the following courts, if their terms do not expire in 1973 and if they are eligible under subsection (d)(8) hereof, shall become additional judges of the circuit court for each of the counties of their respective circuits, and shall serve as such circuit judges for the remainder of the terms to which they were elected and shall be eligible for election as circuit judges thereafter. These courts are: civil court of record of Dade county, all criminal courts of record, the felony courts of record of Alachua, Leon and Volusia Counties, the courts of record of Broward, Brevard, Escambia, Hillsborough, Lee, Manatee and Sarasota Counties, the civil and criminal court of record of Pinellas County, and county judge's courts and separate juvenile courts in counties having a population in excess of 100,000 according to the 1970 federal census. On the effective date of this article, there shall be an additional number of positions of circuit judges equal to the number of existing circuit judges and the number of judges of the above named courts whose term expires in 1973. Elections to such offices shall take place at the same time and manner as elections to other state judicial offices in 1972 and the terms of such offices shall be for a term of six years. Unless changed pursuant to section nine of this article, the number of circuit judges presently existing and created by this subsection shall not be changed.

(3) In all counties having a population of less than 100,000 according to the 1970 federal census and having more than one county judge on the date of the adoption of this article, there shall be the same number of judges of the county court as there are county judges existing on that date unless changed pursuant to section 9 of this article.

(4) Municipal courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal courts not previously abolished shall cease to exist. Judges of municipal courts shall remain in office and be subject to reappointment or reelection in the manner prescribed by law until said courts are terminated pursuant to the provisions of this subsection. Upon municipal courts being terminated or abolished in accordance with the provisions of this subsection, the judges thereof who are not members of the bar of Florida, shall be eligible to seek election as judges of county courts of their respective counties.

(5) Judges, holding elective office in all other courts abolished by this article, whose terms do not expire in 1973 including judges established pursuant to Article VIII, sections 9 and 11 of the Constitution of 1885 shall serve as judges of the county court for the remainder of the term to which they were elected. Unless created pursuant to section 9, of this Article V such judicial office shall not continue to exist thereafter.

(6) By March 21, 1972, the supreme court shall certify the need for additional circuit and county judges. The legislature in the 1972 regular session may by general law create additional offices of judge, the terms of which shall begin on the effective date of this article. Elections to such offices shall take place at the same time and manner as election to other state judicial offices in 1972.

(7) County judges of existing county judge's courts and justices of the peace and magistrates' court who are not members of bar of Florida shall be eligible to seek election as county court judges of their respective counties.

(8) No judge of a court abolished by this article shall become or be eligible to become a judge of the circuit court unless the judge has been a member of bar of Florida for the preceding five years.

(9) The office of judges of all other courts abolished by this article shall be abolished as of the effective date of this article.

(10) The offices of county solicitor and prosecuting attorney shall stand abolished, and all county solicitors and prosecuting attorneys holding such offices upon the effective date of this article shall become and serve as assistant state attorneys for the circuits in which their counties are situate for the remainder of their terms, with compensation not less than that received immediately before the effective date of this article.

(e) Limited operation of some provisions.--

(1) All justices of the supreme court, judges of the district courts of appeal and circuit judges in office upon the effective date of this article shall retain their offices for the remainder of their respective terms. All members of the judicial qualifications commission in office upon the effective date of this article shall retain their offices for the remainder of their respective terms. Each state attorney in office on the effective date of this article shall retain the office for the remainder of the term.

(2) No justice or judge holding office immediately after this article becomes effective who held judicial office on July 1, 1957, shall be subject to retirement from judicial office because of age pursuant to section 8 of this article.

(f) Until otherwise provided by law, the nonjudicial duties required of county judges shall be performed by the judges of the county court.

(g) All provisions of Article V of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes. [FN1]

(h) The requirements of section 14 relative to all county court judges or any judge of a municipal court who continues to hold office pursuant to subsection (d)(4) hereof being compensated by state salaries shall not apply prior to January 3, 1977, unless otherwise provided by general law.

(i) Deletion of obsolete schedule items.--The legislature shall have power, by concurrent resolution, to delete from this article any subsection of this section 20 including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

(j) Effective date.--Unless otherwise provided herein, this article shall become effective at 11:59 o'clock P.M., Eastern Standard Time, January 1, 1973.

Article VI. Suffrage and Elections

§ 1. Regulation of elections

All elections by the people shall be by direct and secret vote. General elections shall be determined by a plurality of votes cast. Registration and elections shall, and political party functions may, be regulated by law; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters.

§ 2. Electors

Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

§ 3. Oath

Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

§ 4. Disqualifications

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

(b) No person may appear on the ballot for re-election to any of the following offices:

(1) Florida representative,

(2) Florida senator,

(3) Florida Lieutenant governor,

(4) any office of the Florida cabinet,

(5) U.S. Representative from Florida, or

(6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

§ 5. Primary, general, and special elections

(a) A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the term. A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law. Special elections and referenda shall be held as provided by law.

(b) If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

§ 6. Municipal and district elections

Registration and elections in municipalities shall, and in other governmental entities created by statute may, be provided by law.

§ 7. Campaign spending limits and funding of campaigns for elective state-wide office

It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.

Article VII. Finance and Taxation

§ 1. Taxation; appropriations; state expenses; state revenue limitation

(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

(b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

(c) No money shall be drawn from the treasury except in pursuance of appropriation made by law.

(d) Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.

(e) Except as provided herein, state revenues collected for any fiscal year shall be limited to state revenues allowed under this subsection for the prior fiscal year plus an adjustment for growth. As used in this subsection, "growth" means an amount equal to the average annual rate of growth in Florida personal income over the most recent twenty quarters times the state revenues allowed under this subsection for the prior fiscal year. For the 1995-1996 fiscal year, the state revenues allowed under this subsection for the prior fiscal year shall equal the state revenues collected for the 1994-1995 fiscal year. Florida personal income shall be determined by the legislature, from information available from the United States Department of Commerce or its successor on the first day of February prior to the beginning of the fiscal year. State revenues collected for any fiscal year in excess of this limitation shall be transferred to the budget stabilization fund until the fund reaches the maximum balance specified in Section 19(g) of Article III, and thereafter shall be refunded to taxpayers as provided by general law. State revenues allowed under this subsection for any fiscal year may be increased by a two-thirds vote of the membership of each house of the legislature in a separate bill that contains no other subject and that sets forth the dollar amount by which the state revenues allowed will be increased. The vote may not be taken less than seventy-two hours after the third reading of the bill. For purposes of this subsection, "state revenues" means taxes, fees, licenses, and charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. However, "state revenues" does not include: revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds by the state; revenues that are used to provide matching funds for the federal Medicaid program with the exception of the revenues used to support the Public Medical Assistance Trust Fund or its successor program and with the exception of state matching funds used to fund elective expansions made after July 1, 1994; proceeds from the state lottery returned as prizes; receipts of the Florida Hurricane Catastrophe Fund; balances carried forward from prior fiscal years; taxes, licenses, fees, and charges for services imposed by local, regional, or school district governing bodies; or revenue from

taxes, licenses, fees, and charges for services required to be imposed by any amendment or revision to this constitution after July 1, 1994. An adjustment to the revenue limitation shall be made by general law to reflect the fiscal impact of transfers of responsibility for the funding of governmental functions between the state and other levels of government. The legislature shall, by general law, prescribe procedures necessary to administer this subsection.

§ 2. Taxes; rate

All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; provided, as to any obligations secured by mortgage, deed of trust, or other lien on real estate wherever located, an intangible tax of not more than two mills on the dollar may be levied by law to be in lieu of all other intangible assessments on such obligations.

§ 3. Taxes; exemptions

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality.

and may be renewable by referendum as provided by general law.

(d) By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

(e) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

§ 4. Taxation; assessments

By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as. stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead

shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.
(2) Twenty percent of the total assessed value of the property as improved.

§ 5. Estate, inheritance and income taxes

(a) Natural persons. No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.

(b) Others. No tax upon the income of residents and citizens other than natural persons shall be levied by the state, or under its authority, in excess of 5% of net income, as

defined by law, or at such greater rate as is authorized by a three-fifths (3/5) vote of the membership of each house of the legislature or as will provide for the state the maximum amount which may be allowed to be credited against income taxes levied by the United States and other states. There shall be exempt from taxation not less than five thousand dollars ($5,000) of the excess of net income subject to tax over the maximum amount allowed to be credited against income taxes levied by the United States and other states.

(c) Effective date. This section shall become effective immediately upon approval by the electors of Florida.

§ 6. Homestead exemptions

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).

(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with respect to 1981 assessments; twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.

(e) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

§ 7. Allocation of pari-mutuel taxes

Taxes upon the operation of pari-mutuel pools may be preempted to the state or allocated in whole or in part to the counties. When allocated to the counties, the distribution shall be in equal amounts to the several counties.

§ 8. Aid to local governments

State funds may be appropriated to the several counties, school districts, municipalities or special districts upon such conditions as may be provided by general law. These conditions may include the use of relative ad valorem assessment levels determined by a state agency designated by general law.

§ 9. Local taxes

(a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing

municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

§ 10. Pledging credit

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:

(a) the investment of public trust funds;

(b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;

(c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.

(d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

§ 11. State bonds; revenue bonds

(a) State bonds pledging the full faith and credit of the state may be issued only to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, upon approval by a vote of the electors; provided state bonds issued pursuant to this subsection may be refunded without a vote of the electors at a lower net average interest cost rate. The total outstanding principal of state bonds issued pursuant to this subsection shall never exceed fifty percent of the total tax revenues of the state for the two preceding fiscal years, excluding any tax revenues held in trust under the provisions of this constitution.

(b) Moneys sufficient to pay debt service on state bonds as the same becomes due shall be appropriated by law.

(c) Any state bonds pledging the full faith and credit of the state issued under this section or any other section of this constitution may be combined for the purposes of sale.

(d) Revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from sources other than state tax revenues.

(e) Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.

(f) Each project, building, or facility to be financed or refinanced with revenue bonds issued under this section shall first be approved by the Legislature by an act relating to appropriations or by general law.

§ 12. Local bonds

Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

§ 13. Relief from illegal taxes

Until payment of all taxes which have been legally assessed upon the property of the same owner, no court shall grant relief from the payment of any tax that may be illegal or illegally assessed.

§ 14. Bonds for pollution control and abatement and other water facilities

(a) When authorized by law, state bonds pledging the full faith and credit of the state may be issued without an election to finance the construction of air and water pollution control and abatement and solid waste disposal facilities and other water facilities authorized by general law (herein referred to as "facilities") to be operated by any municipality, county, district or authority, or any agency thereof (herein referred to as "local governmental agencies"), or by any agency of the State of Florida. Such bonds shall be secured by a

pledge of and shall be payable primarily from all or any part of revenues to be derived from operation of such facilities, special assessments, rentals to be received under lease-purchase agreements herein provided for, any other revenues that may be legally available for such purpose, including revenues from other facilities, or any combination thereof (herein collectively referred to as "pledged revenues"), and shall be additionally secured by the full faith and credit of the State of Florida.

(b) No such bonds shall be issued unless a state fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the pledged revenues exceed seventy-five per cent of the pledged revenues.

(c) The state may lease any of such facilities to any local governmental agency, under lease-purchase agreements for such periods and under such other terms and conditions as may be mutually agreed upon. The local governmental agencies may pledge the revenues derived from such leased facilities or any other available funds for the payment of rentals thereunder; and, in addition, the full faith and credit and taxing power of such local governmental agencies may be pledged for the payment of such rentals without any election of freeholder electors or qualified electors.

(d) The state may also issue such bonds for the purpose of loaning money to local governmental agencies, for the construction of such facilities to be owned or operated by any of such local governmental agencies. Such loans shall bear interest at not more than one-half of one per cent per annum greater than the last preceding issue of state bonds pursuant to this section, shall be secured by the pledge revenues, and may be additionally secured by the full faith and credit of the local governmental agencies.

(e) The total outstanding principal of state bonds issued pursuant to this section 14 shall never exceed fifty per cent of the total tax revenues of the state for the two preceding fiscal years.

§ 15. Revenue bonds for scholarship loans

(a) When authorized by law, revenue bonds may be issued to establish a fund to make loans to students determined eligible as prescribed by law and who have been admitted to attend any public or private institutions of higher learning, junior colleges, health related training institutions, or vocational training centers, which are recognized or accredited under terms and conditions prescribed by law. Revenue bonds issued pursuant to this section shall be secured by a pledge of and shall be payable primarily from payments of interest, principal, and handling charges to such fund from the recipients of the loans and, if authorized by law, may be additionally secured by student fees and by any other moneys in such fund. There shall be established from the proceeds of each issue of revenue bonds a reserve account in an amount equal to and sufficient to pay the greatest amount of principal, interest, and handling charges to become due on such issue in any ensuing state fiscal year.

(b) Interest moneys in the fund established pursuant to this section, not required in any fiscal year for payment of debt service on then outstanding revenue bonds or for maintenance of the reserve account, may be used for educational loans to students determined to be eligible therefor in the manner provided by law, or for such other related purposes as may be provided by law.

§ 16. Bonds for housing and related facilities

(a) When authorized by law, revenue bonds may be issued without an election to finance or refinance housing and related facilities in Florida, herein referred to as "facilities."

(b) The bonds shall be secured by a pledge of and shall be payable primarily from all or any part of revenues to be derived from the financing, operation or sale of such facilities, mortgage or loan payments, and any other revenues or assets that may be legally available for such purposes derived from sources other than ad valorem taxation, including revenues from other facilities, or any combination thereof, herein collectively referred to as "pledged revenues," provided that in no event shall the full faith and credit of the state be pledged to secure such revenue bonds.

(c) No bonds shall be issued unless a state fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for payment of such debt service requirements, as defined by law.

§ 17. Bonds for acquiring transportation right-of-way or for constructing bridges

(a) When authorized by law, state bonds pledging the full faith and credit of the state may be issued, without a vote of the electors, to finance or refinance the cost of acquiring real property or the rights to real property for state roads as defined by law, or to finance or refinance the cost of state bridge construction, and purposes incidental to such property acquisition or state bridge construction.

(b) Bonds issued under this section shall be secured by a pledge of and shall be payable primarily from motor fuel or special fuel taxes, except those defined in Section 9(c) of Article XII, as provided by law, and shall additionally be secured by the full faith and credit of the state.

(c) No bonds shall be issued under this section unless a state fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed ninety percent of the pledged revenues available for payment of such debt service requirements, as defined by law. For the purposes of this subsection, the term "pledged revenues" means all revenues pledged to the payment of debt service, excluding any pledge of the full faith and credit of the state.

§ 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this

section.

Article VIII. Local Government

§ 1. Counties

(a) **Political subdivisions**. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) **County funds**. The care, custody, and method of disbursing county funds shall be provided by general law.

(c) **Government**. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) **County officers**. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

(e) **Commissioners**. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) **Non-charter government**. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) **Charter government**. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) **Taxes; limitation**. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) **County ordinances**. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.

(j) **Violation of ordinances**. Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) **County seat**. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

§ 2. Municipalities

(a) **Establishment.** Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) **Powers.** Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

(c) **Annexation.** Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

§ 3. Consolidation

The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

§ 4. Transfer of powers

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

§ 5. Local option

(a) Local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county. The status of a county with respect thereto shall be changed only by vote of the electors in a special election called upon the petition of twenty-five per cent of the electors of the county, and not sooner than two years after an earlier election on the same question. Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law.

(b) Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

§ 6. Schedule to Article VIII

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) **Counties; county seats; municipalities; districts.** The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of intoxicating liquors, wines and beers; the method of selection of county officers; the performance of municipal functions by county officers; the county seats; and the municipalities and special districts of the state, their powers, jurisdiction and government.

(c) **Officers to continue in office.** Every person holding office when this article becomes effective shall continue in office for the remainder of the term if that office is not abolished. If the office is abolished the incumbent shall be paid adequate compensation, to be fixed by law, for the loss of emoluments for the remainder of the term.

(d) **Ordinances.** Local laws relating only to unincorporated areas of a county on the effective date of this article may be amended or repealed by county ordinance.

(e) **Consolidation and home rule.** Article VIII, Sections 9, 10, 11 and 24, of the Constitution of 1885, as amended, [FN1] shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, [FN1] shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended. [FN1]

(f) **Dade county; powers conferred upon municipalities.** To the extent not inconsistent with the powers of existing municipalities or general law, the Metropolitan Government of Dade County may exercise all the powers conferred now or hereafter by general law upon municipalities.

(g) **Deletion of obsolete schedule items.** The legislature shall have power, by joint resolution, to delete from this article any subsection of this Section 6, including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

Article IX. Education

§ 1. Public education

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:

(1) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;

(2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and

(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection.

(b) Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.

(c) The early childhood education and development programs provided by reason of subparagraph (b) shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those

funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development.

§ 2. State board of education

The state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law. The state board of education shall consist of seven members appointed by the governor to staggered 4-year terms, subject to confirmation by the senate. The state board of education shall appoint the commissioner of education.

§ 3. Terms of appointive board members

Members of any appointive board dealing with education may serve terms in excess of four years as provided by law.

§ 4. School districts; school boards

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

§ 5. Superintendent of schools

In each school district there shall be a superintendent of schools who shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law. The resolution or special law may be rescinded or repealed by either procedure after four years.

§ 6. State school fund

The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

§ 7. State University System

a. Purposes. In order to achieve excellence through teaching students, advancing research

and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

b. State University System. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

c. Local Boards of Trustees. Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

d. Statewide Board of Governors. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

Article X. Miscellaneous

§ 1. Amendments to United States Constitution

The legislature shall not take action on any proposed amendment to the constitution of the United States unless a majority of the members thereof have been elected after the proposed amendment has been submitted for ratification.

§ 2. Militia

(a) The militia shall be composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States; and no person because of religious creed or opinion shall be exempted from military duty except upon conditions provided by law.

(b) The organizing, equipping, housing, maintaining, and disciplining of the militia, and the safekeeping of public arms may be provided for by law.

(c) The governor shall appoint all commissioned officers of the militia, including an adjutant general who shall be chief of staff. The appointment of all general officers shall be subject to confirmation by the senate.

(d) The qualifications of personnel and officers of the federally recognized national guard, including the adjutant general, and the grounds and proceedings for their discipline and removal shall conform to the appropriate United States army or air force regulations and usages.

§ 3. Vacancy in office

Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

§ 4. Homestead; exemptions

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located

within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

§ 5. Coverture and property

There shall be no distinction between married women and married men in the holding, control, disposition, or encumbering of their property, both real and personal; except that dower or curtesy may be established and regulated by law.

§ 6. Eminent domain

(a) No private property shall be taken except for a public purpose and with full compensation therefor 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.

§ 7. Lotteries

Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.

§ 8. Census

(a) Each decennial census of the state taken by the United States shall be an official census of the state.

(b) Each decennial census, for the purpose of classifications based upon population, shall become effective on the thirtieth day after the final adjournment of the regular session of the legislature convened next after certification of the census.

§ 9. Repeal of criminal statutes

Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

§ 10. Felony; definition

The term "felony" as used herein and in the laws of this state shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.

§ 11. Sovereignty lands

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

§ 12. Rules of construction

Unless qualified in the text the following rules of construction shall apply to this constitution.

(a) "Herein" refers to the entire constitution.

(b) The singular includes the plural.

(c) The masculine includes the feminine.

(d) "Vote of the electors" means the vote of the majority of those voting on the matter in an election, general or special, in which those participating are limited to the electors of the governmental unit referred to in the text.

(e) Vote or other action of a legislative house or other governmental body means the vote or action of a majority or other specified percentage of those members voting on the matter. "Of the membership" means "of all members thereof."

(f) The terms "judicial office," "justices" and "judges" shall not include judges of courts established solely for the trial of violations of ordinances.

(g) "Special law" means a special or local law.

(h) Titles and subtitles shall not be used in construction.

§ 13. Suits against the state

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

§ 14. State retirement systems benefit changes

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

§ 15. State operated lotteries

(a) Lotteries may be operated by the state.

(b) If any subsection or subsections of the amendment to the Florida Constitution are held unconstitutional for containing more than one subject, this amendment shall be limited to subsection (a) above.

(c) This amendment shall be implemented as follows:

(1) Schedule--On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

§ 16. Limiting marine net fishing

(a) The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing, and waste.

(b) For purposes of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

(1) No gill nets or other entangling nets shall be used in Florida waters; and

(2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on vessel shall use more than one such net in nearshore and inshore Florida waters.

(c) For purposes of this section:

(1) "gill net" means one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills, and "entangling net"

means a drift net, tarammel net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown, cast net is not a gill or an entangling net;

(2) "mesh area" of a net means the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets of combination type nets shall be based on the shape of the individual components;

(3) "coastline" means the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America;

(4) "Florida waters" means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of FLorida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof; and

(5) "nearshore and inshore Florida waters" means all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.

(d) This section shall not apply to the use of nets for scientific research or governmental purposes.

(e) Persons violating this section shall be prosecuted and punished pursuant to the penalties in s. 370.021(2)(a), (b), (c)6. and 7., and (e). Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations thereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).

(f) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by law or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.

(g) If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

(h) This section shall take effect on the July 1 next occurring after approval hereof by vote of the electors.

§ 17. Everglades Trust Fund

(a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article III, Section 19(f). The purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District, or its successor agency, consistent with statutory law.

(b) The Everglades Trust Fund may receive funds from any source, including gifts from individuals, corporations or other entities, funds from general revenue as determined by the Legislature; and any other funds so designated by the Legislature, by the United States Congress or by any other governmental entity.

(c) Funds deposited to the Everglades Trust Fund shall be expended for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area.

(d) For purposes of this subsection, the terms "Everglades Protection Area, "Everglades Agricultural Area" and "South Florida Water Management District" shall have the meanings as defined in statutes in effect on January 1, 1996.

§ 18. Disposition of conservation lands

The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

§ 19. Repealed effective January 4, 2005 [High Speed Ground Transportation System]

§ 20. Workplaces Without Tobacco Smoke

(a) **Prohibition.** As a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke, tobacco smoking is prohibited in enclosed indoor workplaces.
(b) **Exceptions.** As further explained in the definitions below, tobacco smoking may be permitted in private residences whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof; and further may be permitted in retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. However, nothing in this section or in its implementing legislation or regulations shall prohibit the owner, lessee, or other person in control of the use of an enclosed indoor workplace from further prohibiting or limiting smoking therein.

(c) **Definitions.** For purposes of this section, the following words and terms shall have the stated meanings:

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

"Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

"Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like.

"Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. This section applies to all such enclosed indoor workplaces without regard to whether work is occurring at any given time.

"Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

"Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental.

"Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

"Stand-alone bar" means any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or

intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.

(d) **Legislation.** In the next regular legislative session occurring after voter approval of this amendment, the Florida Legislature shall adopt legislation to implement this amendment in a manner consistent with its broad purpose and stated terms, and having an effective date no later than July 1 of the year following voter approval. Such legislation shall include, without limitation, civil penalties for violations of this section; provisions for administrative enforcement; and the requirement and authorization of agency rules for implementation and enforcement. Nothing herein shall preclude the Legislature from enacting any law constituting or allowing a more restrictive regulation of tobacco smoking than is provided in this section.

§ 21. Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy

Inhumane treatment of animals is a concern of Florida citizens. To prevent cruelty to certain animals and as recommended by The Humane Society of the United States, the people of the State of Florida hereby limit the cruel and inhumane confinement of pigs during pregnancy as provided herein.

a. It shall be unlawful for any person to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy, on a farm in such a way that she is prevented from turning around freely.

b. This section shall not apply:

1. when a pig is undergoing an examination, test, treatment or operation carried out for veterinary purposes, provided the period during which the animal is confined or tethered is not longer than reasonably necessary.

2. during the prebirthing period.

a. For purposes of this section:

1. "enclosure" means any cage, crate or other enclosure in which a pig is kept for all or the majority of any day, including what is commonly described as the "gestation crate."

2. "farm" means the land, buildings, support facilities, and other appurtenances used in the production of animals for food or fiber.

3. "person" means any natural person, corporation and/or business entity.

4. "pig" means any animal of the porcine species.

5. "turning around freely" means turning around without having to touch any side of the pig's enclosure.

6. "prebirthing period" means the seven day period prior to a pig's expected date of giving birth.

a. A person who violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082(4)(a), Florida Statutes (1999), as amended, or by a fine of not more than $5000, or by both imprisonment and a fine, unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Section 828.13, Florida Statutes (1999). The confinement or tethering of each pig shall constitute a separate offense. The knowledge or acts of agents and employees of a person in regard to a pig owned, farmed or in the custody of a person, shall be held to be the knowledge or act of such person.

b. It is the intent of this section that implementing legislation is not required for enforcing any violations hereof.

c. If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

d. This section shall take effect six years after approval by the electors.

§ 22. Parental notice of termination of a minor's pregnancy

The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

§ 23. Slot machines

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the

referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

§ 24. Florida minimum wage

(a) Public policy. All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.

(b) Definitions. As used in this amendment, the terms "Employer," "Employee" and "Wage" shall have the meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing regulations.

(c) Minimum wage. Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of $6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA, Employers may credit towards satisfaction of the Minimum Wage tips up to the amount of the allowable FLSA tip credit in 2003.

(d) Retaliation prohibited. It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this amendment. Rights protected under this amendment include, but are not limited to, the right to file a complaint or inform any person about any party's alleged noncompliance with this amendment, and the right to inform any

person of his or her potential rights under this amendment and to assist him or her in asserting such rights.

(e) Enforcement. Persons aggrieved by a violation of this amendment may bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of $1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.

(f) Additional legislation, implementation and construction. Implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

(g) Severability. If any part of this amendment, or the application of this amendment to any person or circumstance, is held invalid, the remainder of this amendment, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this amendment are severable.

§ 25. Patients' right to know about adverse medical incidents

(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

(c) For purposes of this section, the following terms have the following meanings:

(1) The phrases "health care facility" and "health care provider" have the meaning given in general law related to a patient's rights and responsibilities.

(2) The term "patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available.

§ 26. Prohibition of medical license after repeated medical malpractice

(a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

(b) For purposes of this section, the following terms have the following meanings:

(1) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

(2) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court or law, final administrative agency decision, or decision of binding arbitration.

Article XI. Amendments

§ 1. Proposal by legislature

Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

§ 2. Revision commission

(a) Within thirty days before the convening of the 2017 regular session of the legislature, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:

(1) the attorney general of the state;

(2) fifteen members selected by the governor;

(3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and

(4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.

(b) The governor shall designate one member of the commission as its chair. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it.

§ 3. Initiative

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

§ 4. Constitutional convention

(a) The power to call a convention to consider a revision of the entire constitution is reserved to the people. It may be invoked by filing with the custodian of state records a petition, containing a declaration that a constitutional convention is desired, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to fifteen per cent of the votes cast in each such district respectively and in the state as a whole in the last preceding election of presidential electors.

(b) At the next general election held more than ninety days after the filing of such petition there shall be submitted to the electors of the state the question: "Shall a constitutional convention be held?" If a majority voting on the question votes in the affirmative, at the next succeeding general election there shall be elected from each representative district a member of a constitutional convention. On the twenty-first day following that election, the convention shall sit at the capital, elect officers, adopt rules of procedure, judge the election of its membership, and fix a time and place for its future meetings. Not later than ninety days before the next succeeding general election, the convention shall cause to be filed with the custodian of state records any revision of this constitution proposed by it.

§ 5. Amendment or revision election

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

(c) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(d) Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

(e) If the proposed amendment or revision is approved by vote of the electors, it shall be

effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

§ 6. Taxation and budget reform commission

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decision making process.

(e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes

related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.

§ 7. Tax or fee limitation

Notwithstanding Article X, Section 12(d) of this constitution, no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered. For purposes of this section, the phrase "new State tax or fee" shall mean any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds vote required hereby shall be null, void and without effect.

Article XII. Schedule

§ 1. Constitution of 1885 superseded

Article I through IV, VII, and IX through XX of the Constitution of Florida adopted in 1885, as amended from time to time, are superseded by this revision except those sections expressly retained and made a part of this revision by reference.

§ 2. Property taxes; millages

Tax millages authorized in counties, municipalities and special districts, on the date this revision becomes effective, may be continued until reduced by law.

§ 3. Officers to continue in office

Every person holding office when this revision becomes effective shall continue in office for the remainder of the term if that office is not abolished. If the office is abolished the incumbent shall be paid adequate compensation, to be fixed by law, for the loss of emoluments for the remainder of the term.

§ 4. State commissioner of education

The state superintendent of public instruction in office on the effective date of this revision shall become and, for the remainder of the term being served, shall be the commissioner of education.

§ 5. Superintendent of schools

(a) On the effective date of this revision the county superintendent of public instruction of each county shall become and, for the remainder of the term being served, shall be the superintendent of schools of that district.

(b) The method of selection of the county superintendent of public instruction of each county, as provided by or under the Constitution of 1885, as amended, shall apply to the selection of the district superintendent of schools until changed as herein provided.

§ 6. Laws preserved

(a) All laws in effect upon the adoption of this revision, to the extent not inconsistent with it, shall remain in force until they expire by their terms or are repealed.

(b) All statutes which, under the Constitution of 1885, as amended, apply to the state superintendent of public instruction and those which apply to the county superintendent of public instruction shall under this revision apply, respectively, to the state commissioner of education and the district superintendent of schools.

§ 7. Rights reserved

(a) All actions, rights of action, claims, contracts and obligations of individuals, corporations and public bodies or agencies existing on the date this revision becomes effective shall continue to be valid as if this revision had not been adopted. All taxes, penalties, fines and forfeitures owing to the state under the Constitution of 1885, as amended, shall inure to the state under this revision, and all sentences as punishment for crime shall be executed according to their terms.

(b) This revision shall not be retroactive so as to create any right or liability which did not exist under the Constitution of 1885, as amended, based upon matters occurring prior to the adoption of this revision.

§ 8. Public debts recognized

All bonds, revenue certificates, revenue bonds and tax anticipation certificates issued pursuant to the Constitution of 1885, as amended by the state, any agency, political subdivision or public corporation of the state shall remain in full force and effect and shall be secured by the same sources of revenue as before the adoption of this revision, and, to the extent necessary to effectuate this section, the applicable provisions of the Constitution of 1885, as amended, are retained as a part of this revision until payment in full of these public securities.

§ 9. Bonds

(a) Additional securities.--

(1) Article IX, Section 17, of the Constitution of 1885, as amended, as it existed immediately before this Constitution, as revised in 1968, became effective, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim, except revenue bonds, revenue certificates or other evidences of indebtedness hereafter issued thereunder may be issued by the agency of the state so authorized by law.

(2) That portion of Article XII, Section 9, Subsection (a) of this Constitution, as amended, which by reference adopted Article XII, Section 19 of the Constitution of 1885, as amended, as the same existed immediately before the effective date of this amendment is adopted by this reference as part of this revision as completely as though incorporated herein verbatim, for the purpose of providing that after the effective date of this amendment all of the proceeds of the revenues derived from the gross receipts taxes, as therein defined, collected in each year shall be applied as provided therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds or certificates issued before the effective date of this amendment or any refundings thereof which are secured by such gross receipts taxes. No bonds or other obligations may be issued pursuant to the provisions of Article XII, Section 19, of the Constitution of 1885, as amended, but this provision shall not be construed to prevent the refunding of any such outstanding bonds or obligations pursuant to the provisions of this subsection (a)(2).

Subject to the requirements of the first paragraph of this subsection (a)(2), beginning July 1, 1975, all of the proceeds of the revenues derived from the gross receipts taxes collected from every person, including municipalities, as provided and levied pursuant to the provisions of chapter 203, Florida Statutes, as such chapter is amended from time to time, shall, as collected, be placed in a trust fund to be known as the "public education capital outlay and debt service trust fund" in the state treasury (hereinafter referred to as "capital outlay fund"), and used only as provided herein.

The capital outlay fund shall be administered by the state board of education as created and constituted by Section 2 of Article IX of the Constitution of Florida as revised in 1968 (hereinafter referred to as "state board"), or by such other instrumentality of the state which shall hereafter succeed by law to the powers, duties and functions of the state board, including the powers, duties and functions of the state board provided in this subsection (a)(2). The state board shall be a body corporate and shall have all the powers provided herein in addition to all other constitutional and statutory powers related to the purposes of this subsection (a)(2) heretofore or hereafter conferred by law upon the state board, or its predecessor created by the Constitution of 1885, as amended.

State bonds pledging the full faith and credit of the state may be issued, without a vote of the electors, by the state board pursuant to law to finance or refinance capital projects theretofore authorized by the legislature, and any purposes appurtenant or incidental thereto, for the state system of public education provided for in Section 1 of Article IX of this Constitution (hereinafter referred to as "state system"), including but not limited to institutions of higher learning, community colleges, vocational technical schools, or public schools, as now defined or as may hereafter be defined by law. All such bonds shall mature not later than thirty years after the date of issuance thereof. All other details of such bonds shall be as provided by law or by the proceedings authorizing such bonds; provided, however, that no bonds, except refunding bonds, shall be issued, and no proceeds shall be expended for the cost of any capital project, unless such project has been authorized by the legislature.

Bonds issued pursuant to this subsection (a)(2) shall be primarily payable from such revenues derived from gross receipts taxes, and shall be additionally secured by the full faith and credit of the state. No such bonds shall ever be issued in an amount exceeding ninety percent of the amount which the state board determines can be serviced by the revenues derived from the gross receipts taxes accruing thereafter under the provisions of this subsection (a)(2), and such determination shall be conclusive.

The moneys in the capital outlay fund in each fiscal year shall be used only for the following purposes and in the following order of priority:

a. For the payment of the principal of and interest on any bonds due in such fiscal year;

b. For the deposit into any reserve funds provided for in the proceedings authorizing the issuance of bonds of any amounts required to be deposited in such reserve funds in such

fiscal year;

c. For direct payment of the cost or any part of the cost of any capital project for the state system theretofore authorized by the legislature, or for the purchase or redemption of outstanding bonds in accordance with the provisions of the proceedings which authorized the issuance of such bonds, or for the purpose of maintaining, restoring, or repairing existing public educational facilities.

(b) Refunding bonds.--Revenue bonds to finance the cost of state capital projects issued prior to the date this revision becomes effective, including projects of the Florida state turnpike authority or its successor but excluding all portions of the state highway system, may be refunded as provided by law without vote of the electors at a lower net average interest cost rate by the issuance of bonds maturing not later than the obligations refunded, secured by the same revenues only.

(c) Motor vehicle fuel taxes.--

(1) A state tax, designated "second gas tax," of two cents per gallon upon gasoline and other like products of petroleum and an equivalent tax upon other sources of energy used to propel motor vehicles as levied by Article IX, Section 16, of the Constitution of 1885, as amended, is hereby continued. The proceeds of said tax shall be placed monthly in the state roads distribution fund in the state treasury.

(2) Article IX, Section 16, of the Constitution of 1885, as amended, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim for the purpose of providing that after the effective date of this revision the proceeds of the "second gas tax" as referred to therein shall be allocated among the several counties in accordance with the formula stated therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds, revenue certificates and tax anticipation certificates or any refundings thereof secured by any portion of the "second gas tax."

(3) No funds anticipated to be allocated under the formula stated in Article IX, Section 16, of the Constitution of 1885, as amended, shall be pledged as security for any obligation hereafter issued or entered into, except that any outstanding obligations previously issued pledging revenues allocated under said Article IX, Section 16, may be refunded at a lower average net interest cost rate by the issuance of refunding bonds, maturing not later than the obligations refunded, secured by the same revenues and any other security authorized in paragraph (5) of this subsection.

(4) Subject to the requirements of paragraph (2) of this subsection and after payment of administrative expenses, the "second gas tax" shall be allocated to the account of each of the several counties in the amounts to be determined as follows: There shall be an initial allocation of one-fourth in the ratio of county area to state area, one-fourth in the ratio of the total county population to the total population of the state in accordance with the latest available federal census, and one-half in the ratio of the total "second gas tax" collected on retail sales or use in each county to the total collected in all counties of the

state during the previous fiscal year. If the annual debt service requirements of any obligations issued for any county, including any deficiencies for prior years, secured under paragraph (2) of this subsection, exceeds the amount which would be allocated to that county under the formula set out in this paragraph, the amounts allocated to other counties shall be reduced proportionately.

(5) Funds allocated under paragraphs (2) and (4) of this subsection shall be administered by the state board of administration created under Article IV, Section 4. The board shall remit the proceeds of the "second gas tax" in each county account for use in said county as follows: eighty per cent to the state agency supervising the state road system and twenty per cent to the governing body of the county. The percentage allocated to the county may be increased by general law. The proceeds of the "second gas tax" subject to allocation to the several counties under this paragraph (5) shall be used first, for the payment of obligations pledging revenues allocated pursuant to Article IX, Section 16, of the Constitution of 1885, as amended, and any refundings thereof; second, for the payment of debt service on bonds issued as provided by this paragraph (5) to finance the acquisition and construction of roads as defined by law; and third, for the acquisition and construction of roads and for road maintenance as authorized by law. When authorized by law, state bonds pledging the full faith and credit of the state may be issued without any election: (i) to refund obligations secured by any portion of the "second gas tax" allocated to a county under Article IX, Section 16, of the Constitution of 1885, as amended; (ii) to finance the acquisition and construction of roads in a county when approved by the governing body of the county and the state agency supervising the state road system; and (iii) to refund obligations secured by any portion of the "second gas tax" allocated under paragraph 9(c)(4). No such bonds shall be issued unless a state fiscal agency created by law has made a determination that in no state fiscal year will the debt service requirements of the bonds and all other bonds secured by the pledged portion of the "second gas tax" allocated to the county exceed seventy-five per cent of the pledged portion of the "second gas tax" allocated to that county for the preceding state fiscal year, of the pledged net tolls from existing facilities collected in the preceding state fiscal year, and of the annual average net tolls anticipated during the first five state fiscal years of operation of new projects to be financed, and of any other legally available pledged revenues collected in the preceding state fiscal year. Bonds issued pursuant to this subsection shall be payable primarily from the pledged tolls, the pledged portions of the "second gas tax" allocated to that county, and any other pledged revenue, and shall mature not later than forty years from the date of issuance.

(d) School bonds.--

(1) Article XII, Section 9, Subsection (d) of this constitution, as amended, (which, by reference, adopted Article XII, Section 18, of the Constitution of 1885, as amended) as the same existed immediately before the effective date of this amendment is adopted by this reference as part of this amendment as completely as though incorporated herein verbatim, for the purpose of providing that after the effective date of this amendment the first proceeds of the revenues derived from the licensing of motor vehicles as referred to therein shall be distributed annually among the several counties in the ratio of the number

of instruction units in each county, the same being coterminous with the school district of each county as provided in Article IX, Section 4, Subsection (a) of this constitution, in each year computed as provided therein to the extent necessary to comply with all obligations to or for the benefit of holders of bonds or motor vehicle tax anticipation certificates issued before the effective date of this amendment or any refundings thereof which are secured by any portion of such revenues derived from the licensing of motor vehicles.

(2) No funds anticipated to be distributed annually among the several counties under the formula stated in Article XII, Section 9, Subsection (d) of this constitution, as amended, as the same existed immediately before the effective date of this amendment shall be pledged as security for any obligations hereafter issued or entered into, except that any outstanding obligations previously issued pledging such funds may be refunded by the issuance of refunding bonds.

(3) Subject to the requirements of paragraph (1) of this subsection (d) beginning July 1, 1973, the first proceeds of the revenues derived from the licensing of motor vehicles (hereinafter called "motor vehicle license revenues") to the extent necessary to comply with the provisions of this amendment, shall, as collected, be placed monthly in the school district and community college district capital outlay and debt service fund in the state treasury and used only as provided in this amendment. Such revenue shall be distributed annually among the several school districts and community college districts in the ratio of the number of instruction units in each school district or community college district in each year computed as provided herein. The amount of the first motor vehicle license revenues to be so set aside in each year and distributed as provided herein shall be an amount equal in the aggregate to the product of six hundred dollars ($600) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1967-68, plus an amount equal in the aggregate to the product of eight hundred dollars ($800) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1972-73 and for each school fiscal year thereafter which is in excess of the total number of such instruction units in all the school districts of Florida for the school fiscal year 1967-68, such excess units being designated "growth units." The amount of the first motor vehicle license revenues to be so set aside in each year and distributed as provided herein shall additionally be an amount equal in the aggregate to the product of four hundred dollars ($400) multiplied by the total number of instruction units in all community college districts of Florida. The number of instruction units in each school district or community college district in each year for the purposes of this amendment shall be the greater of (1) the number of instruction units in each school district for the school fiscal year 1967-68 or community college district for the school fiscal year 1968-69 computed in the manner heretofore provided by general law, or (2) the number of instruction units in such school district, including growth units, or community college district for the school fiscal year computed in the manner heretofore or hereafter provided by general law and approved by the state board of education (hereinafter called the state board), or (3) the number of instruction units in each school district, including growth units, or community college district on behalf of which the state board has issued bonds or motor vehicle license revenue anticipation

certificates under this amendment which will produce sufficient revenues under this amendment to equal one and twelve-hundredths (1.12) times the aggregate amount of principal of and interest on all bonds or motor vehicle license revenue anticipation certificates issued under this amendment which will mature and become due in such year, computed in the manner heretofore or hereafter provided by general law and approved by the state board.

(4) Such funds so distributed shall be administered by the state board as now created and constituted by Section 2 of Article IX of the State Constitution as revised in 1968, or by such other instrumentality of the state which shall hereafter succeed by law to the powers, duties and functions of the state board, including the powers, duties and functions of the state board provided in this amendment. For the purposes of this amendment, said state board shall be a body corporate and shall have all the powers provided in this amendment in addition to all other constitutional and statutory powers related to the purposes of this amendment heretofore or hereafter conferred upon said state board.

(5) The state board shall, in addition to its other constitutional and statutory powers, have the management, control and supervision of the proceeds of the first motor vehicle license revenues provided for in this subsection (d). The state board shall also have power, for the purpose of obtaining funds for the use of any school board of any school district or board of trustees of any community college district in acquiring, building, constructing, altering, remodeling, improving, enlarging, furnishing, equipping, maintaining, renovating, or repairing of capital outlay projects for school purposes to issue bonds or motor vehicle license revenue anticipation certificates, and also to issue such bonds or motor vehicle license revenue anticipation certificates to pay, fund or refund any bonds or motor vehicle license revenue anticipation certificates theretofore issued by said state board. All such bonds or motor vehicle license revenue anticipation certificates shall bear interest at not exceeding the rate provided by general law and shall mature not later than thirty years after the date of issuance thereof. The state board shall have power to determine all other details of the bonds or motor vehicle license revenue anticipation certificates and to sell in the manner provided by general law, or exchange the bonds or motor vehicle license revenue anticipation certificates, upon such terms and conditions as the state board shall provide.

(6) The state board shall also have power to pledge for the payment of the principal of and interest on such bonds or motor vehicle license revenue anticipation certificates, including refunding bonds or refunding motor vehicle license revenue anticipation certificates, all or any part from the motor vehicle license revenues provided for in this amendment and to enter into any covenants and other agreements with the holders of such bonds or motor vehicle license revenue anticipation certificates at the time of the issuance thereof concerning the security thereof and the rights of the holders thereof, all of which covenants and agreements shall constitute legally binding and irrevocable contracts with such holders and shall be fully enforceable by such holders in any court of competent jurisdiction.

(7) No such bonds or motor vehicle license revenue anticipation certificates shall ever be

issued by the state board, except to refund outstanding bonds or motor vehicle license revenue anticipation certificates, until after the adoption of a resolution requesting the issuance thereof by the school board of the school district or board of trustees of the community college district on behalf of which the obligations are to be issued. The state board of education shall limit the amount of such bonds or motor vehicle license revenue anticipation certificates which can be issued on behalf of any school district or community college district to ninety percent (90%) of the amount which it determines can be serviced by the revenue accruing to the school district or community college district under the provisions of this amendment, and shall determine the reasonable allocation of the interest savings from the issuance of refunding bonds or motor vehicle license revenue anticipation certificates, and such determinations shall be conclusive. All such bonds or motor vehicle license revenue anticipation certificates shall be issued in the name of the state board of education but shall be issued for and on behalf of the school board of the school district or board of trustees of the community college district requesting the issuance thereof, and no election or approval of qualified electors shall be required for the issuance thereof.

(8) The state board shall in each year use the funds distributable pursuant to this amendment to the credit of each school district or community college district only in the following manner and in order of priority:

a. To comply with the requirements of paragraph (1) of this subsection (d).

b. To pay all amounts of principal and interest due in such year on any bonds or motor vehicle license revenue anticipation certificates issued under the authority hereof, including refunding bonds or motor vehicle license revenue anticipation certificates, issued on behalf of the school board of such school district or board of trustees of such community college district, subject, however, to any covenants or agreements made by the state board concerning the rights between holders of different issues of such bonds or motor vehicle license revenue anticipation certificates, as herein authorized.

c. To establish and maintain a sinking fund or funds to meet future requirements for debt service or reserves therefor, on bonds or motor vehicle license revenue anticipation certificates issued on behalf of the school board of such school district or board of trustees of such community college district under the authority hereof, whenever the state board shall deem it necessary or advisable, and in such amounts and under such terms and conditions as the state board shall in its discretion determine.

d. To distribute annually to the several school boards of the school districts or the boards of trustees of the community college districts for use in payment of debt service on bonds heretofore or hereafter issued by any such school boards of the school districts or boards of trustees of the community college districts where the proceeds of the bonds were used, or are to be used, in the acquiring, building, constructing, altering, remodeling, improving, enlarging, furnishing, equipping, maintaining, renovating, or repairing of capital outlay projects in such school districts or community college districts and which capital outlay projects have been approved by the school board of the school district or

board of trustees of the community college district, pursuant to the most recent survey or surveys conducted under regulations prescribed by the state board to determine the capital outlay needs of the school district or community college district. The state board shall have power at the time of issuance of any bonds by any school board of any school district or board of trustees of any community college district to covenant and agree with such school board or board of trustees as to the rank and priority of payments to be made for different issues of bonds under this subparagraph d., and may further agree that any amounts to be distributed under this subparagraph d. may be pledged for the debt service on bonds issued by any school board of any school district or board of trustees of any community college district and for the rank and priority of such pledge. Any such covenants or agreements of the state board may be enforced by any holders of such bonds in any court of competent jurisdiction.

e. To pay the expenses of the state board in administering this subsection (d), which shall be prorated among the various school districts and community college districts and paid out of the proceeds of the bonds or motor vehicle license revenue anticipation certificates or from the funds distributable to each school district and community college district on the same basis as such motor vehicle license revenues are distributable to the various school districts and community college districts.

f. To distribute annually to the several school boards of the school districts or boards of trustees of the community college districts for the payment of the cost of acquiring, building, constructing, altering, remodeling, improving, enlarging, furnishing, equipping, maintaining, renovating, or repairing of capital outlay projects for school purposes in such school district or community college district as shall be requested by resolution of the school board of the school district or board of trustees of the community college district.

g. When all major capital outlay needs of a school district or community college district have been met as determined by the state board, on the basis of a survey made pursuant to regulations of the state board and approved by the state board, all such funds remaining shall be distributed annually and used for such school purposes in such school district or community college district as the school board of the school district or board of trustees of the community college district shall determine, or as may be provided by general law.

(9) Capital outlay projects of a school district or community college district shall be eligible to participate in the funds accruing under this amendment and derived from the proceeds of bonds and motor vehicle license revenue anticipation certificates and from the motor vehicle license revenues, only in the order of priority of needs, as shown by a survey or surveys conducted in the school district or community college district under regulations prescribed by the state board, to determine the capital outlay needs of the school district or community college district and approved by the state board; provided that the priority of such projects may be changed from time to time upon the request of the school board of the school district or board of trustees of the community college district and with the approval of the state board; and provided, further, that this paragraph (9) shall not in any manner affect any covenant, agreement or pledge made by the state

board in the issuance by said state board of any bonds or motor vehicle license revenue anticipation certificates, or in connection with the issuance of any bonds of any school board of any school district or board of trustees of any community college district.

(10) The state board shall have power to make and enforce all rules and regulations necessary to the full exercise of the powers herein granted and no legislation shall be required to render this amendment of full force and operating effect. The legislature shall not reduce the levies of said motor vehicle license revenues during the life of this amendment to any degree which will fail to provide the full amount necessary to comply with the provisions of this amendment and pay the necessary expenses of administering the laws relating to the licensing of motor vehicles, and shall not enact any law having the effect of withdrawing the proceeds of such motor vehicle license revenues from the operation of this amendment and shall not enact any law impairing or materially altering the rights of the holders of any bonds or motor vehicle license revenue anticipation certificates issued pursuant to this amendment or impairing or altering any covenant or agreement of the state board, as provided in such bonds or motor vehicle license revenue anticipation certificates.

(11) Bonds issued by the state board pursuant to this subsection (d) shall be payable primarily from said motor vehicle license revenues as provided herein, and if heretofore or hereafter authorized by law, may be additionally secured by pledging the full faith and credit of the state without an election. When heretofore or hereafter authorized by law, bonds issued pursuant to Article XII, Section 18 of the Constitution of 1885, as amended prior to 1968, and bonds issued pursuant to Article XII, Section 9, subsection (d) of the Constitution as revised in 1968, and bonds issued pursuant to this subsection (d), may be refunded by the issuance of bonds additionally secured by the full faith and credit of the state.

(e) Debt limitation.--Bonds issued pursuant to this Section 9 of Article XII which are payable primarily from revenues pledged pursuant to this section shall not be included in applying the limits upon the amount of state bonds contained in Section 11, Article VII, of this revision.

§ 10. Preservation of existing government

All provisions of Articles I through IV, VII and IX through XX of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

§ 11. Deletion of obsolete schedule items

The legislature shall have power, by joint resolution, to delete from this revision any section of this Article XII, including this section, when all events to which the section to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this section shall be subject to judicial review.

§ 12. Senators

The requirements of staggered terms of senators in Section 15(a), of Article III of this revision shall apply only to senators elected in November, 1972, and thereafter.

§ 13. Legislative apportionment

The requirements of legislative apportionment in Section 16 of Article III of this revision shall apply only to the apportionment of the legislature following the decennial census of 1970, and thereafter.

§ 14. Representatives; terms

The legislature at its first regular session following the ratification of this revision, by joint resolution, shall propose to the electors of the state for ratification or rejection in the general election of 1970 an amendment to Article III, Section 15(b), of the constitution providing staggered terms of four years for members of the house of representatives.

§ 15. Special district taxes

Ad valorem taxing power vested by law in special districts existing when this revision becomes effective shall not be abrogated by Section 9(b) of Article VII herein, but such powers, except to the extent necessary to pay outstanding debts, may be restricted or withdrawn by law.

§ 16. Reorganization

The requirement of Section 6, Article IV of this revision shall not apply until July 1, 1969.

§ 17. Conflicting provisions

This schedule is designed to effect the orderly transition of government from the Constitution of 1885, as amended, to this revision and shall control in all cases of conflict with any part of Article I through IV, VII, and IX through XI herein.

§ 18. Bonds for housing and related facilities

Section 16 of Article VII, providing for bonds for housing and related facilities, shall take effect upon approval by the electors.

§ 19. Renewable energy source property

The amendment to Section 3 of Article VII, relating to an exemption for a renewable energy source device and real property on which such device is installed, if adopted at the special election in October 1980, shall take effect January 1, 1981.

§ 20. Access to public records

Section 24 of Article I, relating to access to public records, shall take effect July 1, 1993.

§ 21. State revenue limitation

The amendment to Section 1 of Article VII limiting state revenues shall take effect January 1, 1995, and shall first be applicable to state fiscal year 1995-1996.

§ 22. Historic property exemption and assessment

The amendments to Sections 3 and 4 of Article VII relating to ad valorem tax exemption for, and assessment of, historic property shall take effect January 1, 1999.

§ 23. Fish and wildlife conservation commission

(a) The initial members of the commission shall be the members of the game and fresh water fish commission and the marine fisheries commission who are serving on those commissions on the effective date of this amendment, who may serve the remainder of their respective terms. New appointments to the commission shall not be made until the retirement, resignation, removal, or expiration of the terms of the initial members results in fewer than seven members remaining.

(b) The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law. All rules of the marine fisheries commission and game and fresh water fish commission in effect on the effective date of this amendment shall become rules of the fish and wildlife conservation commission until superseded or amended by the commission.

(c) On the effective date of this amendment, the marine fisheries commission and game and freshwater fish commission shall be abolished.

(d) This amendment shall take effect July 1, 1999.

§ 24. Executive branch reform

(a) The amendments contained in this revision shall take effect January 7, 2003, but shall govern with respect to the qualifying for and the holding of primary elections in 2002. The office of chief financial officer shall be a new office as a result of this revision.

(b) In the event the secretary of state is removed as a cabinet office in the 1998 general election, the term "custodian of state records" shall be substituted for the term "secretary

of state" throughout the constitution and the duties previously performed by the secretary of state shall be as provided by law.

§ 25. Schedule to Article V Amendment

(a) Commencing with fiscal year 2000-2001, the legislature shall appropriate funds to pay for the salaries, costs, and expenses set forth in the amendment to Section 14 of Article V pursuant to a phase-in schedule established by general law.

(b) Unless otherwise provided herein, the amendment to Section 14 shall be fully effectuated by July 1, 2004.

TAB C

Reference:

Article X, Section 22

Ballot Title:

Patients' Right to Know About Adverse Medical Incidents

Ballot Summary:

Current Florida law restricts information available to patients related to investigations of adverse medical incidents, such as medical malpractice. This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents, including those which could cause injury or death. Provides that patients' identities should not be disclosed.

Full Text:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

1) Statement and Purpose:

The Legislature has enacted provisions relating to a patients' bill of rights and responsibilities, including provisions relating to information about practitioners' qualifications, treatment and financial aspects of patient care. The Legislature has, however, restricted public access to information concerning a particular health care provider's or facility's investigations, incidents or history of acts, neglects, or defaults that have injured patients or had the potential to injure patients. This information may be important to a patient. The purpose of this amendment is to create a constitutional right for a patient or potential patient to know and have access to records of a health care facility's or provider's adverse medical incidents, including medical malpractice and other acts which have caused or have the potential to cause injury or death. This right to know is to be balanced against an individual patient's rights to privacy and dignity, so that the information available relates to the practitioner or facility as opposed to individuals who may have been or are patients.

2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

"Section 22. Patients' Right to Know About Adverse Medical Incidents.

"(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

"(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

"(c) For purposes of this section, the following terms have the following meanings:

"(1) The phrases "health care facility" and "health care provider" have the meaning given in general law related to a patient's rights and responsibilities.

"(2) The term "patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

"(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality

assurance, credentials, or similar committee, or any representative of any such committees.

"(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available."

3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

CHAPTER 2005-265

Committee Substitute for Senate Bill No. 938

An act relating to adverse medical incidents; creating s. 381.028, F.S.; providing a short title; providing a purpose; defining terms; specifying patients' right of access to records relating to an adverse medical incident; prohibiting the disclosure of the identity of certain patients; providing for maintaining privacy restrictions imposed by federal law; providing for the applicability of s. 25, Art. X of the State Constitution; providing for applicability of this section; providing restrictions upon the use of the records; providing for the identification and production of the records; providing for fees charged for copies of records; providing an effective date.

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

Section 1. Section 381.028, Florida Statutes, is created to read:

381.028 Adverse medical incidents.—

(1) SHORT TITLE.—This section may be cited as the "Patients' Right-to-Know About Adverse Medical Incidents Act."

(2) PURPOSE.—It is the purpose of this act to implement s. 25, Art. X of the State Constitution. The Legislature finds that this section of the State Constitution is intended to grant patient access to records of adverse medical incidents, which records were made or received in the course of business by a health care facility or provider, and not to repeal or otherwise modify existing laws governing the use of these records and the information contained therein. The Legislature further finds that all existing laws extending criminal and civil immunity to persons providing information to quality-of-care committees or organizations and all existing laws concerning the discoverability or admissibility into evidence of records of an adverse medical incident in any judicial or administrative proceeding remain in full force and effect.

(3) DEFINITIONS.—As used in s. 25, Art. X of the State Constitution and this act, the term:

(a) "Agency" means the Agency for Health Care Administration.

(b) "Adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider which caused or could have caused injury to or the death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, incidents that are reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee or any representative of any such committee.

(c) "Department" means the Department of Health.

(d) "Have access to any records" means, in addition to any other procedure for producing the records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records that have been made publicly available by publication or on the Internet may be provided by reference to the location at which the records are publicly available.

(e) "Health care provider" means a physician licensed under chapter 458, chapter 459, or chapter 461.

(f) "Health care facility" means a facility licensed under chapter 395.

(g) "Identity" means any "individually identifiable health information" as defined by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations.

(h) "Patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(i) "Privacy restrictions imposed by federal law" means the provisions relating to the disclosure of patient privacy information under federal law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, and its implementing regulations, the Federal Privacy Act, 5 U.S.C. s. 552(a), and its implementing regulations, and any other federal law, including, but not limited to, federal common law and decisional law, that would prohibit the disclosure of patient privacy information.

(j) "Records" means the final report of any adverse medical incident. Medical records that are not the final report of any adverse medical incident, including drafts or other nonfinal versions; notes; and any documents or portions thereof which constitute, contain, or reflect any attorney-client communications or any attorney-client work product may not be considered "records" for purposes of s. 25, Art. X of the State Constitution and this act.

(k) "Representative of the patient" means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient's health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient's surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; or the attorney for any such person.

(4) PATIENTS' RIGHT OF ACCESS.—Patients have a right to have access to any records made or received in the course of business by a health care facility or health care provider relating to any adverse medical incident.

In providing access to these records, the health care facility or health care provider may not disclose the identity of patients involved in the incidents and shall maintain any privacy restrictions imposed by federal law.

(5) APPLICABILITY.—Section 25, Art. X of the State Constitution applies to records created, incidents occurring, and actions pending on or after November 2, 2004. Section 25, Art. X of the State Constitution does not apply to records created, incidents occurring, or actions pending before November 2, 2004. A patient requesting records on or after November 2, 2008, shall be eligible to receive records created within 4 years before the date of the request.

(6) USE OF RECORDS.—

(a) This section does not repeal or otherwise alter any existing restrictions on the discoverability or admissibility of records relating to adverse medical incidents otherwise provided by law, including, but not limited to, those contained in ss. 395.0191, 395.0193, 395.0197, 766.101, and 766.1016, or repeal or otherwise alter any immunity provided to, or prohibition against compelling testimony by, persons providing information or participating in any peer review panel, medical review committee, hospital committee, or other hospital board otherwise provided by law, including, but not limited to, ss. 395.0191, 395.0193, 766.101, and 766.1016.

(b) Except as otherwise provided by act of the Legislature, records of adverse medical incidents, including any information contained therein, obtained under s. 25, Art. X of the State Constitution, are not discoverable or admissible into evidence and may not be used for any purpose, including impeachment, in any civil or administrative action against a health care facility or health care provider. This includes information relating to performance or quality-improvement initiatives and information relating to the identity of reviewers, complainants, or any person providing information contained in or used in, or any person participating in the creation of the records of adverse medical incidents.

(7) PRODUCTION OF RECORDS.—

(a) Pursuant to s. 25, Art. X of the State Constitution, the adverse medical incident records to which a patient is granted access are those of the facility or provider of which he or she is a patient and which pertain to any adverse medical incident affecting the patient or any other patient which involves the same or substantially similar condition, treatment, or diagnosis as that of the patient requesting access.

(b)1. Using the process provided in s. 395.0197, the health care facility shall be responsible for identifying records as records of an adverse medical incident, as defined in s. 25, Art. X of the State Constitution.

2. Using the process provided in s. 458.351, the health care provider shall be responsible for identifying records as records of an adverse medical incident, as defined in s. 25, Art. X of the State Constitution, occurring in an office setting.

(c)1. Fees charged by a health care facility for copies of records requested by a patient under s. 25, Art. X of the State Constitution may not exceed the reasonable and actual cost of complying with the request, including a reasonable charge for the staff time necessary to search for records and prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means as required by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations. The health care facility may require payment, in full or in part, before acting on the records request.

2. Fees charged by a health care provider for copies of records requested by a patient under s. 25, Art. X of the State Constitution may not exceed the amount established under s. 456.057(16), which may include a reasonable charge for the staff time necessary to prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means as required by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations. The health care provider may require payment, in full or in part, before acting on the records request.

(d)1. Requests for production of adverse medical incident records shall be processed by the health care facility or health care provider in a timely manner, after having a reasonable opportunity to determine whether or not the requested record is a record subject to disclosure and to prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means.

2. A request for production of records must be submitted in writing and must identify the patient requesting access to the records by name, address, and the last four digits of the patient's social security number; describe the patient's condition, treatment, or diagnosis; and provide the name of the health care providers whose records are being sought.

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

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA. CIVIL DIVISION

Case No: 02-919 CA

KAREN BEANE and GARY BEANE,

Plaintiffs,

vs.

ROBERT PARE, JR., M.D., TREASURE COAST OB/GYN ASSOCIATES, P.A. and MARTIN MEMORIAL MEDICAL CENTER, INC.,

Defendants.

ORDER

THIS COURT having heard argument of counsel finds that Defendant, Martin Memorial Medical Center, Inc's., Objections to Plaintiff's Amended Notice of Deposition Duces Tecum of Martin Memorial's Administrator dated November 30, 2004, and Plaintiff's Request to Produce dated March 3, 2005 are **OVERRULED.**

In addition, the Court finds that Defendants, Robert J. Pare, Jr., M.D., and Treasure Coast OB/GYN Associates, P.A.'s Motion for Protective Order regarding the Deposition of the Martin Memorial Medical Center Administrator is **DENIED.**

In support of the above rulings, the Court finds that Article X, Section 25 of the Florida Constitution is self-executing. Specifically, Article X, Section 25 which was approved by the Electorate of the State of Florida as an Amendment to the State

Constitution contains language which states "this Amendment shall be effective on the date that it is approved by the Electorate." The Amendment was approved by majority vote on November 2, 2004. According to **Gray v. Bryant**, 125 So. 2d 846, 851 (Fla. 1960), the seminal decision on determining whether a constitutional provision is self-executing:

> "The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."

The Court agrees with the language from **McHale v. Tenewitz**, 2005 WL 900744, 4 (Fla. 18th Jud. Circ. Ct., February 28, 2005) that the Constitutional Amendment "reads like a Statute" and a close reading of the Amendment clearly indicates it establishes a sufficient rule by which the intent and purpose of the constitutional provision can be fulfilled without additional legislation.

The Court also finds that Article X, Section 25 of the Florida Constitution applies retroactively. In **Metropolitan Dade County v. Chase Federal Housing Corp.**, 737 So. 2d 494, 499 (Fla. 1999), it was held "In order to determine legislative intent as to retroactivity, both the terms of the Statute and the purpose of the enactment must be considered."

The purpose of this amendment is to give a patient or potential patient information about a doctor. The constitutional amendment defines a "patient" entitled to records of adverse medical incidents as an individual "who has sought, is seeking, is undergoing, or has undergone care or treatment." Article X, Section 25, Fla. Const. The clear intent of the

Constitutional Amendment is to allow both past patients and patients considering undergoing treatment to receive information about the doctor's past adverse medical incidents. See **Metro Dade**, 737 So.2d at 500 (finding "clear legislative intent" that the Legislature intended retroactive effect from the language and purpose of the Statute). If this Court accepted Defendant's interpretation, a patient who requested records the day after the Amendment went into effect would be entitled to **NO** information. This Court will not construe Article X, Section 25 to create such an absurd result. **See In re Advisory Opinion to Governor Request of June 29, 1979, 374 So. 2d 959, 964** (Fla. 1979) ("In construing provisions of the Constitution...the Court must give provisions a reasonable meaning, tending to fulfill, not frustrate, the intent of the framers and adopters. Constructions which... lead to absurd results...must be avoided.").

In order to achieve the purposes of Article X, Section 25 of the Florida Constitution, patients must be entitled to records of adverse medical incidents regardless of whether the records were created before or after the adoption of the Constitutional Amendment. A patient is entitled to all records of adverse medical incidents that pertain to their provider to give the patient an accurate and complete picture of the provider.

The Court also finds Florida Statute Section 381.028 is unconstitutional because it conflicts with Article X, Section 25 of the Florida Constitution. Section 381.028 negates significant portions of the Amendment and defeats the purpose of the Amendment and the will of the people.

In **Weinburger v. Board of Public Instruction of St. Johns County,** 112 So. 253, 256 (Fla. 1927) the Court held that when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the legislature to enact

a Statute that would defeat the purpose of the Constitutional provision. The general rule is that when the Constitution provides the ways and means for accomplishing a purpose, the means provided is exclusive of every other means, even those attempted by the Legislature. *See, State v. Volusia County School Bldg. Authority*, 60 So. 2d 761, 762 (Fla. 1952). Thus, when the Constitution prescribes a remedy, while the Legislature may regulate the manner of its exercise, it may not revoke or change it, or place undue burden on its exercise. *See, Holmer v. State*, 28 So. 2d 586, 588 (Fla. 1947).

As a result, Defendant, Martin Memorial Medical Center, Inc., shall produce all documents responsive to Plaintiff's Request to Produce in 30 days from the date of this Order. Plaintiff's counsel, Babbitt, Johnson, Osborne & LeClainche, shall keep all information and documents obtained pursuant to said production confidential. Further, Counsel for the Plaintiff shall not conduct additional discovery as a result of information obtained through the production of documents without leave of Court.

DONE and ORDERED in Chambers at Stuart, Martin County, Florida, this _____ day of AUGUST, 2005.

SIGNED AND DATED

SEP 21 2005

JUDGE ROBERT MAKEMSON

The Honorable Robert R. Makemson
Circuit Court Judge

Copies furnished
counsel of record: see attached

IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, IN AND FOR COLUMBIA COUNTY, FLORIDA.

(AS CONSOLIDATED FOR DISCOVERY PURPOSES)

EVELYN BOWEN and DON BOWEN, her husband; — CASE NO. 03-207-CA

ROBERTA GREEN and ROBERT GREEN, her husband; — CASE NO 04-543-CA

JOHN C. NICELY, as Personal Representative of the Estate of CHRISTINE NICELY; — CASE NO 04-57-CA

Plaintiffs,

vs.

NOTAMI HOSPITAL OF FLORIDA, INC., d/b/a LAKE CITY MEDICAL CENTER, PENDRAK SURGICAL GROUP, P.A. AND ROBERT B. PENDRAK, M.D.,

Defendants.

_____/

ORDER ON MOTIONS RE: AMENDMENT 7

THIS CAUSE was heard by the Court on May 12, 2005, on motions of Plaintiffs and Defendant relating to the discovery of "peer review, credentialing and risk management" material and the effect of Amendment 7. Based upon the record in this cause, the materials submitted, and the argument of counsel, the Court enters this order granting discovery.

AMENDMENT 7 IS SELF-EXECUTING

Amendment 7, now Article X, Section 22, does not require implementing legislation

Section 3 of the amendment provided that the "amendment shall be effective on the date it is approved by the electorate." As stated by the Court in *Gray v. Bryant*, 125 So.2d 846, 851 (Fla. 1960):

> A basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.

In *Gray v. Bryant*, the Court held that *Fla. Const. Art.* V, Section 6 (2) which provided for one circuit judge for each 50,000 inhabitants of the circuit, was self-executing. If that type of broadly worded constitutional provision is self-executing, Amendment 7, which is much more specific is also self-executing. The Court went on to note in *Gray v. Bryant*:

> The will of the people is paramount in determining whether a constitutional provision is self-executing and the modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most <u>sacrosanct</u> of all expressions of the people. 125 So 2d at 851.

"RETROACTIVITY" OF AMENDMENT 7

This Court adopts the reasoning of Judge Moxley in *McHale v. Tenewitz*, Case No.05-2003-CA-054153, Brevard County Circuit Court, a copy of which is in the record, in which he concluded:

> The Court finds that Amendment 7, now Section 22 of Article X of the Florida Constitution, is prospective in operation but is

> retrospective as it relates to extant records. This is necessary to carry out the design and purpose of this constitutional provision. The information a patient needs in order for the patient to have the opportunity to make educated decisions relating to the patient's health care treatment requires that it be applied retrospectively. After the hearing the Court conducted additional research on the issue of retrospective application. A statute is not unconstitutionally retrospective in operation unless it impairs a substantive vested right that must be more than a mere expectation based on the continuance of existing law but rather must have become a title, legal or equitable, to the present or future enforcement of a demand. *In re Trust Under Will of Martell*, 457 So.2d 1064 (Fla. 2nd DCA). There is no vested right in not having to disclose adverse medical incidents. While there may have been an expectation based on existing law prior to the Amendment to the Florida Constitution, it did not become a vested right

FLORIDA STATUTE §381.028 IS UNCONSTITUTIONAL

The 2005 Legislature enacted *Florida Statute* §381.028 in response to the passage of Amendment 7. The legislature did not attempt to "implement" Amendment 7 in enacting Section 381.028, they attempted to abolish it. For the reasons set forth below, the statute violates Article X, Section 22, and is therefore unconstitutional

"All political power is inherent in the people," Fla. Const., Art. I, § 1, and the people of Florida on November 2, 2004, by a margin of 4 to 1, voted to exercise this power and remove the shroud of secrecy surrounding medical errors. Let there be no doubt, Amendment 7 "has but one purpose–providing access to records on adverse medical incidents...." In re Advisory Opinion to the Atty. Gen. re Patients' Right To Know About Adverse Medical Incidents, 880 So.2d 617, 620 (Fla. 2004) "Unquestionably, the amendment would affect

sections 395.0193(8) and 766 101(5) of the Florida Statutes (2003), which currently exempt the records of investigations, proceedings, and records of the peer review panel from discovery in a civil or administrative action. Indeed, this is a primary purpose of the amendment." Id. at 620-21.

"A statute enacted by the Legislature may not constrict a right granted under the ultimate authority of the Constitution." Austin v. State ex rel. Christian, 310 So.2d 289, 293 (Fla. 1975). See also In re Advisory Opinion to Atty. Gen., Limitation of Non-Economic Damages in Civil Actions, 520 So 2d 284, 287 (Fla.1988) ("statutes . . . which are inconsistent with the constitution, if it is amended, will simply have to give way.... [P]roposed amendments to the constitution are not required to be consistent with statutory law"); Henderson v. State, 20 So.2d 649, 651 (Fla. 1945) ("[w]hen the provisions of statute collide with provisions of the Constitution the statute must give way"); State ex rel. Curley v. McGeachy, 6 So.2d 823, 826 (Fla. 1942) ("[t]he provisions of the Constitution will always prevail over statutes where there is conflict between the two").

As previously stated by the Supreme Court of Florida, "[w]e heartily reiterate the view that sovereignty resides in the people and that they may modify and change the constitution as they wish so long as they do not run afoul of the Federal Constitution... [S]tate constitutions . . . are limitations upon the power of the state legislature." Peters v. Meeks, 163 So.2d 753, 755 (Fla. 1964) (citation and internal quotation marks omitted) (emphasis added).

> [W]e are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they deep within the confines of the Federal Constitution..... [O]ur first duty is to uphold their action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval

Gray v. Golden, 89 So.2d 785, 790 (Fla. 1956).

> "To the judges belongs the power of expounding the laws; and although in the discharge of that duty they may render a law inoperative by declaring it unconstitutional, it does not arise from any supremacy which the judiciary possesses over the Legislature, but from the supremacy of the constitution over both."

Sebring Airport Authority v. McIntyre, 783 So.2d 238, 244 n 5 (Fla. 2001) (citation omitted) (emphasis in original).

> [T]o the extent . . . that . . . an act violates expressly or clearly implied mandates of the Constitution, the act must fall, not merely because the courts so decree, but because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary

Holley v. Adams, 238 So.2d 401, 405 (Fla. 1970) (quoting Amos v. Mathews, 99 Fla 1, 126 So. 308 (1930)).

"Article X, Section 22, provides that "patients have a right to have access to *any records* made or received in the course of business by a healthcare facility or provider relating to any adverse medical incident." Section 22(c)(3) broadly defines "adverse medical incident" as *including but not limited to* records coming out of "facility peer review, risk management, quality assurance, credentials, or similar committees, or any representative of any such

committees." Section 381.028(3)(j) on the other hand, attempts to limit production only to a "final report".

Under Article X, Section 22, patients, actual or prospective, are entitled to any of the records described above. The legislature has attempted to limit disclosure to only the final report relating to same or substantially similar condition, treatment, or diagnosis with that of the patient requesting record access.

Article X, Section 22, contains no limitation on the time frame within which records were generated. Section 381.028(5) attempts to limit production only to records generated after November 2, 2004.

And finally, Section 381.028(6) provides that Amendment 7 will have no effect on any of the existing privilege statutes. This is contrary to the stated purpose of the amendment, and the Supreme Court discussion in its opinion authorizing Amendment 7 to be placed on the ballot. 880 So.2d at 620-21. Because of these limitations, the legislature has impermissibly restrained rights granted under the Florida Constitution to which all statutes must yield.

Florida Statutes, Section 381.028 is therefore unconstitutional.

OTHER ISSUES

The Court has considered other objections to production of peer review materials raised by Defendant and briefed by the parties and finds that in light of Amendment 7, none of the grounds are valid.

ORDER

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant, LAKE CITY MEDICAL CENTER, shall produce any records made or received in the course of business relating to any adverse medical incident involving Dr. Pendrak's care and treatment of patients at LAKE CITY MEDICAL CENTER, as that term is defined in Article X, Section 22 (c)(3) of the Florida Constitution.

2. Mr. Karsner is instructed to answer the questions propounded to him at deposition which, prior to the passage of Amendment 7, sought privileged information.

3. The Defendant shall comply with this Order within 30 days, unless within that time appellate review is sought, in which case this Order shall be stayed pending further of this Court or the Court of Appeals.

DONE AND ORDERED in Lake City, Columbia County, Florida, on this 15th day of ~~June,~~ July 2005.

Original Sign By
E. VERNON DOUGLAS
Circuit Judge

E. VERNON DOUGLAS, CIRCUIT JUDGE

Copies furnished to:

See attached Mailing List

TAB D

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JU 06-01 State Minimum Wage
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee		Hogge	Hogge
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

On November 2, 2004, the voters approved Constitutional Amendment 5, creating a state minimum wage effective six months after the date enacted by the voters. This new state minimum wage took effect on May 2, 2005. The amendment sets the wage at $6.15 per hour and provides for annual adjustments. The amendment prohibits retaliation against persons exercising rights under the amendment and provides an extensive set of remedies. Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature to "adopt any measures appropriate for the implementation of this amendment."

This bill incorporates provisions from Constitutional Amendment 5 and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act." The bill accomplishes the following:

- In accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill limits the state minimum wage to employees eligible to receive the federal minimum wage; it also incorporates by reference sections 213 and 214 of the federal Fair Labor Standards Act relating to the employment of workers with disabilities;
- It adopts the U.S. Consumer Price Index for the South Region as the applicable index for determining the annual adjustments to the state minimum wage;
- It provides direction to the agencies for providing notice of the adjusted state minimum wage;
- It requires employees to notify employers and give them 15 days to resolve any claims for unpaid minimum wages before filing suit;
- It limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages, and imposes certain requirements on class action suits; and
- The bill restricts the authority of the Agency for Workforce Innovation (AWI), to that expressly provided for in the amendment and expressly authorized by the Legislature.

The fiscal impact of the bill on state and local government is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to be $168,129 for FY 2006-07 for employer notification responsibilities. Any fiscal impact resulting from the increase in the state minimum wage results from the amendment, not the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The bill adds little in the way of additional government. The additional government included in the bill is almost exclusively a function of the constitutional amendment the bill is supplementing. It actually limits the ability of the Agency for Workforce Innovation (AWI) to exercise any authority related to the state minimum wage beyond that expressly provided in the amendment.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

On November 2, 2004, the voters approved Constitutional Amendment 5, creating a state minimum wage effective six months after the date enacted by the voters. This new state minimum wage took effect May 2, 2005. That provision is now codified at s. 24, art. X, State Constitution. The amendment sets the wage at $6.15 per hour for "employees," as defined under the federal Fair Labor Standards Act (FLSA), with an annual adjustment based on the increase in the U.S. Consumer Price Index for urban wage earners. The amendment directs the AWI to publish the amount of the initial and adjusted state minimum wage.

The amendment prohibits retaliation against persons exercising rights under the amendment. The amendment provides for enforcement by creating a private cause of action with specific remedies, in addition to authorizing the attorney general or other designated official to bring a civil enforcement action. The amendment expressly authorizes class actions as a means to enforce the amendment.

Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature and AWI to "adopt any measures appropriate for the implementation of this amendment." The amendment states that interpretations and guidance developed under the FSLA be used in construing the amendment.

The federal minimum wage stands at $5.15 per hour and is established in section 6 of the FLSA. The FLSA defines key terms such as "employer" and "employee," establishes standards for employers and employees, identifies prohibited acts, and specifies penalties and enforcement measures.

Section 16 of the FLSA punishes willful violations with fines and subjects those that violate the act with payment of unpaid wages and liquidated damages. An employer that retaliates against an employee is also subject to "such legal or equitable relief as may be appropriate." The U.S. Secretary of Labor may also sue for injunctive relief against employers. As amended by the Portal-to-Portal Act, 61 Stat. 84, the court may modify the amount of liquidated damages if an employer shows to the "satisfaction of the court" that the conduct giving rise to the civil action occurred in "good faith" and based on "reasonable grounds."

Effect of Proposed Changes

This bill incorporates provisions from Constitutional Amendment 5 and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act."

One, in accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill provides that the state minimum wage applies to employees eligible to receive the federal minimum

wage and provides that the minimum wage applies to hours worked in Florida. It also incorporates by reference sections 213 and 214 of the Fair Labor Standards Act, relating to the employment of workers with disabilities.

Two, it adopts the U.S. Consumer Price Index for the South Region as the applicable index for determining the annual adjustments to the state minimum wage.

Three, it directs the AWI to notify employers included in the unemployment compensation database of the adjusted state minimum wage.

Four, it requires employees to notify employers and give them 15 days to resolve any claims for unpaid wages before filing suit.

Five, it limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages, and imposes certain requirements on class action suits.

Finally, the bill restricts the authority of the AWI to that expressly provided for in the amendment and expressly authorized by the Legislature.

C. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., to include the statutes of limitation provided for in s. 24, Art. X, State Constitution.

Section 2. Creates s. 448.110, F.S., providing for the "Florida Minimum Wage Act."

Section 3. Designates ss. 448.01 – 448.110 as Part I of chapter 448, Florida Statutes, and entitled "Terms and Conditions of Employment."

Section 4. Provides a severability clause.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The fiscal impact of the bill on the state is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to be $168,129 for FY 2006-07 and beyond for the required mailing to employers. SEE II.D., FISCAL COMMENTS. Any additional fiscal impact on the state resulting from an increase in the minimum wage is a function of the constitutional amendment, not this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Any fiscal impact on local government as employers results from the amendment, not the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any fiscal impact on employers results from the amendment, not the bill.

D. FISCAL COMMENTS:

The cost associated with the required mailing to employers assumes 449,258 employers multiplied by the cost of first class postage, printing, paper, and envelopes. The estimate for FY 2006-07 and beyond contemplates an increase in postage costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1
2 A bill to be entitled
3 An act relating to the state minimum wage; amending s.
4 95.11, F.S.; providing periods of limitations on actions
5 for violations of the Florida Minimum Wage Act; creating
6 s. 448.110, F.S., the Florida Minimum Wage Act; providing
7 legislative intent to implement s. 24, Art. X of the State
8 Constitution in accordance with authority granted to the
9 Legislature therein; requiring employers to pay certain
10 employees a minimum wage for all hours worked in Florida;
11 incorporating provisions of the federal Fair Labor
12 Standards Act; requiring the minimum wage to be adjusted
13 annually; providing a formula for calculating such
14 adjustment; requiring the Agency for Workforce Innovation
15 and the Department of Revenue to annually publish the
16 amount of the adjusted minimum wage; providing criteria
17 for posting; requiring the agency to provide written
18 notice to certain employers; providing a deadline for the
19 notice to be mailed; providing that employers are
20 responsible for maintaining their current addresses with
21 the agency; requiring the agency to provide the department
22 with certain information; prohibiting discrimination or
23 adverse action against persons exercising constitutional
24 rights under s. 24, Art. X of the State Constitution;
25 providing for civil action by aggrieved persons; requiring
26 aggrieved persons bringing civil actions to provide
27 written notice to their employers alleged to have violated
28 the act; providing information that must be included in
29 the notice; providing a deadline by which an employer

30 alleged to have violated the act must pay the unpaid wages
31 in question or resolve the claim to the aggrieved person's
32 satisfaction; providing a statute of limitations period;
33 providing that aggrieved persons who prevail in their
34 actions may be entitled to liquidated damages and
35 reasonable attorney's fees and costs; authorizing
36 additional legal or equitable relief for aggrieved persons
37 who prevail in such actions; providing that punitive
38 damages may not be awarded; providing that actions brought
39 under the act are subject to s. 768.79, F.S.; authorizing
40 the Attorney General to bring a civil action and seek
41 injunctive relief; providing a fine; providing statutes of
42 limitations; authorizing class actions; declaring the act
43 the exclusive remedy under state law for violations of s.
44 24, Art. X of the State Constitution; providing for
45 implementation measures; designating ss. 448.01-448.110,
46 F.S., as part I of ch. 448, F.S.; providing a part title;
47 providing for severability; providing an effective date.
48
49 Be It Enacted by the Legislature of the State of Florida:
50
51 Section 1. Paragraph (d) is added to subsection (2) and
52 paragraph (q) is added to subsection (3) of section 95.11,
53 Florida Statutes, to read:
54 95.11 Limitations other than for the recovery of real
55 property.--Actions other than for recovery of real property shall
56 be commenced as follows:
57 (2) WITHIN FIVE YEARS.--
58 <u>(d) An action alleging a willful violation of s. 448.110.</u>

59 (3) WITHIN FOUR YEARS.--
60 (q) An action alleging a violation, other than a willful
61 violation, of s. 448.110.
62 Section 2. Section 448.110, Florida Statutes, is created to
63 read:
64 448.110 State minimum wage; annual wage adjustment;
65 enforcement.--
66 (1) This section may be cited as the "Florida Minimum Wage
67 Act."
68 (2) The purpose of this section is to provide measures
69 appropriate for the implementation of s. 24, Art. X of the State
70 Constitution, in accordance with authority granted to the
71 Legislature pursuant to s. 24(f), Art. X of the State
72 Constitution.
73 (3) Beginning May 2, 2005, employers shall pay employees a
74 minimum wage at an hourly rate of $6.15 for all hours worked in
75 Florida. Only those individuals entitled to receive the federal
76 minimum wage under the federal Fair Labor Standards Act and its
77 implementing regulations shall be eligible to receive the state
78 minimum wage pursuant to s. 24, Art. X of the State Constitution
79 and this section. The provisions of ss. 213 and 214 of the
80 federal Fair Labor Standards Act, as interpreted by applicable
81 federal regulations and implemented by the Secretary of Labor,
82 are incorporated herein.
83 (4)(a) Annually on September 30, the Agency for Workforce
84 Innovation shall calculate an adjusted state minimum wage rate by
85 increasing the state minimum wage by the rate of inflation for
86 the 12 months prior to September 1. In calculating the adjusted
87 state minimum wage, the agency shall use the Consumer Price Index

88 for Urban Wage Earners and Clerical Workers, not seasonally
89 adjusted, for the South Region, or a successor index as
90 calculated by the United States Department of Labor. Each
91 adjusted state minimum wage rate shall take effect on the
92 following January 1, with the initial adjusted minimum wage rate
93 to take effect on January 1, 2006.
94 (b) The Agency for Workforce Innovation and the Department
95 of Revenue shall annually publish the amount of the adjusted
96 state minimum wage and the effective date. Publication shall
97 occur by posting the adjusted state minimum wage rate and the
98 effective date on the Internet home pages of the agency and the
99 department by October 15 of each year. In addition, to the extent
100 funded in the General Appropriations Act, the agency shall
101 provide written notice of the adjusted rate and the effective
102 date of the adjusted state minimum wage to all employers
103 registered in the most current unemployment compensation
104 database. Such notice shall be mailed by November 15 of each year
105 using the addresses included in the database. Employers are
106 responsible for maintaining current address information in the
107 unemployment compensation database. The agency shall not be
108 responsible for failure to provide notice due to incorrect or
109 incomplete address information in the database. The agency shall
110 provide the Department of Revenue with the state minimum wage
111 rate information and effective date in a timely manner.
112 (5) It shall be unlawful for an employer or any other party
113 to discriminate in any manner or take adverse action against any
114 person in retaliation for exercising rights protected pursuant to
115 s. 24, Art. X of the State Constitution. Rights protected
116 include, but are not limited to, the right to file a complaint or

117 inform any person of his or her potential rights pursuant to s.
118 24, Art. X of the State Constitution and to assist him or her in
119 asserting such rights.
120 (6)(a) Any person aggrieved by a violation of this section
121 may bring a civil action in a court of competent jurisdiction
122 against an employer violating this section or a party violating
123 subsection (5). However, prior to bringing any claim for unpaid
124 minimum wages pursuant to this section, the person aggrieved
125 shall notify the employer alleged to have violated this section,
126 in writing, of an intent to initiate such an action. The notice
127 must identify the minimum wage to which the person aggrieved
128 claims entitlement, the actual or estimated work dates and hours
129 for which payment is sought, and the total amount of alleged
130 unpaid wages through the date of the notice.
131 (b) The employer shall have 15 calendar days after receipt
132 of the notice to pay the total amount of unpaid wages or
133 otherwise resolve the claim to the satisfaction of the person
134 aggrieved. The statute of limitations for bringing an action
135 pursuant to this section shall be tolled during this 15-day
136 period. If the employer fails to pay the total amount of unpaid
137 wages or otherwise resolve the claim to the satisfaction of the
138 person aggrieved, then the person aggrieved may bring a claim for
139 unpaid minimum wages, the terms of which must be consistent with
140 the contents of the notice.
141 (c)1. Upon prevailing in an action brought pursuant to this
142 section, aggrieved persons shall recover the full amount of any
143 unpaid back wages unlawfully withheld plus the same amount as
144 liquidated damages and shall be awarded reasonable attorney's
145 fees and costs. As provided under the Fair Labor Standards Act,

146 pursuant to s. 11 of the Portal-to-Portal Act of 1947, 29 U.S.C.
147 s. 260, if the employer proves by a preponderance of the evidence
148 that the act or omission giving rise to such action was in good
149 faith and that the employer had reasonable grounds for believing
150 that his or her act or omission was not a violation of s. 24,
151 Art. X of the State Constitution, the court may, in its sound
152 discretion, award no liquidated damages or award any amount
153 thereof not to exceed an amount equal to the amount of unpaid
154 minimum wages. The court shall not award any economic damages on
155 a claim for unpaid minimum wages not expressly authorized in this
156 section.
157 2. Upon prevailing in an action brought pursuant to this
158 section, aggrieved persons shall also be entitled to such legal
159 or equitable relief as may be appropriate to remedy the violation
160 including, without limitation, reinstatement in employment and
161 injunctive relief. However, any entitlement to legal or equitable
162 relief in an action brought under s. 24, Art. X of the State
163 Constitution shall not include punitive damages.
164 (d) Any civil action brought under s. 24, Art. X of the
165 State Constitution and this section shall be subject to s.
166 768.79.
167 (7) The Attorney General may bring a civil action to
168 enforce this section. The Attorney General may seek injunctive
169 relief. In addition to injunctive relief, or in lieu thereof, for
170 any employer or other person found to have willfully violated
171 this section, the Attorney General may seek to impose a fine of
172 $1,000 per violation, payable to the state.
173 (8) The statute of limitations for an action brought
174 pursuant to this section shall be for the period of time

175 specified in s. 95.11, from the date the alleged violation
176 occurred.
177 (9) Actions brought pursuant to this section may be brought
178 as a class action pursuant to Rule 1.220, Florida Rules of Civil
179 Procedure. In any class action brought pursuant to this section,
180 the plaintiffs shall prove, by a preponderance of the evidence,
181 the individual identity of each class member and the individual
182 damages of each class member.
183 (10) This section shall constitute the exclusive remedy
184 under state law for violations of s. 24, Art. X of the State
185 Constitution.
186 (11) Except for calculating the adjusted state minimum wage
187 and publishing the initial state minimum wage and any annual
188 adjustments thereto, the authority of the Agency for Workforce
189 Innovation in implementing s. 24, Art. X of the State
190 Constitution, pursuant to this section, shall be limited to that
191 authority expressly granted by the Legislature.
192 Section 3. Sections 448.01-448.110, Florida Statutes, are
193 designated as part I of chapter 448, Florida Statutes, and
194 entitled "Terms and Conditions of Employment."
195 Section 4. If any provision of this act or its application
196 to any person or circumstance is held invalid, the invalidity
197 shall not affect the other provisions or applications of the act
198 which can be given effect without the invalid provision or
199 application, and to this end the provisions of this act are
200 severable.
201 Section 5. This act shall take effect upon becoming a law.
202